BEFORE THE STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PUGET SOUND PILOTS, Respondent.	Docket No. TP-220513 DECLARATION OF MICHELLE DELAPPE IN SUPPORT OF PMSA'S MOTION TO DISMISS

1. I, Michelle DeLappe, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge and belief:

2. I am over eighteen years of age, am competent to testify herein, and base this declaration on my personal knowledge.

3. I am counsel for Pacific Merchant Shipping Association ("PMSA") in this case and make this declaration to conform PMSA's motion to dismiss with the requirements under WAC 480-07-395(1)(c)(iii)(D).

4. Attached to this declaration are true and correct copies of the pages with highlighted relevant portions relied on from the following exhibits filed by Puget Sound Pilots in this case:

a. Costanzo, Exhibit CPC-01T

b. Costanzo, Exhibit. CPC-05

c. Costanzo, Exhibit CPC-08

d. Costanzo, Exhibit CPC-11

e. Costanzo, Exhibit CPC-12

f. Costanzo, Exhibit CPC-13

g. Costanzo, Exhibit CPC-14

h. Costanzo, Exhibit CPC-15

i. Tabler, Exhibit WST-01T

Signed this 7th day of July, 2022.

s/ Michelle DeLappe
Michelle DeLappe

Exh. CPC-01T
Witness: Charles P. Costanzo

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, **Complainant,** **v.** **PUGET SOUND PILOTS,** **Respondent.**	**Docket TP-**

TESTIMONY OF

CHARLES P. COSTANZO

ON BEHALF OF PUGET SOUND PILOTS

JUNE 29, 2022

Haglund Kelley, LLP
2177 SW Broadway
Portland, OR 97201
Tel: (503) 225-0777 / Fax: (503) 225-1257

years necessary to become qualified for the maritime pilotage profession, knowing that this profession embraces the opportunity for its pilots to have families.

Q: Has PSP added a new expense category to its 2023 budget that is included in the 2023 PSP pro forma statement of operations, which is Exhibit MB-05 to the testimony of PSP Office Manager Magan Brooks.

A: Yes. That expense category for $50,000 is designed to cover the annual costs of sustaining PSP's highly robust diversity, equity and inclusion program. The cost covers outreach efforts and scholarships.

B. Results of UTC-Ordered Stakeholder Process to Address Transition of PSP Pension Plan from Unfunded to Funded.

Q: Please describe how PSP approached the UTC directive in Order 09 to engage with stakeholders on the issue of transitioning PSP's unfunded pension plan to a fully funded defined benefit plan.

A: PSP understood the UTC mandate on this issue and took it very seriously. PSP has long recognized that it has both a moral and legal obligation to honor the pension benefit promise that our pilot group makes to every PSP pilot upon licensure, namely that the pension each has earned after making a mid-career move to the pilotage profession will in fact be paid for the balance of their lifetime. Knowing the gravity of this responsibility, PSP pursued a two-step approach to the stakeholder engagement process related to its pension plan. First, recognizing that PSP had to treat its legally enforceable pension obligations to both existing retirees and currently working pilots as an incontestable bedrock principle, the first step was to engage both a pension law expert and an actuary to address two fundamental questions:

when the Oregon Board of Maritime Pilots transitioned Oregon pilot groups from their farebox pensions to defined contribution pension plans. There were then four stakeholder meetings in March, April and May and then telephone calls and correspondence that culminated in an agreement between PSP and two stakeholders (Pacific Yacht Management and Northwest Marine Trade Association) and apparent impasse with PMSA.

Q: With respect to Pacific Yacht Management and Northwest Marine Trade Association, what is the nature of the agreement with PSP on pension funding?

A: I am pleased to report that PSP and both Pacific Yacht Management and Northwest Marine Trade Association are in agreement on three key points. First, PSP's time-honored legal obligations to its retirees and all working pilots are legally enforceable obligations that should be funded through the tariff. Second, in order to maintain a competitive package of compensation and benefits that is attractive to top-flight mariner applicants, the existing PSP pension plan benefit accrual rate of 1.5% per year should remain in place for all future licensees. Third, the UTC should approve a transition to a fully funded defined-benefit plan that replicates the existing PSP plan benefits using one of the two fully funded scenarios described in the testimony of Mr. McNeil and Mr. Wood and summarized in the cost projections on Exhibit CPC-09. It is my understanding that both Pacific Yacht Management and Northwest Marine Trade Association plan to submit letters or testimony in this rate case that formally confirms their support for full tariff funding of a transition of the existing PSP pension plan to a fully funded defined benefit plan.

Q: Please describe the nature of the impasse between PSP and PMSA on the pension issues covered in the stakeholder process that you have described.

A: Quite frankly, we made no progress whatsoever with PMSA. Based on my observations, I attribute this to PMSA's unwillingness at any time to acknowledge that the tariff funding the pilotage system in Puget Sound should cover the costs of the promised pension benefits to current retirees and to all currently working PSP pilots when they retire. Instead, PMSA focused on an unfair process-related argument, repeatedly complaining that PSP started the stakeholder sessions with its own "hand-picked actuary" rather than jointly engaging that actuary with other parties. As explained above, PSP had a fiduciary obligation to educate itself first regarding the various options and their costs before launching the stakeholder process. All of the materials provided to stakeholders and all pertinent correspondence in letter or email form is contained in Exhibits CPC-05 through CPC-15. Suffice it to say here that, despite multiple stakeholder sessions over three months, PMSA did not engage its own actuary until sometime in May and as late as June 6, 2022 had never yet taken any type of position on any issue, as confirmed in an email from Mike Moore that included the following statement: "We obviously don't have any positions (final or preliminary) on any issues with specificity yet." In response to that email, our counsel forwarded a letter dated June 8, 2022 to Mr. Moore declaring an impasse between PSP and PMSA while at the same time leaving the door open to further discussions and committing to continue providing information at PMSA's request. PMSA responded to PSP's June 8, 2022 letter in a June 9, 2022 letter, included as Exhibit CPC-15, inviting PSP to recommence the stakeholder sessions, but PSP stands by its position that it fully complied with the UTC mandate and will not be scheduling any further meetings. If PMSA wishes to pursue settlement negotiations on the funded pension issue in this rate case, PSP's door is always open.

Q: Do you believe that PSP made a good faith effort to complete the stakeholder engagement process ordered by the UTC concerning pension-related issues?

A: Absolutely. The proof is in the documentation that PSP has submitted as exhibits and the testimony of multiple witnesses with expertise on this issue. PSP's door remains open to further discussions with PMSA, but PSP has an obligation both to its members and to the State of Washington to move as quickly as reasonably possible to redress the substantially underfunded character of the pilotage system serving Puget Sound today. The sheer magnitude and comprehensive character of PSP's testimony from 23 witnesses and over 2000 pages of exhibits clearly demonstrates the legitimacy of this position on the part of PSP. Contrary to the suggestions of PSP's historic opponent on pilotage rates, PSP had no obligation to engage in an unnecessarily long and unproductive stakeholder process with PMSA.

C. The Statutory "Best Achievable Protection" Standard Governs UTC Pilotage Rate-Setting for the Puget Sound Pilotage District.

Q: What is the public trust doctrine?

A: The public trust doctrine as it is understood and applied in the United States evolved from the historic principle at English common law that title to submerged lands is held in trust by the sovereign for the benefit of the public. The U.S. Supreme Court (adopting the language of the New York State Court of Appeals), explained the doctrine's origins as follows:

> The title to lands under tide waters, within the realm of England, were, by the common law, deemed to be vested in the king as a public trust, to subserve and protect the public right to use them as common highways for commerce, trade and intercourse. The king, by virtue of his proprietary interest could grant the soil so that it should become private property, but his grant was subject to the paramount right of public use of navigable waters, which he could neither destroy nor abridge. In every such grant there was an

HAGLUND KELLEY LLP

Portland Office and Mailing Address:
2177 SW Broadway
Portland, Oregon 97201

T 503.225.0777
F 503.225.1257
www.hk-law.com

Astoria Office Location:
800 Exchange Street, #330
Astoria, Oregon 97103

Michael E. Haglund
Michael K. Kelley (In Memoriam)
Michael G. Neff
Julie A. Weis
Christopher Lundberg
Matt Malmsheimer
Joshua Stellmon (Astoria)
Eric J. Brickenstein
Christopher T. Griffith

Heather Reynolds (Astoria)
Of Counsel

LeRoy W. Wilder
Retired

January 28, 2022

<u>VIA Email and U.S. Mail</u>

Michelle DeLappe
Fox Rothschild LLP
1001 Fourth Avenue, Suite 4500
Seattle, WA 98154-1192
mdelappe@foxrothschild.com
Attorneys for Pacific Merchant Shipping Association

Monique Webber
Pacific Yacht Management
2284 W. Commodore Way, Suite 120
Seattle, WA 98199
monique@pacificyachtmanagement.com
Attorney for Pacific Yacht Management

Sally Brown
Harry Fukano
Assistant Attorneys General
P. O. Box 47250
Olympia, WA 98504
sally.brown@utc.wa.gov
harry.fukano@utc.wa.gov
Attorneys for Washington Utilities and Transportation Commission

Steven Block
Lane Powell PC
1420 Fifth Avenue, Suite 4200
P.O. Box 91302
Seattle, WA 98111-9402
BlockS@LanePowell.com

Attorneys for Tote Maritime Alaska, LLC

RE: Stakeholder Meetings to Consider Puget Sound Pilots' Pension Program Transition

Dear Counsel:

On behalf of the Puget Sound Pilots (PSP), the purpose of this letter is to begin the process of initiating stakeholder discussions regarding the development of a plan to transition from PSP's current pay-as-you-go or farebox retirement program to a fully funded, defined benefit retirement plan and to implement full accrual accounting for retirement expenses. To facilitate this transition, the Washington Utilities and Transportation Commission in its November 25, 2020 Order 09 directed PSP to conduct a number of workshops addressing these issues prior to the filing of PSP's next general rate case.

Over the last several months, PSP has worked closely with a highly qualified actuary to develop the information necessary for meaningful stakeholder participation in these workshops. Specifically, after providing the actuary with the census data for all current PSP retirees and working pilots (date of birth, date of hire and date of retirement), actuary Christopher "Tiff" Wood with the highly regarded actuarial firm Milliman was asked to prepare a 50-year projection of the annual cost of three scenarios:

1. Continue the current pay-as-you-go pension program;

2. Continue to pay existing retirees on a pay-as-you-go basis, but transition the retirement benefits of all current working pilots to a funded defined benefit plan covering both past and future pension benefit accruals; and

3. Continue to pay both existing retirees and working PSP pilots past pension benefit accruals on a pay-as-you-go basis, but transition the future pension benefit accruals of working PSP pilots to a funded defined benefit plan.

The three 50-year cost projections begin on July 1, 2022 and assume that the funded number of PSP working pilots is 52, that the retirement base against which the annual accrual percentage of 1.5% per year is applied to is $393,790 (which is the average of the last three years of PSP pilot actual net income or distributable net income approved by the WUTC), that pilot income levels increase at a rate of 2% per year and that financial returns on invested funds average 5% net of expenses.

These projections show that, over 50 years, the pay-as-you-go pension program will cost approximately $472 million, that the continuation of the pay-as-you-go system for retirees only as of July 1, 2022 and funding the pension benefits of all working pilots (both past and future accruals) will cost $337 million and that continued funding of both existing retirees and past pension accruals for working pilots as of July 1, 2022 on a pay-as-you-go basis and then funding future pension accruals for working pilots in a funded defined benefit plan will cost $354 million.

From PSP's perspective, two observations are worth making at this stage. First, from the standpoint of ratepayers, steamship companies would achieve significant savings if there were a funded transition from the pay-as-you-go pension system to a defined benefit plan. If the funding of the defined benefit plan covers both past service accruals and future accruals for working pilots, the savings over 50 years is $135 million. If the transition to a defined benefit plan covers only future accruals for the existing pilot corps, the savings is approximately $117 million. Second, with either transition, there is an initial period where rates are higher than the comparable pay-as-you-go levels in order to fund accrued pension liabilities over the legally required 15 years, but the annual cost then drops significantly below what will be necessary to fund the pay-as-you-go system if the status quo continues. This significantly enhances rate stability over the long term to the benefit of steamship company ratepayers.

We recognize that studying the potential to transition the PSP pay-as-you-go pension system to a defined benefit plan is complicated and requires a high level of transparency to facilitate meaningful discussions between the stakeholders. To that end, we enclose the census data provided to the PSP actuary and a copy of the PSP Pension Plan. Our actuary is double-checking each of the 50-year cost projections and preparing a detailed description of the actuarial assumptions underlying those projections. We anticipate sending those materials out early next week. Recognizing that one or more stakeholders may wish to engage their own actuary to review the information and develop their own projections, we are scheduling the first of the stakeholder meetings for March 2, 2022, which will give all stakeholders over six weeks to examine the enclosed information and to perform their own analyses.

Finally, to facilitate the discussions on March 2, we have asked a very well-regarded Seattle mediator, Lou Peterson of Hillis, Clark, Martin & Peterson P.S., to conduct this stakeholder meeting and not only to preside at any subsequent session, but to attempt to mediate a mutually agreeable resolution of this issue. From the PSP's perspective, stakeholders should know that, provided the benefits that have been promised to retirees and to PSP working pilots from the date that each was licensed by the Washington Board of Pilot Commissioners are not reduced in any way, PSP is open to any one of the three different scenarios presented in the Milliman 50-year cost projections.

We look forward to the potential to resolve the issue of PSP pension funding for the long-term and to your participation in this process on March 2. Throughout the pandemic, all of Mr. Peterson's mediations are being conducted virtually. Each of you will be receiving soon a mediation confirmation letter and materials related to participation via Zoom. Approximately two weeks prior to the mediation session, Mr. Peterson will hold a pre-mediation planning conference. As the party directed to convene this stakeholder session, PSP will absorb the mediator's fee.

If you have any questions, please do not hesitate to call.

Very truly yours,

Michael E. Haglund

MEH:akt

HAGLUND KELLEY LLP

Portland Office and Mailing Address:
2177 SW Broadway
Portland, Oregon 97201

T 503.225.0777
F 503.225.1257
www.hk-law.com

Astoria Office Location:
800 Exchange Street, #330
Astoria, Oregon 97103

Michael E. Haglund
Michael K. Kelley (In Memoriam)
Michael G. Neff
Julie A. Weis
Christopher Lundberg
Matt Malmsheimer
Joshua Stellmon (Astoria)
Eric J. Brickenstein
Christopher T. Griffith

Heather Reynolds (Astoria)
Of Counsel

LeRoy W. Wilder
Retired

February 24, 2022

Via Email and U.S. Mail

Capt. Mike Moore
Pacific Merchant Shipping Association
World Trade Center
2200 Alaskan Way, Suite 160
Seattle, WA 90121
mmoore@pmsaship.com

Monique Webber
Pacific Yacht Management
2284 W. Commodore Way, Suite 120
Seattle, WA 98199
monique@pacificyachtmanagement.com
Attorney for Pacific Yacht Management

Harry Fukano
Assistant Attorney General
P.O. Box 47250
Olympia, WA 98504
harry.fukano@utc.wa.gov
Attorneys for Washington Utilities and Transportation Commission

RE: March 2, 2022 Stakeholder Meeting regarding Puget Sound Pilots' Pension Program

Dear Stakeholder Representatives:

Following up our previous discussions or correspondence, this letter confirms that the first stakeholder meeting to consider a possible transition of the Puget Sound Pilots' pension from an unfunded pay-as-you-go or farebox system to a fully funded, defined-benefit retirement plan is scheduled for March 2, 2022 from 9:30 AM to noon at the PSP offices. PSP's actuary Christopher "Tiff" Wood will be attending and available to respond any questions regarding the 50-year cost projections that he prepared and the underlying assumptions. It should also be noted that UTC staff will not be participating in these stakeholder meetings.

In terms of an agenda for the meeting, PSP proposes the following:

1. Introductions
2. Presentation by Tiff Wood regarding 50-year cost projections and the actuarial assumptions
3. Q&A for Mr. Wood
4. PMSA comments/alternative proposal
5. PYM comments/alternative proposal
6. Next steps

In advance of this first stakeholder meeting, PSP considers it important to provide some historical context regarding its pension and to describe the very limited character of the negotiating space available to a pilot group that has had a pension program for retirees funded by its tariff dating back to 1967, a period of more than 50 years. At present, the PSP pension plan provides a retirement benefit of 1.5% for each year of service multiplied by the average of the retiring pilot's last three years of distributable net income or DNI. This percentage level of annual benefit accrual dates back to 2001, when the rate of accrual was increased from 1.25% to 1.5%, pursuant to a Memorandum of Understanding signed by PSP, the Puget Sound Steamship Operators Association and Polar Tankers (successor to ARCO Marine). It is important to note that PSP's 1.5% level of pension benefit accrual per year of service is in the middle range of annual benefit accruals among other pilot groups throughout the U.S. On the West Coast, the annual accrual rate for the San Francisco Bar Pilots is 1.84% and that of the LA Pilots is 2.2%. The Maryland Pilots' accrual rate is the same as PSP's at 1.5% per year, but there are no less than seven pilot organizations on the Gulf and East Coasts with annual pension benefit accrual rates of 2% to 2.66%.

It is also worth noting that the approximately 1,300 licensed maritime pilots throughout the U.S. who achieve this pinnacle profession do so in the middle of their maritime careers, which means that a newly licensed pilot begins work as a pilot either without a pre-existing pension or having to forego the opportunity to build an existing pension to the maximum benefit levels generated by a full career. In other words, new PSP pilots need a reasonably robust pension accrual rate in order to compensate for the negative impact of a mid-career change of maritime occupation on any pre-existing pension.

Finally, all stakeholders need to be aware of the legal obligations that PSP as an organization has both to existing retirees and to all current working pilots who have accrued and continue to accrue pension benefits promised to each pilot in writing when he or she was first licensed. PSP has an absolute legal obligation to honor and to pay the benefits earned by current retirees and all accrued benefits when each currently working pilot retires. With respect to the funding of the system, there is now more than one half century of precedent for funding PSP retirement benefits through the tariff that funds the pilotage system serving vessels calling in Puget Sound. The fact that this is a legitimate expense to be included within the rate base has been codified both in statute, RCW 88.16.055(1), and regulation, WAC 363-116-315. Indeed, in this WAC provision dating back to 1991, the Washington Board of Pilot Commissioners codified as a matter of state policy PSP's pension-related contractual obligations by imposing the following requirement on pilot associations in Washington:

> Pilot associations having retirement plans, the expense of which is reimbursed through board established tariffs, shall make such payments to retired pilots as are required by the benefits and enforcement provisions of those plans.

While it is theoretically possible to consider revising the level of PSP pension benefits downward for new licensees at some future date, PSP is strongly opposed to that idea for two reasons. First, the PSP pension is not overly generous by national standards as demonstrated by the number of U.S. pilot groups with significantly more generous plans. Second, any reduction in the existing level of PSP pension benefits would hurt PSP's ability to recruit the best candidates to a safety-critical transportation position and negatively affect the organization's efforts to diversify its pilot corps.

As noted in my letter of January 28, provided the benefits that have been promised to PSP's retirees and working pilots are not reduced, PSP is open to either continuing the existing pay-as-you-go pension plan or transitioning to one of the two fully funded defined-benefit plans presented in the Milliman 50-year cost projections.

We look forward to our discussions next week. If you have any questions, please not hesitate to call.

Very truly yours,

Mike

Michael E. Haglund

MEH:km

cc: Puget Sound Pilots
Blair Fassburg
Mike Jacob

From: Michael Haglund
Sent: Monday, February 28, 2022 12:21 PM
To: Mike Moore <mmoore@pmsaship.com>
Cc: Ivan Carlson - President <president@pspilots.org>; ccostanzo@pspilots.org; Fassburg, Blair <BFassburg@williamskastner.com>; David Grobschmit <dgrobschmit@pspilots.org>; Mike Jacob <mjacob@pmsaship.com>; monique@pacificyachtmanagement.com; harry.fukano@utc.wa.gov; Jordan Royer <jroyer@pmsaship.com>
Subject: RE: March 2 PSP Pension Stakeholder Meeting

Dear Mike,

Thanks for your email. Given all of the work that has gone into planning this initial PSP Pension stakeholder meeting, we are not willing to scale it back to a meeting to plan a series of workshops. It is worth noting that the Puget Sound Pilots were assigned the responsibility in the UTC order "to initiate discussions for the purpose of developing a plan to transition to a fully funded, defined-benefit retirement plan." As part of the process to "facilitate this transition," PSP was required to conduct "a comprehensive stakeholder evaluation and participation study," which is exactly what PSP is doing. Based upon my discussion with Mike Jacob, it was clear that PMSA did not think use of a third-party facilitator such a mediator was necessary and that we should simply proceed with discussions involving the various stakeholders.

As explained in my letter of February 24, at this first workshop, PSP actuary Tiff Wood will make a presentation regarding the Milliman 50-year cost projections and the actuarial assumptions. He will also be happy to field any questions. PSP representatives will also be available to answer any questions about the PSP pension plan. We would then like to hear from PMSA and PYM regarding thoughts, reactions and/or alternative proposals for consideration. The final agenda item will be planning the next stakeholder session.

Lastly, given your comment about having been ill and the perfectly reasonable request for Jordan Royer to participate, we have decided to provide participants with the option to attend the meeting either virtually or in person at the PSP offices. Charlie Costanzo will send out a Teams invite so that anyone who wishes to participate virtually can do so.

Best regards, Mike

From: Mike Moore <mmoore@pmsaship.com>
Sent: Thursday, February 24, 2022 3:49 PM
To: Michael Haglund <MHaglund@hk-law.com>
Cc: Ivan Carlson - President <president@pspilots.org>; ccostanzo@pspilots.org; Fassburg, Blair <BFassburg@williamskastner.com>; David Grobschmit <dgrobschmit@pspilots.org>; Mike Jacob <mjacob@pmsaship.com>; monique@pacificyachtmanagement.com; harry.fukano@utc.wa.gov; Jordan Royer <jroyer@pmsaship.com>
Subject: RE: March 2 PSP Pension Stakeholder Meeting

Mike H (three of us so far),

I have been out this week and hope to be healthy and back next week but don't know yet or about the wisdom of an in-person meeting until I know more.

As for the first meeting, we propose scaling it back to focus on following the UTC Order. In our view, this should be a meeting to plan workshops, not an actual workshop. I appreciate your letter a few workdays before a first meeting but also need to point out that there has not been agreement to proceed with a PSP hired actuarial analysis or for parties to propose alternatives at what should be a "series of workshops" planning meeting. Your letter conveys some of the PSP views which have also been conveyed in many past hearings as has our perspectives. An exchange of the baseline set of perspectives would logically be the subject of a first workshop in the series which would help map out issues of agreement/disagreement setting the stage for follow-on workshops along with sufficient time for parties to properly and professionally prepare.

For this first meeting, we propose discussing how to conduct “a series of workshops facilitated by a mutually agreeable third-party…” and how we will go about identifying “… agreements, recommendations, or contested issues that arise from the workshops…” (quotes from UTC Order). If the mutually agreeable third-party is an actuary we all agree to, great, but if not, we'd have to arrive at an agreement about that as well.

Lastly, we might have to plan for this workshop planning meeting to be remote; perhaps we can decide that on Monday. Also, Jordan Royer of PMSA will be involved in this as well and thus is included on the cc line.

Regards,

Mike

Captain Mike Moore
Vice President
PACIFIC MERCHANT SHIPPING ASSOCIATION
World Trade Center
2200 Alaskan Way, Suite 160
Seattle, WA 98121
Office: 206.441.9700
Mobile: 425.876.2992
PMSASHIP.COM

From: Michael Haglund <MHaglund@hk-law.com>
Sent: Thursday, February 24, 2022 12:52 PM
To: Mike Moore <mmoore@pmsaship.com>; monique@pacificyachtmanagement.com; harry.fukano@utc.wa.gov
Cc: Ivan Carlson - President <president@pspilots.org>; ccostanzo@pspilots.org; Fassburg, Blair <BFassburg@williamskastner.com>; David Grobschmit <dgrobschmit@pspilots.org>; Mike Jacob <mjacob@pmsaship.com>
Subject: March 2 PSP Pension Stakeholder Meeting

All,

Attached is a letter with the proposed agenda for the upcoming March 2 stakeholder meeting which also contains relevant background information.

Best regards, Mike

Michael E. Haglund
Haglund Kelley LLP
2177 SW Broadway
Portland, OR 97201-1557
(503) 225-0777
(503) 225-1257 (fax)
www.hk-law.com

MEMORANDUM

TO: Stakeholders

FROM : Puget Sound Pilots

RE: Funded Pension Plan Options

DATE: April 20, 2022

I. Introduction.

Following up the stakeholder session on April 13, 2022 in Seattle, PSP agreed to share analysis provided by its pension attorney setting out the types of defined benefit pension plans and defined contribution pension plans available to employers or plan sponsors in the US. This memorandum briefly summarizes the funded defined benefit plan that would replicate the existing PSP retirement plan benefits in its currently unfunded pay-as-you-go or farebox pension system. This type of plan was the subject of the 50-year cost projections presented by PSP's actuary in the first stakeholder session on March 2, 2022. This memorandum also summarizes the types of defined contribution pension plans available in the US and the maximum annual contributions that can be made to those plans.

II. Defined Benefit Pension Plans.

A defined benefit pension plan is a type of pension plan in which the employer or plan sponsor promises a specified pension benefit paid over a period of years (e.g., a life annuity) on retirement that is determined by a formula based upon the participant's compensation and years of service. This type of retirement plan often utilizes a unit benefit formula to calculate the pension benefit payable under the defined benefit plan. This is the type of benefit defined in the PSP pension plan where each pilot accrues a 1.5% unit benefit per year of service and the ultimate retirement benefit is based upon total years of service and a pilot's average compensation over the last three years of service as a pilot.

A pension law expert retained by PSP has concluded that PSP could establish a multiple employer plan (“MEP”) that provides the same benefits to retirees as those set out in the current PSP retirement plan. To participate in an MEP, which is a type of fully funded defined benefit pension plan, each PSP pilot would be required to participate through an entity such as a LLC or subchapter S corporation. At present, all but two of PSP's current pilots participate in the Puget Sound Pilots Association through an entity. PSP's pension lawyer is of the opinion that an MEP including all PSP pilot entities could satisfy the tax-qualification requirements applicable to an MEP under section 401(a) of the Internal Revenue Code of 1986.

III. Defined Contribution Pension Plans.

A defined contribution plan is a type of retirement plan in which the employer, employee, or both make contributions on a regular basis. An individual account is established for each participating employee for the contributions, and the benefit payable to each participant at the time of the participant's retirement or separation from service is determined based upon the total amount of the contributions made to the participant's account (adjusted for earnings or losses). A profit-sharing plan with a 401(k) feature is a common type of defined contribution plan. The types of defined contribution plans available in the United States and the maximum annual contributions are summarized below.

A. Traditional 401(k) Plans.

Traditional 401(k) plans allow considerable flexibility for the sponsoring employer with respect to eligibility to participate (e.g., the sponsor can choose age and hours of service not to exceed 21 and 1,000 hours of service), contributions (e.g., the level of matching contributions and whether to make discretionary employer contributions) and the vesting schedule for the contributions (e.g., three-year cliff vesting or a graded vesting schedule with 100% vesting after six years). The tax code imposes limitations on the contributions that may be made to the accounts of plan participants. The annual employee contributions are limited to $20,500 for 2022, with additional contributions for employees age 50 and over of $6,500 for 2022. The maximum annual contribution is limited to $61,000 for 2022, and $67,500 including catch-up contributions by employees age 50 and over.

B. Simplified Employee Pension ("SEP").

A SEP requires contributions made by an employer and does not permit employee elective deferral contributions. A SEP can be established by any type of business, including a sole proprietor, partnership, LLC, or corporation to provide retirement plan coverage to employees. The employer usually makes a contribution to each eligible employee's IRA (referred to as a "SEP-IRA") that is equal to the same percentage of compensation for each employee. The annual per-participant contribution cannot exceed the lesser of 25% of compensation or $61,000 in 2022.

C. Savings Incentive Match Plan for Employees ("SIMPLE IRA").

A SIMPLE IRA plan allows businesses with fewer than 100 employees to establish an IRA for each employee. In 2022, employees may make salary deferral contributions up to the lesser of 100% of compensation or $14,000. Employees who are age 50 or older may also make catch-up contributions of up to $3,000 annually. The employer must also generally make a matching contribution dollar-for-dollar for employee contributions up to 3% of compensation to contributing employees or a nonelective contribution of up to 2% of compensation to all eligible employees up to no more than $305,000 of compensation in 2022, which limits that contribution to $6,100 in 2022.

D. Payroll Deduction IRA.

A payroll deduction IRA allows an employer to establish a payroll deduction IRA program with a bank, insurance company or other financial institution. Then, each employee may choose whether to participate and, if so, the amount of payroll deduction for contribution to the IRA. Employee contributions are limited to $6,000 for 2022. Additional catch-up contributions of $1,000 per year are permitted for employees who are age 50 or older.

IV. PSP Position.

As stated by PSP representatives at both the March 2 and April 13 stakeholder sessions, PSP is committed to seeking full funding in the pilotage tariff for the Puget Sound pilotage district for the pension benefits promised to retirees and to all working pilots at the time of initial licensure. PSP believes that it has both a legal and moral obligation to honor these pension commitments. Further, considering that PSP's pension accrual rate of 1.5% per year of service is in the lower third of similar pension plans for major pilot groups in the US (which range from 1% to 2.2% per year), we strongly favor maintaining the current pension plan for new licensees in order to remain competitive with other major US pilot groups in the recruitment of top-flight applicants.

With respect to the other pension plan options summarized above, all of which are defined contribution pension plans, PSP's actuary has advised that the annual contribution limits on these plans make it impossible for a pilot to build up sufficient funds in his or her pension plan to come close to replicating the benefits earned in the average 20-year career of a PSP pilot. As noted in the April 13 stakeholder session, one of the reasons for the relatively generous accrual rates in US pilot group pension plans is the need to make up for the pension-related losses that occur when a mariner makes a mid-career move to become a maritime pilot.

From: Michael Haglund
Sent: Tuesday, June 7, 2022 10:53 AM
To: Mike Moore <mmoore@pmsaship.com>
Cc: Mike Jacob (mjacob@pmsaship.com) <mjacob@pmsaship.com>; Jordan Royer (jroyer@pmsaship.com) <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

Michael E. Haglund
Haglund Kelley LLP
2177 SW Broadway
Portland, OR 97201-1557
(503) 225-0777
(503) 225-1257 (fax)
www.hk-law.com

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

HAGLUND KELLEY LLP

Portland Office and Mailing Address:
2177 SW Broadway
Portland, Oregon 97201

T 503.225.0777
F 503.225.1257
www.hk-law.com

Astoria Office Location:
800 Exchange Street, #330
Astoria, Oregon 97103

Michael E. Haglund
Michael K. Kelley (In Memoriam)
Michael G. Neff
Julie A. Weis
Christopher Lundberg
Matt Malmsheimer
Joshua Stellmon (Astoria)
Eric J. Brickenstein
Christopher T. Griffith

Heather Reynolds (Astoria)
Of Counsel

LeRoy W. Wilder
Retired

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

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.

---

[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

Michael E. Haglund
Haglund Kelley LLP
2177 SW Broadway
Portland, OR 97201-1557
(503) 225-0777
(503) 225-1257 (fax)
www.hk-law.com

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

HAGLUND KELLEY LLP

Portland Office and Mailing Address:
2177 SW Broadway
Portland, Oregon 97201

T 503.225.0777
F 503.225.1257
www.hk-law.com

Astoria Office Location:
800 Exchange Street, #330
Astoria, Oregon 97103

Michael E. Haglund
Michael K. Kelley (In Memoriam)
Michael G. Neff
Julie A. Weis
Christopher Lundberg
Matt Malmsheimer
Joshua Stellmon (Astoria)
Eric J. Brickenstein
Christopher T. Griffith

Heather Reynolds (Astoria)
Of Counsel

LeRoy W. Wilder
Retired

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

Exh. WST-01T
Witness Walter S. Tabler

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, **Complainant,** **v.** **PUGET SOUND PILOTS,** **Respondent.**	**Docket TP-**

TESTIMONY OF

WALTER S. TABLER

ON BEHALF OF PUGET SOUND PILOTS

JUNE 29, 2022

Haglund Kelley, LLP
2177 SW Broadway
Portland, OR 97201
Tel: (503) 225-0777 / Fax: (503) 225-1257

While the authority to regulate PSP's pilotage rates shifted in 2018 from the BPC to the UTC, the longstanding tradition of funding an adequate retirement program for state-licensed pilots in Washington should be continued. I can conceive of no reason to change a policy that supports a critically important component of maritime transportation safety infrastructure in our state.

Q: Should the UTC continue to fund the PSP pension plan in the tariff either on a pay-as-you-go or a fully funded basis?

A: Absolutely. There should be continued tariff funding for this reasonable pension benefit promised to the elite corps of master mariners who become pilots in Puget Sound for three reasons. First, PSP has an absolute legal and moral obligation to pay the benefit levels promised to existing retirees and to all current members of the pilot corps when each made a midcareer move from a Master or Captain position in the maritime industry to become a Puget Sound pilot. Second, the State of Washington has viewed pilot pension benefits as part and parcel of the pilotage system being funded by the tariff for over 30 years. There is no basis for a change in that longstanding policy. Third, retention of PSP's existing 1.5% per year pension accrual rate is a key and necessary component of a nationally competitive package of pilot compensation and benefits, which must be continued in the future if the Puget Sound Pilots are to attract the top flight mariners required to maximize PSP's accident-prevention capability.

Q: Do you receive a pension from PSP based upon your more than 12 years as Executive Director and General Counsel?

A: Yes.

Q: Please describe the level of pension benefit that you are receiving from PSP and explain why you consider it to be fair and reasonable.

A: I am receiving an annual retirement benefit of $70,000 per year based on my more than 12 years of service in PSP's top non-pilot leadership position. The benefit is paid monthly and my wife will receive 50% of that benefit upon my death if she survives me. Given my length of service with PSP and the level of skill and leadership that I brought to the position after serving as PSP's lead outside counsel for 12 years before becoming its top staff person, I believe the level of pension benefit to be fair and reasonable.

III. <u>CONCLUSION</u>.

Q: Does this conclude your testimony?

A: Yes.