PMSA DATA REQUEST NO. 351: Regarding Exh. CLD-01T 6:13–14, please describe why abutment of the waters of Canada and the United States are a unique maritime setting with respect to pilotage on the Great Lakes such that state pilotage is "probably not legally possible" and why this differs from pilotage on the waters of the Puget Sound which are also U.S. waters that abut Canadian waters.

RESPONSE:

It is not difficult to distinguish the Great Lakes-St. Lawrence Seaway System from the Straits of Juan de Fuca as it relates to pilotage. The Straits of Juan de Fuca and the Great Lakes-St. Lawrence Seaway System are vastly different in size and how they impact the imposition of a compulsory pilotage system. The Straits of Juan de Fuca, where U.S. and Canadian internal waters do indeed abut, is less than one hundred miles in length and, more importantly Washington State pilotage waters are on the U.S. side of the border. As a result, there are no significant legal or diplomatic barriers to Washington State imposing a compulsory pilotage system in accordance with 46 U.S.C. § 8501. Washington State has indeed done so through the Wash. Rev. Code § 88.16.

The Great Lakes-St. Lawrence Seaway System, on the other hand, is over 1,000 miles long and the U.S. – Canadian border runs through the entire system, including through the center of the St. Lawrence, Detroit, and St. Mary's River, as well as Lakes Ontario, Erie, Huron, and Superior. To make a transit through this system, vessels subject to compulsory pilotage necessarily must cross back and forth over the U.S.-Canadian border dozens and dozens of times. As a result, and since it would not be possible for ships to be continually switching between U.S. and Canadian pilots during the transit through the system, to have an efficient pilotage system U.S. and Canadian pilots must each be authorized to pilot ships in both countries' pilotage waters. Therefore, a pilotage system covering all the U.S. waters of the Great Lakes would necessarily involve consultations and formal agreements with the Government of Canada and would have significant foreign policy implications. Furthermore, since the U.S. Constitution (Article I, Section 10, Clause 1) does not permit states to "enter into any Treaty, Alliance, or Confederation" with another country, the comprehensive Great Lakes pilotage system was consequently put in place by the federal government.

These foreign policy implications were articulated by Deputy Assistant Secretary of State Ivan B. White during a 1960 hearing discussing the Great Lakes Pilotage Act of 1960. Specifically, Secretary White stated during his testimony, "The foreign relations aspects of this bill are very important. Aside from any other considerations, the fact that United States-Canadian boundary waters are involved creates a practical necessity of having pilotage systems in the respective waters of these two countries which can be coordinated with each other." Secretary White went on to testify, "In the course of the development of the bill, constructive discussions took place between United States and Canadian officials. These discussions resulted in general agreement on desirable legislation as well as on other requirements for coordination between the two countries to provide for compatible systems of Great Lakes pilotage." See Great Lakes Pilotage Act: Hearing on S. 3019 Before the S. Merchant Marine and Fisheries Subcomm. of the Comm. on Interstate and Foreign Commerce, 86th Cong., 2d Sess. (1960) (Statement of Ivan B. White,).

In conclusion, as I previously stated, as a result of the unique nature of the Great Lakes-St. Lawrence Seaway System, from practical, diplomatic, and constitutional law perspectives, a federal as opposed to state-by-state approach was required for the unique setting of the Great Lakes region.