

MOTION
OF THE PORT OF SEATTLE COMMISSION
CONCERNING THE AT-BERTH CLEAN FUELS PROGRAM

JANUARY 8, 2013

STATEMENT IN SUPPORT OF THE MOTION AND FINDINGS

The At-Berth Clean (“ABC”) Fuels Program is one of the many ways the Port of Seattle (the “Port”) plans to reach its Century Agenda vision of adding 100,000 Port-related jobs to the region in the next 25 years while reducing its environmental footprint.

The Port initiated the ABC Fuels Program in 2009 as part of the Northwest Ports Clean Air Strategy to reduce the Port’s maritime-related air emissions. The program reimburses shipping and cruise lines to encourage them to use low-sulfur fuel (less than 0.5%) while berthed at the Port. Since diesel fuel is more expensive than regular bunker fuel, the ABC Fuels Program makes up approximately half of the cost differential between regular and cleaner diesel fuel. The program was carried out through an agreement with the Puget Sound Clean Air Agency (“PSCAA”) at a cost of \$2.44 million from 2009 through September 30, 2012.

Eight container carriers and four cruise lines have participated in the ABC Fuels program, and more than 1,250 ships have switched fuels at-berth. The program has been a very cost-effective way to reduce sulfur dioxide (SO₂) and diesel particulate matter (DPM) emissions based on the results of the 2011 Puget Sound Maritime Emissions Inventory released in October 2012. The inventory found that SO₂ and DPM emissions attributable to Port maritime operations declined 28 percent and 34 percent, respectively, between 2005 and 2011 per unit of cargo throughput. Since 2009, the program has prevented nearly 900 metric tons of sulfur dioxide from entering the environment.

The Commission finds that reducing and/or mitigating air pollution related to Port operations is in furtherance of its statutory obligation under RCW 53.08.020 to operate wharves, docks, boat landings, and other harbor improvements as a proprietary enterprise and is specifically important: (1) to enhance its competitiveness among carriers in the marketplace; and (2) to address Clean Air Act requirements that could prevent further development and expansion of Port facilities. The Commission further finds that the ABC Fuels Program provides the Port with demonstrable and valuable consideration in the form of reduced air pollution for its expenditure of funds and that contracting with PSCAA to implement and monitor the program is an effective way to ensure the benefits of the program to the Port. The Commission further finds that supporting policies and programs that prevent air pollution are as or more appropriate than cleaning up air pollution after it occurs.

The State Auditor’s Office (“SAO”) completed its accountability audit for 2011 on December 4, 2012, and issued a finding that the Port improperly funded the ABC Fuels Program through its contract with the PSCAA. The SAO also stated because the program exceeded the Port’s authority, it is considered a gift of public funds to the shipping lines because the Port did not

receive legally sufficient consideration. As a result, the SAO determined that all of the program's costs are considered an unallowable use of Port funds. However, the SAO also indicated its understanding of the benefits of the program and indicated a willingness to work with the Port to seek a mutually agreeable solution.

In its response to the SAO audit, the Port stated that it "understands the SAO's position and recognizes that it is not unreasonable to take the view that the contract exceeds the Port's authority." However, the Port maintained that it was "equally reasonable" to interpret the ABC Fuels Program as falling within the Port's authority to contract for the purchase of services designed to reduce maritime pollution from Port facilities. The Port also believes it has the necessary implied proprietary authority under existing law to continue with the ABC Fuels Program and is willing to discuss this authority and improvements to the terms and conditions under which the program is implemented through the PSCAA or otherwise in order to strengthen the program and ensure its ongoing benefits to the Port.

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The Commission wishes to continue the At-Berth Clean Fuels Program in 2013 and in future years, as appropriate, bearing in mind the State Auditor's December 4, 2012, finding regarding the program and consistent with state law.

The Commission directs the Chief Executive Officer to bring to the attention of the State Auditor additional arguments regarding the authority of the Port to continue the ABC Fuel Program and to consider additional contractual terms with the PSCAA or devise other means to maintain the program to ensure the continuation of the benefits of the program to the Port.