



October 5, 2020

Dave Connolly, President
Board of Pilot Commissioners
State of California
660 Davis St.
San Francisco, CA 94111

BOPC RECEIVED
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OPPOSE - Board Self-Commenced Pilotage Rate Hearing (7 CCR §236(a))

Dear President Connolly and Commissioners –

On behalf of the Cruise Lines International Association (CLIA), Pacific Merchant Shipping Association (PMSA), and Western States Petroleum Association (WSPA), representing the overwhelming majority of the customers of the state licensed pilots under the regulatory authority of the California State Board of Pilot Commissioners, we respectfully request that the Board avoid a self-commenced Pilotage Rate Hearing.

Our industries are exceptionally sensitive to the economic disruptions that have been caused by, and continue to reverberate from, the COVID-19 pandemic. We are all dealing with the sudden and severe shocks to the economy that have resulted in the idling of hundreds of cruise, container, and tank vessels around the world. Our member companies respect and acknowledge these impacts to our local port partners and vendors, including local providers of pilotage services worldwide.

The pandemic's short-term economic shock does not however merit a Board decision to take the unprecedented step of a self-initiated Pilotage Rate Hearing. The San Francisco Bar Pilots (SFBP) as the regulated monopoly has the right to submit a petition to the Board for a rate hearing at any time, as do the vessel customers of the pilots. No party has done so.

If none of the commercial parties directly impacted by the economics of the licensed pilotage monopoly on the San Francisco Bay have asked for a hearing to consider a change in rates it would be inappropriate for the Board to decide that one is nevertheless necessary on a commercial basis. The Board has no ministerial requirement for doing so, so we must ask upon what objective basis would the Board move forward, as no basis has been provided.

The Board has never initiated a pilot rate hearing on its own, and it is unprecedented for good reason. To self-initiate a rate hearing, the Board must conclude that it knows the economics of the pilotage monopoly better than the regulated pilots or its ratepayers or both. To self-initiate a rate hearing, the Board is also essentially telling the parties that it does not believe that they

should vigorously and in good faith remain at the negotiating table as long as possible to find compromises and commercially viable solutions to marketplace issues. And, to self-initiate a rate hearing for a non-commercial purpose, the Board would have to identify a problem which exists in the tariff which has an impact on the public, and then consider whether there is a proposed solution to those issues for which no private party has an incentive to bring forward for consideration by the Board on its own. None of these conclusions have been reached.

This is also unnecessary in response to the economic impacts of the COVID-19 pandemic. When first impacted by the economic downturn, the SFBP did not first reach out to their customers about short-term commercial or economic impacts or the need for relief; instead they went to Sacramento and sponsored a bill in the Legislature to overhaul and change the ratesetting process. Our collective associations have been at the negotiating table with the SFBP for years to discuss potential ratemaking reforms, but we were not asked to participate in any further discussions with SFBP about these proposals.

Despite claims that somehow this latest effort to change the pilot ratesetting process was related to COVID-19, this proposal clearly was not related to the pandemic, and it was not taken up by the Legislature. If SFBP was interested in addressing short-term cash flow issues in this business cycle, its solutions would not have been to create new multi-year processes to recreate the entirety of the ratemaking process.

Subsequently, SFBP threatened at the Board to reduce pilotage services because of the reduced disbursements of post-expense partnership profits which have occurred as a result of the pandemic. In response to these claims that its decreased revenues were going to harm “pilot infrastructure” and result in cuts to pilotage services to vessels, industry representatives of container and tanker interests met with the pilots along with the Board President as mediator to ensure that no such impacts to services would occur. SFBP produced projections which demonstrated significant decreases in revenues, although not so significant as to impact operating expenses or threaten any infrastructure of the pilotage ground. Nonetheless, industry offered a tentative deal with new short-term revenues to fund all SFBP projections of increased operating expenses, in addition to a no-interest bridge financing funded by industry, and a promise to work on rate changes in 2021. SFBP refused and suspended negotiations. Industry has asked to re-initiate these conversations and negotiations and SFBP has yet to engage in such discussions.

The pilots have every right to ask the Board for a rate hearing, but they have yet to do so. The pilots have every right to negotiate proposed rates and charges with their customers, yet they are currently refusing to do so. The pilots have every right to go to Sacramento for ratesetting reforms, but they excluded other stakeholders and refused to include consensus principles when they did so. To our estimation, whatever situation the pilots find themselves in now is one which presents the SFBP with multiple avenues of relief – all of which they can initiate on their own if they so desired.

It is not the job of the Board to seek such relief on the pilots' behalf. The Board should not self-initiate a rate-hearing process.

Please feel free to contact Sande George, CLIA, sgeorge@stefangeorge.com, Mike Jacob, PMSA, mjacob@pmsaship.com, or Margo Parks, WSPA, mparks@wspa.com, with any comments, questions or responses.

Sincerely,

Sande George
Cruise Lines International Association

Mike Jacob
Pacific Merchant Shipping Association

Margo Parks
Western States Petroleum Association