

**Transition Committee of the
Board of Pilot Commissioners for Harris County Ports
Public Meeting**

**Houston, Texas
August 20, 2020**

A public meeting of the Transition Committee of the Board of Pilot Commissioners for Harris County Ports (the “Transition Committee”) was convened on August 20, 2020 at 3:13 p.m., at the offices of the Economic Alliance Houston Port Region, 203 Ivy Avenue, Deer Park, Texas 77536, as well as virtually via WebEx webinar. The following Commissioners, staff, and counsel were in attendance:

Roland Garcia, Commissioner and Transition Committee Chairman
Frances Castañeda Dyess, Commissioner
Brenda Hellyer, Commissioner
Reginald McKamie, Commissioner (arrived at 3:19 p.m.)
Captain M. Tyler Gavis, Secretary and Compliance Coordinator (present virtually)
Erik Eriksson, General Counsel (present virtually)

Chairman Garcia called the meeting to order and thanked everyone for attending at the new location for the day.

Chairman Garcia noted that the meeting minutes from August 6, 2020 had been circulated and called for a motion to approve. Commissioner Hellyer moved for approval, seconded by Commissioner Dyess. Chairman Garcia and Commissioners Dyess and Hellyer, voted Aye. Nays none. MOTION APPROVED.

Chairman Garcia convened the meeting and observed that all protocols mandated by the governor were being observed by the attendees meeting in person.

Chairman Garcia recalled the discussion on funding at the last meeting when he asked stakeholders to meet and devise a consensus plan or proposal on either long-term or short-term funding to present to the commissioners. He then opened the floor for public comment.

Captain Robert Thompson, Houston Pilots, Presiding Officer, advised that a meeting was held the previous Monday with several people from the industry. He noted a significant amount of discussion, that resulted however in nothing major and further noted that the Pilots wished to preserve safe navigation and pilotage operations to maintain the prosperity of the Port of Houston.

Captain Thompson then announced that the Houston Pilots would like to make a proposal to enter into a two-year memorandum of understanding (MOU) with the Pilot Board as a funding mechanism. He added that the Pilots wanted to keep the Pilot Board Investigation and Recommendation Committee (PBIRC) and Application Review Committee (ARC) as is, as well as Captain Gavis, noting he was a good asset. He also noted a meeting would need to be held between the Houston Pilots and Pilot Board to

discuss the terms in order to move forward with the process. Captain Thompson remarked he did not think there was a need for a drastic change initially, as he just wanted the Pilot Board's feet to get on the ground and move forward to continue safe pilotage.

Commissioner Dyess thanked Captain Thompson for the generous offer. Captain Thompson advised that it was only a proposal and noted that the following Wednesday he and his team would have a further discussion, as the Pilots have to agree that they wanted to spend the money. In response to Chairman Garcia's inquiry, Captain Thompson confirmed that the Pilots would present a draft MOU to the Pilot Board, as well as to Mr. Eriksson and Captain Gavis for review.

Following brief discussion on the proposed budget and terms, Captain Thompson reiterated that he just wanted to get the Pilot Board up and running to continue safe navigation for the Port of Houston.

Commissioner McKamie commented that the two-year proposal would give the Pilot Board time to look at other alternatives. In response to Commissioner McKamie's inquiry, Captain Thompson advised that the Pilots were up against the wall and confirmed that a good percentage of the Pilots were willing to make things happen. Commissioner McKamie also thanked Captain Thompson for the generous offer, and while raising a concern on the appearance of impropriety or interference, added that because the MOU would be an agreement, the process should continue regardless of what else transpired. For example, the Pilot Board would have to take corrective action if an incident occurred, and so he advised the board should remain conscious of any punitive nature of such action, so there would be no appearance of conflict.

Commissioner Hellyer also thanked Captain Thompson on behalf of the Pilot Board and inquired about the timing of the funding. Captain Thompson advised that he was sure he would receive approval and funding would immediately follow.

Chairman Garcia added that the Pilot Board would have something to bring to the Port Commission in order to ask for an extension of the Interlocal Agreement after a plan was in place.

Commissioner Hellyer also commented that the proposal from the Pilots was an important message for the legislature, as it expected the Pilot Board to have results to show in the next session.

Following brief discussion as to when the MOU would be submitted for review, Chairman Garcia advised that a meeting with an executive session would be scheduled for

September 3rd at 3 p.m. to receive, review, and deliberate on the MOU. Chairman Garcia then opened the floor to the stakeholders for public comment.

Niels Aalund, West Gulf Maritime Association (WGMA), Senior Vice President, commented that the Pilots' proposal was a pleasant and interesting development. He noted that he wanted to share some numbers regarding those who were invited to the requested stakeholder meeting: it included 36 different vessel operators and chartering companies, 31 agents, and 52 terminal companies. He also mentioned that the WGMA's daily industry update report goes to 3,500 constituents and stakeholders.

Mr. Aalund further noted there was not a significant meeting turnout, noting only seven vessel operators in person and four virtually, one agent in person and one virtually, and two terminal companies in person and six virtually. Following discussion, and conducting a survey with those who did not attend the meeting, Mr. Aalund noted the majority of the ship owners and terminals favored the Pilots paying for funding. He added that WGMA has an excellent relationship with the Pilots and although there may be some disagreements, everyone tries to work together. Mr. Aalund concluded that the Pilot Board should be good stewards and spend the money wisely and effectively, and noted that he looked at the decision to be a wise development and a plan to push the process along.

In response to Commissioner Hellyer's inquiry, Mr. Aalund advised that the WGMA represents 300 stakeholders and companies, and noted that he did not speak on behalf of everyone. He added however that having the Pilots' lawyer as the Pilot Board's lawyer as well was not viewed as a healthy relationship. He also added that meeting at the current location instead of the Pilots' office was favorably viewed, noting however that that consensus was not unanimous, while there was a general consensus for a healthy separation on the legal side of the process.

Chairman Garcia commented on the extension of the interlocal agreement and noted part of the process would include Captain Gavis and Mr. Eriksson assisting while employed by the Port Authority. He remarked that he wanted to ensure no one in the room thought it was a problem that the Pilot Board was drawing on the advice of Mr. Eriksson or the assistance of Captain Gavis while they were employees of the Port Authority via the extension of the interlocal agreement. He invited anyone who had an issue to come up and explain their reasoning.

Mr. Aalund commented that he has not heard any comments to that regard. He also invited anyone else who saw a problem with conflict of interest to speak up before the end of the meeting. In response to Chairman Garcia's inquiry, Mr. Aalund advised he has not heard of any complaints as to how the Pilot Board was handling matters or any questioning of them not being good stewards.

Bob Sanders, Enterprise Products Partners LP (Enterprise Products), Executive Vice President, Asset Optimization, wanted to clarify Mr. Aalund's point on office space and the Pilots' attorney. He remarked there was nothing discouraging conveyed about the Port Authority, as it was only a discussion regarding the Pilot Board using the Pilots' office and the Pilots' attorney, noting that he had no problem at all with that.

Mr. Sanders advised that the offer from Captain Thompson and the Pilots followed the state statute to the letter and was a good thing. The Pilot Board had the right to charge the Pilots for expenses. As previously mentioned, it also gave the Pilot Board a chance to grow into its position and understand what was needed to see what the future brings. In addition, it gave industry, the Pilots, and the Pilot Board a chance to understand and figure out the best way to go back to the state. He remarked that the bottom line was that it was a great short-term solution as it allowed everyone not to be in a panic mode, and added he was in full support of it. In response to Chairman Garcia's inquiry, Mr. Sanders also confirmed he would be "ok" if the Pilots asked for a rate increase in a couple of years, adding that the other half of the statute provided that the Pilots were allowed to recoup their costs.

Captain Thompson returned and commented to the conflict of interest issue. He advised that if the ARC and PBIRC continued to operate as they had in the past, requests for rate increases were done with the industry and not with the Pilot Board.

Captain Kevin Oditt, Intercontinental Terminals Company, LLC (ITC), Chief Compliance Officer, commented that his company fully supported the Pilots' proposal. He also stated that if the Pilots' offer was not viable in the short-term for any reason, ITC would also fully support continuing the interlocal agreement as it was perfectly reasonable. In addition, Captain Oditt suggested that if the Pilot Board could not make the solution viable, to find out how much money the Port Authority funded to support the Pilot Board, and whether the Port Commission would be willing to extend the interlocal agreement. He noted that he had heard a range of between \$150,000 to \$200,000, at which he believed there was a consensus that the Pilots, terminals, and shippers would split costs.

Captain Oditt added that there was no mechanism for collecting fees, and raised the question of how fees would be collected if an agreement was in place or an arrangement made for the terminals to pay. He concluded by suggesting that the administrator/executive director and maritime investigator should absolutely have experience and understanding of how this works, as well as the stakeholders involved, and added they must understand the complexities of the operations that occur on the Houston Ship Channel.

Chairman Garcia commented there would likely be some form of interlocal agreement for a period of time that would include some sharing of Mr. Eriksson's and Captain Gavis' time. He noted that while the agreement would be in place, most of the operations would be separated and funded accordingly, as the process continued to be sorted out. Captain Oditt advised that he understood there would be an interlocal agreement for some time, and even suggested extending it longer if Captain Gavis' resources were funded through other mechanisms from the way they had been in previous agreements between the two commissions. Further discussion ensued.

In response to Commissioner Dyess' inquiry regarding the separation, Mr. Eriksson advised that assuming there was a proposal on behalf of the Pilot Board and the Pilots, the next step would be to bring it to the Port Commission. He added that regardless of the funding arrangement, more work needed to go into the short-term transition, and suggested that if a good transition plan was in place beyond the short term, it would improve the chances that the Port Commission would approve an extension of the interlocal agreement.

Commissioner Dyess expressed her concern that the legislature would look negatively at the Pilot Board if the extension was approved, as it illustrated there had not been a complete separation, and Mr. Eriksson agreed that in the coming weeks there was a need to talk to legislators and formulate a plan "for the next 100 years." Commissioner McKamie added that the legislature would go back into session in January and advised that discussion was needed on funding mechanisms. Mr. Eriksson agreed and advised that it would be good to draft a bill in the early fall so legislative counsel could review it. He continued that it was also necessary to ask a state senator or representative to sponsor the legislation, and all of this should happen in the next four to five months.

Commissioner Hellyer raised a concern about going to the legislature to ask for funding when nothing had been done and a system was not in place, and so suggested taking the Pilots' proposal and move forward with the initial plan. Commissioner McKamie commented that the time to go to the legislature and address the no-funding mechanism was now. He added that discussions with the legislature could be done at the same time the Pilots were working with the Pilot Board to fund it.

Following further discussion, Mr. Eriksson remarked that the question that still needed to be decided was to what degree would the status quo continue, using Captain Gavis, for example, as opposed to a transition to a third-party administrator. He also raised a point as to what degree was the Pilots' proposal was contingent on the status quo for administration, as opposed to carrying on the status quo for "x" number of months before moving to the new arrangement.

Captain Thompson clarified his proposal and advised that Captain Gavis would be separated from the Port Authority, as his pay would be provided by the Pilots, as would a different counsel from Mr. Eriksson. He remarked that he did not think an Executive Director was needed, as Captain Gavis should be able to handle the required tasks to get the Pilots off the ground and running, and reiterated that the Pilots' proposal was to separate these functions from the Port Authority. He further noted that the reasoning behind the two-year proposal was to allow those who were unhappy with the process to go Austin to fix things in 2021 rather than in 2023.

Commissioner McKamie suggested carving out a piece of the county taxes that are funded to the Port Authority as a funding mechanism to help the Pilot Board. Further discussion ensued on taxes.

Vijay D'Cruz, Enterprise Products, Senior Vice President, Legal, commented that he welcomed the discussion and thought it was healthy. He pointed out that if deliberation began on severing taxes from the Port Authority and allocating them, Mr. Eriksson, as the lawyer for the Port Authority and Pilot Board, had a clear conflict of interest in advising the Pilot Board how to separate taxes for itself. Mr. Eriksson agreed and advised there would have to be a taxpayer vote to authorize such taxes in Harris County and noted that it had never occurred. He commented that in theory, Harris County would be asked to arrange for a vote on a maintenance and operation tax of "x" to go for "y," in this case toward supporting the Pilot Board. Mr. Eriksson advised if that was the route taken, the Port Authority did not have to be involved, as it would just be a matter of looking at the Pilot Board statute and having the Pilot Board handle it directly.

Commissioner McKamie commented he thought that option should be looked at later, and noted at this point the focus should be on who applied for the different functions, making the separation, and moving forward. Chairman Garcia commented that it was a matter of time and noted the goal was to separate by the end of the year or maybe by the end of September, if possible. He reiterated that review of the requests for proposals (RFPs), looking at office space, and other details to close the loop should be done by the end of the year. Further discussion ensued on timing and the extension of the interlocal agreement.

Mr. D'Cruz also mentioned while the members of the Pilot Board were new, the Board of Pilot Commissioners had existed for 100 years. He noted there were years and decades of history and records that existed at the Houston Pilots and Port Authority offices that could help the full Pilot Board. Commissioner McKamie appreciated Mr. D'Cruz's comment and noted the Pilot Board has a wealth of knowledge with the PBIRC and ARC members and planned to continue utilizing their help.

Norman O'Shaughnessy, Stolt Tankers USA, Group Operations and Regulatory Manager, commented he had been pleasantly surprised by the number of turns and twists over the last couple of weeks. He also thanked the Pilots for the generous offer, noting it worked to serve short-term needs, although the pitfall of conflict of interests would arise again. Mr. O'Shaughnessy raised a concern that he did not believe that the Pilot Board had shown a willingness to approach the state. He remarked whether through taxes or grants, there was some other way to fund the Pilot Board so that it was completely separate and above any innuendo. He suggested picking up the phone and having discussions with the legislature, and requested a firm commitment from the Pilot Board that it would do everything it could to receive state funding. He added if the effort fell short, it could be brought up two years from now, but he did not support pushing it back for two years. He remarked he would like to see the Pilot Board take positive action in helping itself stand on its own.

Commissioner McKamie agreed with Mr. O'Shaughnessy regarding the push to get it done and look at another funding mechanism other than funds received directly from the Pilots. He stressed that the Pilot Board really needed to look into having a discussion with legislators regarding a funding mechanism even if that took a while. In response to Chairman Garcia's inquiry, Mr. Eriksson advised that he did not think Pilot Board members would need to be registered as lobbyists if they decided to have discussions with the legislature, and added he would conduct research and circle back.

Commissioner Hellyer resurfaced her question from the previous meeting inquiring whether industry and stakeholders were willing to go to the state and testify on behalf of the Pilot Board's request for funding. Mr. O'Shaughnessy noted for the record that he would be. Chairman Garcia asked if terminal companies would be also supportive in going to the legislature to ask for funding. Mr. Sanders commented that his opinion regarding going to the state and asking for money – regardless of how small the amount – would be a hard sale, as state revenues were down by 40-45%. He further noted that the Pilots had graciously offered to move the industry across the rough spots to get back to some normalcy by 2022, which allowed the Pilot Commission to look at what rights it had and understand what made sense and what worked. Mr. Sanders advised that he was not implying that the issue should not be looked into – it should just not be rushed into. He emphasized the need to be mindful of timing and remarked that if the request for funding was denied, most likely it would be denied forever.

Denise Schaefer, Odfjell USA Houston, Agency Manager, commented that she was not familiar with how the legislature worked or how it handled funding, and but that she understood shortfalls and asking for money at the wrong time. At the same time, she did not understand how often something was done on a state level where there was a mandate to do something but no funding mechanism to support it. She raised a concern that the

Pilots would fund this and pass the charges on to recoup their money, noting the carriers would ultimately be the ones paying for funding and that was where she had an issue. Commissioner McKamie commented that he concurred with Ms. Schaefer's concern, and added that it needed to be looked into for correction. Chairman Garcia also commented that he was not a professional lobbyist but he knew that unfunded mandates happened more often than not, as with education and healthcare. Ms. Schaefer appreciated the feedback and advised that she would go to the legislature in favor of funding for the Pilot Board on behalf of her company and as an individual taxpayer.

Chairman Garcia moved to the next item on the agenda and asked Captain Gavis if he had anything to report. Captain Gavis advised that the next PBIRC meeting was scheduled for September 21 and noted other matters continued to progress. He also advised that proposals responding to the three RFPs were received. In response to Chairman Garcia's inquiry, Mr. Eriksson advised that Captain Gavis was one of the proposers, which meant he needed to recuse himself from the RFP review process, adding that there was no staff expertise beyond Captain Gavis to conduct these reviews particularly regarding the maritime investigator and executive director RFPs.

Mr. Eriksson advised that since the executive director would report directly to the Pilot Board, the board would be key in the interview process for that position. He also suggested the Transition Committee review the counsel and investigator RFPs and then schedule an informal meeting to discuss their thoughts and consider other decisions, noting the committee did not have decision making powers and did not constitute a quorum of the full Pilot Board. Mr. Eriksson continued that he would transmit the proposals to the committee, keeping Captain Gavis out of the process, and discuss the logistics of how to proceed with reviews before it potentially made recommendations to the full Pilot Board.

In response to Commissioner Hellyer's inquiry, Mr. Eriksson advised that determining whether a proposal was responsive was more of an administrative task, and so he did not think there would be an issue for the Port Authority Procurement Services group to make that determination, although he would also speak to that group. To her second question, he advised that a Port Authority staff team, made up of the people who would be interacting with the service provider, would typically evaluate the procurement. Further discussion ensued on the proposal process and Mr. Eriksson suggested that the new Pilot Board, and particularly the Transition Committee, should conduct the evaluation and make those choices.

Following Chairman Garcia's inquiry, Captain Gavis confirmed that he had submitted responses to both the maritime investigator RFP and executive director RFP, and confirmed that he wanted to be removed from the evaluation process.

Chairman Garcia moved on to acknowledge a PowerPoint presentation provided by Cadence Bank. Captain Gavis noted that he was advised to allot some time to allow the representatives from Cadence Bank to present but had been unable to connect them online. Commissioner Hellyer asked whether an RFP for banking arrangements and loan service should be put on the streets. Commissioner Dyess commented that an RFP for banking arrangements was not necessary and suggested an investigation of banks by board members. Mr. Eriksson advised that he would research the matter and follow up, noting that the Port Authority had conducted it as a formal process in the past. He added that banking could be accomplished through the interlocal agreement on an interim basis, and then later moving forward to establish a banking relationship. In response to Commissioner McKamie's remark, Mr. Eriksson reiterated that he would follow up on whether a formal process was needed or if an informal solicitation would be feasible. In addition, Commissioner Hellyer requested proposals for a demand deposit account, as well as a line of credit be included in the RFP.

Following further discussion, Captain Gavis advised that he had obtained a taxpayer identification number, which had been included in the back of the commissioners' packages.

Commissioner McKamie apologized to the representatives from Cadence Bank for being able to present, adding the matter would be tabled for another time.

At 5:00 p.m., Chairman Garcia announced the committee would enter into an Executive Session. Mr. Eriksson made the following announcement:

It is now 5:00 p.m. The Transition Committee of the Board of Pilot Commissioners for Harris County Ports will now convene in a closed meeting, as permitted by the Texas Open Meetings Act and Government Code to conduct a private consultation with attorneys (*Section 551.071, Texas Open Meetings Act*). The Pilot Board Transition Committee will reconvene in public session after the closed meeting is adjourned.

Immediately thereafter the Transition Committee retired into closed session.

At 5:35 p.m., Chairman Garcia reconvened the open meeting via Cisco WebEx with the following Commissioners and staff in attendance:

Roland Garcia, Commissioner and Transition Committee Chairman
Frances Castañeda Dyess, Commissioner
Brenda Hellyer, Commissioner

Reginald McKamie, Commissioner
Captain M. Tyler Gavis, Secretary and Compliance Coordinator (present
virtually)
Erik Eriksson, General Counsel (present virtually)

Chairman Garcia asked if there were any other comments from the public, and announced Captain Thompson's return to provide a comment.

Captain Thompson reiterated for clarity purposes that the Pilots' MOU would offer to accept the ARC, PBIRC, and Captain Gavis. He noted that although a legal counsel was needed, he was not looking for an executive director, or to fill the other positions for which RFPs have been sent out, though negotiations could be considered.

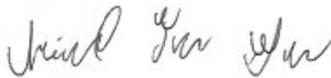
Chairman Garcia noted that Captain Thompson's point was received and understood. He advised that the RFPs needed to be independently reviewed for their merits according to procurement protocol and noted it was still a generous offer and expressed his appreciation for "hanging in there" with the Pilot Board.

At 5:38p.m., Chairman Garcia adjourned the Transition Committee meeting.

The above is a correct copy of the Minutes of the August 20, 2020 meeting of the Transition Committee of the Pilot Commissioners for Harris County.



Roland Garcia, Chairman



M. Tyler Gavis, Secretary