

Wildlife Program concerning the mainstem Columbia and Snake rivers. A memorandum accompanying the request for recommendations outlined certain points to consider in developing mainstem amendment recommendations. Council Document No. 2001-04. By the June 15, 2001, deadline for submitting mainstem amendment recommendations, the Council received nearly 1,000 pages of recommendations and supporting information from 22 entities and individuals. As required by Section 4(h)(4) of the Northwest Power Act, the Council released the recommendations to the public for an opportunity for review and comment, until October 2001. Council Document No. 2001-16 (<http://www.nwcouncil.org/library/recommend/mainstem/Default.htm>).

In October 2002, the Council released for public review and comment a draft of proposed mainstem amendments to the fish and wildlife program, and at the same time invited further comment on the mainstem amendment recommendations originally received. The Council held a number of public hearings in the four states of the Council (Washington, Oregon, Montana and Idaho) and received extensive written comments on the draft amendments and the recommendations. Written comments on the draft mainstem amendments and recommendations are posted on the Council's Web site, at <http://www.nwcouncil.org/fw/program/mainstem/2002-16Comments/default.asp>.

After reviewing the recommendations and the comments on the draft mainstem amendments, the Council revised the draft and adopted substantive mainstem amendments to the program in April 2003. In July 2003, the Council completed this process of amending the fish and wildlife program by adopting findings on the recommendations for mainstem amendments as part of the program (Appendix B to the 2003 Mainstem Amendments), as well as a final analysis of the relationship of the mainstem amendments to the adequacy, efficiency, economy and reliability of the region's power supply (Appendix A to the 2003 Mainstem Amendments).

SUPPLEMENTARY INFORMATION: The mainstem amendments are the Council's second step in what will eventually be a comprehensive revision of its Columbia River Basin Fish and Wildlife program. In the first phase, which resulted in the 2000 Fish and Wildlife Program, the Council reorganized the program around a comprehensive framework of scientific and policy

principles. The fundamental elements of the revised program are the vision, which describes what the program is trying to accomplish with regard to fish and wildlife and other desired benefits from the river; basinwide biological objectives, which describe in general the fish and wildlife population and habitat characteristics needed to achieve the vision; implementation strategies, which will guide or describe the actions needed to achieve the desired ecological conditions; and a scientific foundation, which links these elements and explains why the Council believes certain kinds of actions should result in desired habitat conditions and why these conditions should improve fish and wildlife populations in the desired way.

The program amendments in 2000 set the stage for the subsequent phases of the program revision process, in which the Council will adopt specific objectives and strategies for the river's mainstem and tributary subbasins, consistent with the basinwide vision, objectives and strategies in the program and its underlying scientific foundation. This notice concludes the adoption of a set of program amendments relevant to the mainstem Columbia and Snake rivers. The Council next intends to incorporate specific objectives and measures for tributaries into the program in locally developed subbasin plans for the more than 60 subbasins of the Columbia River.

The role of the mainstem amendments was described in the 2000 Fish and Wildlife Program, in the section on Basinwide Hydrosystem Strategies and in the section entitled Schedule for Further Rulemakings. The Council repeated this guidance in the March 14, 2001, request for mainstem amendment recommendations. The mainstem amendments were to contain the specific objectives and strategies (or measures) for the federal operating agencies and others to implement in the mainstem Columbia and Snake rivers to protect, mitigate and enhance fish and wildlife affected by the development and operation of hydroelectric facilities while assuring the region an adequate, efficient, economical and reliable power supply. The final amendments thus include objectives and strategies relating to, among other matters:

- The protection and enhancement of mainstem habitat, including spawning, rearing, resting and migration areas for salmon and steelhead, resident salmonids and other anadromous and resident fish;

- System water management;
- Passage spill at mainstem dams;
- Adult and juvenile passage modifications at mainstem dams;

- Juvenile fish transportation;
- Reservoir elevations, operational requirements and habitat conditions to protect resident fish and wildlife;
- Water quality conditions; and
- Research, monitoring and evaluation.

In developing the mainstem amendments, the Council asked the recommending entities to consider, among other things, the consistency of their mainstem recommendations with the basinwide provisions in the 2000 Fish and Wildlife Program, especially the role of a mainstem plan in a multispecies, habitat-based, basinwide program. The Council evaluated the mainstem recommendations and the draft and final program amendments for consistency with the program framework elements adopted in 2000, including the vision, biological objectives, habitat and hydrosystem strategies, and underlying scientific principles. The Council also evaluated the draft and final amendments for consistency with, and a basis in, the mainstem recommendations, as explained in the findings.

FOR FURTHER INFORMATION CONTACT: The final 2003 Mainstem Amendments, which include the appendices with the findings on recommendations and the power system analysis, can be found on the Council's website, at <http://www.nwcouncil.org/fw/program/mainstem/Default.htm>. You may also contact the Council's central office for a copy, by telephone at 1-503-222-5161 or 1-800-452-5161; by fax at 1-503-795-3370; or by e-mail at info@nwcouncil.org.

Stephen L. Crow,

Executive Director.

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PENSION BENEFIT GUARANTY CORPORATION

Approval of Amendment to Special Withdrawal Liability Rules for International Longshoremen's and Warehousemen's Union-Pacific Maritime Association Pension Plan

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of approval.

SUMMARY: The International Longshoremen's and Warehousemen's Union-Pacific Maritime Association Pension Plan requested the Pension Benefit Guaranty Corporation ("PBGC") to approve a second amendment to a special withdrawal liability rule for

employers that maintain the Plan. PBGC approved the original rule in 1984 and an amended version in 1998. 49 FR 6043 (February 16, 1984); 63 FR 27774 (May 20, 1998). PBGC published a Notice of Pendency of the Request for Approval of a second amendment on June 13, 2003 (68 FR 35462) ("Notice of Pendency"). In accordance with the provisions of the Employee Retirement Income Security Act of 1974, PBGC is now advising the public that the agency has approved the requested amendment with certain modifications.

FOR FURTHER INFORMATION CONTACT:

Gennice D. Brickhouse, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026; Telephone 202-326-4020 (For TTY/TDD users, call the Federal Relay Service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4020).

SUPPLEMENTARY INFORMATION:

Background

As explained in the Notice of Pendency (see 68 FR 35463-65), the International Longshoremen's and Warehousemen's Union-Pacific Maritime Association Pension Plan ("Plan") has since 1984 operated under a special modification to the usual employer withdrawal liability rules of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended by the Multiemployer Pension Plan Amendments Act of 1980, Public Law 96-364, 94 Stat. 1208-1311. Under section 4201 of ERISA, an employer who incurs either a complete or partial withdrawal from a defined benefit multiemployer pension plan becomes liable for a proportional share of the plan's unfunded vested benefits. The statute specifies that a "complete withdrawal" occurs whenever an employer either permanently (1) ceases to have an obligation to contribute to the plan, or (2) ceases all operations covered under the plan. See ERISA section 4203(a). Under the second test, therefore, an employer who closes or sells its operations will incur withdrawal liability. Under the first test, an employer who remains in business but who no longer has an obligation to contribute to the plan also suffers liability. The "partial withdrawal" provisions of sections 4205 and 4206 impose a lesser measure of liability upon employers who greatly reduce, but do not entirely eliminate, the operations that generate contributions to the plan.

The withdrawal liability provisions of ERISA are a critical factor in maintaining the solvency of these pension plans and reducing claims

made on the multiemployer plan guaranty fund maintained by PBGC, which is much less robustly funded than the comparable single employer fund.¹ In the absence of withdrawal liability rules, an employer who participates in an underfunded multiemployer plan would have a powerful economic incentive to reduce expenses by withdrawing from the plan at the first convenient opportunity.

Congress nevertheless allowed for the possibility that, in certain industries, the fact that particular employers go out of business (or cease operations in a specific geographic region) might not result in permanent damage to the pension plan's contribution base. In the case of the construction industry, for example, the work must necessarily take place at the construction site; if that work generates contributions to the pension plan, it does not much matter which employer performs the work. Put another way, if a construction employer goes out of business, or stops operations in a geographic area, pension plan contributions will not diminish if a second employer who contributes to the plan fills the void. The plan's contribution base is damaged, therefore, only if the employer stops contributing to the plan but continues to perform construction work in the jurisdiction of the collective bargaining agreement.

This reasoning led Congress to adopt a special definition of the term "withdrawal" for construction industry plans. Section 4203(b)(2) of ERISA provides that a complete withdrawal occurs only if an employer ceases to have an obligation to contribute under a plan, but the employer nevertheless performs previously covered work in the jurisdiction of the collective bargaining agreement at any time within five years after the employer ceased its contributions.² There is a parallel rule for partial withdrawals from construction plans. Under section 4208(d)(1) of ERISA, "[a]n employer to whom section 4203(b) (relating to the building and construction industry) applies is liable for a partial withdrawal only if the employer's obligation to contribute under the plan is continued for no more than an insubstantial

¹ The PBGC multiemployer guaranty fund receives only \$25 million in annual premiums. In contrast, the single employer funds received premiums of \$787 million in the 2002 fiscal year. PBGC Pension Insurance Data Book 2002 at 2.

² Section 4203(c)(1) of ERISA applies a similar definition of complete withdrawal to the entertainment industry, except that the pertinent jurisdiction is the jurisdiction of the plan rather than the jurisdiction of the collective bargaining agreement. No plan has ever requested PBGC to determine that it shares the characteristics of an entertainment plan.

portion of its work in the craft and area jurisdiction of the collective bargaining agreement of the type for which contributions are required."

Section 4203(f) of ERISA provides that PBGC may prescribe regulations under which plans that are not in the construction industry may be amended to use special withdrawal liability rules similar to those that apply to construction plans. Under the statute, the regulations "shall permit the use of special withdrawal liability rules * * * only in industries" that PBGC determines share the characteristics of the construction industry. In addition, each plan application must demonstrate that the special rule "will not pose a significant risk to the [PBGC] insurance system." Section 4208(e)(3) of ERISA provides for parallel treatment of partial withdrawal liability rules.

The regulation on *Extension of Special Withdrawal Liability Rules* (29 CFR part 4203), prescribes the procedures a multiemployer plan must follow to request PBGC approval of a plan amendment that establishes special complete or partial withdrawal liability rules. Under 29 CFR 4203.3(a), a complete withdrawal rule must be similar to the statutory provision that applies to construction industry plans under section 4203(b) of ERISA. Any special rule for partial withdrawals must be consistent with the construction industry partial withdrawal provisions.

Each request for approval of a plan amendment establishing special withdrawal liability rules must provide PBGC with detailed financial and actuarial data about the plan. In addition, the applicant must provide PBGC with information about the effects of withdrawals on the plan's contribution base. As a practical matter, the plan must demonstrate that the characteristics of employment and labor relations in its industry are sufficiently similar to those in the construction industry that use of the construction rule would be appropriate. Relevant factors include the mobility of the employees, the intermittent nature of the employment, the project-by-project nature of the work, extreme fluctuations in the level of an employer's covered work under the plan, the existence of a consistent pattern of entry and withdrawal by employers, and the local nature of the work performed.

PBGC will approve a special withdrawal liability rule only if a review of the record shows that:

(1) The industry has characteristics that would make use of the special construction withdrawal rules appropriate; and

(2) The plan would not be adversely affected by the adoption of the special rule.

After review of the application and all public comments, PBGC may approve the amendment in the form proposed by the plan, approve the application subject to conditions or revisions, or deny the application.

Previous Agency Action Involving This Plan

The Notice of Pendency explained how the Plan operates under a modification to the employer withdrawal liability rules of ERISA, as amended by the Multiemployer Pension Plan Amendments Act of 1980 (see 68 FR 35463-65). Under the initial rescission of the special Plan rule—which was approved in 1984 (see 49 FR 6043)—a complete withdrawal occurs if a contributing employer permanently ceases to have an obligation to contribute to the Plan, and: (1) Continues to perform work of the type for which contributions to the Plan are currently or were previously required at any Pacific Coast port in the United States; (2) resumes such work— without

renewal of the obligation to contribute—at any time before the end of the fifth Plan Year commencing after the obligation ceased; (3) sells or transfers a substantial portion of its business or assets to another person that performs such work without having an obligation to make contributions to the Plan; or (4) is found to have ceased Plan contributions in connection with the withdrawal of all, or substantially all, employers from the Plan as described in 4219(c)(1)(D) of ERISA. Parallel provisions were adopted for partial withdrawals.

Because the Plan had a substantial shortfall between assets and vested liabilities, the 1984 approval was conditioned upon the satisfaction of twin contribution tests crafted to protect Plan participants and the PBGC. First, the Plan was amended to provide that “[c]ontributions for each Plan Year shall be not less than the total administrative costs and benefits to be paid by the Trustee during the Plan Year.” Second, the Plan committed itself to satisfy a “Funding Goal” designed to ensure that the Plan accumulated sufficient assets to pay for the massive benefit promises

already made—but not yet paid for—by the bargaining parties. The Plan was required to become 50% funded within 10 years, and had to achieve 80% funding in accordance with this schedule:

| Plan year | Percent |
|-------------------|---------|
| 10 | 50 |
| 11 | 53 |
| 12 | 56 |
| 13 | 59 |
| 14 | 62 |
| 15 | 65 |
| 16 | 68 |
| 17 | 71 |
| 18 | 74 |
| 19 | 77 |
| 20 and over | 80 |

As a result of these measures, the funded status of the Plan improved over the next decade, even though the bargaining parties instituted continuous benefit improvements under which the monthly benefit accruals promised under the labor contract rose by 270%, from \$26 in 1983 to \$70 in 1996. This trend is illustrated by table that the Plan presented to PBGC in 1997.

TABLE 1.—SUMMARY OF ACTUARIAL VALUATION RESULTS ¹

| | Valuation date | | | | | |
|---|----------------|-----------|---------|---------|---------|---------|
| | 7/1/96 | 7/1/95 | 7/1/94 | 7/1/93 | 7/1/92 | 7/1/91 |
| Number of active participants | 8,185 | 7,856 | 7,682 | 8,141 | 8,339 | 8,469 |
| Number of retired participants | 9,049 | 9,236 | 9,244 | 8,979 | 9,132 | 9,214 |
| Monthly benefit accrual rate | 70 | 69 | 69 | 69 | 39 | 37 |
| Maximum monthly benefit | 2,450 | 2,415 | 2,415 | 2,415 | 1,365 | 1,295 |
| Contributions (000) | 99,700 | 99,696 | 99,023 | 87,316 | 74,139 | 71,074 |
| Benefits (000) | 96,900 | 94,963 | 92,437 | 85,293 | 71,321 | 68,848 |
| Market value assets (000) | 1,329,082 | 1,143,335 | 957,661 | 950,030 | 835,063 | 746,993 |
| Net minimum funding charges w/o credit balance (000) | 79,154 | 85,787 | 81,247 | 80,034 | 47,307 | 43,987 |
| Normal cost, including operating expenses (000) | 20,527 | 19,180 | 17,831 | 18,529 | 12,821 | 12,334 |
| Unfunded accrued liability (assets at market value) (000) | 534,416 | 637,646 | 710,802 | 664,096 | 341,037 | 360,009 |
| Unfunded liability—vested benefits (assets at market value) (000) | 354,821 | 462,132 | 530,092 | 476,168 | N/A | N/A |
| Valuation interest rate | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 |

¹ Taken from actuarial reports submitted by the Plan to PBGC in 1997.

The 1997 Amendments

In 1997, the trustees of the Plan submitted a proposed revision of their special rules to the PBGC. Their submission represented that employer contributions that equaled benefit payments and administrative expenses would exceed the limits for tax-deductibility set forth in the Internal Revenue Code. The trustees requested PBGC allow them to eliminate the contribution floor requirement, and the agency approved a modified version of the request in 1998. 63 FR 27774. Under the modification, the “annual contribution equal to annual benefit

payments” rule was waived unless the Plan became less than 85% funded; if the Plan failed the 85% Funding Goal, then employer “[c]ontributions in the following Plan Year shall be not less than the lesser of” the Plan’s benefit payments and administrative expenses or “the amount required to increase the Funding Percentage * * * to eighty-five percent (85%).” 63 FR 27777. If the Plan failed to satisfy these remedial measures, the special withdrawal liability rule would become void.

The Background of the Proposed Second Amendment

In autumn 2002, the Director of the Federal Mediation and Conciliation Service (“FMCS”) urgently requested the staff of the Secretary of Labor and the Executive Director of PBGC to provide technical comments and observations about pension-related issues to the International Longshoremen’s and Warehousemen’s Union (“ILWU”) and U.S. based representatives of the Pacific Maritime Association (“PMA”). Those parties were then negotiating a new collective bargaining agreement for west coast

ports. Under most circumstances the PBGC would not become involved in private sector labor negotiations. As stated in the Notice of Pendency, however, the 2002 negotiations were extraordinary in several respects. Despite the personal efforts of the Chairman of the FMCS, the parties reached a bargaining deadlock and a lockout was called that paralyzed the west coast docks. For the first time in a generation, the United States government invoked the provisions of the Taft-Hartley Act and obtained an injunction from a federal court to halt the work stoppage and reopen the ports. The FMCS vouched that no agreement

could be reached unless federal pension agencies provided informal reactions to proposed modifications to the 1984 and 1998 recensions of the rule.

On that basis, PBGC listened to various proposals and provided the FMCS and the parties with general guidance concerning benefit increases and temporary changes to the Funding Goal. The ILWU and PMA represented that compliance with the 85% Funding Goal would prevent them from bargaining for an increase in pension benefits to a level that was sufficiently attractive to convince current workers to acquiesce in work rule changes and employment reductions desired by the

PMA shipping interests. They argued also that PMA "could not afford" to honor the "equal contribution and benefit payment" rule because PMA "needed to invest elsewhere in the industry."

The parties reached an agreement in November of 2002 but did not finalize their pension proposals and submit them for formal approval PBGC until March 29, 2003.

Prior to the November 2002 amendments, the Plan was said to be in compliance with the 85% Funding Goal established under the 1998 recension of the special rule.

TABLE 2.—SELECT FINANCIAL DATA SUBMITTED BY PLAN ON MARCH 28, 2003

| | Plan year ending June 30, 1997 | Plan year ending June 30, 1998 | Plan year ending June 30, 1999 | Plan year ending June 30, 2000 | Plan year ending June 30, 2001 | Plan year ending June 30, 2002 |
|---|--------------------------------|--------------------------------|--------------------------------|--------------------------------|--------------------------------|--------------------------------|
| Assets | \$1.63 billion ... | \$1.91 billion ... | \$2.16 billion ... | \$2.40 billion ... | \$2.22 billion ... | \$1.93 billion. |
| Vested Benefits | \$1.69 billion ... | \$1.66 billion ... | \$1.63 billion ... | \$1.83 billion ... | \$1.99 billion ... | \$1.84 billion. |
| Active Participants | 8,315 | 8,859 | 9,572 | 9,395 | 10,070 | 10,113. |
| Contributions | \$104 million ... | \$35.0 million ... | \$28.8 million ... | \$32.5 million ... | \$26.9 million ... | \$23.5 million. |
| Benefit Payments | \$101.5 million | \$108.0 million | \$110.6 million | \$126.4 million | \$132.9 million | \$154 million. |
| Plan Assets As Multiple of Benefits ... | 16.1 | 17.7 | 19.6 | 19.0 | 16.6 | 12.5. |

Materials that the Plan submitted to PBGC in March 2003, however, indicated that the cost of the 2002 benefit increases caused the Plan to fail the Funding Goal from July 2002

through July 2012. Thus, the Plan would require annual "catch-up" contributions equal to benefit payments. The "catch up" contributions, however, would greatly exceed the amount the Plan

would otherwise need to satisfy the "minimum funding" provisions of the Internal Revenue Code.

TABLE 3.—SEGAL COMPANY PROJECTED PBGC FUNDING PERCENTAGES

[Submitted to plan on March 10, 2003]

| Year | Funding level (percent) | Benefit payments (millions) | Code funding (millions) |
|------------|-------------------------|-----------------------------|-------------------------|
| 2002 | 87 | \$154 | 23 |
| 2003 | 84 | 167 | 44 |
| 2004 | 80 | 179 | 72 |
| 2005 | 76 | 192 | 98 |
| 2006 | 71 | 211 | 122 |
| 2007 | 67 | 230 | 148 |
| 2008 | 68 | 238 | 213 |
| 2009 | 71 | 247 | 303 |
| 2010 | 76 | 253 | 304 |
| 2011 | 82 | 259 | 304 |
| 2012 | 88 | 264 | 304 |

Decision on the Proposed Second Amendment

The statute and the implementing regulation state that PBGC must make two factual determinations before it approves a request for an amendment that adopts a special withdrawal liability rule. ERISA section 4203(f); 29 CFR 4203.4(a). First, on the basis of a showing by the plan, PBGC must determine that the amendment will apply to an industry that has

characteristics that would make use of the special rules appropriate. Second, PBGC must determine that the plan amendment will not pose a significant risk to the insurance system. PBGC's discussion on each of those issues follows. After review of the record submitted by the Plan, and having received no public comments, PBGC has entered the following determinations.

1. What Is the Nature of the Industry?

In determining whether an industry has the characteristics that would make an amendment to special rules appropriate, an important line of inquiry is the extent to which the Plan's contribution base resembles that found in the construction industry. This threshold question requires consideration of the effect of employer withdrawals on the Plan's contribution base.

The characteristics of the west coast longshore industry that supported approval of special withdrawal liability rules in 1984 and 1998 apparently continue to apply today. Specifically, work covered under the Plan is dependent on the comings and goings of ocean-going vessels at west coast ports. The work must be performed at the port of embarkation or debarkation. Thus, the work will continue to be covered by the Plan unless future shipping is diverted to Canadian, Mexican or Central American ports.

In addition, an employer in this industry cannot withdraw from the Plan while continuing to perform longshore work at Pacific ports: longshore work along the entire west coast of the United States for all ocean-going dry cargo work is covered under collective bargaining agreements that require contributions to the Plan. Because the entire coast is one bargaining unit, and all ports through which ocean-going dry cargo is shipped are completely organized by the ILWU, it is not feasible to load or unload cargo unless contributions being paid to the Plan. Moreover, a former employer who did resume operations on a noncontributory basis would incur withdrawal liability.

2. What Is the Exposure and Risk of Loss to PBGC and Participants?

Exposure. The bargaining parties have increased benefits for active workers by over 50%, from \$95 a month for each year of service to \$150 per month. For a participant who retires with 33 years of service (as is typical) the annual benefit rises from \$37,620 to \$59,400. Thus, benefit liabilities will rise substantially. It should also be noted that Congress raised the PBGC guarantee for multiemployer plans in 2001: the guaranteed benefit for a participant with 33 years of service has risen from \$6435 to \$13,365. It follows that PBGC's exposure has increased.

Risk of loss. When the PBGC considered this question in 1998, the record indicated that the Plan presented a low risk of loss to PBGC guaranty funds. The agency expressed this view because actuarial reports for the period from July 1991 through July 1996:

* * * show a stable Plan population, an increase in annual contributions (\$71.1 million to \$99.7 million), and an increase in Plan assets (\$747 million to \$1.329 billion). Plan income has also consistently exceeded benefit payouts. The Plan and the covered industry have unique characteristics that suggest that the Plan's contribution base is likely to remain stable. Contributions to the Plan are made with respect to all west coast dry cargo. * * * Consequently, the Plan's contribution base is secure and the departure of one employer from the Plan is not likely

to have an adverse effect on the contribution base so long as the level of shipping does not decline.

As noted in the tables (*supra*) the risk of loss has increased due to the funding pressure that the Plan will encounter due to a combination of (1) reduced contributions³; and (2) increased benefit costs spread across a fixed or declining number of employers.

Conclusion. The Plan should continue to resemble a construction plan so long as virtually all foreign-flag shipping flows into and out of west coast ports, and so long as U.S. labor relations law continues to treat the ILWU as the exclusive bargaining representative of all west coast dockworkers. However, if either condition should change, the Plan's contribution base would be at risk. In addition, the Plan will be less robust than it was in 1998, and the economic pressures that plan funding will place on contributing employers (and, indirectly, the workforce) will increase dramatically after 2009—which is exactly the point when the Plan falls to its lowest level of funding. In view of the foregoing, approval of the amendment should be conditioned, for each of the plan years commencing from July 2003 through July 2012, upon the Plan's compliance with the enhanced reporting, disclosure and certification requirements.

Wherefore, the following amendments are approved to the enumerated sections of the ILWU-PMA Pension Agreement:

In paragraph 4.4042(c)(iv), the "Accelerated Funding Schedule" shall be 65% for each plan year commencing from July 2002 through July 2007; and rising by three percent each year thereafter until it reaches 80% in the plan year commencing July 1, 2012, remaining at 80% for all years thereafter;

In paragraph 4.4042(c)(vi), the table is amended to state a Funding Percentage of 65% for each plan year commencing from July 2002 through July 2007; and rising by three percent each year thereafter until it reaches 83% in the plan year commencing July 1, 2013, and then increasing to 85% for the plan year commencing July 1, 2014, and all subsequent years;

Paragraph 4.402(c)(v) may be amended to allow for revisions of certain actuarial assumptions as set forth in the experience study and recommendation of the plan actuary in January 2003, but such revised

³ If the "contributions must equal benefit payments" provision of the 1984 amendment had been retained, this Plan would have received an additional \$639 million in contributions between 1997 and 2003.

assumptions may apply only to plan years commencing after June 30, 2002; *provided, however,*

That the foregoing amendments are approved subject to the following reporting requirements;

(1) The Plan shall provide PBGC with copies of all actuarial valuation reports, as well as drafts of such reports, within 5 business days after the reports or drafts are received by any of the Plan, its trustees, the ILWU or the PMA;

(2) The Plan shall provide PBGC with copies of all independent auditor's reports and financial statements, as well as drafts thereof, within 5 business days after the reports or drafts are received by any of the Plan, its trustees, the ILWU or the PMA; and

(3) The annual actuarial certification heretofore filed by the Plan with PBGC shall, for all plan years that commence after July 1, 2003, be filed with PBGC no later than 90 days after the close of the plan year (unless this period is extended by PBGC for good cause shown), and this certification shall state whether the contributions received by the Plan are at least equal to the amounts listed under column 4 (headed "Code Funding") of Table 3 of this Notice of Approval.

Based on the facts of this case and the representations and statements made in connection with the request for approval, PBGC has determined that the Plan Amendment modifying special withdrawal liability rules (1) will apply only to an industry that has characteristics that would make the use of special withdrawal liability rules appropriate, and (2) will not pose a significant risk to the insurance system. Therefore, PBGC hereby grants the Plan's request for approval of a plan amendment modifying special withdrawal liability rules, as set forth herein. The Plan must agree to certify annually its compliance with the conditions set forth at 49 FR 6043 and 63 FR 27774, as modified by this Notice of Approval, with such certification to be filed within the deadlines established in this Notice of Approval. Should the Plan wish to again amend these rules at any time, PBGC approval of the amendment will be required. In the absence of extraordinary circumstances, the PBGC will not approve any amendments with retroactive effect.

Issued at Washington, DC, on this 31st day of July, 2003.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 03-19956 Filed 8-5-03; 8:45 am]

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