

EXHIBIT NO. 22

DECISION BY JUDGE JERRY MITCHELL  
1995 RATE HEARING

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BEFORE  
OFFICE OF ADMINISTRATIVE  
STATE OF CALIFORNIA

In the Matter of Petitions to the  
Board of Harbor Commissioners for  
the Bays of San Francisco,  
San Pablo, and Suisun, by:

OAH NO. N9504166

SAN FRANCISCO BAR PILOTS,  
CAPT. S. WALLACE SLOUGH, and  
PACIFIC MERCHANT SHIPPING  
ASSOCIATION,

Petitioners,

Pursuant to Section 1201.6 of the  
Harbors and Navigation Code.

DECISION

This matter was heard in San Francisco on May 1 through  
5, and 8 through 11, 1995, by Jerry Mitchell, Administrative Law  
Judge of the Office of Administrative Hearings, State of  
California.

Dennis J. Kelly and Amy E. Sherburne, Attorneys at Law,  
represented San Francisco Bar Pilots.

Barry Endick, Attorney at Law, represented Capt. S.  
Wallace Slough.

Sam D. Delich, Attorney at Law, represented Pacific  
Maritime Shipping Association.

FINDINGS OF FACT

I

Petitioners are parties directly affected by pilotage  
rates within the meaning of Section 1201.6 of the Harbors and  
Navigation Code (all further statutory references are to that code)  
and have petitioned, severally, pursuant to Section 1201.6, for a  
public hearing on recommendations that the Board of Pilot Commis-  
sioners for the Bays of San Francisco, San Pablo, and Suisun (the  
board) is required to make to the Legislature with respect to  
pilotage rates.

II

San Francisco Bar Pilots (SFBP) is an association of pilots, Capt. S. Wallace Slough is an inland pilot, and Pacific Merchant Shipping Association (PMSA) is an association of shipping companies.

III

Pilots, of whom there will be 60 in 1996, perform both bar and inland pilotage. Capt. Slough performs only the latter.

IV

Section 1190(a)(1) provides that the rate for bar pilotage shall be \$7.35 per draft foot of the vessel's deepest draft and fractions of a foot pro rata (the draft rate), and 64.88 mills per high gross registered ton (the mill rate). Section 1190(a)(1)(A) provides that the mill rate may be augmented by an incremental rate of 0.78 additional mill for each pilot appointed by the board in excess of 60 pilots.

V

There is no statutory ceiling on the rates that may be charged for inland pilotage. Section 1191(c) provides that the minimum rates charged by pilots or inland pilots shall be the schedule of ship pilot fees published by SFBP on January 1, 1990.

VI

SFBP petitions the board to recommend to the Legislature that the draft rate be increased to \$8.09, the mill rate to 71.12 mills, and the incremental rate to 0.92 mills. It also petitions the board to recommend that rates for inland pilotage be increased 10 percent. The latter request seems unnecessary since, according to Section 1191(c), the pilots are free to charge whatever they wish for inland pilotage provided it is not less than the schedule of ship pilot fees published by SFBP on January 1, 1990.

VII

PMSA generally opposes any increase in pilotage rates beyond the amount necessary to compensate for inflation. However, it does join with Capt. Slough in petitioning the board to recommend to the Legislature that the rates for inland pilotage be increased 54 percent; that the mill rate be decreased sufficiently to compensate therefor; that the board commission a study by an independent consultant, to be completed by March 1, 1996, of "San Francisco, San Pablo and Suisun pilotage income and expenses to determine the percentage of such income and expenses allocable to: (a) bar; (b) bay; and (c) river"; and that "in order to achieve a

more equitable distribution of target revenue between bar and inland moves at future rate proceedings," the study be submitted by the board for consideration by an Administrative Law Judge at the next rate hearing.

#### VIII

The pilotage rates currently in effect were intended, when recommended to the Legislature in 1994, to produce an amount of revenue from the draft rate, the mill rate, and inland pilotage, combined, that would provide each pilot with an annual net income of \$162,241 (the target net income). To insure that neither more nor less than the target net income is generated, Section 1190(a)(1)(B) requires that the mill rate be adjusted quarterly as follows:

(A) fiduciary shall determine the quarterly adjusted rate by a calculation wherein the total revenue to be generated by the mill rate, as approved by the board at a meeting on May 26, 1994, pursuant to Section 1201.6, is the dividend and the total of the actual gross registered tonnage from the four most recent quarters preceding the quarter ending immediately before the effective date of the adjustment is the divisor. The resultant quotient ... shall be the new mill rate effective on the first day of the succeeding quarter and will remain in effect for that quarter until otherwise adjusted.

Because the amount of tonnage piloted has exceeded that which was forecast when a mill rate of 64.88 was recommended, adjustments pursuant to Section 1190(a)(1)(B) have reduced the rate being charged to 62.21, though 64.88 is still the rate set forth in Section 1190.

#### IX

Section 1203 lists several factors to be considered in preparing recommendations on pilotage rates, one of which is a change in cost-of-living indices. The most recent consumer price index reflects an increase of two percent in the cost of living. Predictions as to what the index will be in the future are too speculative to be considered.

#### X

Another factor to be considered is the volume of shipping traffic using pilotage. The pilots consider the gross registered tonnage piloted to be a measure of their productivity, and complain that Section 1190(a)(1)(B) prevents them from being compensated

when the tonnage actually piloted exceeds that which was anticipated when the target net income was determined.

#### XI

Another factor to be considered is the cost to the pilots of providing the service as required. The pilots predict that such costs will total \$6,574,400 in 1996.

\$20,000 of the predicted legal fees and \$10,000 of the predicted travel expenses are to be spent in connection with the contemplated purchase of a new boat. Since the purchase has not yet been approved by the board, the legal fees are not yet required. The travel, however, is found to be required in order to gather preliminary information before presenting the matter to the board.

\$408,740 of the predicted costs is for debt service on improvements to the pilot station at Pier 9. However, 25 percent of those costs were incurred for improvements that are not required to provide the service.

\$15,998 of the predicted costs is for an increase in lobbying costs. The Administrative Law Judge finds that lobbying is not a required cost, but because it has been considered in making previous rate recommendations, the lobbying expenses, minus the increase, will be considered this year.

\$60,000 of the predicted costs is for political contributions, a cost that is found not to be required.

Deducting \$20,000 in legal fees, \$102,185 in debt service, \$15,998 in lobbying costs, and \$60,000 in political contributions from total predicted costs of \$6,574,400, the costs be considered total \$6,376,217.

#### XII

Section 1191(a) provides: "The board shall ... recommend that the Legislature, by statute, adopt a schedule of pilotage rates providing fair and reasonable return to pilots and inland pilots engaged in ship movements and special operations where rates for those movements or operations are not specified in Section 1190."

Taking into account inflation since the schedule of ship pilot fees was published by SFBP on January 1, 1990, and the cost of providing inland pilotage, the current rates for such pilotage provide at least 20 percent less than a fair and reasonable return.

XIII

All other factors to be considered in preparing rate recommendations were given due consideration and found not to require changes in the current rates.

XIV

The pilots predict that in 1996, their total revenue will include \$991,213 from inland pilotage, and \$1,600,373 from the draft rate, if each of those rates is increased 10 percent. If those revenues were increased 10 percent, they would be \$901,102 and \$1,454,884, respectively.

CONCLUSIONS

I

It is appropriate to increase the target net income two percent to compensate for the increase reflected in the most recently reported consumer price index.

II

It is appropriate to increase the minimum rates for inland pilotage 20 percent, and to order the study requested by Capt. Slough and PMSA.

III

It would be appropriate to amend Section 1190(a)(1)(B) to permit actual net income to deviate from target net income by a relatively small percentage, e.g., 5 percent. However, it would be premature to propose such an amendment before the aforementioned study is completed. In the interim, it is appropriate to increase target net income an additional two percent to compensate for the increases in tonnage that have driven down the adjusted mill rate.

IV

By reason of Determinations I and III, target net income will be \$168,731 (\$162,241 + 4%) per pilot, a total of \$10,123,860 for 60 pilots. The revenue required to produce that net income is \$16,500,077 (\$10,123,860 plus \$6,376,217 in costs).

V

Total revenue from inland pilotage and the draft rate, combined, is predicted to be \$2,536,206 (\$901,102 + 20% + \$1,454,884). Thus, \$13,963,871 (\$16,500,077 - \$2,536,206) must be generated by the mill rate to produce \$16,500,077 total revenue.

VI

By reason of Section 1190(a)(1)(B), it is not necessary to change the mill rate to produce the desired target net income; it is only necessary to set forth in Section 1190(a)(1)(B) the total revenue to be generated by the mill rate.

PROPOSALS

I

Minimum rates for inland pilotage shall be increased 20 percent.


II

Section 1190(a)(1)(B) shall be amended by replacing the words "the total revenue to be generated by the mill rate, as approved by the board at a meeting on May 26, 1994, pursuant to Section 1201.6," with the amount "\$13,963,871."

III

The board shall order a study by an independent consultant of the issues raised herein, to be paid for as the board sees fit.

DATED: May 26, 1995

  
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JERRY MITCHELL  
Administrative Law Judge  
Office of Administrative Hearings