ISSUED: May 19, 2010

OREGON BOARD OF MARITIME PILOTS

BP 9

In the Matter of the Petition of the Columbia River Pilots for a Change in Pilotage Rates.	))	FINAL ORDER No. 10-01

DISPOSITION: REVISED RATE SCHEDULE ADOPTED

I. PROCEDURAL HISTORY

Background. 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) for the Columbia and Willamette River Pilotage Ground (CWRPG). The Port of Portland on October 30, 2009, and the Port of Vancouver on November 3, 2009, each filed Counter-Petitions and became parties to the proceeding. Columbia River Steamship Operators Association (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a settlement agreement with the Ports of Portland, Vancouver, Longview, and Astoria (the Ports) and that CRSOA had withdrawn from active participation in the evidentiary process. 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 removed from BP 9 and placed in the newly established docket designated as BP 10.

On March 12, 2010, COLRIP filed its list of Witnesses and Exhibits to be used at the hearing. On April 1, 2010, COLRIP filed a Motion for Leave to Supplement the Record which was granted without opposition by Ruling of April 9, 2010.

All of the parties waived their rights to cross examine witnesses or to file Reply Testimony, and the hearing dates were removed from the schedule.

On April 16, 2010, COLRIP, CRSOA, and the Ports filed opening briefs. CRSOA also filed Objections and Motions to Strike COLRIP Testimony, and COLRIP filed Motions to strike both CRSOA's Objections and Motion to Strike and the Exhibits and portions of the Opening Brief filed by CRSOA. The ALJ disposed of the objections and motions in Rulings of April 21 and 23, 2010, and CRSOA filed an amended opening brief pursuant thereto. All parties filed reply briefs on April 26, 2010. On April 29, COLRIP filed a Motion to Strike exhibits and portions of the Port's Brief or permission to file further response, and the Ports filed a Response on May 3. The COLRIP Motion was granted on April 30, 2010.

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 (TNI) 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:
>
> (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

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 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.

Ratemaking is, nevertheless, a *prospective* process; it is not designed to address events retroactively to compensate for either windfall or shortfall. Evidence of current factor levels and projected estimated levels of relevant factors form the bases for the ratemaking process.

The Burden of Proof. COLRIP, 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, COLRIP submitted affidavits or declarations from ten witnesses and 102 supporting exhibits. In the Opinion, below, the ALJ addressed each of the criteria set forth in the statutes and regulations relative to the ratemaking process and provided an opinion as to whether COLRIP has met its burden of proof with respect to that issue.

III. ANALYSIS AND OPINION

This Proposed Order sequentially addresses each of the subparagraphs of OAR 856-030-0000 (1) and paragraph (2) thereof.

Vessel Traffic: a) The amount of activity, including number of vessels, number of pilot assignments, size of vessels by net tonnage and length, and draft; and b) any change in the amount of activity since the last rate order.

COLRIP witness Amos testified that the average length of ships is between 600 and 650 feet, with 15 to 20 percent of the ships over 700 feet in length.[1] COLRIP submitted evidence sponsored by witness Halmagyi tending to show the following with respect to each of the remaining criteria[2] under subparagraph a):

Year	Number of Vessels	Number of Assignments	Tons (GRT)	Draft Ft.
2006	1,763	4,685	100,388,591	99,748
2007	1,889	5,059	105,717,735	107,584
2008	1,799	4,924	103,459,364	102,659
2009	1,407	3,823	77,534,269	79,366

The evidence tended to prove that the most recent five-year average per vessel tonnage was between 27,500 and 28,000. During a comparable period ten years previous, the average tonnage per vessel was 24,302 on the CWRPG, approximately 15 percent less than for the most recent period.[3]

COLRIP's estimate of the expected number of vessels arriving in Astoria and requiring pilotage service from COLRIP is 1,410 vessels, which using the 2.8 assignments per vessel standard in the Quantec study equates to 3,948 assignments. None of the parties dispute the data supplied by COLRIP.

[1] Amos Affidavit at 5, ll. 5-8.
[2] Halmagyi Affidavit at 2, ll. 5-7.
[3] Amos at 5, ll. 8-12.

CRSOA, while supporting COLRIP's projection as a reasonable estimate of 2010 vessel traffic,[4] argues that "tough times" remain ahead and that COLRIP witnesses' testimony supports the argument that the economic recovery is on a "tenuous footing" and that "any significant recovery will take years," and that the pilotage grounds are "subject to fierce competition."[5]

Analysis and Findings. The 2006-2009 period spans the extremes of the most recent economic cycle, with all factors ascending moderately in 2006-2007 and declining slightly in 2008 and sharply in 2009. Ocean shipping is particularly prone to booms and busts, but there are currently signs—somewhat tenuous—of recovery, but not to earlier pre-recession levels for several years.[6] The testimony tends to show that the most recent four-year data covers the extremes in the business cycle and indicates a likelihood that a return to a midpoint is in the offing, but not likely to occur during the next rate period.

The ALJ further concluded that there is insufficient evidence to determine whether 2011 will see greater or less traffic than 2010. He proposed, however, that for ratemaking purposes, the average vessel length and tonnage be set at 625 feet and 27,750 tons, respectively (an average of the length and weight during the previous years for which COLRIP provided data). With respect to the level of traffic, he proposed that, in light of the concurrence of both COLRIP and CRSOA, use of the 2009 data for ratemaking purposes is appropriate. The Board agreed to adopt a slightly higher traffic projection in recognition of the marginal increase in recent ship traffic. The following amounts should be adopted for ratemaking purposes, in compliance with subparagraph a), for the entire two-year period:

Years	Number of Vessels (annualized)	Number of Assignments (annualized)
2010-2011	1,443	4,040

Number of Pilots: " c) The public interest in prompt and efficient service;" and "d) * * * including time necessary to perform the service." The CWPRG extends from the lowermost dock at the Port of Astoria to the head of navigation on the Columbia River (Lewiston, Idaho) and the Willamette River (upriver from Oregon City), although most vessels only go as far as Portland or Vancouver. The majority of vessels traveling upriver from Vancouver carry radioactive waste for disposal at Hanford, Washington.[7] Witness Amos provided a list of typical transit times, between Astoria and dockside at destination, where the pilot is on the vessel bridge (excluding delays of various types):[8]

PORT	TIME ON BRIDGE BY PILOT (hrs)
Longview	4.5
Kalama	5.5

[4] CRSOA Opening Brief at 21, fn.15.
[5] CRSOA Opening Brief at 5 and testimony cited therein.
[6] Haveman Affidavit at 4, l. 13, at 6, l.1-6.
[7] Amos Affidavit at 2, ll. 13-20.
[8] *Id.* at 3.

Vancouver	7.0
Portland, Terminals 5 & 6	7.0
Portland, Terminal 4	7.5
Portland Terminals 1 & 2	8.0
Portland, Ship Repair Facility	8.0
Portland LDC Terminal	9.0

COLRIP provides pilotage services pursuant to a dispatching schedule and maintains sleeping quarters in Astoria and Portland and a fleet of 15 automobiles for pilots' use between assignments.[9]

COLRIP currently has 43 licensed pilots. Pursuant to an agreement with the Board, COLRIP also provides a Coos Bay-licensed pilot for the Coos Bay and Yaquina Bay pilotage grounds, as needed. COLRIP does not seek to increase the number of pilots unless shipping increases.[10] No party recommended a change in the actual number of pilots. All of the parties agreed that the current number of pilots is reasonable and sufficient to handle the current levels of vessel traffic. COLRIP argues, however, that "to maintain Quantec proportionality with COLBAR (the Columbia River Bar Pilots)" because the CRBP settlement provides 36.4 percent more pilots than recommended by Quantec, a calculation as to the number of COLRIP pilots to be funded must be increased at a greater ratio than the increase in vessel traffic or the actual number of pilot assignments.[11]

The Ports contend that such an argument is inapposite because CRBP committed to hiring the actual number of pilots because the Quantec-recommended number was producing significant ship delays and have returned to a full staffing consistent with the funded levels.[12] The Ports assert that COLRIP is essentially asking the Board to establish tariffs that will fund "ghost" pilots that COLRIP intends to neither fund nor employ and that COLRIP pilots have chosen to have the existing pilots take more than the Quantec-recommended annual number of assignments. Adopting the COLRIP rationale would cause individual pilots to far out-earn their target TGI.[13] The increase in the number of CRBP pilots, who objected to the Quantec study's conclusions, was supported by testimony in BP 10 and allowed for a 10 percent "safety factor" increase not to exceed 1.5 pilots, a change agreed to because of service delays.[14] To provide parity with the CRBP for increases in vessel traffic and pilot assignments, the Ports offer a methodology in Appendix A to their opening brief.

Analysis and Findings. In order to satisfy the requirements set forth in subparagraph c) and the last clause of subparagraph d), the Board must make findings as to the actual number of pilots required on the CWRPG to provide prompt and efficient service.

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[9] *Id.* at 4.
[10] *Id.* at 1, ll. 21-23; Halmagyi Affidavit at 23, ll. 2-4.
[11] COLRIP Memorandum in Support of Request for an Increase in Pilotage Rates (COLRIP Memorandum) at 34.
[12] Ports Opening Brief at 5.
[13] Ports Reply at 1-2.
[14] *Id.* at 6.

The number of pilots that should be available to provide services has been supported by sworn testimony, and reflects the experience and managerial judgment of the COLRIP Administrative Pilots. Traffic across the CWRPG is not uniform; rather there are occasional periods of significant time gaps between transits and, at other times, a cluster of vessels may need immediate pilotage services. (*See*, e.g., COLRIP Exhibit 47). The availability of a sufficient number of pilots will provide greater assurance that delays will be minimized, safety standards will be maintained, and port commerce will not be adversely affected. This fulfills the mandate of subparagraph c).

A Board determination of the appropriate TNI for each pilot is more properly addressed in the analysis of (1) d)-g), below, *not* via a recalculation of the number of pilots required for the CWRPG. The Board finds COLRIP's argument with respect to Quantec/CRBP proportionality is irrelevant in determining the proper number of pilots on the CWRPG.[15]

The Board finds, in accordance with the opinions of all parties and COLRIP testimony, that the target per pilot per year assignment workload should be set at 106 and that the current cohort of licensed pilots are adequate to meet those requirements, based upon the traffic findings set forth above, under subparagraphs a) and b).

The Board concludes that the Rate Order should address potential changes in the number of per-pilot assignments due to increases in vessel traffic beyond a certain range via tariff adjustments. These adjustments should reflect the cost of an additional pilot to maintain the number of per-pilot assignments within near proximity to the recommended level. Exhibit A to the Settlement Agreement between the Ports and CRBP in docket BP 10 provides an automatic tariff adjustment mechanism to address changes in traffic via the application of a Key Input Formula. Due to the differences in the tasks of bar and river pilots, and a vastly different capital structure, there is insufficient evidence to support the application of the Key Input Formula to the COLRIP proceeding and a mechanism more directly related to the record is therefore adopted as follows.

The current quarterly estimated number of assignments is 1,010. If the actual number of assignments exceeds 1,037 per quarter for two consecutive quarters, the tariff will be revised to reflect an additional FTE and increased vessel traffic. For each additional 27 assignments per quarter for two additional consecutive quarters, the tariff will be revised to provide funding for an additional FTE and increased vessel traffic.

The Board has the duty and authority under ORS 776.115(2) to set the number of pilots required to serve vessel traffic. While we have adopted a method for adjusting the tariff to reflect increases in traffic via the addition of FTEs, we have not ceded our authority to require an increase in the actual number of active pilots should we find that such an increase is necessary to promote the safe and efficient provision of pilotage services.

[15] The issue of comparing factors other than TNI between the pilotage grounds was addressed in the BP 8 Order at 9-10.

Per-Pilot Target Net Income (TNI) and Target Gross Income (TGI). OAR 856-030-0000 (1) addresses the question of per-pilot TNI by requiring consideration of the factors in the following subparagraphs:

> 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.

COLRIP's rate request did not identify a specific per-pilot net or gross income level; rather COLRIP asked for compensation equal to that received by Seattle and San Francisco pilots.[16] COLRIP submitted a considerable amount of testimony and supporting exhibits relative to subparagraph d). The skills required and the difficulty of providing service are described generally in the affidavit of Captain Paul Amos as they relate to assignment duration (p. 3), vessels (page 5), the topography of the pilotage ground and ongoing changes (pp. 5-9), the implications of channel deepening (pp. 9-12), safety and environmental concerns (pp. 12-14), and legal and regulatory issues (pp. 14-16). Witness Amos also noted certain technological improvements which have enhanced safety (pp. 16-18). Another witness described a recent, harrowing incident demonstrating COLRIP pilot skills.[17] Witness Livingstone noted the difficulty of the CWRPG primarily due to fog and said that it is "as difficult and demanding as piloting anywhere.[18] Witness vonBrandenfels described the difficulties of CWRPG pilotage due to the length, tides, and the shallowness and narrowness of the channels,[19] and witness Stark stated that the CWRPG was "more difficult than most pilotage grounds" and provided the bases for his opinion.[20]

Neither CRSOA nor the Ports assert that the skills and experience required of a pilot on the CWRPG are less than that described by COLRIP witnesses.

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[16] Petition at 1, filed September 30, 2009.
[17] Balensifer Affidavit.
[18] Livingstone Affidavit at 4-5.
[19] vonBrandenfels Affidavit at 2-4.
[20] Stark Affidavit at 3-4.

CRSOA states that the evidence tends to prove that the dangers and difficulties described by COLRIP witnesses have, in the main, always been present and that there have been no significant changes in those dangers and difficulties during the past six years; neither has the risk of civil or criminal liability increased.[21]

In Reply, COLRIP cites increased ship drafts, increased training requirements, more rigorous physical qualifications, greater likelihood of criminal prosecution for acts of negligence, and the growing use of computerized engine controls as significant changes.[22]

Subparagraph e), compensation comparability with other maritime professions, including other pilotage associations, was addressed by COLRIP in its written testimony regarding pilot net income for pilotage grounds in seven states and calculated an average net income of $381,562 per pilot for the 17 pilotage organizations for 2007.[23] COLRIP pilots had an average net income of $231,959.35 in 2007 and $224,890.39 in 2008, the years of greatest traffic on the CWRPG.[24] In 2009, COLRIP per-pilot net income dropped dramatically to $160,377.52 (Exhibit 51). No party challenged the accuracy of testimony, but CRSOA and the Ports dispute the relevancy of the data in setting the TNI for COLRIP pilots. (CRSOA also notes that COLRIP pilots exceeded the TNI by $40,000 and $57,000 between 2006 and 2008).[25]

In reply, COLRIP states that "the OBMP unwritten policy of maintaining 'parity' among Oregon Pilots is a factor to consider in deciding what constitutes fair compensation,"[26] but that "Order 02-2 did not set a TNI for COLRIP, and, even if it had, it was specifically disclaimed in the 2004 agreement * * * signed by CRSOA, which led to Order BP-04-02, the results of which CRSOA specifically agreed would <u>not</u> be construed as setting precedent with respect to later disputes."[27]

TGI. In order to calculate the 2010 per-pilot TGI figure, it is necessary to examine COLRIP Exhibit 67, Projected Revenue Allocations (Excluding CPD and Launch Revenues and Expenses) for years 2010 and 2011. Six projected components are comparable to the CRBP TGI factors[28]:

TGI Expenses Excluding Cash Distributions to Pilots (TNI Equivalent)	**2010**
Unused Leave at Retirement	162,118
Final Settlements	88,047
Pilots' Medical Insurance	1,036,569
Pilots' Disability and Life Insurance	224,269
Pilots' Leave Used	377,343

[21] CRSOA Opening Brief at 10-15.
[22] COLRIP Reply Memorandum at 21-23.
[23] Davis Affidavit at 3-5 and exhibits cited therein.
[24] BP 9 Exhibits 49 and 50.
[25] CRSOA Opening Brief at 18-20.
[26] COLRIP Reply Memorandum at 13.
[27] *Id.* at 16.
[28] Ports Opening Brief at 10-11 provides notes cross-referencing to comparable CRBP TGI line item components.

Pilots' Pension	1,816,835
Equipment Allowance	66,000
Total	**3,771,251**
TGI Per-Pilot Expense Excluding TNI Equivalent: 43 Pilots	**87,703.51**

No party challenged the per-pilot requested TGI-related amounts in their briefs.

Analysis and Findings.

This order attempts to establish proximate parity between COLBAR and COLRIP. The Board is also required to evaluate evidence of compensation for comparable maritime professions, which may include compensation on other pilotage grounds. The Board is not committed to parity with other grounds, but recognizes that a compensation gap exists. Consequently, these Order No.'s 10-01 and 10-02 allow pilot income to increase by linking it to shipping increases.

TNI: The position of a pilot on the CWRPG is one of great responsibility and skill, but it is not unique in that regard, notwithstanding the particular hazards of the CWRPG. In weighing the COLRIP testimony, Board Order 99-3 at 12 ("it is more relevant to compare target net income increases on the West Coast pilotage grounds") and Order 02-2 at 16 ("In evaluating all of the factors bearing on pilot income, the Board is most concerned with parity with other Oregon pilots.") have made clear the overriding nature of the Board's policy for striving to achieve income parity among the pilotage grounds in the rate setting process. COLRIP asks for parity under Order 99-3 with the San Francisco and Puget Sound pilotage grounds. While the San Francisco and Seattle pilotage grounds are "more relevant" than Gulf and East Coast pilotage grounds, "the Board is *most* concerned with parity with *other Oregon pilots.*" Clearly, as between Order 99-3 and the later Order 02-2, Order 02-2 must prevail.

While the parties may have agreed that they will not assert precedent as a basis for arguing Oregon pilotage ground parity, the policy decision is in the hands of the Board. Although the Board has several orders since these orders were issued, the principle has not been rejected when a final decision was reached. Under paragraph 3 of the CRBP Settlement Agreement between the Ports and CRBP, the per-pilot annual TNI is $214,447. The Board sets the COLRIP per pilot TNI at the same amount.

TGI: Under the CRBP Settlement Agreement, the TNI is grossed up to Target Pilot Gross Income (TGI) by the addition of the following per-pilot expenses: Equipment Allowance ($5,827), Health and Life Insurance ($25,957), Sick Leave ($13,200) and Pension Allowance ($40,567) for a TGI of $299,998, adjusted annually for changes in the Portland-Vancouver Consumer Price Index. This adjustment is in accordance with the policy set forth in Order 99-3 at 12. The Settlement Agreement provides for a five-year term, rather than the usual two-year review.

COLRIP TGI expenses are slightly greater in total than CRBP expenses.[29] With an identical TNI, COLRIP per-pilot TGI is $302,150.51, or only seven-tenths of 1 percent greater than CRBP per-pilot TGI. None of the per-pilot expenses were challenged by the parties. The Board finds that COLRIP testimony with respect to per-pilot expenses has met the requisite burden of proof. The Board adopts a COLRIP per-pilot TGI of $302,150.51, adjusted annually for changes in the Portland-Vancouver Consumer Price Index.

Operating Expenses (Including Payments to Retirees and Pilot Expense Reimbursements): (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.

COLRIP requests 2010 operating expenses of $2,280,376; the amount is a 14.35 percent increase over 2009 operating expenses (Exhibit 68). COLRIP also requests $1,439,492 for Payments to Retirees and Expense reimbursements of $169,754 (Exhibit 67).[30] CRSOA takes particular issue with requests of $27,014 for "legislative consultants" in its entirety and the level of the request ($199,721) for "legal services." More generally, CRSOA takes issue with a grouping of other line items it deems duplicative or not proven as just, reasonable, and economical.[31]

Citing the Board's Order 05-01 at page 16, CRSOA argues that the entire request of $27,014 for Legislative Consultants should be disallowed.[32] Witness Halmagyi at paragraph 27 asserts that the job of its lobbyists include "supporting legislation that is sponsored or proposed by the Board." CRSOA argues that "if the Board needs more money to support its legislative efforts, it should charge pilots more money for their licenses. It is not appropriate for the shipping industry to pay to advance COLRIP's or the Board's legislative interests."[33]

COLRIP requests $199,721 for its attorney, Kevin Davis, who is paid on a flat rate to provide all legal services to COLRIP. CRSOA questions the legitimacy of tasks such as representing individual pilots when an incident occurs, participating in rulemaking, dealing with COLRIP's disability insurer, assisting COLRIP in complying with an FTC consent decree and being a "Point of contact" for P&I clubs. CRSOA argues that COLRIP has failed to meet its burden of proof that all of Mr. Davis's services are "legitimately related to pilotage," and that some evidence should be given the Board of the breakdown of Mr. Davis's time.[34]

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[29] e.g., health and life insurance is $29,321.81 per COLRIP pilot per year, but equipment allowance is only $1,534.88 per COLRIP pilot per year.

[30] No party interposed any objection to the COLRIP request for Payments to Retirees and Expense Reimbursements.

[31] CRSOA Opening Brief at 23.

[32] *Id.* CRSOA notes that the name and amount are contained in Supplement to COLRIP's Petition for Change in Pilotage Rates, Ex. B, p. 1. In COLRIP Exhibit 68, the line item was originally identified as "Lobby" and was for a requested amount of $25,906.

[33] *Id.* at 24.

[34] *Id.*

COLRIP responds that the Board "has previously and repeatedly approved virtually all the COLRIP expense categories" and that it has therefore met its burden; it need not reprove every previously approved expense in every rate proceeding.[35]

Analysis and Findings.

Operating Expenses. CRSOA waived its right to provide direct or rebuttal testimony and to cross-examine witnesses with respect to these operating expenses. A general statement that COLRIP has failed adequately to justify its expenses is insufficient to overcome the COLRIP testimony and supporting exhibits. COLRIP has thus satisfied its burden of proof with respect to the *amounts* of all approved expense items.

However, as COLRIP itself notes, the Board "approved *virtually* all the COLRIP expense categories…." There is one category for which Board approval has been withheld. Expense category "Legislative Consultants" has not been demonstrated by COLRIP to differ in any significant way from the "Firm Relations" line item portion used to retain lobbyists that we disallowed in the CRBP Order 05-01. The Board finds that the $27,014 requested expense is not reasonably related to the provision of pilotage services and is disallowed as an expense item for the purposes of calculating the tariff rates. All other expenses and adjustments proposed by COLRIP, that have been recognized in prior tariffs, including annual CPI adjustments, expenses for the Astoria launch, Farebox expenses and Continuing Professional Development expenses are also approved.

IV. CONCLUSIONS OF LAW

The record in this proceeding contains sufficient evidence to satisfy the requirements set forth in provisions of OAR 856-030-0000. The estimated number of vessels for the purpose of designing the tariff is 1,443, the ratio of pilot assignments to vessels is 2.8, and the annual number of assignments is 4,040, and that the COLRIP pilot cohort consists of 43 pilots. The number of pilots, per-pilot compensation and operating expenses set forth in the Revenue Requirement Summary provide fair compensation for services and expenses for the provision of efficient, economical, and competent pilotage services.

Revenue Requirement Summary. The COLRIP Revenue Requirement to be recovered through tariffs consists of the sum of per-pilot TGIs and the allowed operating expenses. The levels for its rate calculations, subject to inflation indexing and other adjustments as deemed by this Rate Order appropriate:

43 pilots x per-pilot TGI of $302,150.51	$12,992,471.93
Payments to Retirees	$ 1,439,492.00
Expense reimbursements	$ 169,754.00
Operating Expenses ($2,280,376 less disallowance of $27,014)	$ 2,253,362.00
TOTAL:	**$16,885,079.93**

[35] COLRIP Reply Memorandum at 17.

V. ORDERING CLAUSES

1. **ESTIMATE OF FUTURE SHIP TRAFFIC.** For purposes of setting the tariff, the estimate of future ship transits is 1,443.

2. **NUMBER OF PILOTS.** For purposes of setting the tariff, the number of FTE pilots is 43, of which two shall be designated as administrative pilots.

3. **TARGET NET INCOME.** For purposes of setting the tariff, target net income is $214,447 prior to the effect of cost of living adjustments.

4. **TARGET GROSS INCOME ANNUAL PILOT-DEPENDENT EXPENSES.** For the purposes of setting the tariff, Unused Leave at Retirement is $162,118, Final Settlements is $88,047, Pilots' Medical Insurance is $1,036,569, Pilots' Disability and Life Insurance is $224,269, Pilots' Leave Used is $377,343, Pilots' Pension is $1,816,835, and Equipment Allowance is $66,000.

5. **PILOT – INDEPENDENT OPERATING EXPENSES-SPECIFIC LINE ITEMS.** For the purposes of setting the tariff, COLRIP Exhibit 68, "Columbia River Pilots Schedule of Operating Expenses, 2010 Requested" is adopted except as to the line item "Lobby," which is set at zero.

6. **THE TARIFF FOR THE COLUMBIA & WILLAMETTE RIVER PILOTAGE GROUND WILL GO INTO EFFECT JUNE 1, 2010.**

Dated this 19th day of May, 2010, at Portland, Oregon.

Kim Duncan

Kim Duncan, Chair

Parties have the right to appeal this Order to the Oregon Court of Appeals pursuant to ORS 183.482. To appeal, a party must file a petition for judicial review with the Court of Appeals within 60 days from the day this Order was served on you. If this Order was personally delivered to a party, the date of service is the day the Order was received. If this Order was mailed to a party, the date of service is the day it was mailed, not the day it was received. If any party does not file a petition for judicial review within the 60-day time period, they will lose their right to appeal.

CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2010, I served a copy of **Order 10-01– In the Matter of the Petition of the Columbia River Pilots for a Change in Pilotage Rates** by electronic mail and by mailing a true copy to said person(s), contained in a sealed envelope, addressed to said person(s) at his or her last-known address(es) indicated below.

Honorable Allan J. Arlow
Administrative Law Judge
PUC Administrative Hearings Division
550 Capitol Street N.E. #215
Salem, OR 97301
allan.arlow@state.or.us

David Hatton
DOJ GC Regulatory Utility & Business
1162 Court Street, N.E.
Salem, OR 97301
david.hatton@state.or.us

Michael Haglund
Haglund Kelley et al
200 S.W. Market Street #1777
Portland, OR 97201
Attorney for Columbia River Bar Pilots
mhaglund@hk-law.com

David Bartz
Schwabe Williamson & Wyatt
1211 S.W. 5th Avenue, #1900
Portland, OR 97204
Attorney for CRSOA
dbartz@schwabe.com

Marcus Wood
Stoel Rives LLP
900 S.W. 5th Avenue #2600
Portland, OR 97204
Attorney for the Ports of Portland & Vancouver
mwood@stoel.com

Ian Whitlock
Port of Portland
7200 N.E. Airport Way
Portland, OR 97218-1016
Attorney for Port of Portland
ian.whitlock@portofportland.com

Kevin Q. Davis
Attorney at Law
1 S.W. Columbia Street #1600
Portland, OR 97258
kqdjd@aol.com

Susan Johnson

Susan Johnson, Administrator
Oregon Board of Maritime Pilots
susan.johnson@state.or.us