PMSA
PACIFIC MERCHANT SHIPPING ASSOCIATION

June 9, 2022

Michael Haglund
Haglund Kelly LLP
2177 SW Broadway
Portland, OR 97201
Delivered via email

Re: "PSP Pension Stakeholder Negotiations" correspondence (June 8, 2022)

Mr. Haglund,

We are disappointed that PSP is walking away from the UTC's mandated workshop process, claiming an "impasse" when none exists. PMSA further expresses its continued intention to follow the UTC Order currently in place and to engage in workshops, and respectfully invites PSP to return to the process.

We do not believe that a collaborative effort to follow the UTC Order is a "waste of time." PMSA is committed to a workshop process whose goal is to issue as work product a joint report which clearly delineates where parties agree and disagree about facts and potential proposals and next steps as described by the UTC Order. If PSP returns to discussions, we would welcome the opportunity to work together to draft such a report as the primary outcome of the pension workshops.

PMSA has retained the services of an actuary who is initiating his analysis. PMSA has informed PSP of its efforts to retain a qualified actuary available to do the analysis required in a timely manner and the emails this week furthering this work ("PMSA Actuary Request for Information" attached) are obviously meant to facilitate the production of a final report with PSP.

As such, PMSA is in a period of actuarial due diligence. Due diligence is neither a sign of bad faith nor of delay. Quite the opposite, PMSA is proceeding in good faith and fidelity with the UTC workshop process: having a base of well-established actuarial facts and projections and well-informed positions on the best manner in which to approach a transition to a new retirement plan. As such, this is a critical step which will allow us to have a meaningful workshop process and present a final report to the UTC which will facilitate stipulations and decisions at the next general rate hearing.

We are not asking for anything that PSP has not availed itself of already. PSP arrived at its conclusions about the best next steps to advocate for with its retirement as ably noted in your letter (at pg 2):

> *"When the UTC issued its Final Order and approved a new tariff in late January 2021, PSP devoted a number of months to studying whether it was feasible to transition the existing PSP pay-as-you-go pension plan to a fully funded, ERISA-qualified defined benefit plan and, if so, how the costs compared to continuing the status quo. That work was completed in late 2021 and led to the PSP Pension Committee and Board Of Directors deciding to support the transition to the fully funded pension plan recommended so strongly by the UTC in its Final Order."*

We recognize PSP's independent progress and work to date on its own due diligence. Unfortunately, PSP chose to do this work alone, pre-emptively, and outside of the scope of the Order's direction that such due diligence and actuarial work should be done collaboratively with other stakeholders and through a mutually agreed upon third party actuary.

PMSA is endeavoring to stay within the scope of the Order's proscribed workshop process and also conduct its own actuarial review in response to PSP's independent process. We ask only for a modicum of time during the current workshop period to do the same type of analysis that took PSP the better part of an entire calendar year.

To that end, PMSA has solicited actuaries, interviewed actuaries, and contracted with an actuary; we are now in a period where we need to allow the actuary a reasonable time to produce an actuarial report; this will be followed by a period of time necessary for PMSA to review the actuary's work product before starting workshops to try and reach consensus on next steps and a final report to the UTC.

This is not an "impasse" or a tactic to "delay" or a lack of "good faith." We disagree with these mischaracterizations of our activities and the description of the state of the calendar of our meetings.[1]

Despite PSP's withdrawal, PMSA will continue its work – without delay and in good faith – in order to fully and adequately participate in a retirement workshop process. This is in the same vein as the email from Mike Moore to you earlier this week; we are seeking a long-term outcome to this issue which is comprehensive, informed, and collaborative. This is the outcome which was sought by the UTC in its Order and is in every party's best interest.

PMSA stands by optimistically that PSP will remain engaged with stakeholders on the retirement workshop process required by the UTC Order, and we would respectfully request that you retract the claims made in your June 8, 2022 letter.

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[1] PMSA provides the following accurate representation of the state of the pension workshops: The first request by PSP to meet with PMSA for a pension workshop was for a meeting on March 2, 2022. After consideration of mutually agreed upon conditions, PMSA met with PSP on March 2. At this initial meeting, PMSA clearly conveyed the need to lay out a workshop process based on the UTC Order, including the need to use a third-party actuary and a mutually agreed upon approach to workshops. PSP informed PMSA that it preferred to continue to use the work of its hand-picked actuary, as opposed to utilizing a mutually agreed upon actuary as directed by the UTC Order in follow-on meetings. PMSA participated in those secondary discussions with the PSP actuary. As a result of those discussions, PMSA indicated it would need to engage with its own actuary to conduct due diligence and review of the PSP actuarial study and its assumptions. PMSA asked PSP if it would like to collaborate and mutually engage with a new actuary, consistent with the UTC Order, and PSP declined. Moreover, PSP did not object to PMSA moving forward with its own actuary as a component of the workshop process in the April meetings. PMSA has kept PSP abreast of its need for additional time to acquire qualified and timely deliverable actuarial services when rescheduling the May meetings. At no time in reply to these notifications by PMSA did PSP give any indication to PMSA that it would view our pursuit of actuarial due diligence as either an "impasse" or "a strategy of delay and [refusal] to negotiate in good faith."

Aside from the above, thank you for affirming a pathway for communication of questions from our actuary to PSP's actuary. We will invite our actuary to proceed.

Sincerely,

Mike Jacob
Vice President & General Counsel

attachments
cc: Mike Moore, PMSA
Jordan Royer, PMSA
Monique Webber, PYM
Jay Jennings, NMTA

Mike Jacob

From: Mike Moore
Sent: Tuesday, June 7, 2022 12:53 PM
To: Michael Haglund
Cc: Mike Jacob; Jordan Royer; Ivan Carlson - President; ccostanzo@psppilots.org; David Grobschmit; Jay Jennings; Monique Webber
Subject: RE: PMSA Actuary Request for Information

Mike,

Thanks for the reply on our actuary's requests for how to best move forward with his review and interact with your Actuary.

Here's what I take away from your response to these, please correct me if I'm wrong or misstating these:

- Re: "Contact with Milliman Actuary" – PSP would agree with either email correspondence directly from PMSA actuary to PSP actuary with cc's to principals, and anticipates 1-2 day response timeline or telephone conference calls.

- Re: "Contact with Plan Administrator" – PSP would not agree to provide contact to clarify benefits to PMSA actuary in case of questions

- Re: "Legal Opinion on 401(a) Qualification" - PSP would not agree to share written documentation about creation of a tax-qualified pension plan mirroring the current PSP pension.

If these are correct we will get these responses back to our Actuary and encourage him to coordinate with your Actuary on questions as they arise via email or coordinated conference call.

As for the balance of your email, this is really quite a surprise! To "insist on PMSA providing its final position on any transition of the PSP existing pension to a funded pension no later than June 15" and that PSP is looking to have "a wrap-up stakeholder session at any time next week" and "report to the UTC on what appears to be an agreement" is unexpected and not realistic. We obviously don't have any positions (final or preliminary) on any issues with specificity yet. This email string is case in point, we still need to have our actuaries communicate about baseline analytical issues.

Of course, we also see the end goal of workshops as generating a report to the UTC. We have thought this whole time that there would actually be a real, physical written and negotiated Report. It will be an actual workshop product which is a summary of the discussions, facts and paths forward where we both agree and disagree. This is exactly what the UTC Order asks us to work on, together. After we have a final actuarial review on our end, then we can get to having an informed position, which is obviously key to agreeing on the facts that will then guide our workshops, getting us to a joint proposal if possible, and starting to draft this written Report, signed off on by all of the parties.

And this raises a practical matter moving forward – putting aside this timing and actuarial issue - if PSP has a draft Report, we would expect it to be shared ahead of time. It is important that if PSP is looking for stakeholders to review it and sign off on a "Final" position Report, that you have circulated that draft with us ahead of time. Obviously, there is no draft here that's been shared for approval by next week, so that is not happening here, but I think it would be productive to just say now that moving forward we would expect everyone to share such drafts of a proposed Report with everyone in plenty of time for everyone to edit, wordsmith, share versions, and discuss at Workshop sessions prior to setting a date to ask people to agree to a "final position."

Also surprising – we started this process last Fall? Our first meetings on the topic didn't occur until this March. PSP may have started its own internal processes last fall, but since you did not engage us early, PSP hired its own actuary without mutual consultation, and PSP did not set up any of the workshops, please don't make this timeline ours. If PSP was interested in getting this wrapped up by June 15th, we would have expected an earlier engagement and more collaboration on finding a mutually agreeable actuary and moving forward with workshops as was described in the Order.

Which now we all are trying to do, which now leaves us back to the subject matter of my original email – getting back to these workshops.

We will get these responses now to our Actuary and ask him for an estimate of when he believes his review will be done. We will get you some dates based on that estimate for our next workshop meeting where we can all get together with both actuaries to review the facts on which everyone can agree. That will be a really productive starting place for laying the bones of the UTC Report and working to address identified issues.

All of this reminds me of the old adage that if you want to go someplace fast, go alone, but if you want to go far, go together.
It strikes me that your June 15th deadline is a request to go fast on your own. The UTC Order asked us to go far by working on this collaboratively.

We hope we can go far too – and we know that is in everyone's best long-term interest in doing a transition to a new retirement system right.
On that same score of keeping everyone working on this together, I'm also adding PYM as a cc to this reply.

Regards,

Mike

From: Michael Haglund <MHaglund@hk-law.com>
Sent: Tuesday, June 7, 2022 10:53 AM
To: Mike Moore <mmoore@pmsaship.com>
Cc: Mike Jacob <mjacob@pmsaship.com>; Jordan Royer <jroyer@pmsaship.com>; Ivan Carlson - President <president@pspilots.org>; ccostanzo@psppilots.org; David Grobschmit <dgrobschmit@pspilots.org>
Subject: PMSA Actuary Request for Information

Mike,

Charlie forwarded your email of yesterday regarding a number of questions from the PMSA actuary. We would be happy to have PSP actuary Christopher Wood respond to questions in writing within a day or two or we could coordinate a telephone conference call later this week. As to contact with the PSP plan administrator or pension counsel, that is not necessary and well beyond the scope of the stakeholder discussions that the UTC ordered.

On behalf of PSP, we do wish to wrap this process up quite soon. We must respectfully insist on PMSA providing its final position on any transition of the PSP existing pension to a funded pension no later than June 15. As we understand your position at this point, PMSA is agreeable to existing retirees continuing to receive their pensions and that the funding for these pension payments should continue to be covered within the revenue requirement for the tariff. With respect to the past and future pension accruals for PSP working pilots as well as the pension benefits for future licensees, we understand that PMSA opposes continuation of the existing PSP plan with its 1.5% annual accrual rate that ultimately generates a fixed pension benefit calculated by multiplying a retiring PSP pilot's total accruals times the average of the last three calendar years of distributable net income before retirement.

We are available to have a wrap-up stakeholder session at any time next week. However, considering that this process began last fall and has included multiple sessions, it's time to wrap things up and report to the UTC on what appears to be agreement on how to handle the benefits owing to existing retirees, but disagreement on what sort of pension benefits PSP working pilots and future licensees should receive.

We look forward to hearing from you regarding your actuary's preferred form of follow-up and to receiving PMSA's final position on the pension issues by June 15.

If you have any questions, please not hesitate to call. Best regards, Mike

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From: Mike Moore <mmoore@pmsaship.com>
Sent: Monday, June 6, 2022 12:00 PM
To: Charles Costanzo <ccostanzo@pspilots.org>
Cc: Mike Jacob <mjacob@pmsaship.com>; Jordan Royer <jroyer@pmsaship.com>
Subject: PMSA Actuary Request for Information

Charlie,

Our actuary would like to collect some information – his suggestions to us are listed below. Can you respond to us with your thoughts and hopefully our actuary can get through the work in a thorough and timely fashion.

Contact with Milliman Actuary
Ideally, your contact at PSP would agree to direct communication between Milliman and me, with you and PSP copied on the correspondence going both ways. I am happy to handle all of the communication, but you may wish to discuss the communication protocol with your PSP contacts first, to avoid confusion. I will need from you the contact information for PSP. If available, please also provide the contact information for the Milliman actuary.

Contact with Plan Administrator
While the I believe that I understand the benefits provided in the current PSP plan from the plan document, sometimes actual administration of a plan produces surprises. Therefore, it would be good practice to review benefit determinations from the benefits administrator to ensure that I have a full understanding of the benefits in the plan. Protocol for requesting and receiving that information may be similar to the protocol for communication with Milliman. I will need the contact information for PSP to proceed with that request.

Legal Opinion on 401(a) Qualification
Please let me know whether your PSP contacts would agree to share any written documentation of the advice they received from legal counsel about creation of a tax-qualified pension plan mirroring the current PSP pension.

Let us know if you have any questions about these requests...

Thanks,

Mike

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June 8, 2022

Via Email and U.S. Mail

Mike Moore
Pacific Merchant Shipping Association
World Trade Center
2200 Alaskan Way, Suite 160
Seattle, WA 98121

Re: PSP Pension Stakeholder Negotiations

Dear Mike:

In response to your email of yesterday, let me first address the inaccuracy in your suggested takeaways from my June 6 email and then provide PSP's position on the state of negotiations with PMSA.

Corrected Takeaways.

As to the PMSA request for three categories of information, which you communicated via email on June 6 and to which we responded on June 7, you are correct that the PSP actuary is willing to respond to written requests for information from PMSA's actuary or to participate in a conference call on which PSP is also represented by counsel and a member of its Pension Committee. Regarding the second request for contact with the PSP plan administrator, there is no PSP staffer with that title. The terms of the PSP pension plan are extremely straightforward. When pilots retire, which happens zero to three times per year, the retiring pilot's benefit is calculated, reviewed by the president and then paid monthly by PSP's accounts payable staffer. If PMSA's actuary has specific questions, please send them to Ivan, Charlie and me and we will answer promptly. As to the request for any legal opinion on section 401(a) qualification of a Multiple Employer Defined Benefit Pension Plan, we have already advised you in our first stakeholder session on March 2 that PSP's pension attorney has concluded that this approach will meet the requirements of section 401(a), but there has been no formal legal opinion. PMSA can verify this through its own capable counsel.

Status of Negotiations with PMSA.

The most telling sentence in your email of yesterday regarding the state of stakeholder discussions between PSP and the PMSA is the following: "We obviously don't have any positions (final or preliminary) on any issues with specificity yet." The reality is that, from the beginning, PMSA has deployed a strategy of delay and has refused to negotiate in good faith.

This process began nearly five months ago when PSP forwarded a letter on January 28 enclosing the census data for PSP retirees and working pilots, the PSP pension plan and a summary of our actuary's 50-year cost projections for continuing the pay-as-you-go pension plan and two different scenarios involving a transition to a fully funded defined benefit plan. A week later, all parties received copies of the 50-year cost projections and a detailed description of the underlying actuarial assumptions. The letter also proposed a March 2 date with a well-regarded Seattle mediator to facilitate discussions at the initial stakeholder session on March 2. PMSA objected to using what it characterized as PSP's "hand-picked" mediator and the parties ultimately agreed to dispense with use of a mediator and to negotiate directly.

We have now had three stakeholder sessions, which occurred on March 2, April 13 and 26. An additional session was set for May 11 with the back-up date of May 17, but the session was canceled by PMSA because it needed more time to line up an actuary. To date, PMSA has been unwilling to acknowledge that PSP is legally bound to respect and honor its pension obligations to existing retirees and to 52 currently working pilots. While PMSA has repeatedly suggested in the stakeholder sessions that a host of other pension plan options – 401(k) plans, SEP plans, IRAs and individualized defined benefit plans – should be considered, PSP has made clear that none of these are in the cards. Not only is PSP legally bound to meet its pension obligations, but Washington's pilotage system regulators, the BPC and UTC to date, expect them to be met and have funded those obligations in the tariff as a fully appropriate and reasonable cost of the pilotage system for decades.

When the UTC issued its Final Order and approved a new tariff in late January 2021, PSP devoted a number of months to studying whether it was feasible to transition the existing PSP pay-as-you-go pension plan to a fully funded, ERISA-qualified defined benefit plan and, if so, how the costs compared to continuing the status quo. That work was completed in late 2021 and led to the PSP Pension Committee and Board Of Directors deciding to support the transition to the fully funded pension plan recommended so strongly by the UTC in its Final Order. In PSP's mind, there is no question that this transition, while more expensive in terms of tariff costs over the first 15 years (the required period for moving from a 100% deficit plan to full funding), will ultimately deliver significant savings to the pilotage system and stabilize the annual cost of funding PSP's pension plan.

To date, PMSA has been unwilling to make any proposal despite deep pre-existing knowledge of pilot group pensions both in Puget Sound and in San Francisco. However, PMSA has made clear on multiple occasions that, as a matter of principle, the ships paying pilotage fees today should not be paying for the costs of past pilotage service, which is how you characterize the costs of the PSP pension plan which collects the funds to pay retired pilots after each has retired. If the stakeholder process to date had involved a mediator, we are confident that an impasse would have been declared by now. PSP, as has been repeatedly explained, has virtually no negotiating space on the pension issue. The existing PSP plan must either be continued as a pay-as-you-go plan or replicated as a fully funded defined benefit plan. There are no other legally available options for PSP. As to changing the level of benefits at some future date for all newly licensed PSP pilots, PSP is absolutely opposed to reducing a pension that is in the middle rank of those in place at other major state-licensed US pilot groups for one simple reason. A substantial downgrade of PSP pension benefits would quickly become known among the relatively small group of master mariners in the US who consider making a mid-career move to the pilotage profession and would, without question, reduce the number of the best qualified mariners in what is a national candidate pool who consider applying to become a trainee pilot on the Puget Sound pilotage ground. PSP is obligated to maintain a pilotage system that provides the best available protection against oil spills and other maritime casualties in Puget Sound. As an organization, it must maintain a nationally competitive package of compensation and benefits both to attract the best available captains in the US and to diversify its pilot corps.

As you know, the Puget Sound pilotage tariff fell significantly short of meeting the assumed revenue requirement in 2020 and 2021 and will again in 2022. PSP is also significantly understaffed, which in this year of rebounding traffic levels, is causing excessive levels of callbacks, which are unsafe from a fatigue risk management perspective. Given the obvious impasse with PMSA on pension-related issues, PSP must concentrate on the preparations for its next general rate case. In our view, PSP has made a good faith effort to engage with stakeholders on the pension issues as requested by the UTC. PMSA has not. While we remain willing to provide information at your request consistent with the protocols listed in the first paragraph of this letter and to engage in meaningful negotiations provided any such session is preceded by an actual proposal from PMSA, we see no need to schedule a further session with PMSA in light of the clear impasse between the parties. Further, we believe it would be a waste of time to attempt to draft some sort of joint stakeholder report to the UTC regarding our negotiations. Between letters and emails, the record is quite clear and each party is free to submit a report to the UTC as it sees fit.

Very truly yours,

Michael E. Haglund

MEH:km

cc: *Via email*:
Mike Jacob
Jordan Royer
Monique Webber
Jay Jennings

HAGLUND KELLEY LLP