BEFORE THE STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PUGET SOUND PILOTS, Respondent.	Docket TP-220513 **DECLARATION OF MICHAEL E. HAGLUND IN OPPOSITION TO PMSA'S MOTION TO DISMISS**

1. I am lead counsel for the Puget Sound Pilots ("PSP") in this general rate case. I have been deeply involved in the practice of maritime law since 1977, an area of concentration that has involved work related to pilotage law since the early 1980s including the representation of multiple pilot groups in Oregon and Alaska and the representation of individual pilots in Washington, Oregon and Alaska. I hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge and belief:
2. I was engaged to serve as PSP's general counsel in May 2021. Having previously reviewed the November 25, 2020 Order 09 issued by the Washington Utilities and Transportation Commission ("UTC") and significant parts of the record in that rate proceeding, I recognized that two of the top priorities for PSP in 2021 and early 2022 were addressing two UTC directives to PSP in Order 09: (1) a thorough examination of the potential opportunities to make PSP's pilot dispatch system more efficient; and (2) planning for a transition of PSP's pay-as-you-go pension plan to a fully funded defined-benefit plan that included conducting a stakeholder engagement process related to that transition. PSP's systematic and

comprehensive approach to identifying ways to make its pilot dispatch system more efficient is described in detail in the testimony of PSP President Captain Ivan Carlson. Exh. IC-01T at 11-15. Regarding the stakeholder meetings to address a transition of PSP's unfunded pension plan to a fully funded defined-benefit plan, PSP Executive Director Charlie Costanzo describes the process that began in January 2022 and concluded in late June 2022 with mixed success, a consensus agreement with stakeholders Pacific Yacht Management and Northwest Marine Trade Association and an impasse with Pacific Merchant Shipping Association ("PMSA").[1] The balance of this declaration provides additional facts regarding the stakeholder engagement process involving the PSP pension transition, the issue of the existing pension benefit for PSP's former executive director Walt Tabler and the lack of any PSP involvement in potential use of a rate of return methodology in a pilotage rate case, which was entirely the responsibility of UTC staff to initiate as clearly set forth in Order 09.

3. For pilot groups in the United States, the most common form of pension is the pay-as-you-go or farebox pension where benefits are funded by the tariff annually and paid out to retirees on a monthly basis by the pilot group from which they retired from pilotage revenues collected each month. Under these plans, a working pilot accrues an annual percentage that ranges from a low of 1.25% to a high of 2.5% that is aggregated in the year of retirement and then applied to the average of the retiring pilot's income during the last several years of his or her service. For PSP, the annual accrual rate is 1.5% and, at retirement, the pilot's years of service multiplied by 1.5% is then multiplied by the average of his or her last three years of distributable net income ("DNI").

[1] Costanzo, Exh. CPC-01T at 7-11 and Exh. CEC-05 through CEC-15.

4. In my experience, especially for a group of master mariners who make a mid-career move to become a pilot and then enjoy a career that is generally around 20 years rather than a 30 to 40-year career with a single employer, the pilot group pension is an extremely important benefit. When the UTC in Order 09 unequivocally directed PSP to develop a plan to transition its existing pay-as-you-go pension to a fully funded defined-benefit pension plan, there was an extraordinarily high level of alarm and concern within the PSP pilot corps. As their counsel, because there was no question that PSP was legally obligated to honor its written pension promises both to existing retirees and all working pilots, it was critically important for PSP, its Board of Directors and its Pension Committee to be completely knowledgeable regarding its legally binding pension obligations, the feasibility of transitioning its unfunded existing pension plan to a fully funded, ERISA-qualified defined-benefit pension plan and the costs of the transition alternatives compared to the cost of continuing the status quo pay-as-you-go pension plan. Given the fiduciary obligation that Puget Sound Pilots Association owes to all existing retirees and all current PSP licensees, this educational process necessarily had to precede the initiation of the stakeholder engagement process.

5. The process of educating PSP as an organization regarding the potential to transition its unfunded pension plan to a funded defined-benefit plan began in mid-2021 and continued into early 2022. PSP hired an actuary, Christopher Wood, who had highly relevant past experience in the mid-1990s when the Oregon Board of Maritime Pilots ultimately decided to transition the pay-as-you-go pension plans for three Oregon pilot groups to funded defined contribution plans. PSP also hired a pension law expert, Bruce McNeil, a nationally recognized expert in pension law who has written multiple books in his field. Both Mr.

Wood and Mr. McNeil are witnesses in this case addressing the actuarial and pension law issues relevant to transitioning the PSP unfunded pension plan to a fully funded defined-benefit pension plan.[2]

6. It is worth noting that PSP went into the process of educating itself as an organization regarding a potential transition to a funded pension plan and the follow-on stakeholder engagement process with its eyes wide open. Specifically, PSP recognized that the potential for an agreement with PMSA that recognized PSP's existing pension obligations and transitioned those to a fully funded pension plan was extremely unlikely. In my experience, PMSA is by far the most aggressive shipping industry trade association on the West Coast with respect to how the organization engages on pilotage rate matters. Based on years of observing PMSA, there is no question that delay is one of the organization's primary tactics when it comes to dealing with pilotage rate matters. The remarkably long period of "regulatory lag" that has plagued the San Francisco Bar Pilots for two decades is a good example. Despite rate increase recommendations from the California Board of Pilot Commissioners in 2011 and again in 2015, because those recommendations were subject to approval by the California Legislature, PMSA was successful in both years in lobbying against those rate recommendations from becoming enacted into law.[3]

7. The extraordinarily high probability that pension negotiations with the PMSA would be unsuccessful resulted in PSP making two significant decisions. First, given the importance of PSP taking the necessary time to educate itself regarding the issues described above, which required the hiring to both an actuary and pension lawyer, it made no sense to make those key experts available to joint use by other stakeholders because that would result in PSP

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[2] Wood, Exh. CRW-01T at 1-7 and Exh. CRW-03, -04 and -05; McNeil, Exh. BJN-01T at 2-10.
[3] McIntyre, Exh. ALM-01T at 4-5.

losing the opportunities to use their expertise in the next general rate case due to a conflict of interest. Second, PSP was willing to engage stakeholders for a reasonable period of four to five months to engage in good faith negotiations, but not to see that time frame extended beyond the point where it was clear that impasse had been reached with one or more stakeholders.

8. As the exhibits to the Costanzo testimony reveal, PSP provided a detailed letter to all stakeholders on January 28, 2022[4] that described the three 50-year cost projections prepared by Mr. Wood showing very substantial savings with either one of the two fully funded defined-benefit plan options. This letter also enclosed the census data (both for existing retirees and currently working pilots) provided to the PSP actuary and a copy of the PSP Pension Plan. The letter also included the following statement:

> 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.

9. As promised in the January 28 letter, on February 1, 2022, I emailed the 50-year cost projections and the PSP actuary's actuarial methods and assumptions to all stakeholders. PSP expected that PMSA would engage an actuary promptly and take advantage of the six-week time frame between the January 28 letter and the first of the stakeholder meetings on March 2, 2022 to perform an actuarial analysis that PMSA ultimately did not begin until sometime in June 2022.

10. In early February 2022, PMSA objected to utilizing what it characterized as PSP's "hand-picked mediator," Seattle's well-regarding Lou Peterson, in connection with the first

[4] Costanzo, Exh. CPC-05.

stakeholder session scheduled for March 2. On February 9, 2022, I talked with PMSA General Counsel Mike Jacob to discuss this matter and explained that I had no personal connection to Mr. Peterson other than one prior mediation and that PSP felt a skilled mediator could be much more effective than an actuary as a facilitator for the parties. During the course of this telephone discussion, Mr. Jacob suggested that there was really no need for a mediator or other facilitator and that we could simply proceed with direct negotiations between the stakeholders. PSP agreed to proceed on that basis and subsequently notified Seattle mediator Lou Peterson that his services were not required.

11. On February 24, 2022, I forwarded a letter to all stakeholders reconfirming the March 2, 2022 first stakeholder meeting, proposing an agenda for that meeting and providing information regarding the annual benefit accrual rates for a number of pilot organizations in the U.S. and the regulatory requirement in WAC 363-116-315 codifying PSP's obligation to make pension payments to its retirees, "the expense of which is reimbursed through board established tariffs." After this letter went out, I received an objection on February 24 to proceeding with the March 2 stakeholder meeting from PMSA Vice President Mike Moore in which he proposed that the meeting be scaled back to plan workshops rather than an actual workshop. I emailed back the same day, declining to scale back the meeting and noting that the UTC had assigned PSP the responsibility "to initiate discussions for the purpose of developing a plan to transition to a fully funded, defined-benefit retirement plan."[5] The March 2, 2022 meeting proceeded as scheduled, included a detailed presentation by Mr. Wood regarding the 50-year cost projections and the underlying actuarial assumptions, which

[5] Costanzo, Exh. CPC-11 at 1.

was followed by an extensive question-and-answer period involving all attending stakeholders.

12. There were two subsequent stakeholder meetings on April 13 and April 26. An additional session was set for May 11 with a backup date of May 17, but the session was canceled by PMSA because it said that it needed more time to hire an actuary. During the course of the three meetings in March and April, PMSA was unwilling at any time to acknowledge that PSP was legally obligated to make pension payments to its retirees or to each of its working pilots upon their retirement despite the requirement to do so in WAC 363-116-315, a regulation adopted in 1991. My correspondence and the statements made by me and PSP representatives at these stakeholder sessions were abundantly clear on one fundamental principle: PSP had no legal authority to consider a transition from its pay-as-you-go pension to a fully funded defined-benefit pension that resulted in any loss of the pension benefits laid out in the PSP Pension Plan. Despite the clarity of this basic PSP position, PMSA repeatedly refused to engage on it and instead raised other pension-type options during these meetings, each of which was demonstrated to be inferior to the current PSP pension plan as shown in a memorandum provided in advance of the April 26 stakeholder meeting.[6]

13. During the April 26 stakeholder meeting, I specifically brought up the fact that the UTC had directed PSP to raise the question of former Executive Director and General Counsel Walt Tabler's $70,000 per year pension, which was awarded after 12 years of service to PSP. PMSA, through Mike Moore, refused to engage on the topic other than to say that whatever pensions PSP granted to employees was a matter for PSP to decide.

[6] Costanzo, Exh. CPC-12.

14. In light of the cancellation by PMSA of the two proposed stakeholder meeting dates for May, PMSA's ongoing intransigence throughout the stakeholder meetings, its late hiring of an actuary and then its June 6 email requesting actuarial information that should have been requested long before[7], PSP became very concerned that PMSA was pursuing a strategy designed to turn the pension stakeholder engagement sessions into a 12 to 18-month protracted process. As the evidence in PSP's general rate filing demonstrates, there is an urgent need for the UTC to address multiple pilotage rate matters in this case. Because PSP cannot be held hostage to an adversary that refuses to engage in good faith and attempts to unnecessarily draw out a process that should have been concluded within a few months, I forwarded an email on June 7 responding to Mr. Moore's June 6 request for information from the PSP actuary and a protocol for continued involvement with that actuary.[8] In that letter, we noted: "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." Mr. Moore responded the same day disagreeing that PSP had any right to request PMSA provide its final position by June 15. His email[9] also included the following very telling statement:

> We obviously don't have any positions (final or preliminary) on any issues with specificity yet.

15. The above statement is proof positive of the highly dilatory character of PMSA's approach to the stakeholder engagement process that PSP initiated and which included all of the census, actuarial, cost comparison and alternative pension program information that reasonably could have been expected. Given the clarity of the PMSA position favoring delay as opposed to meaningful engagement as demonstrated in Mr. Moore's June 7 email, I responded in a letter

[7] Costanzo, Exh. CPC-13 at 1-2.
[8] *Id.* at 1.
[9] Costanzo, Exh. CPC-15 at 4-5.

dated June 8[10] which summarized the status of the negotiations between PSP and PMSA, provided relevant background information and ultimately declared the negotiations between PMSA and PSP at impasse. The last paragraph of that letter summarizes why PSP felt compelled to declare an impasse, which any qualified mediator would have done in the same circumstance, and explains the need for PSP to concentrate its energies on the preparations for this general rate case. However, the letter also left the door open to continued dialogue with PMSA regarding the transition to a funded pension plan provided those negotiations were preceded by an actual proposal from PMSA:

> 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.

16. During parts of April, May and June, 2022, PSP Executive Director Charles Costanzo and I participated in discussions with two stakeholders, Pacific Yacht Management ("PYM") and Northwest Marine Trade Association ("NMTA"), the largest recreational boater trade association in the United States. PYM was represented by Monique Webber and NMTA was represented by its Vice President and Government Affairs Director Jay Jennings. These discussions ultimately concluded in June with an agreement on three points that are reported

[10] Costanzo, Exh. CPC-14.

in the testimony of Mr. Costanzo. Both PYM and NMTA agreed that the PSP's pension obligations to its retirees and working pilots should be funded in the tariff, that the 1.5% annual pension accrual rate should be maintained as part of a competitive package of compensation and benefits attractive to potential pilot trainees and that the UTC should approve one of the two fully funded defined-benefit plan options presented by PSP's actuary and pension lawyer. We saw no reason to reduce PSP's agreement with PYM and NMTA to writing. We did provide both parties with a copy of Mr. Costanzo's proposed summary of the agreement and it was confirmed that the summary in Mr. Costanzo's testimony was accurate.

DATED this 18th day of July, 2022.

s/ Michael E. Haglund
Michael E. Haglund