



SAN FRANCISCO BAR PILOTS ASSOCIATION

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***BOPC RECEIVED
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May 17, 2021

California Board of Pilot Commissioners
Ad Hoc Committee to Review the Pilotage Rate Setting Process

Subject: SF Bar Pilots Comments re Rate Setting Process

Dear Committee Members:

On April 8th, 2021, the Committee requested stakeholder input regarding concerns with the current rate setting process and outcome suggestions for potential improvements. As you are aware, there is a long and complicated history surrounding rate setting on the pilotage grounds under BOPC's jurisdiction. Over the 170 years that the BOPC has been in existence, the regulation of pilotage has evolved and the setting of pilotage rates has been an ever-present subject in this evolution. It is the San Francisco Bar Pilot's view that over the past decade serious problems have developed with the rate setting process and we are encouraged to see the BOPC take on this issue. We look forward to working cooperatively with the BOPC and our fellow stakeholders in examining the issues surrounding the rate setting process and developing potential improvements.

The committee has requested that we keep our written submission focused and brief – we therefore offer the following comments and, if requested, would be pleased to follow up in more detail.

Concerns with Current Rate Setting Process

The last time the Legislature acted on a rate recommendation from the BOPC was in 2002. Since that time, the BOPC has conducted two extensive rate hearings (2011 & 2015). In both cases, the BOPC rate recommendations were carried to the Legislature but the Legislature did not adopt the recommendations. It is SFBP's view that this outcome presents critical flaws:

- Substantial resources were expended in the conduct of these hearings to reach recommendations that in the end were disregarded by the Legislature. Preparation, filing and conduct of these hearings come at a significant cost to BOPC staff, Commissioners and stakeholders. Time commitment for all parties is considerable – in the hundreds of hours. SFBP's legal and consulting fees for a single hearing run in excess of \$200,000 and, while we cannot account for other parties' and BOPC's costs, we assume they are relatively comparable.
- While the BOPC is appointed by the Governor and confirmed by the Senate, the evidence based rate setting function of the board has been undermined. It has evolved to overweight the political advocacy of interested parties when the recommendation is considered by the legislature. This results in a lack of transparency in what ultimately drives the legislative outcome and creates a highly contentious and politicized environment. This unfortunate environment results in strained stakeholder relationships, the necessity for continuous and costly legislative engagement and ultimately creates a dysfunctional pilotage system.

- Because it is tied to the Legislative Calendar, the process is too lengthy and therefore is not responsive to rapidly changing economic conditions. This became readily apparent in attempting to respond to the COVID-19 crisis. Nor is it responsive to making small or timely adjustments. For example, adjusting for inflation or changes in the Bay Area CPI.
- Procedurally, we find it troubling that a regulated entity or rate-payer must carry legislation on behalf the regulating agency.
- Overall, we believe the process to be procedurally outdated. It is not aligned with standard utility rate setting practices in California or the county, nor is it aligned with pilotage rate setting in other maritime states.

Suggested Outcomes for Improving the Rate Setting Process

As the committee may be aware, the stakeholders, both jointly and individually, have sought legislation to change the rate setting process. None of these efforts, for a variety of reasons, have been successful. Rather than advocate for a particular process, SFBP respectfully submits the following suggestions for possible outcomes that we believe would be of benefit to all parties. Our view is that an improved process would reflect and encourage the following:

- A single step process under BOPC jurisdiction that can be completed in a reasonable time frame. We believe and have overwhelmingly heard from legislators that the Legislature should be removed from the rate-making process.
- When hearings are held, they should be evidence based, incorporate an administrative law judge and follow the Administrative Procedures Act.
- The process should be responsive to changing economic conditions and system fiscal requirements and procedurally it should not rely on a limited legislative calendar. Predictability of both rate and revenue should be considered.
- Consideration should be given to possibly making the process more formulaic and data driven. Automatic adjusters could be considered.
- The process should equitably allocate rates across all rate payers and consider the interests of State as well as that of the Pilots and the rate-payers.
- The process should promote a simplified tariff structure that is easily auditable.
- Encourage cooperation of all parties with less litigation and decreased cost.
- Discourage use of media and political contributions to advocate or influence outcome.

General Comments on Pilotage Rate Setting

Pilotage rate setting, in and of itself, is not particularly complicated. It is a matter of determining the revenue requirements of the pilotage system and setting a rate that equitably recovers that revenue across the users of the system. The revenue requirement is broadly determined across 3 categories: capital expenses (i.e. pilot vessels), operating expenses (i.e. rent, employee payroll) and pilot compensation. In single-provider systems, it is incumbent upon the rate-setting body to ensure that the

expenses included in the rate are necessary and reasonable. For example, legislative advocacy and external political expenses are typically excluded when setting rates. Pilot compensation is set by a number of methods, common ones include reviewing comparable pilotage grounds, consideration of attract and retain and previous years compensation. Once a compensation level is determined, the revenue requirement is determined by applying it to the number of pilots necessary to provide the desired service level. Throughout the US, pilotage rate setting is conducted routinely, usually on an interval that provides stability of rate and revenue but also allows for periodic adjustment for changes in revenue requirements, vessel traffic levels and inflation. Those jurisdictions that adjust rates less frequently may employ a COLA mechanism to protect against rising costs and avoid shocking the system with significant single rate increases.

Like many systems, the “devil is in the details” and we believe that focusing on the fundamental components of rate setting will help to yield the results all parties are hoping to achieve. The current pilotage rate setting process is inherently adversarial, unnecessarily litigious, too costly and inflexible. There has to be a better way.

Respectfully submitted,



Capt. John Carlier
Port Agent