

**OREGON BOARD OF MARITIME PILOTS**

BP 10

In the Matter of the Petition of the Columbia	)	FINAL ORDER
River Bar Pilots for a Change in Pilotage	)	No. 10-02
Rates.	)	

DISPOSITION: REVISED RATE SCHEDULE ADOPTED

**I. PROCEDURAL HISTORY**

**Background.** The most recent Columbia River Bar Pilots (CRBP) rate proceeding, BP 8, resulted in the issuance of Final Order 05-01 on July 8, 2005, with the tariff to take effect on December 1, 2005. While a CRBP-filed Motion for Reconsideration and Rehearing was pending, CBRP, the Ports of Longview, Vancouver, Kalama, and Portland, and the Columbia River Steamship Owners Association (CRSOA), entered into a Settlement Agreement, setting forth proposed adjustments to the tariff. It was adopted by the Oregon Board of Maritime Pilots (the Board) as an amendment to Order 05-01 issued December 4, 2005. The most economically significant amended tariff terms and conditions were essentially as follows:

1. The tariff would remain in effect for four years, ending November 1, 2009.
2. The fuel cost adjustment formula would be applied semiannually beginning March 1, 2006.
3. A new measurement would be utilized: Target Pilot Gross Income (TGI), defined as Target Net Income (TNI)—\$187,754 at the time the agreement was executed—plus per-pilot expenses for equipment allowance, health and life insurance, and pension allowance.
4. The number of pilots funded by the tariff and the TGI would be annually adjusted according to a formula based on changes in vessel transits, billable vessels, average vessel draft and average vessel gross registered tons (GRT). The TGI would be annually adjusted (COLA) based on changes in the Portland –Vancouver Consumer Price Index (CPI). The agreement also called for a 2008 TGI increase of 1 percent.
5. Non-transportation tariff-allowed expenses were listed in a separate exhibit and would be in CRBP’s audited financial statements and subject to review by all parties to the agreement.

6. The Transportation Expense would be annually adjusted to reflect best available information. There would also be a four-person oversight committee (the TOC)—two from CRBP and one each from the Ports and CRSOA. The TOC would submit expense projections to the Board prior to the September 1 tariff adjustment.
7. Except for fuel, continuing professional development and the Cutter Boat surcharge, the parties agreed to adjust Tariff A-9 to show the base numbers for use in the TGI formula as set forth in the table at page 4 in the Settlement Agreement.

Exhibit A to the Agreement provided examples of how the automatic tariff adjustment would work and Exhibit B provided a listing of allowed Transportation and Non-Transportation Expenses.

On April 7, 2009, the parties executed a further set of stipulations modifying the automatic tariff adjustment mechanism. The parties further stipulated that the changes were in accordance with ratemaking principles, were just and reasonable, and should go into effect at midnight April 9, 2009. Exhibit A provided examples of how the new base numbers would be applied to the tariff. The Board approved the Stipulations by Order 09-01, issued April 8, 2009.

On September 30, 2009, pursuant to OAR 856-030-0010, the Columbia River Pilots filed a Petition for a Change in Pilotage Rates (COLRIP Petition). The Port of Portland on October 30, 2009, and the Port of Vancouver on November 3, 2009 (the Ports) each filed Counter-Petitions and became parties to the proceeding. CRSOA filed a Response and Counter Petition on December 17, 2009. Pursuant to a Request for Extension of Time to File Rate Petition filed by the Columbia River Bar Pilots (CRBP) on October 29, 2009, the Administrative Law Judge (ALJ) granted CRBP an extension of time until November 19, 2009, in which to file its Rate Petition (CRBP Petition). The CRBP Petition was timely filed on November 19, 2009.

A joint schedule for the proceedings was established at a prehearing conference held on December 8, 2009, and noted in the Prehearing Conference Report issued by the ALJ on December 15, 2009. On January 26, 2010, the ALJ issued a Ruling and Memorandum establishing the list of issues that were to be considered in the rate proceedings for each pilotage ground.

On March 2, 2010, CRBP moved for a change of schedule, noting that it had reached a settlement agreement with the Ports of Portland, Vancouver, Longview, and Astoria, and that CRSOA had withdrawn from active participation in the evidentiary process. By letter of February 2, 2010, the Ports of Portland and Vancouver also indicated that they were withdrawing from active participation in the case. On March 4, 2010, the ALJ issued Protective Order 10-01. Due to the fact that the COLRIP and CRBP Petitions were proceeding on different discovery and negotiation tracks, by Ruling and Memorandum of March 26, 2010, the two petitions were placed in separate dockets, with the CRBP docket being placed in the newly established docket designated as BP 10.

All of the parties waived their rights to cross examine witnesses or to file Reply Testimony. On March 31, 2010, CRBP timely filed Direct Testimony. Included with its Direct Testimony as CRBP Exhibit 1 was an executed Settlement Agreement between CRBP and the Ports of Portland, Vancouver, Longview, and Astoria. No other parties filed direct testimony. On April 8, 2010, CRBP filed an Unopposed Motion to Supplement Record. A second affidavit from Captain Gary Lewin was associated with the Motion. It provided first quarter actual traffic data which CRBP proposes to be utilized effective in May upon adoption of a tariff consistent with the Settlement Agreement.

On April 19, 2010, CRSOA filed Objections and Motions to Strike Columbia River Bar Pilot Testimony and Exhibits and requested expedited consideration (CRSOA Motion). On April 16, 2010, CRBP filed a Motion to Strike CRSOA's objections and Motions to Strike CRBP Testimony and Exhibits (CRBP Motion).<sup>1</sup> By Ruling of April 21, 2010, the ALJ denied the CRSOA Motion and granted in part the CRBP Motion.

Opening Briefs were filed April 19, 2010, by CRBP, the Ports, and CRSOA. CRBP and CRSOA subsequently filed motions to strike portions of each others' Opening Briefs. The ALJ's ruling of April 22, 2010, granted in part and denied in part the respective motions. CRSOA refiled its Opening Brief with certain sections omitted, on April 26, 2010, in compliance with the ALJ's Ruling. Reply Briefs were filed on April 23, 2010, by CRBP and CRSOA. The Administrative Law Judge issued a Proposed Order on May 10, 2010. CRSOA filed Exceptions on May 14, 2010. On May 17, 2010 the parties presented oral argument to the Board.

## II. THE RATEMAKING PROCESS

**Statutory Requirements.** ORS 776.115(2) establishes the general goal of providing efficient and competent pilotage service on all pilotage grounds. In doing so, the Board shall "[r]egulate and limit the number of licensees and trainees under this chapter, such number of licensees and trainees to be regulated and limited to the number found by the board to be required to render efficient and competent pilotage service. The primary consideration of the board is public safety." ORS 776.115(2).

ORS 776.115(5)(a) authorizes and directs the Board to set "reasonable and just" rates and fees. ORS 776.115(8) requires the Board to establish rates for a period of not less than two years. The rates may include automatic adjustment provisions to reflect changing economic conditions. *Id.*

OAR 856-030-0000 addresses the determination of pilots' target net income and expenses. The rule provides that:

The Board shall for each pilotage ground establish a rate structure which provides for efficient, economical, and competent pilotage services and fair compensation for pilotage services and expenses:

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<sup>1</sup> The apparent incongruity of the dates is due to differences in the dates on which physical copies were received and docketed.

- (1) In determining the number of pilot positions needed and fair compensation for services and expenses, the Board shall consider:
- a) The amount of activity, including number of vessels, number of pilot assignments, size of vessels by net tonnage and length, and draft;
  - b) Any change in the amount of activity since the last rate order;
  - c) The public interest in prompt and efficient service;
  - d) The professional skills and experience required of a pilot and the difficulty and inconvenience of providing the service, including time necessary to perform the service;
  - e) Evidence of compensation for comparable maritime professions, including other pilotage associations;
  - f) Total gross and net income for the pilots' group since the last rate order, or as directed by the Board, including sources of income by tariff category; and
  - g) Individual amounts paid to pilots since the last rate order, or as directed by the Board, which may be shown as both gross and adjusted gross income, as reported for tax purposes.

(2) In determining compensation for expenses, the Board shall consider evidence of appropriate expenses related to the provision of pilotage services as shown by records of the pilots' group, and verified by an independent audit.

**The Ratemaking Process.** Ratemaking is a two-step process in which the Board first must determine a reasonable and just total revenue level and then set rates for specific tariff items to produce the appropriate amount of total revenues. The Board reaches the total revenue amount by determining the appropriate TNI level for a pilot on a particular pilotage ground, the number of pilots needed to adequately provide pilotage services for the vessels on that pilotage ground, and the expenses of providing the services.

The starting place in the rate setting process is the determination of the appropriate target net income (TNI) per pilot. The individual pilot's TNI is then multiplied by the number of licensed pilots the Board determines are necessary to provide adequate pilotage services to vessels crossing the pilotage ground. Historically, it has been the Board's practice to then add to that figure the projected reasonable operating expenses and costs that the pilot group is expected to incur in providing the pilotage services. The resulting figure equals the total revenues that must be generated under the tariff to reach the target total revenue [(target net) x (pilots) + (expenses) = target total revenue]. A projection about the anticipated amount of ship traffic (the number of transits) is then used to determine how much each vessel must pay to generate the total amount of revenue necessary to cover projected costs and pilot incomes.

A number of factors are considered when determining TNI. The level of TNI (and the resulting target gross income) almost never equates to the actual income that a pilot earns in a given year. Actual pilot income can be above or below the "target" if the actual levels of vessel traffic or operating costs are different than the assumptions made during the ratemaking process. Variations between target and actual levels of income are a fundamental result of the rate setting process. In the past, when target and actual income levels varied greatly – usually due to economic conditions – the rate setting process was initiated to reset the tariff. However, since the Board approved annual cost of living adjustments to the tariff starting in 1993, inflation is no longer an economic factor creating significant variations in actual net income level.

**The Burden of Proof.** CRBP, as the only party to submit evidence in this docket has the burden of proving by a preponderance of the evidence the legal sufficiency of the proposed changes. ORS 183.450(2) and (5). In order to address each of the issues with respect to TNI, Number of Pilots, and Reasonable Operating Expenses in the provision of pilotage services, CRBP submitted affidavits or declarations from 12 witnesses and supporting exhibits.

In the Opinion, below, we address each of the criteria set forth in the statutes and regulations relative to the ratemaking process and provide our opinion as to whether CRBP has met its burden of proof with respect to that issue.

**The Settlement Agreement.** All of the issues in the proceeding are addressed and resolved in the Settlement Agreement entered into between the CRBP and the Ports of Portland, Vancouver, Longview, and Astoria on February 22, 2010.<sup>2</sup> A copy of the Settlement Agreement was offered into the record as CRBP Exhibit 1. The Settlement Agreement contains each of the proposed changes for which CRBP has the burden of proof as noted above. CRBP has submitted affidavits, declarations, and exhibits with respect to each issue relating to a change in pilotage rates in order to meet its statutory burden.

The terms of the Settlement Agreement may be summarized as follows:

1. **Term:** The Agreement proposes to adopt a tariff with duration of five years.
2. **Tariff Structure:** Charges are based on tonnage and draft with separate, per vessel, surcharges. Eighty-four percent of the Pilot Income and Benefits and non-transportation expenses are allocated to tonnage and 16 percent are allocated to draft. Surcharges for transportation expense, boat mortgages, fuel, and pilot professional development are charged on an equal per vessel transit basis.
3. **Pilot Income and Benefits:** Although, as noted above, the Board has traditionally used the phrase "Target Net Income" (TNI) to denote the income per pilot and placed per-pilot expenses with the remaining operating expenses, the Settlement Agreement combines the two to create a "Target Gross Income" separate from the remaining non-per-pilot operating expenses. The parties agreed on a TNI of \$214,447, plus per-pilot expenses of \$85,551, or a Target Gross Income (TGI) of \$299,998. A quarterly adjustment to the TGI is made in accordance with a mechanism described in Exhibit A to the Settlement Agreement. The mechanism is based on the following Key Inputs: vessel transits, billable vessels, average vessel draft, and average gross registered tons.

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<sup>2</sup> CRSOA is not a signatory to the Settlement Agreement and, as noted above, has voiced its opposition to it.

