

COPY

BOARD MEETING OF THE  
BOARD OF PILOT COMMISSIONERS FOR THE BAYS OF  
SAN FRANCISCO, SAN PABLO AND SUISUN

STATE OF CALIFORNIA

REPORTER'S TRANSCRIPT OF PROCEEDINGS

FRIDAY, APRIL 10, 2015

Reported By: SUSAN M. OHANESIAN, CSR No.: 13528

DIAMOND COURT REPORTERS  
1107 2nd St., Suite 210  
Sacramento, CA 95814  
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1 APPEARANCES

2  
3 BOARD OF PILOT COMMISSIONERS:

4 Francis X Johnston, President  
Dave Connolly, Vice President  
5 Captain Joseph Long  
Captain John Schneider  
6 Captain George Livingstone  
Jennifer Schmid  
7 Ben De Alba, Ex Officio Member, California State  
Transportation Agency  
8 Allen Garfinkle, Executive Director  
Roma Cristia-Plant, Assistant Director  
9 Dennis Eagan, Counsel

10 SAN FRANCISCO BAR PILOTS

11 Raymond Paetzold, Counsel

12 PACIFIC MERCHANT SHIPPING ASSOCIATION:

13 Mike Jacob, Vice President and General Counsel

14  
15  
16  
17 ALSO PRESENT:

18 Captain Richard A. Hurt

19  
20  
21 The proceedings were held at the Offices of  
22 the Board of Pilot Commissioners located at 660 Davis  
23 Street, San Francisco, California, on Friday, April 10,  
24 2015, at 9:29 a.m., before Susan M. Ohanesian, Certified  
25 Shorthand Reporter, in and for the State of California.

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## P R O C E E D I N G S

PRESIDENT JOHNSTON: Good morning, ladies and gentlemen. Welcome to the Board of Pilot Commissioners Board meeting. Roll call, please.

MS. DOLCINI: President Johnston?

PRESIDENT JOHNSTON: Here.

MS. DOLCINI: Vice President Connolly?

VICE PRESIDENT CONNOLLY: Here.

MS. DOLCINI: Commissioner Livingstone?

COMMISSIONER LIVINGSTONE: Here.

MS. DOLCINI: Commissioner Long?

COMMISSIONER LONG: Here.

MS. DOLCINI: Commissioner Schmid?

COMMISSIONER SCHMID: Here.

MS. DOLCINI: Commissioner Schneider?

COMMISSIONER SCHNEIDER: Here.

MS. DOLCINI: Representing the Secretary of California State Transportation Agency?

EX OFFICIO MEMBER DEALBA: Ben DeAlba.

PRESIDENT JOHNSTON: The sole agenda item at this meeting is to review and adopt the formal findings and recommendations following the decision that was made by the Board in response to a petition with increase in pilotage rates filed by the SFBP. Hearing on the petition was held before the Board on April 1st and 2nd.

1           Before I turn the meeting over to the Chief  
2 Counsel, I'd like to commend him on the draft findings  
3 on the first and second April public hearings. Even  
4 though he actively participated and took extensive  
5 notes, I myself, and I'm sure the commissioners are  
6 amazed by his accuracy and presentation before the  
7 Board. I want to thank you very much for your  
8 diligence.

9           COMMISSIONER EAGAN: Thank you.

10          PRESIDENT JOHNSTON: May I say one other thing.  
11 Please bear in mind that we are recording these  
12 hearings. So if you would, please speak up. And if  
13 you're in the audience if you would identify yourself  
14 before making a comment. Thank you.

15               Counsel?

16          BOARD COUNSEL EAGAN: Before we get started, we  
17 have one change in what staff submitted in the draft  
18 findings. This is the very top of Page 3, in finding  
19 ten. We have, "Services rendered by the pilots comma  
20 such as compass adjustments and engine trials." And we  
21 propose to add between the word "as" and the word  
22 "compass" the words "maneuvering the ship for" just to  
23 make clear the pilots' roll in these two particular  
24 special services is actually a moving vessel as opposed  
25 to some technician, say, coming on Board for work.

1           There were two votes taken by the Board last  
2 Friday. One was the vote on the proposal of the San  
3 Francisco Bar Pilots as submitted, and that motion on  
4 that boat to adopt the proposals as submitted failed on  
5 a two to four vote.

6           So, the first thing the Board needs to do  
7 today is vote on the three findings that are in support  
8 of that no vote. And in doing that, only those  
9 commissioners who voted in the majority among those  
10 four, and those were Commissioner Livingstone, Long,  
11 Schmid and Schneider. Only those four commissioners  
12 should be discussing those findings 12 through 14. And  
13 the motions ultimately to approve with or without  
14 changes of those three findings should come from one of  
15 those four commissioners, and only those four  
16 commissioners will vote.

17           We'll then proceed to what's left, which  
18 would be all the other findings and the three  
19 recommendations at the end of the document, and all six  
20 commissioners, voting commissioners, will vote on those.

21           VICE PRESIDENT CONNOLLY: Could I just ask a  
22 question about that? Why are the yes votes prevented  
23 from findings?

24           BOARD COUNSEL EAGAN: I guess the thought is, and  
25 I should explain I'm tracking here what the Costal

1 Commissioner does. I used to represent them, this is  
2 how they proceeded. I think the idea is that the people  
3 who are best equipped to vote on findings in this case  
4 against a motion are those who actually voted that way  
5 as opposed to those who, for whatever reason, were  
6 focused on voting no and came out the other way. It is  
7 similar in a way, the Supreme Court or any court, for  
8 instance the Appellate Court, the no votes may choose to  
9 consent or concurring an opinion, but they don't get to  
10 alter, if you will, what the basis of their decision is.

11 PRESIDENT JOHNSTON: When the motion is made, can  
12 we abstain or we have no vote at all?

13 BOARD COUNSEL EAGAN: The way it's set up -- well,  
14 you could abstain just to make the record clear. It is  
15 clear on the record from what I'm telling you, but that  
16 might make it clearer in the minutes. The two yes  
17 votes, in this case, abstain you, Commissioner Connolly.  
18 Anyway, that's the theory.

19 VICE PRESIDENT CONNOLLY: But it is not a matter  
20 of the Board statute or regulation, it is not --

21 BOARD COUNSEL EAGAN: Other than that's the way we  
22 did it last time when I was advising the Board as well.  
23 So, this is the way we did it, and we determined as we  
24 had a reduced number of commissioners that there could  
25 be situations where it is not unanimous where we would

1 decide by a majority vote as opposed to the four votes  
2 that's generally required for basic decisions, I'll call  
3 them.

4 VICE PRESIDENT CONNOLLY: I don't like that, but  
5 I'll take your wise counsel and experience. I do think  
6 that we should be able to comment and we should not be  
7 silent. Maybe from a vote, I can accept that. But are  
8 we prevented from speaking to those findings at all?

9 BOARD COUNSEL EAGAN: I think the focus is  
10 primarily on who gets to vote, ultimately. And it could  
11 be that comments from the two yes votes could aid the  
12 four in refining their recollection. We don't yet have  
13 a transcript of the hearing on the 1st, and so it may be  
14 that Commissioner Johnston and Commissioner Connolly  
15 have recollections that they are voting and articulating  
16 in the findings what the evidentiary basis for their  
17 recalling items that may not be reflected in the  
18 findings suggested.

19 PRESIDENT JOHNSTON: Is that something that I  
20 could decide on, that the two yes votes can participate  
21 in the discussion?

22 BOARD COUNSEL EAGAN: Yes. These are  
23 recommendations, I guess. I don't know that this issue  
24 came up last time. If it did, I don't recall the  
25 discussion issues.



1           VICE PRESIDENT CONNOLLY: The prevention of a vote  
2 is pretty serious. That's a pretty serious, you know,  
3 prevention. Pretty serious obstacle. Prevention of a  
4 voice is even more so. I would object to not being able  
5 to comment on those findings.

6           BOARD COUNSEL EAGAN: Well, okay. And I think,  
7 ultimately, what the Board does is up to the Board.

8           PRESIDENT JOHNSTON: Uh-huh.

9           BOARD COUNSEL EAGAN: Not to strain to certain  
10 legal advice that counsel gives you. If you think there  
11 are sufficient reasons for going another way, the Board  
12 is free to do that.

13          CAPTAIN LONG: I'm supportive of doing --

14          PRESIDENT JOHNSTON: Let me open it up to the  
15 commissioners.

16          CAPTAIN LONG: Okay.

17          PRESIDENT JOHNSTON: Their opinion on the subject  
18 of the Vice President. Captain Long?

19          CAPTAIN LONG: I said it already, I'm supportive  
20 of having you guys participate in the discussion,  
21 provide comments. Unless there's a legitimate  
22 procedural boundary to doing so that's going to get us  
23 in trouble, I don't see a problem.

24          PRESIDENT JOHNSTON: If they don't participate in  
25 voting?

1 CAPTAIN LONG: I'm a little bit more uncertain  
2 about that. It sounds to me like that's pretty  
3 different from the way it has been done in the past.

4 PRESIDENT JOHNSTON: But counsel said, you know,  
5 that's from past precedence. It is not an indication of  
6 current law or legislation.

7 CAPTAIN LONG: Okay.

8 PRESIDENT JOHNSTON: So, you know, it's up to us  
9 as the Board and myself as President to decide whether  
10 the two of us will participate and vote.

11 CAPTAIN LONG: Okay.

12 PRESIDENT JOHNSTON: I'm going to go on to the  
13 commissioner. So what's your position?

14 CAPTAIN LONG: I'd say comments, for sure. I'm a  
15 little less certain about votes because of procedural  
16 issues, not because of concerns about you guys.

17 COMMISSIONER SCHNEIDER: I feel the same way as  
18 Joe does. I'm certainly open to comments. I'm not sure  
19 about the vote thing either. It is some kind of  
20 technical something or other. It is not --

21 PRESIDENT JOHNSTON: Just go around. George?

22 COMMISSIONER LIVINGSTONE: I concur. As far as  
23 vote goes, I am concerned about precedent, but I would  
24 leave it to counsel to determine that with you. But  
25 certainly a voice.

1 COMMISSIONER SCHMIDT: I would welcome the  
2 comments.

3 PRESIDENT JOHNSTON: Well, it seems unanimous that  
4 everyone is in agreement that the Vice President and  
5 myself is a yes, we should be able to vote in the  
6 hearings and we can participate. I tend to say we  
7 should be able to vote in that it is only two of us.  
8 Again, if the majority of commissioners who have made a  
9 decision or will make a decision today, all our votes  
10 would be ineffective.

11 VICE PRESIDENT CONNOLLY: Yes, okay. I think  
12 that's fine. We'll conduct the discussion with the full  
13 voice, but no votes from myself or the President.

14 PRESIDENT JOHNSTON: Do you have any objection to  
15 not voting?

16 VICE PRESIDENT CONNOLLY: No.

17 PRESIDENT JOHNSTON: So it is --

18 VICE PRESIDENT CONNOLLY: I should say  
19 philosophically yes, I do. But procedurally, on the  
20 advice of counsel, I will not object.

21 PRESIDENT JOHNSTON: So without objection, the  
22 President and Vice President will vote yes at the  
23 hearings and will participate in the discussion now, but  
24 will not vote.

25 BOARD COUNSEL EAGAN: Okay. So my suggestion

1 would be, prefatory to the actual discussion I think we  
2 should start with the findings 2 through 14 which  
3 concern the vote we just talked about, the split vote,  
4 that there be a motion by one of the four to adopt these  
5 three findings and then we could open it up to  
6 discussion by the total Board --

7 PRESIDENT JOHNSTON: Thank you.

8 BOARD COUNSEL EAGAN: -- including member DeAlba.

9 PRESIDENT JOHNSTON: Do I hear a motion?

10 CAPTAIN LONG: I have some suggestion for --

11 PRESIDENT JOHNSTON: There has to be a motion  
12 first and then a discussion.

13 CAPTAIN LONG: So we have to move it first before  
14 discussion?

15 PRESIDENT JOHNSTON: Yes.

16 BOARD COUNSEL EAGAN: That would be the normal  
17 way, although we don't operate under Robert's rules of  
18 order. We approximate it on occasions.

19 CAPTAIN LONG: Okay. Then I'll make the motion.

20 PRESIDENT JOHNSTON: All right. Do you want the  
21 counsel to --

22 CAPTAIN LONG: Can you restate?

23 BOARD COUNSEL EAGAN: Would it be a motion to  
24 adopt findings 12 through 14 on the draft findings  
25 submitted by staff?

1 CAPTAIN LONG: So moved.

2 PRESIDENT JOHNSTON: Do I hear a second?

3 COMMISSIONER SCHNEIDER: Second.

4 COMMISSIONER SCHMID: Yes.

5 PRESIDENT JOHNSTON: Discussion.

6 VICE PRESIDENT CONNOLLY: I'll start it off, if  
7 that's okay. I want to echo the President's remarks,  
8 commend the drafters of the document, findings of  
9 recommendations. It is a thorough encapsulation of some  
10 pretty complex discussions. I think it captures not  
11 only the essence, but the nuance of just about  
12 everything that we talked about. Sometimes those are  
13 exceedingly subtle points. So, again, job well done.  
14 There's a couple things that I want to call attention  
15 to. In note 12, this is finding 12.

16 PRESIDENT JOHNSTON: Page 3?

17 VICE PRESIDENT CONNOLLY: Starts on Page 3,  
18 carries through to Page 4. This is the first vote, I  
19 guess -- explaining the first vote. I guess the thing  
20 that I find difficult is in the end, really the last  
21 sentence. "But granting the full increase sought may  
22 well prove unwarranted or unwise." The word  
23 "unwarranted" is used again in 13, and "unwise" again in  
24 14. I don't know, maybe that's a legal term.

25 BOARD COUNSEL EAGAN: No.

1 VICE PRESIDENT CONNOLLY: Unwise has connotations  
2 to me, anyway, of foolish negligence or recklessness or  
3 imprudent behavior. And I don't think anything that we  
4 were doing, we were considering in that first vote, was  
5 foolish in any way. It wasn't reckless, it wasn't, you  
6 know, the five, five, four, four was not out of control.  
7 And I don't think unwise is appropriate.

8 I also think the same for unwarranted.  
9 Unwarranted is a little less tough or stringent, but I  
10 still don't think it is appropriate. I think unsuitable  
11 might be more appropriate for both those words. You  
12 could say unnecessary. You could say something like,  
13 "but granting the full increase sought by the SFBP and  
14 their proposal did not gain the majority of Board's  
15 support." If what we're doing is reporting what  
16 happened, what we found, I don't think we found that it  
17 was unwise or unwarranted, that those increases were not  
18 reasonable. And that's what I think the language would  
19 suggest in 12, and I'll stop there.

20 PRESIDENT JOHNSTON: Captain Long?

21 CAPTAIN LONG: I pick up on that, but I agree with  
22 you. I was writing while you were talking. What would  
23 you think about that last sentence starting with,  
24 "but --

25 PRESIDENT JOHNSTON: Which paragraph are you

1 talking about?

2 VICE PRESIDENT CONNOLLY: Paragraph 12.

3 CAPTAIN LONG: The one Dave is talking about, 12.

4 PRESIDENT JOHNSTON: Okay.

5 CAPTAIN LONG: Last sentence starting with, "but.  
6 Everybody looking?

7 ALL: Uh-huh.

8 CAPTAIN LONG: "But granting the full increases  
9 sought may not be warranted, period." Or maybe  
10 unnecessary.

11 VICE PRESIDENT CONNOLLY: Yes, I think that's  
12 better. I think what we're doing in note 12 is  
13 reporting what we found. And what we found was that the  
14 vote failed. The vote failed. It did not gain the  
15 majority of support from the Board. I think to be  
16 unwarranted and unwise is a value judgment.

17 Now, if you want to include that value  
18 judgment, I think it should be something more long the  
19 lines of unsuitable or, maybe, unnecessary or  
20 maybe -- and that leads in to note 13. So I think it is  
21 important to get that right.

22 COMMISSIONER SCHNEIDER: There is other words,  
23 editorialized comments throughout the plan.

24 BOARD COUNSEL EAGAN: Perhaps I could help with a  
25 distinction. It is one thing what the Board did,

1 obviously, that has to be recorded. But the principle  
2 function of findings is to say why the Board did what it  
3 did. And as I think I explained earlier, it is  
4 sometimes difficult for staff to fully define what the  
5 thinking is of the Board and to the extent we can we try  
6 to extrapolate that from the hearings.

7 But this is the opportunity to refine  
8 staff's attempt to hit the target in terms of the why  
9 part of that assessment. So the Board does have to get  
10 into the why of it, not necessarily in minute detail.  
11 But it has to get beyond the mere fact of what it did.

12 In other words, the legislature I think is  
13 looking for the reasoning, if you recall, of the Board  
14 in reaching the conclusion that it did. Here we're  
15 talking about the reasons for not going along with the  
16 full rate requested by SFBP. And later you get into  
17 reasons for the reduced across the board increase that  
18 the Board did approve and, of course, the navigational  
19 technology surcharge. So you have to get into the why  
20 and the reasons for it, as well as what happened.

21 VICE PRESIDENT CONNOLLY: Again, I would never  
22 vote for something unwise. I would never vote for  
23 something unwarranted. What I voted for may not have  
24 been suitable, it may not have gained the full support  
25 of the Board; but it wasn't unreasonable, it wasn't



1     unwise.   So I think that needs to be changed.

2             PRESIDENT JOHNSTON:   Joe, did you want to make a  
3     correction to it?

4             CAPTAIN LONG:   I kind of threw one out there and I  
5     would be satisfied with it, but that's just me.   Dave, I  
6     sense you're looking for something more.   Unsuitable  
7     doesn't seem to fit in the sentence just grammatically  
8     to me, but we could come up with something else that  
9     kind of dovetails in better.   I'm open to suggestions,  
10    but I don't have any more off the top of my head right  
11    now.

12            VICE PRESIDENT CONNOLLY:   I'll throw out some  
13    other ones.   Inappropriate, unnecessary, unsuitable.

14            COMMISSIONER SCHMID:   How about unsupported?

15            CAPTAIN LONG:   Unsupported by votes?

16            COMMISSIONER LIVINGSTONE:   That's good.

17            EXECUTIVE DIRECTOR GARFINKLE:   If I may,  
18    Mr. President?

19            PRESIDENT JOHNSTON:   Please.

20            EXECUTIVE DIRECTOR GARFINKLE:   Back to our  
21    procedural dilemma that we discussed initially, there  
22    were four votes against this, and so it seemed to me it  
23    would be important for those four people to decide what  
24    that language should be.   Obviously, the President and  
25    Vice President voted for these adjustments, but this

1 sentence speaks to why this vote did not pass. So it is  
2 important that the four people who voted no, as Dennis  
3 said, those are the four that have to affirm those  
4 findings, decide and put into words what this sentence  
5 should say. You know, "granting the full increases --  
6 you didn't vote for the full increases because..." And  
7 you may have specifics, facts that support it, but you  
8 have to kind of encapsulate those facts into a judgment  
9 call.

10               So I didn't vote for this because, as Vice  
11 President said, it was unsupported or unnecessary. I  
12 found it unnecessary. So while you two voted for it,  
13 perhaps you're not the best position to refine that  
14 language when this sentence speaks to those that voted  
15 against it.

16               PRESIDENT JOHNSTON: Then again, we're just  
17 offering comments. The four of you can reject it or  
18 accept it.

19               EXECUTIVE DIRECTOR GARFINKLE: Yes, I'm not saying  
20 that.

21               VICE PRESIDENT CONNOLLY: Are you saying we don't  
22 have a voice then?

23               EXECUTIVE DIRECTOR GARFINKLE: I'm not saying that  
24 you don't have a voice, but I'm saying this sentence  
25 speaks to the action of the other four. You guys

1 clearly felt that it was warranted and wise, and the  
2 other four said, well, no, it is not, or felt that for  
3 some other reason it should go down. And so I think  
4 that's why we're here today, to get at why the motion  
5 didn't pass.

6 BOARD COUNSEL EAGAN: Here is a possibility, the  
7 last sentence in paragraph 12 is really kind of a  
8 transition sentence to the two paragraphs that follows.  
9 We could just say -- and I can see now as I look at  
10 these words that they could be charged a little.

11 So we could say, "but granting the full  
12 increases sought is not supported by the evidence."  
13 That's really not a reason. Well, it is a reason, but  
14 very generalized reason. And then you get into more  
15 detail in what follows then we can call through 13 and  
16 14 to improvise any wording there, so we could just say,  
17 granting the full increases sought, strike may well  
18 prove unwarranted and unwise, being not supported of the  
19 evidence. Just provisionally put that in there.

20 VICE PRESIDENT CONNOLLY: I think that's a great  
21 improvement. Thank you.

22 BOARD COUNSEL EAGAN: Then let's go to, first, 13,  
23 and see what we can do with the wording there.

24 PRESIDENT JOHNSTON: You think unwarranted in the  
25 first sentence is the only objection?

1 BOARD COUNSEL EAGAN: Well, we have that word  
2 unwarranted again. Which, again, this is the language  
3 here, the people who are speaking in effect here are the  
4 four that were no votes. And I understand Commissioner  
5 Connolly's views that he would never vote for anything  
6 unwarranted and unwise and he didn't in his view, but  
7 that didn't prevail. But if there's a softer word than  
8 unwarranted which gets the point across, let's go with  
9 that.

10 VICE PRESIDENT CONNOLLY: I suggested before  
11 inappropriate, unsuitable, unnecessary, but I'm actually  
12 not that freaked out about the unwarranted in 13 because  
13 in the context you put there, I think that's correct.  
14 The unwise in the first line of 14, I think still  
15 connotes responsibility.

16 PRESIDENT JOHNSTON: Let's stay with 13 and then  
17 go on to 14.

18 BOARD COUNSEL EAGAN: How about, Inconsistent with  
19 the admonition in the California State Transportation  
20 Agency? That's another's possibly. It is not unwise,  
21 which does have an edge to it.

22 COMMISSIONER SCHNEIDER: I don't have a problem  
23 with unwarranted. It seems like a basic word.

24 BOARD COUNSEL EAGAN: I think at least in  
25 paragraph 13 we seem to be okay with that.

1           PRESIDENT JOHNSTON: Okay. We're okay with that.

2           BOARD COUNSEL EAGAN: So, again, "Granting the  
3 increases sought may be inconsistent with" and then pick  
4 it up "the admonition of California State Transportation  
5 Agency of the California Freight Mobility Plan, that the  
6 State must continue to both marginalize costs in order  
7 to stay ahead of the increase in competition bracket  
8 with ports outside of the California and support the  
9 State's economic growth." Kind of a lengthy sentence.

10          PRESIDENT JOHNSTON: I thought we were still in  
11 13.

12          BOARD COUNSEL EAGAN: Well, if there's something  
13 else.

14          PRESIDENT JOHNSTON: No changes to 13.

15          CAPTAIN LONG: I had some other changes to 13.

16          VICE PRESIDENT CONNOLLY: I was just trying to  
17 respond to Commissioner Connolly's concerns, and that  
18 would be the language I just suggested in 14 might do  
19 that.

20          PRESIDENT JOHNSTON: Okay.

21          VICE PRESIDENT CONNOLLY: It May be inconsistent  
22 with the admonition and so forth and so on. And, you  
23 know, I know Commissioner Long has some other issues  
24 with paragraph 13, but they didn't relate to what  
25 Commissioner Connolly was commenting on.

1 CAPTAIN LONG: I just wanted to exhaust that  
2 before going on to something else.

3 PRESIDENT JOHNSTON: So is everyone happy with 14  
4 as the counsel has suggested?

5 ALL: Yes.

6 PRESIDENT JOHNSTON: You want to go back to 13?

7 CAPTAIN LONG: I do.

8 PRESIDENT JOHNSTON: Let's go paragraph by  
9 paragraph.

10 CAPTAIN LONG: I was reading 13 and it doesn't  
11 match my recollection of evidence that the Board relied  
12 on for voting against the petition as requested by the  
13 SFBP. And that's what we're addressing here in this  
14 section. In particular, I think there's some actual  
15 mistakes here that we should take a look at. First one  
16 is at the end the first sentence, I guess, ends with  
17 2011.

18 PRESIDENT JOHNSTON: Uh-huh.

19 CAPTAIN LONG: I believe that part between that,  
20 "Aggregate GRT of vessels piloted has been trending  
21 slightly upward each year since 2012." Not 2011. I  
22 think that should be replaced with 2012.

23 Then the following sentence is misleading to  
24 me. And Captain McIsaac's testimony, which I had some  
25 dialogue with him, asked him some questions about they

1 affect of ULCVs we're having in Oakland. And my  
2 recollection was that the discussion -- part of the  
3 basis for my vote was that aggregate GRT in Oakland over  
4 the last few years has actually decreased as ULCVs have  
5 increased the calls in Oakland.

6               So that whole sentence there is basically  
7 incorrect. And the one that starts with "The" after  
8 "2011."

9               "The increases in GRT in recent years stem  
10 from the increases of vessels calling in the port of  
11 Oakland, a new generation of ULCVs, an increase from 31  
12 to 242 in 2014." My recollection is that it was the  
13 effect on GRT was exactly the opposite. Aggregate GRT  
14 has increased, but it was not on account of increases  
15 tonnage in Oakland. So I suggest striking that whole  
16 section there into the whole section or the sentence.

17              PRESIDENT JOHNSTON: That whole section or the  
18 sentence?

19              CAPTAIN LONG: Not the whole section, basically  
20 the sentence.

21              PRESIDENT JOHNSTON: Starting with "The"?

22              CAPTAIN LONG: Start with "the," ending with  
23 "2014."

24              COMMISSIONER SCHNEIDER: Is there anything in your  
25 binder that supports that?

1 CAPTAIN LONG: Yes, there is this. This is from  
2 the McIsaac Declaration. It is the GRT.

3 COMMISSIONER SCHNEIDER: Right. The thing about  
4 Oakland?

5 CAPTAIN LONG: Yes. I have some notes about the  
6 questions I asked McIsaac, but apparently the  
7 transcripts aren't available yet. So we have to go off  
8 our recollections.

9 COMMISSIONER SCHNEIDER: Yes, because my  
10 recollection was kind of in line with what Dennis has  
11 here. So any evidence I don't really know if we should  
12 change that. I don't know --

13 CAPTAIN LONG: Okay. Can I read to you what the  
14 notes I took from the questions I asked McIsaac? You  
15 guys just take this for what it is worth, it is just my  
16 notes. I am pretty sure the transcripts will reflect  
17 it, but we don't have them. In 2011 there were 17 ULCVs  
18 out of 2101, total calls in Oakland.

19 Oakland GRT was 115 million, that's 2011.  
20 2014 there were 167 ULCVs, so more ULCVs. Total calls  
21 were 1,740, so for ULCVs, fewer calls. Oakland GRT was  
22 111 million. His response to my question about where he  
23 got that info is from SFBP billing records, which were  
24 cross-checked. I don't dispute at that aggregate GRT  
25 went up, but it was from other aspects.



1 BOARD COUNSEL EAGAN: Do we have intervening  
2 Oakland figures for 2012 and 2013?

3 CAPTAIN LONG: I don't.

4 COMMISSIONER SCHMID: If we simply got rid of Port  
5 of Oakland, would that solve it? Just increase GRT  
6 coming into the Bay? Is that accurate?

7 VICE PRESIDENT CONNOLLY: It seems like a good  
8 suggestion. That's what I recall too, is that the  
9 aggregate GRT was rising and projecting ship calls  
10 declining, so maybe the problem is the focus on the Port  
11 of Oakland.

12 CAPTAIN LONG: In my mind, the problem is the  
13 focus on the Board of Oakland and ULCVs driving the  
14 increase aggregate GRT. Other aspects or particulars of  
15 the business, like Stockton, Red Wood City, the bulk  
16 carriers. At least according to the notes I have here,  
17 questions I asked. Tankers were flat, growth in  
18 Stockton, growth in Redwood City.

19 And then what I just mentioned regarding  
20 Oakland traffic. So I kind of would like to see that  
21 memorialized in here somehow. I don't know if we need  
22 all of that stuff, but something more consistent with  
23 what I just described here, unless you guys feel that  
24 I'm completely off base in my recollection of what was  
25 discussed at the hearing.

1           PRESIDENT JOHNSTON: Well, as Commissioner Schmid  
2 suggested, after 2012 increase in gross registered  
3 tonnage in recent years stem from the increased size of  
4 the vessels, period.

5           COMMISSIONER LIVINGSTONE: No, that's not true.  
6 It is an increase in vessel number of calls from  
7 Stockton, Oakland, Redwood City. It really didn't have  
8 to do with port of Oakland.

9           PRESIDENT JOHNSTON: That's why I'm saying.

10          COMMISSIONER LIVINGSTONE: Port of Oakland was  
11 flat to negative. Delete calling at the port of  
12 Oakland, that would just cover everything.

13          COMMISSIONER SCHNEIDER: I mean, the bottom line  
14 is the increase.

15          BOARD COUNSEL EAGAN: One can argue that this  
16 detail, if you will, on Oakland really isn't necessary  
17 to the ultimate conclusion of the paragraph. Which is,  
18 it may be that GRT will continue to increase and,  
19 depending on how much it increases, there maybe a  
20 revenue increase to the pilot even though the Board  
21 doesn't make the rate change. So I think the sense of  
22 the paragraph would still be there. The why, if you  
23 will, struck, I guess, sentence two and three, starting  
24 right after what is now 2011. The increases in growth  
25 rate tonnage stem from the increases calling in Oakland,

1 period.

2           Then there's a new sentence, new generations  
3 and so forth, ending in Line 7 with the year 2014. You  
4 could strike everything after what is going to be 2012  
5 in Line 3, all the way up to 2014 in line 7. Then pick  
6 it up, the aggregate gross rates in tonnage handled  
7 annually by the pilot is the primary driver of income.  
8 And I think the rest of it is kind of Oakland neutral.

9           CAPTAIN LONG: If we're going to do that then, I  
10 think that -- I like that suggestion. We might need to  
11 modify -- I don't know what number sentence this is, but  
12 it is the one that starts with, after 2014, it says the  
13 aggregate GRT. The following sentence starts with, the  
14 increase. "That increase in gross registered tonnage of  
15 these vessels has contributed to increase gross  
16 revenue." I would suggest striking of these vessels  
17 because we have just stricken these vessels that that  
18 points out to.

19           BOARD COUNSEL EAGAN: Okay. Yes, okay.

20           CAPTAIN LONG: I think that would just reflect  
21 that the increase in aggregate GRT has contributed to  
22 increases in gross revenue.

23           COMMISSIONER LIVINGSTONE: But to be clear, now  
24 we're going to go ahead and I would concur after  
25 sentence 3, since 2011, we're striking the next two

1 sentences?

2 BOARD COUNSEL EAGAN: Right.

3 COMMISSIONER LIVINGSTONE: I would agree with  
4 that.

5 BOARD COUNSEL EAGAN: Then picking it up with the  
6 next sentence which would remain unchanged. But the  
7 next sentence after that, "The increased gross  
8 registered tonnage of these vessels has contributed to  
9 the proposal as well as to increase gross registered  
10 tonnage has contributed to the increased gross revenue."

11 COMMISSIONER SCHMID: But I heard you want to put  
12 increased aggregate there.

13 BOARD COUNSEL EAGAN: It is in the proceedings.  
14 In that same sentence we're putting aggregate between  
15 "increase" and "gross."

16 CAPTAIN LONG: Between the "increase" insert in  
17 aggregate continue gross registered tonnage." Strike of  
18 these vessels.

19 BOARD COUNSEL EAGAN: So we're inserting two words  
20 between "increase" and "gross" there, "in aggregate,"  
21 right? "The increase in aggregate gross revenue tonnage  
22 has contributed to increased gross revenue" and so  
23 forth. Okay.

24 CAPTAIN LONG: Yes, that sounds right.

25 VICE PRESIDENT CONNOLLY: Sounds good to me. Of

1 course, being prevented from voting, I'll advise my  
2 commissioners in favor of that.

3 BOARD COUNSEL EAGAN: Your personality might  
4 influence some of the others.

5 PRESIDENT JOHNSTON: Any other questions on 13?  
6 Hearing now 14, I think we already decided changing  
7 "unwise" to inconsistent.

8 VICE PRESIDENT CONNOLLY: May be inconsistent  
9 with --

10 BOARD COUNSEL EAGAN: Take out the admonition.  
11 Shall I recap?

12 PRESIDENT JOHNSTON: Please.

13 BOARD COUNSEL EAGAN: In paragraph 12, second to  
14 last line, strike at the end of that line, "may well  
15 prove unwarranted or unwise." Strike that whole set of  
16 wording there, that phrase. And in its place  
17 substitute, is not supported by the evidence, period.  
18 And then in the next paragraph, paragraph 13, the first  
19 sentence that ends with 2011 on Line 3, for 2011  
20 substitute "2012," and then delete the next two  
21 sentences. "The increase in which recurrent increases  
22 in gross registered tonnage stem from the increased size  
23 of the vessels calling at the Port of Oakland. A new  
24 generation of ultra large container vessels, ULCVs, is  
25 now in service, and the number of callings by such

1 vessels has increased from 31 in 2011 to 242 in 2014."

2 Those two sentences I just read will be stricken.

3           Then the next sentence is okay. But the  
4 sentence after that, the one that currently reads, "The  
5 increased gross registered tonnage of these vessels has  
6 contributed to increased gross revenue which has helped  
7 offset the increased expenses incurred by the pilots."  
8 That sentence we'll make two changes to, starts out "The  
9 increased," and then right after "the increased" and  
10 before "gross" insert the words "in aggregate," the  
11 increased -- wait.

12           EXECUTIVE DIRECTOR GARFINKLE: Take the D out.

13           BOARD COUNSEL EAGAN: So "increased" becomes  
14 increase. "The increase in aggregate gross registered  
15 tonnage," then strike "of these vessels," pick it up,  
16 "has contributed to increase gross revenue" and so forth  
17 to the end of the sentence. Those are the only changes  
18 I have in paragraph 13.

19           Then we get to paragraph 14 and the only  
20 change there is in the very first line, strike the words  
21 "unwise in light of," and insert inconsistent with. So  
22 the first line of the sentence will now read, "Granting  
23 the increases sought may be inconsistent with the  
24 admonition of the California State Transportation  
25 Agencies," and so forth.

1 Anything else? Okay, that's it.

2 PRESIDENT JOHNSTON: It appears, though, we're  
3 going item by item. We'll have to maintain some  
4 consistency. Does anyone have any questions or comments  
5 on Page 1 or 2?

6 BOARD COUNSEL EAGAN: I thought, Mr. President, we  
7 could vote on these three paragraphs, these three  
8 findings and then a second motion will be to approve the  
9 remainder of findings and the recommendation, and that  
10 would open everything up to suggested changes.

11 PRESIDENT JOHNSTON: Thank you. All right.

12 BOARD COUNSEL EAGAN: So we have a motion and the  
13 understanding around the table, is it has been amended  
14 to conform to the changes I've just read. So unless  
15 there's further discussion, we'll call roll.

16 PRESIDENT JOHNSTON: Any further discussion, open  
17 to comments of the public?

18 BOARD COUNSEL EAGAN: Yes.

19 PRESIDENT JOHNSTON: Any comments by the public on  
20 what has discussed? Hearing none, the motion is now  
21 before us. We'll call role on it.

22 MS. DOLCINI: President Johnston?

23 PRESIDENT JOHNSTON: Abstain.

24 MS. DOLCINI: Vice President Connolly?

25 VICE PRESIDENT CONNOLLY: Abstain.

1 MS. DOLCINI: Commissioner Livingstone?

2 COMMISSIONER LIVINGSTONE: Yes.

3 MS. DOLCINI: Commissioner Long?

4 CAPTAIN LONG: Yes.

5 MS. DOLCINI: Commissioner Schmid?

6 COMMISSIONER SCHMID: Yes.

7 MS. DOLCINI: Commissioner Schneider?

8 COMMISSIONER SCHNEIDER: Yes.

9 PRESIDENT JOHNSTON: So the vote is in.

10 MS. DOLCINI: Four yeses and two abstentions.

11 PRESIDENT JOHNSTON: So noted. The motion is  
12 passed.

13 BOARD COUNSEL EAGAN: So now the next phase of the  
14 thing underway, there should be a motion to approve the  
15 remainder of the findings and the recommendations  
16 proposed by staff, then we'll get into discussion.

17 PRESIDENT JOHNSTON: Any motion?

18 VICE PRESIDENT CONNOLLY: Move to approve the  
19 remainder of the --

20 BOARD COUNSEL EAGAN: Free at last.

21 VICE PRESIDENT CONNOLLY: I move to approve the  
22 remaining of the findings and recommendations.

23 PRESIDENT JOHNSTON: Second?

24 CAPTAIN LONG: Second.

25 PRESIDENT JOHNSTON: Vice President made the



1 motion. Captain Long seconded it. Discussion?

2 VICE PRESIDENT CONNOLLY: I have some things.

3 PRESIDENT JOHNSTON: Go ahead, Vice President.

4 VICE PRESIDENT CONNOLLY: On Page 5, at the bottom  
5 of finding 21, "In light of these facts" it starts, and  
6 "it is appropriate for legislature to authorize the  
7 Board to re-institute the navigational technology  
8 surcharge that the legislature authorized some years  
9 ago," period or comma, "when the pilots first acquired  
10 first generation." I think it was -- maybe it was noted  
11 somewhere else in the report.

12 BOARD COUNSEL EAGAN: 2009.

13 VICE PRESIDENT CONNOLLY: It was put in 2009 but  
14 it has just expired; is that correct?

15 BOARD COUNSEL EAGAN: Yes.

16 VICE PRESIDENT CONNOLLY: That surcharge has  
17 expired. I think maybe we want that in for clarity,  
18 maybe it is not necessary.

19 PRESIDENT JOHNSTON: It is in. I thought I saw  
20 it.

21 VICE PRESIDENT CONNOLLY: It is somewhere else  
22 where you mentioned that. But it appears to me like,  
23 you know, there's a possibility for confusion there on  
24 that surcharge. We had it there at one of time, but it  
25 is not there now. Why not, because it expired.

1           PRESIDENT JOHNSTON: It is in recommendation one,  
2 F1.

3           VICE PRESIDENT CONNOLLY: Okay. We can make it  
4 clear. That's in here as well. Question could say,  
5 Reinstitute and expire navigational technology surcharge  
6 the legislature authorized in 2009.

7           PRESIDENT JOHNSTON: That would be fine.

8                     Does any other commissioner have any  
9 comments between items 15 through, say, 21? Hearing  
10 none. Okay.

11           VICE PRESIDENT CONNOLLY: I don't have anything  
12 else until we get to 31. But before we do that, can you  
13 explain, Dennis, what is the strike out language  
14 throughout? Is that old language?

15           BOARD COUNSEL EAGAN: Yes. The existing language  
16 of the navigational surcharge is still in the statute,  
17 even though by its own terms, expired prior by  
18 December 21, 2010. If you read the strike over  
19 language, that's the language that's still in the  
20 statute. If you look at that statute today, it will say  
21 "Ancillary," this is in F1, "Ancillary equipment  
22 purchased after November 1st, 2008, and before  
23 January 1st 2011." That language is in the statute  
24 today.

25                     And the January 1st, 2015, is not in the

1 statute today. That's what the Board is suggesting to  
2 legislature that it changed, that it strike the two  
3 other dates, November 1, 2008, and before January 1st,  
4 2011. And in its place substitute January 1st, 2015.  
5 The Board, when it acted on last Friday, had a start  
6 date for the acquisition of the equipment. But it  
7 didn't insert an end date for the acquisition of the  
8 equipment.

9           It did insert a new inoperative date of  
10 January 1st, 2020, that is in F2 at the very end. So  
11 wherever you see a strike over, that's existing statute  
12 language. Wherever you see an underline, that's  
13 proposed new language.

14           VICE PRESIDENT CONNOLLY: Okay. And that's true  
15 throughout the document? Like for example, you've got  
16 the last finding 43 and all that strike out language  
17 there.

18           EX OFFICIO MEMBER DEALBA: We're working on  
19 another draft.

20           VICE PRESIDENT CONNOLLY: You are?

21           EX OFFICIO MEMBER DEALBA: It is the same draft,  
22 but different format.

23           BOARD COUNSEL EAGAN: I have different numbering  
24 on my pages, I don't know why. But I am working off the  
25 draft that, I think, was sent out, I think, Wednesday to

1 the Board members.

2 VICE PRESIDENT CONNOLLY: Yes. That had all the  
3 strike out language. That's what I've been working on.

4 BOARD COUNSEL EAGAN: That's what I'm not  
5 tracking. The only strike out language I have is in  
6 that recommendation number one. There are three  
7 recommendations, unless there was some kind of  
8 formatting issue --

9 COMMISSIONER SCHMID: There was, that's why I  
10 asked you if you sent out the red line. They got the  
11 red line, we got the red line.

12 EXECUTIVE DIRECTOR GARFINKLE: Clean version is on  
13 the table.

14 BOARD COUNSEL EAGAN: I didn't realize this. I  
15 got this thing from -- and I should have asked what you  
16 meant by that, because what I thought what I sent out  
17 was not redlined. I don't know how that happened. A  
18 gremlin, I guess, somewhere along the way or human  
19 error. Or in any case, maybe I sent out your red line.

20 COMMISSIONER SCHMID: You had made your final  
21 edits and then when you sent out to the Board, you sent  
22 it out to the Board showing the red line.

23 EXECUTIVE DIRECTOR GARFINKLE: Showing the edits.

24 BOARD COUNSEL EAGAN: Okay. My apologies.

25 EXECUTIVE DIRECTOR GARFINKLE: But what's before

1 you on the table shows a clean copy without all the red  
2 lines.

3 VICE PRESIDENT CONNOLLY: Let me work from that  
4 now and try to size both.

5 EXECUTIVE DIRECTOR GARFINKLE: In the meantime, I  
6 have a question for the pilots in the room on item 17,  
7 it's a technical question. It says in the years since  
8 2011, technological incorporation of differential GPS.  
9 And my understanding of the new PPU's is not that it is  
10 incorporated differential GPS, but to incorporate  
11 independent GPS receivers. Is that --

12 CAPTAIN HURT: Correct. Yes. Good call.

13 EXECUTIVE DIRECTOR GARFINKLE: It is just  
14 independent, stand alone GPS receivers.

15 CAPTAIN HURT: Independent is a good word. It is  
16 semantics because of the old plug in, when we would  
17 access the ship's unit wasn't necessarily -- there was  
18 nothing in the IMO code for the ship's equipment that  
19 required that to be differential compliant.

20 EXECUTIVE DIRECTOR GARFINKLE: Okay.

21 CAPTAIN HURT: So the idea that we would carry a  
22 separate one would mean that differential would now be  
23 available to us as it was.

24 EXECUTIVE DIRECTOR GARFINKLE: In the areas it was  
25 available. Is it available throughout the Bay?

1 CAPTAIN HURT: Yes, so that's accurate. It is  
2 saying it in a different way. When we plugged into the  
3 ship system, there was no guarantee that there was any  
4 level of accuracy to laws or differential, because you  
5 were using whatever the ship's equipment was.

6 EXECUTIVE DIRECTOR GARFINKLE: Sure.

7 CAPTAIN HURT: So, by using higher level of  
8 technology it is a different way of saying --

9 EXECUTIVE DIRECTOR GARFINKLE: So maybe -- this is  
10 me being persnickety, but -- the incorporation of an  
11 independent GPS may have a higher accuracy or something?

12 COMMISSIONER LIVINGSTONE: I agree.

13 EXECUTIVE DIRECTOR GARFINKLE: This makes it sound  
14 like it's just required differential instead of  
15 independent of the ship's pilot plug.

16 BOARD COUNSEL EAGAN: This is from the McCloy  
17 Declaration. It says in paragraph 5, under "Navigation  
18 Technology," "In recent years, evolving technology has  
19 made it possible to incorporate precision Differential  
20 GPS and Rate of Turn Generators that provide increasing  
21 accuracy in determining and predicting vessel position  
22 and movement, in equipment that is sufficiently  
23 lightweight, durable and reliable that may make it  
24 suitable for SFBP's use."

25 That's where I got Differential GPS and Rate

1 of Turn Generators, quote from McCloy declaration. So I  
2 think you're safer unless there's something else in the  
3 evidence submitted to the Board that clarifies this  
4 further. I think you're better off sticking with what's  
5 at least here is in the evidence.

6 CAPTAIN LONG: I think in his testimony he  
7 referred to it as independent Differential GPS.

8 BOARD COUNSEL EAGAN: That would be a reason, if  
9 that's the case, for modifying there. But, again, we  
10 didn't have the transcript and, I guess, I didn't pick  
11 up on that in my notes so I went to the declaration.

12 EXECUTIVE DIRECTOR GARFINKLE: It may be just  
13 being too persnickety.

14 PRESIDENT JOHNSTON: Could you just add the word,  
15 independent differential GPS?

16 EXECUTIVE DIRECTOR GARFINKLE: I think if you add  
17 independent I would add receivers after GPS.

18 Independent differential receivers and Rate of Turn  
19 Generators. Does that sound accurate to those in the  
20 audience with expertise?

21 BOARD COUNSEL EAGAN: Agree.

22 COMMISSIONER LIVINGSTONE: Agree with his  
23 testimony covered.

24 BOARD COUNSEL EAGAN: He said independent.

25 EXECUTIVE DIRECTOR GARFINKLE: So after

1 "incorporation of independent"?

2 PRESIDENT JOHNSTON: Independent differential GPS  
3 receivers.

4 EXECUTIVE DIRECTOR GARFINKLE: Yes.

5 PRESIDENT JOHNSTON: And rate of turn generators.

6 BOARD COUNSEL EAGAN: So the only two words we're  
7 adding are independent and receivers?

8 COMMISSIONER LIVINGSTONE: Of course, it is stated  
9 in 18, but it follows it. Because what they are  
10 purchasing is actually a receiver that can receive  
11 differential and incorporate differential GPS.

12 PRESIDENT JOHNSTON: The suggestion in 16 would be  
13 the second paragraph. "This equipment is," and I've  
14 always used an aid to navigation, not a decision support  
15 tool.

16 BOARD COUNSEL EAGAN: That was slavishly taken out  
17 of McCloy's declaration, but there's no magic in that.  
18 If you want to go with something --

19 PRESIDENT JOHNSTON: Okay.

20 CAPTAIN LONG: -- I think that's suitable.

21 PRESIDENT JOHNSTON: I guess you get the chair.

22 VICE PRESIDENT CONNOLLY: If it is appropriate  
23 now, I think I'd like to look at note 31.

24 PRESIDENT JOHNSTON: Is there anything between 17  
25 and 31 that anyone wants to discuss?



1 CAPTAIN LONG: I have one on 28, but I don't want  
2 to interrupt.

3 PRESIDENT JOHNSTON: Okay, 31.

4 VICE PRESIDENT CONNOLLY: 31, again, I want to  
5 commend the drafters. That was an important point that  
6 needed attention and subtlety and was well done. The  
7 one thing -- and I'm not necessarily suggesting a  
8 change, but the one thing I'm a little uncomfortable  
9 with was the second to last line. "One false move can  
10 have catastrophic results." "One false move" is kind of  
11 a loaded term. It's got criminal connotation. It has  
12 colloquial connotation. I'm not sure it is exactly  
13 the -- it could be interpreted different ways.

14 BOARD COUNSEL EAGAN: It is colloquial, is  
15 probably a better way to express it.

16 PRESIDENT JOHNSTON: If you change that to could.

17 VICE PRESIDENT CONNOLLY: I was thinking some more  
18 like mistakes or --

19 PRESIDENT JOHNSTON: One false mistake?

20 EXECUTIVE DIRECTOR GARFINKLE: No. Just mistake.

21 PRESIDENT JOHNSTON: Okay.

22 BOARD COUNSEL EAGAN: So strike "one false move"  
23 and insert mistakes.

24 PRESIDENT JOHNSTON: It should be can or could?

25 VICE PRESIDENT CONNOLLY: Just mistakes can.

1 CAPTAIN LONG: We can say, Mistakes can have  
2 catastrophic results.

3 PRESIDENT JOHNSTON: Yes.

4 VICE PRESIDENT CONNOLLY: I can go forward with  
5 another note, Joe, if you want to do 28?

6 CAPTAIN LONG: Sure.

7 COMMISSIONER LONG: 28, Page 6 at the top. What  
8 it says presently is "Also, because of lack of  
9 transparency and difficulty in obtaining compensation  
10 data, neither parties presented evidence with income to  
11 pilots for comparable services in other ports." Just  
12 kind of ends there. I think what it implies to me is  
13 that the Board didn't do anything with this particular  
14 rate hearing factor.

15 In my view, there was evidence presented on  
16 this, although that first part is true. It is difficult  
17 to get because of transparency issues in other pilot  
18 groups. It is difficult to get apples to apples  
19 information. I would suggest adding to that that, we  
20 relied on evidence from the 2011 rate hearing that,  
21 quote, the net income of the local pilots compared to  
22 income levels of pilots for comparable ports for which  
23 information was available was, again, about the middle  
24 in the highest number of votes, or something to that  
25 effect.

1 BOARD COUNSEL EAGAN: There is an issue with that  
2 in that it's conceivable that things have changed since  
3 the conclusion reached in 2011, based on evidence  
4 introduced in 2011. And there are variables that can go  
5 into pilot compensation that may have changed. For  
6 instance, just an increase in rates of some other  
7 jurisdictions doesn't necessarily mean that the pilot  
8 income has gone up. Maybe expenses have gone up in a  
9 way and so forth.

10 So there was some of this issue in 2011.  
11 Some reliance on conclusions that had been reached  
12 concerning trends at the 2002 rate hearings, and that's  
13 problematic because that was then, this is now.

14 CAPTAIN LONG: Right.

15 BOARD COUNSEL EAGAN: And I think you get into  
16 problematic area when you report to rely on evidentiary  
17 conclusions that were reached on a different body of  
18 evidence at another rate hearing. So I think that on a  
19 safer ground if you -- if the Board confines itself to  
20 what was introduced in evidence at this hearing --

21 CAPTAIN LONG: Okay.

22 BOARD COUNSEL EAGAN: My perception, at least,  
23 both parties threw up their hands and said, We really  
24 can't get there from here because of these transparency  
25 issues. It is a factor we were supposed to consider,

1 but because of these other issues we feel we can't get  
2 there. So there's other factors, however, that the  
3 Board can discuss what those are.

4 CAPTAIN LONG: Okay. I'll defer to your advice on  
5 that one. I'll withdraw that.

6 VICE PRESIDENT CONNOLLY: I think I get the same  
7 feeling, maybe the less the better.

8 EX OFFICIO MEMBER DEALBA: Could you change  
9 "income" to monetary compensation? Because there was  
10 that comparison of revenue income, right? Because I had  
11 asked at the hearing where was there a comparison of  
12 compensation from other pilots throughout the nation. I  
13 was told this was sort of the reason why it was too  
14 difficult to gather that data, but being more specific  
15 as to what sort monetary compensation would be more  
16 accurate.

17 PRESIDENT JOHNSTON: We could add something like,  
18 at the end of compensation data at this time.

19 COMMISSIONER SCHNEIDER: Right. The point you're  
20 making, Ben, it's more to compensation than income?

21 EX OFFICIO MEMBER DEALBA: Yeah. I mean,  
22 compensation may have come and neither party presented  
23 evidence of monetary compensation to pilots for their  
24 comparable service in other ports.

25 BOARD COUNSEL EAGAN: I'm wondering, and this

1 would be because income can comprehend not just monetary  
2 compensation, but benefits? Is that what -- we have the  
3 statute that talks about income to pilots without  
4 defining what that means.

5 EX OFFICIO MEMBER DEALBA: Well, it says it in the  
6 regulation in five, income paid for comparable services.  
7 So income paid is a little more specific than income.  
8 We could say in 28 neither party presented evidence of  
9 income aid for pilots for comparable services. That  
10 would crack more closely the lining that's in the  
11 regulation.

12 BOARD COUNSEL EAGAN: Do you want to do that?

13 PRESIDENT JOHNSTON: Objection? No. Agreed.  
14 Dave?

15 VICE PRESIDENT CONNOLLY: Okay. Next for me is  
16 note 33, the one that begins with, "It does not appear  
17 that increasing rates in the recommendation will have  
18 any negative economic effect in the local shipping  
19 industry job and state's economy." My notes from the  
20 discussion were that the 2011 findings had no  
21 significant effect on the economic activity was  
22 referenced in the discussion. And I'm not sure it is  
23 necessary, but it may be helpful to recognize that it is  
24 not the first time this Board has reached this  
25 conclusion.

1           So what I would like the Board to consider  
2 is language along the lines of the Board -- instead of  
3 the way it starts -- this would be the first line of 33.  
4 "The Board previously found that rate increases proposed  
5 in 2011 would not have a negative economic effect.  
6 Similarly, it does not appear now that the increase in  
7 the rates" -- I don't know. I don't think it is that  
8 great of a change, but I know that I said it when I  
9 spoke to the local shipping industry economic impact. I  
10 referenced the 2011 finding. If the Board thinks it is  
11 appropriate --

12           BOARD COUNSEL EAGAN: I think the distinction,  
13 what you're suggesting, and my comments to Commissioner  
14 Long is, it is just reciting a historical fact.

15           VICE PRESIDENT CONNOLLY: Okay.

16           BOARD COUNSEL EAGAN: Which is fine. And there's  
17 another place in here where we actually quote language  
18 from the findings in 2011, which is a historical fact,  
19 but we're not.

20           VICE PRESIDENT CONNOLLY: It is not a new finding.

21           BOARD COUNSEL EAGAN: We're showing consistency, I  
22 guess, a trend if you will, but we're not relying on  
23 that earlier statement and whatever evidence supports  
24 whatever we do here. So what was your language again?

25           VICE PRESIDENT CONNOLLY: It was, "The Board

1 previously found that rate increases proposed in 2011  
2 would not or did not appear to have a negative economic  
3 effect on the local shipping industry or just negative  
4 economic effect. Similarly, it does not appear now."

5 BOARD COUNSEL EAGAN: Okay. So just that first  
6 sentence, "The Board previously found that rate increase  
7 as proposed in 2011," what?

8 VICE PRESIDENT CONNOLLY: "Would not have any  
9 negative economic effect." To use the language that's  
10 repeated in the next line, just to facilitate, the  
11 grammar of the next line could be similarly -- it does  
12 not appear, insert the word now that increases.

13 BOARD COUNSEL EAGAN: Similarly, now it does not  
14 appear that increase," and so forth.

15 VICE PRESIDENT CONNOLLY: Yes.

16 BOARD COUNSEL EAGAN: Okay.

17 VICE PRESIDENT CONNOLLY: One other thing in note  
18 33 is that in the middle of the sentence, "Local  
19 refineries are not being built or closed down so tanker  
20 traffic is not divertable to other ports." I don't  
21 remember being that sure of myself. Or that's -- you  
22 know, tanker traffic is divertable. I mean, just like  
23 any ship is divertable. I would say generally  
24 divertable or something.

25 COMMISSIONER SCHNEIDER: I think the point is that

1 refineries can't pick up and move, where container port  
2 can easily divert. I mean it is a fixed process.

3 VICE PRESIDENT CONNOLLY: My suggestion would be  
4 to make it easy to insert the word generally between  
5 "not" and "divertable."

6 BOARD COUNSEL EAGAN: Okay.

7 VICE PRESIDENT CONNOLLY: Then the last thing, I'm  
8 not sure I understand this here. Okay, that would be it  
9 for note 33.

10 PRESIDENT JOHNSTON: Can we change a word that's  
11 quoted in the Board findings in 2011? Paragraph above  
12 it says basically the goal given the unique challenges  
13 of navigational pilots is the environment in which the  
14 pilots operate is to attract the best pilots. We're not  
15 attracting pilots, this is applicants.

16 BOARD COUNSEL EAGAN: This is a quote.

17 PRESIDENT JOHNSTON: So you can't change it now.

18 BOARD COUNSEL EAGAN: It is history.

19 VICE PRESIDENT CONNOLLY: So if it is appropriate,  
20 my last discussion point is on 34. That is -- check  
21 what this is. This is where we now say that we're in  
22 line with the Freight Mobility Plan. Where we said  
23 before, I think, in note 12, that we weren't or possibly  
24 could come into conflict with it. So I think it is  
25 important to somehow revise this to show why this is not



1 a contradiction.

2           And my suggestion would be something like --  
3 this would be the first sentence or an addition to the  
4 first sentence. By declining to accept the increases  
5 proposed by SFBP, the adoption of the modest pilotage  
6 rate increase recommended by the Board is consistent.  
7 Something like that. You could do it in the positive or  
8 in the negative.

9           You could start off the sentence as it is  
10 now and then after "recommended by the Board" say, and  
11 rejection of the less modest proposal of the SFBP, too.  
12 But somehow we should reference why this is now  
13 appropriately here.

14           CAPTAIN LONG: I can agree with you, David. I get  
15 that the first reference is in the other section about  
16 why we voted down. This is in the section about why we  
17 voted yes. But it isn't a quick reading. This is a  
18 little bit, like you say, contradictory. There might be  
19 a way to massage this one, consistent with what Dave  
20 suggested, too.

21           EXECUTIVE DIRECTOR GARFINKLE: How about the word  
22 more in front of "modest adoption," or the more modest  
23 pilot --

24           COMMISSIONER LIVINGSTONE: Yes, that's good.

25           EXECUTIVE DIRECTOR GARFINKLE: That differentiates

1 other rate increases which were rejected. That may not  
2 be strong enough language for you, but--

3 COMMISSIONER LIVINGSTONE: That makes the point  
4 adequate.

5 BOARD COUNSEL EAGAN: So more in front of modest  
6 in Line 1, Line 34.

7 COMMISSIONER SCHNEIDER: Yes, I think so. That's  
8 it for me.

9 PRESIDENT JOHNSTON: Captain Long, do you have any  
10 other questions?

11 CAPTAIN LONG: No, that's all I got.

12 PRESIDENT JOHNSTON: Mr. Schneider?

13 COMMISSIONER SCHNEIDER: No, I think Dennis did a  
14 great job on this.

15 PRESIDENT JOHNSTON: DeAlba?

16 EX OFFICIO MEMBER DEALBA: Concur.

17 COMMISSIONER LIVINGSTONE: Concur.

18 COMMISSIONER SCHMID: Concur.

19 PRESIDENT JOHNSTON: I guess we have a motion to  
20 accept the findings presented with the demarkation  
21 changes so noted.

22 Sorry, we'll go back. Any comments from the  
23 public?

24 MR. JACOB: I'll comment to the staff. What is an  
25 appropriate comment from the public at this point?

1           PRESIDENT JOHNSTON: I'm sorry?

2           MR. JACOB: What would be an appropriate comment  
3 from the public at this point?

4           PRESIDENT JOHNSTON: What would it be? You're not  
5 going to comment.

6           MR. JACOB: I'm happy to comment.

7           PRESIDENT JOHNSTON: I was afraid of that.

8           VICE PRESIDENT CONNOLLY: It would have to be  
9 germane to the motion which is to adopt the findings of  
10 the change of language.

11          MR. JACOB: PMSA stands on its prior submissions.

12          PRESIDENT JOHNSTON: So noted. Any other  
13 documents by the public? So here we go, back to the  
14 motion. We have resected it, we had a discussion.  
15 Ready to vote? All six members can vote at this point.  
16 For the record, so all those in favor of the motion,  
17 roll call vote.

18          MS. DOLCINI: President Johnston?

19          PRESIDENT JOHNSTON: Yes.

20          MS. DOLCINI: Vice President Connolly?

21          VICE PRESIDENT CONNOLLY: Yes.

22          MS. DOLCINI: Commissioner Livingstone?

23          COMMISSIONER LIVINGSTONE: Yes.

24          MS. DOLCINI: Commissioner Long?

25          CAPTAIN LONG: Yes.

1 MS. DOLCINI: Commissioner Schmid?

2 COMMISSIONER SCHMID: Yes.

3 MS. DOLCINI: Commissioner Schneider?

4 COMMISSIONER SCHNEIDER: Yes.

5 PRESIDENT JOHNSTON: Vote is carried unanimously  
6 by the Board. Any other matters before the Board? Hear  
7 a motion for adjournment?

8 COMMISSIONER LIVINGSTONE: Motion adjourned.

9 VICE PRESIDENT CONNOLLY: Second.

10 PRESIDENT JOHNSTON: Seconded by the Vice  
11 President, made by the Commissioner Livingstone. All  
12 those in favor, say I.

13 ALL: I.

14 PRESIDENT JOHNSTON: Motion was carried. Meeting  
15 is adjourned.

16 -o0o-

17 (Whereupon the meeting concluded at 10:44 a.m.)

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1 State of California  
2 County of San Francisco  
3

4 I, SUSAN M. OHANESIAN, License No. 13528, Certified  
5 Shorthand Reporter of the State of California, do hereby  
6 certify:

7 That the said proceeding was under my direction  
8 transcribed with the use of audio capabilities and  
9 computer-assisted transcription, and that the foregoing  
10 transcript constitutes a true and correct record of the  
11 proceedings which then and there took place.

12 I am a disinterested person to the said action.  
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18 SUSAN M. OHANESIAN, CSR  
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