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BOARD OF PILOT COMMISSIONERS

Rules And Regulations Committee

Guidelines for 1996 Rate Hearing

1. The parties to past rate hearings have expressed their concerns that these hearings have become too costly, protracted and frequent and have resulted in lingering animosities. At the direction of the Board, the Rules and Regulations Committee has held a series of public workshops, which have resulted in the guidelines contained herein. These guidelines are intended to assist the Board and the parties in the conduct of the 1996 Rate Hearings and are intended to be refined further in the regulatory process before they are adopted as regulations.

2. Under current law (Harbors and Navigation Code Section 1201), any party directly affected by pilotage rates (typically the users or providers of pilotage services) may petition the Board for a public hearing to consider a change in the rates. For the past five years, those hearings have been held before an administrative law judge (ALJ). The law providing for an ALJ for such hearings was repealed by its own provisions and, under current law, the Board will hear the evidence in support of, and in response to, a the rate petition.

3. A notice of hearing on the rate petition will be sent to the public within 10 days of receipt of the petition, with the hearing scheduled at least 30 days but not more than 60 days from the date of the notice. (Currently the week of May 6, 1996 has been scheduled for a hearing on the rate petitions of the San Francisco Bar Pilots and Pacific Merchant Shipping Association. Inland Pilot Captain Wallace Slough has withdrawn his petition.)

4. The party seeking a rate change will have the burden to prove by a preponderance of the evidence that a change in the rate is justified.

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5. At least 10 days prior to the hearing, the parties supporting and opposing the petition for a rate change shall meet with the President of the Board or his designee at the time and place directed by the President, to determine if the issues raised by the petition can be narrowed or resolved by stipulation. The President or his designee may issue a pre-hearing order setting forth any stipulations or limitations on the scope of the hearing or the issues to be presented as agreed to by all parties attending the pre-hearing meeting. Participation by the President or any other Board member in the pre-hearing meeting shall not disqualify him or her from participation in the rate hearing.

6. It is anticipated that the parties to the rate hearing and the Board will, at least in 1996, utilize the Bar Pilots' most recent annual audit as well as the results of the independent study of Bar and Inland Rate structures ordered by the Board as a result of the 1995 rate hearing. It is further anticipated that the Quarterly Expense Review conducted of Bar Pilots' expenses during regular Board meetings and/or at its Finance Committee meetings should serve to avoid any surprises in substantial variations of actual vs. budgeted expenses or in accounting of costs.

7. Current law (Harbors and Navigation Code Section 1203) requires the Board to consider a number of factors before recommending a rate change. The following guidelines shall apply in considering those factors:

- (a) "Costs of Providing Pilot Services": Whether specific expense items or categories are approved as a "cost of providing pilot services" have taken up considerable time at past rate hearings and sometimes re-litigated in subsequent hearings. (See RMP memo dated January 3, 1996, attached.) Consideration should be given to resolving these issues outside the rate setting process. Harbors and Navigation Code Section 1200 provides, in part, for a periodic review of pilotage expenses by the Board and the establishment of guidelines for the evaluation and application of these expenses regarding the Board's recommendations for

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rate adjustments. (Under current law, approval of an expense category outside the rate setting process would not automatically result in a rate change. If a rate change is justified, it would have to wait until the next rate hearing.)

Volatile/Extraordinary Expenses:

At the 2/21/96 workshop, there was extensive discussion of whether the current law should be changed to authorize the Board to adjust pilotage rates in response to substantial variations in designated volatile or extraordinary expenses beyond the pilots' control. Included in the discussion was whether rates should be subject to adjustments when costs went down as well as up.

At the 3/12/96 workshop, the parties arrived at a consensus that any authority to adjust rates between rate hearings should be limited to provide relief only in the event of catastrophic increases in expenses; that, therefore, no limitation need be placed on the specific type or category of expense, nor on the frequency that such relief could be requested or provided. Rate adjustment under such a provision would be in response to a specific request from a party effected by a catastrophic cost increase.

At the 3/12/96 workshop, a consensus was also reached that a catastrophic cost increase sufficient to trigger a rate adjustment would be one that would result in a two per cent (2%) increase in the overall annual cost of providing pilot services.

- (b) "Net Return to Pilots Sufficient to Attract and Hold": As with other issues, the party seeking a rate change based on a contention that the current net return is not sufficient to either attract or hold qualified pilots has the burden of persuading the Board of its view by a preponderance of the evidence. In determining whether the current net return is sufficient to attract qualified pilots, the Board may consider the advice of its

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Application Review Committee whether those applying to enter the Pilot Trainee Training Program provided an adequate pool of qualified applicants from which to select prospective trainees.

Cost of Living Index: The Board will consider as a factor in assessing the adequacy of the net return the change in the cost of living index over the most recent 12-month period for which information is available from the U. S. Department of Commerce, Bureau of Labor Statistics, for "All Urban Consumers, San Francisco-Oakland-San Jose."

- (c) "Rates Charged for Comparable Services in Other Ports": "Comparable services" means pilotage from sea to dock in ports with generally similar vessel traffic in density and size and type of vessels, geographic and hydrographic parameters, length of transit and relative difficulty of pilotage and hazards encountered. While the Board recognizes that no port will be precisely the same in all these categories as the waters under the Board's jurisdiction, it believes that the parties should be able to agree on a number of ports which are sufficiently comparable and for which pilotage rate and pilot income data (see (f) below) is reasonably available.

For the 1996 Rate Hearings, the parties have agreed to limit evidence of comparable pilotage rates and pilot income to the following ports

- ♦ Columbia River (Portland)
- ♦ Columbia Bar (Astoria)
- ♦ Houston
- ♦ Tampa Bay
- ♦ Sandy Hook (NY/NJ)
- ♦ New Orleans/Baton Rouge
- ♦ St. Johns Bar, Jacksonville
- ♦ Maryland (Chesapeake Bay)
- ♦ Puget Sound (Seattle)

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Updated Rate data for these ports should be readily accessible. This data is not expected to be a source of controversy. Accurate Pilot Income data has been less accessible and has fostered considerable controversy in past rate hearings as to both accuracy and what aspects of compensation are included for a meaningful comparison.

Any pilot rate and income data collected by Board staff for consideration by the Board at the rate hearing will be made available to all parties at least 10 days before the hearing.

- (d) "Methods of Determining Rates in Other Ports":
This factor may be more relevant to reviewing the Board's rate setting process than providing a significant input to setting the rates. It may have some relevance if combined with the pilotage rate data provided under factor (c) above.
- (e) "Economic Factors Effecting Local Shipping":
The Board accepts that in the current economic climate, the shipping industry is carefully scrutinizing every cost of doing business in order to maximize potential profits or minimize possible losses.
- (f) Additional Factors:
- Volume of Vessel Traffic: As reported to the Board.
- Number of Pilots Available: Actual number of pilots licensed with a mechanism for periodic adjustment in the rate for changes in that number. (Adequacy of the number authorized should be addressed at a duly noticed manpower hearing.)
- Income Paid for Comparable Services: The Board will use available pilot income data for the ports deemed comparable under factor (c) above (adjusted for cost of living differential between those ports and San Francisco-Oakland-San Jose). (See discussion under factor (c) above.)

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(g) "Changes in Navigational and Safety Equipment": The Board recognizes that over the years there have been substantial changes in training requirements placed on pilots, in regulations which pilots must implement, and in the complexity and size of vessels which increases the professional demands on pilots. To the extent these changes have increased the cost to the pilots of providing pilot services, these costs will presumably be addressed under factor (a) and through periodic expense review. To the extent they have increased the time demands on pilots, those demands should be addressed in a manpower hearing.

(h) Pilot Support Activities: The Board further recognizes that over the years the pilots have provided services beyond the navigation of vessels, including service on various governmental and advisory bodies dealing with harbor safety, tug escort, real time tide data collection, navigational aids, channel deepening projects, international, national, state and local pilotage regulation, and pilot training and evaluation. Such support activities of the pilots as are necessary to providing pilot service shall be considered in determining the appropriate rate.

8. 1996 Rate Hearing - Order of Presentation:

All parties agree that, with the cooperation of everyone concerned, the presentation of evidence and the Board's deliberation should be completed within the week of May 6, 1996. The parties are encouraged to make full use of the pre-hearing conference referred to in paragraph 5 above to narrow the issues, identify and limit the number of witnesses, and address and, if possible, resolve anticipated evidentiary and procedural issues.

The following schedule, subject to fine tuning at the pre-hearing conference, should meet the goal of completing the hearing within five days and still allow sufficient time for each

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party to present their case and to respond to any other party's case:

Monday, May 6, 1996:

Presentation of SF Bar Pilots' case

Tuesday, May 7, 1996:

Presentation of PMSA's case

(PMSA should be prepared to begin its case on Monday afternoon if the pilots' presentation concludes early.).

Wednesday, May 8, 1996:

9:00 - 10:00: Public input (if any)

10:00 - 11:00: SF Bar Pilots' rebuttal (to start at 9:00 if no public input)

11:00 - 12:00: PMSA rebuttal

1:00 - 2:00: Pilots' closing argument

2:00 - 3:00: PMSA's closing argument

3:00 - 5:00: Board deliberation

Thursday, May 9, 1996:

If necessary, complete Board deliberation

The proceedings will be transcribed by a certified court reporter. Witnesses will be sworn and subject to cross-examination. Cross-examination should be limited to the scope of the witness' direct examination and credibility.