

**BEFORE THE  
LOUISIANA PILOTAGE FEE COMMISSION**

**RIVER PORT PILOTS FOR THE PORT  
OF NEW ORLEANS, DULY ORGANIZED  
AS THE CRESCENT RIVER PORT PILOTS'  
ASSOCIATION, INC., EX PARTE**

**DOCKET NO. P20-001**

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**In Re: Request for Increase in Approved Pilot Complement; Increased Funding for Necessary Additional Manpower; Upward Adjustment of Estimated Average Annual Pilot Compensation; and Related Relief Pursuant to La. R.S. 34:1122.**

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**ORDER**

At the Louisiana Pilotage Fee Commission's (the "Commission") Regular Meeting on November 18, 2021 (the "Meeting"), on motions made and duly seconded, the Commission voted to fully adopt the Hearing Master's Proposed Recommendation of Final Determination (the "Recommendation") issued on October 29, 2021 in Commission Docket No. P20-001, with two minor clarifications. The first clarification reconciled the discrepancy between Recommended Determinations one (1) and three (3) on page 54 of the Recommendation, so that the Crescent River Port Pilots' Association, Inc's ("CRPPA") tariff rates will reflect only the cost to compensate commissioned, active pilots at a target compensation of \$586,019 for 16,151 billable turns per year, and CRPPA's tariff rates will increase and decrease on an annual basis as the amount of CRPPA pilots changes.<sup>1</sup> The second clarification was to make this order effective immediately upon the signatures of the Commission's Chairperson, Mr. Bruce Mohon, and the Commission's Administrator, Mr. Larry E. McNutt, Jr.<sup>2</sup> These clarifications were approved by a vote of the Commission on motions made and duly seconded. Therefore, with the addition of the two

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<sup>1</sup> On substitute motion of Commissioner Tyler Gray and duly seconded. The motion passed via a 7-4 vote.

<sup>2</sup> On motion of Commissioner Michael Bopp and duly seconded. The motion passed via a 7-4 vote.

aforementioned adopted clarifications, the following Recommendation issued by the Hearing Master in this proceeding on October 29, 2021 is approved and ordered:

## **PROPOSED RECOMMENDATION OF FINAL DETERMINATION**

### **I. REQUEST**

Plaintiff, Crescent River Port Pilots' Association (CRPPA), filed a Request for Action (RFA) with the Louisiana Pilotage Fee Commission (the Commission or LPFC) on July 2, 2020, requesting that the Commission issue an order to:

- 1) Authorize an increase in the pilot complement from 122 to 150 Pilots, to be included in rates as the pilots are commissioned;
- 2) Authorize an increase in the annual tariff rates and fees addressed herein to recover all costs and expenses required to fund the approved and increased pilot complement, including increased compensation per Pilot in parity with other state ship pilotage groups in other United States ports;
- 3) Authorize an upward adjustment in the estimated average annual compensation per pilot to \$697,000, consistent with the standards specified in La. R.S. 34:1122;
- 4) Authorize a permanent, annual cost of living adjustment (COLA) based on the three-year rolling average of the Consumer Price Index (CPI) for the three most recently available calendar years for the South region of the United States to CRPPA's estimated average annual compensation; and
- 5) That all other decisions and orders of the Commission applicable to CRPPA, including LPFC Order P07-001, remain in full force and effect.

### **II. INTERVENTIONS**

The Louisiana Chemical Association (LCA) and The Louisiana Mid-Continent Oil and Gas Association (LMOGA), filed a formal intervention, requesting this matter be assigned to a contested docket. LCA and LMOGA asserted some of its members purchase pilotage services and/or are otherwise impacted by those who purchase such services.<sup>1</sup>

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<sup>1</sup> Anthony Almerica on behalf of Cooper/T. Smith Mooring, Andrew Cooper on behalf of Crescent Towing, Paul G. Aucoin, Executive Director of the Port of South Louisiana; Todd Fuller, President of Associated Terminals; and Mr. Billy Nungesser, in his capacity as the Lieutenant Governor for the State of Louisiana filed letters in support of CRPPA's request for action. The New Orleans Board of Trade (the Board) also filed a resolution, wherein the Board formally supported CRPPA's request for an adjustment in the number of its pilot complement.

### III. PRE-HEARING MATTERS

Early in the proceedings, CRPPA filed a motion for protective order, ultimately seeking to quash the depositions of six river port pilots on the basis that the depositions would lead to duplicative testimony, needless delay, and increased costs. LCA and LMOGA, who sought the discovery, opposed the motion claiming CRPPA had failed to show “good cause” to preclude the requested fact discovery. Finding merit in LCA and LMOGA’s position and concluding they should not be unreasonably constrained in discovering factual details regarding the designated individual pilots, CRPPA’s motion for a protective order was denied by order of the hearing master.

According to a January 26, 2021 “Revised Procedural Schedule,” the hearing on the merits was scheduled for July 26-29, 2021. In April 2021, United Professionals Company<sup>2</sup> (UPC), which had been retained by LPFC to review and provide its expert opinion on the subject RFA, submitted its report (UPC original report), authored by Lane Sisung. After rebuttal testimony was filed in which various witnesses reasoned one or more UPC conclusions were unsound, UPC was ordered to supplement its report to address these assertions. UPC did so by filing its July 23, 2021 “Response to Rebuttal Report” (UPC’s supplemental report). Because proceeding to trial three days after receiving additional testimony might have prejudiced the parties, the hearing on the merits was rescheduled and took place on August 16 and 17, 2021.<sup>3</sup>

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Cruise Lines International Association (CLIA) filed a letter of opposition to CRPPA’s request for increased compensation.

<sup>2</sup> UPC’s report described itself as “a consulting, project management, business development and real estate development company with extensive experience in providing expert witness services in matter[s] related to regulatory ratemaking.” Further UPC’s report stated, “[It] has provided regulatory consulting and expert opinion services for over a decade and its professionals collectively have over 60 years in regulatory ratemaking.”

<sup>3</sup> Louisiana Revised Statutes 34:1122(D)(4) authorizes the LPFC to hold a hearing on the request for action “at which parties shall be permitted to file and present evidence, cross-examine witnesses, and present arguments.” “Following the hearing, the commission shall decide the request by majority vote and issue an order that includes findings of facts and conclusions of law.”

#### IV. CONTENTIONS OF THE PARTIES

##### 1.) Pilot Complement

Pursuant to LPFC's Consolidated Order in Docket Nos. P15-002 and P15-003 (August 1, 2015) (the "2015 Settlement"), CRPPA's maximum authorized pilot complement is 122 pilots. CRPPA now requests an increased Pilot complement of up to 150 Pilots. CRPPA states the primary reason behind its request for an increased pilot complement is to improve the availability of safe service and to ensure the uninterrupted flow of cargo transported on the Mississippi River. Since the 122-authorized complement of pilots was established, CRPPA maintains current shipping volume has significantly increased and CRPPA Pilots have completed more billable turns per pilot in 2019 than New Orleans Baton Rouge Steamship Pilots Association (NOBRA) pilots. The argument is an increase in the complement of the pilots is needed now to assure the availability of adequately-rested pilots.

LCA/LMOGA urge CRPPA has not demonstrated a need for additional pilots, urging CRPPA's own witness' analysis indicates fatigue among its pilots is extremely limited. Additionally, they note CRPPA has operated with fewer than its authorized 122 pilots with more billable turns in prior years and it has not claimed any accidents have been caused by pilot fatigue. LCA/LMOGA maintain rates should only reflect the cost to compensate active pilots and CRPPA rates should increase and decrease as the pilot complement changes. LCA/LMOGA do not oppose the recommendation of UPC to add up to 4 additional authorized pilots for a complement of 126 pilots, subject to CRPPA being required to adjust its tariff at least annually to reflect the actual number of existing pilots at the time. But they do oppose any increase higher than 126.

##### 2.) Annual Compensation Per Pilot

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La. R.S. 34:1122(D)(5). In contested proceedings, the Commission may assign the matter to a Hearing Master to administer the proceeding. LAC 46:LXX.12404. The hearing master is authorized to issue a written proposed recommendation at the conclusion of the taking of any evidence and testimony on the matter to be decided. LAC 46:LXX.12903.

CRRPA seeks an increase in its current average annual compensation per pilot from \$526,958<sup>4</sup> to \$697,000. CRPPA asserts such an increase would put the pilot compensation in line with NOBRA pilots' compensation. CRPPA states that of the three pilotage groups currently operating on the Lower Mississippi River (CRPPA, NOBRA and the Associated Branch Pilots of the Port of New Orleans (the Bar Pilots)), CRPPA Pilots are currently the lowest compensated and their pay should be raised to achieve parity with these other pilotage groups.<sup>5</sup> CRPPA urges because CRPPA's Pilots perform more billable turns on average than NOBRA's pilots, it is appropriate for CRPPA's pilots to be "proportionately compensated" for performing this additional work.

LCA/LMOGA allege CRPPA's request to increase its target pilot compensation to \$697,000 per year is not supported and should be denied. LCA/LMOGA opposes any increase in target pilot compensation, asserting CRPPA's current target pilot compensation of \$473,692 is already at parity with NOBRA's target pilot compensation of \$473,591. LCA/LMOGA maintain CRPPA's support for this request is based on speculative and inappropriately selective net income per pilot data. LCA/LMOGA reference testimony

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<sup>4</sup> CRPPA acknowledges that its pilots actually earn net compensation of approximately \$552,448 per pilot, but each must pay an average of \$25,490 from this amount for health insurance coverage since CRPPA does not directly pay for the pilots' health insurance. It notes that other pilotage associations in both Louisiana and the western Gulf of Mexico pay for their pilots' health insurance, such that health insurance expenses are not included in the associations' reported net income per pilot. Thus, CRPPA removed the average health insurance premium cost per pilot from CRPPA's reported net income per pilot to provide a more accurate comparison of pilot compensation among pilotage associations.

<sup>5</sup> The legislature established three distinct pilot associations which have the exclusive right to provide river pilot services to vessels from the time they enter the Mississippi River from the Gulf of Mexico until they reach the Port of Baton Rouge. *Hayden v. New Orleans Baton Rouge S.S. Pilots Fee Comm'n*, 97-1239 (La. 1/21/98), 707 So. 2d 3, 5. "The pilots whose duty it shall be to pilot sea-going vessels into and out of the entrance of the Mississippi River and into and out of the entrances of all other waterways connecting the Port of New Orleans with outside waters of the Gulf of Mexico ... shall be known as [the Bar Pilots]." La. R.S. 34:943. CRPPA pilots have "the exclusive right to pilot vessels on the Mississippi River between New Orleans ... and Pilottown" and other areas specifically designated in La. R.S. 34:996. NOBRA, the third association of Mississippi river pilots, provide exclusive pilotage services between New Orleans and Baton Rouge. La. R.S. 34:1043.

reflecting increased pilot earnings each year while bridge hours<sup>6</sup> and billable turns have decreased; they assert this has resulted in the CRPPA pilots earning in excess of their authorized target compensation levels while their workload has decreased. LCA/LMOGA urge the LPFC to retain CRPPA's current target compensation as fair compensation for setting rates.

### 3) Annual Tariff Rates and Fees

CRPPA seeks an increase in its service tariff, asserting the requested increase would result in a cost per mile comparable to CRPPA's relevant peer pilotage organizations. CRPPA maintains the requested increase is fair to the industries that CRPPA serves.

LCA/LMOGA acknowledges the tariff will need to be increased to cover the additional cost of increasing the authorized pilot count to 126 pilots as each pilot is commissioned. They otherwise oppose the request for an increase in tariff fees as not reasonable or necessary.

### 4) Permanent Annual Cost of Living Adjustment

CRPPA seeks an automatic annual cost of living adjustment to neutralize the negative effect of inflation on its tariff. Since a previous COLA mechanism in effect expired on December 31, 2019, CRPPA now requests that a COLA mechanism be permanently implemented to avoid frequent and expensive proceedings before the LPFC.

LCA/LMOGA opposes this request, maintaining the COLA has increased CRPPA Pilot compensation even in years when the pilots have earned above their authorized target compensation. They maintain the COLA has created inappropriate guaranteed rate increases rather than preventing "erosion" of pilot income. LCA/LMOGA also urges that LPFC does not have legal authority to implement a COLA absent a settlement or non-opposition because the mechanism would allow CRPPA to implement a rate increase each year without going through an RFA procedure.

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<sup>6</sup> The "bridge" is a glass room at the top of the ship with good visibility, which contains the equipment for handling all of the piloting maneuvers of the ship, such as turning, speed, docking, and anchoring. (Deposition of Pilot No. 9, p. 33).

5) Prior Decisions and Orders of the LPFC

In its RFA, CRPPA requested, “That all other decisions and orders of the Commission applicable to CRPPA, including LPFC Order P07-001, remain in full force and effect.” In response to LCA/LMOGA Data Request 2-6, requesting identification of all such decisions and orders, CRPPA responded that it requested to have remain in effect its “annual expense true up mechanism” (Expense Mechanism) referenced in LPFC Order P07-001.<sup>7</sup>

LCA/LMOGA points out this matter was addressed by CRPPA in the prayer of its RFA.<sup>8</sup> LCA/LMOGA urge the mechanism is automatic and it allows CRPPA to increase tariff rates annually without going through an RFA procedure as required by La. R.S. 34:1122D. Further LCA/LMOGA maintains the LPFC does not have the legal authority to continue the Expense Mechanism absent a settlement or non-opposition because the mechanism would allow CRPPA to annually implement rate increases without review. To the extent the Commission considers continuing the Expense Mechanism, LCA/LMOGA urges it needs reform.

V. FACTUAL BACKGROUND

The parties do not dispute the CRPPA Pilots are critical to the economic flow of the vessel traffic on the Mississippi River. The evidence establishes vessel traffic is irregular and unpredictable. Weather hazards and other variables and delays caused by collisions and allisions are inherent to the riverboat industry. According to the Circadian Expert

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<sup>7</sup> Other items CRPPA enumerated that it requested to have remain in effect were: 1) CRPPA’s capital improvement surcharges (see LPFC Order P10-002); 2) CRPPA’s pension surcharge (see Louisiana Public Service Commission Order No. T-23268-A (Corrected)); and 3) CRPPA’s transportation tariff.

<sup>8</sup> During the LPFC’s March 10, 2021 meeting, LCA/LMOGA objected to a 2021 automatic rate increase relative to 2020 expenses that resulted from the expense mechanism on grounds that the mechanism is allowing an over-recovery of expenses from ratepayers. LCA/LMOGA requested a hearing to cross examine witnesses that put forth the expense filing. The LPFC voted to defer LCA/LMOGA’s request for a hearing until the outcome of this current docket matter.

Service, Inc. (Circadian) study, CRPPA Pilots navigate more than 17,000 vessels annually on the 106 miles of the Mississippi River between Pilottown and the Port of New Orleans. To ensure the safe navigation of these complex waterways, all large vessel movements are conducted by pilots who are members of CRPPA with comprehensive training and supervised experience in the special challenges of navigating the Mississippi River.

CRPPA's pilot complement currently consists of 120 pilots. While the LPFC has previously authorized a cap of 122 pilots, one had recently retired and one had died as of the time the pilot depositions were taken. And a petition for six more pilots has been approved in addition to the 120. (Deposition of CRPPA Pilot No. 113, p. 155 and 172) Those six will be full pilots within two years "if all goes well." (Deposition of Pilot 113, p. 156)<sup>9</sup> He explained the RFA is striving to achieve parity between pilotage groups, both in compensation and in workload. The more pilots who are working, the lower the workload or bridge hours will be for each individual pilot. With more pilots, you would not have to depend on the off-duty pilots to subsidize the working slate in order to move ships safely. Currently, in order to keep up with the volume of river traffic, pilots have to be called in to work on their days off. Pilot 113 states he has worked when he was tired and knows of other pilots who have done the same. (Deposition of Pilot No. 13, p. 173)

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<sup>9</sup> At the August 2021 hearing, these six pilot candidates had begun training and were expected to be part of the pilot complement at some point between July 2022 and July 2023. (August 16, 2021 hearing on the merits, Testimony of Cpt. Bopp, p. 67) Pilot No. 113 testified he was not aware of any other pending petition for additional pilots. (Deposition of Pilot No. 113, p. 158)

Pilot No. 113 is a CRPPA pilot, who is member of the Louisiana Board of Commissioners. He explained the process used to determine when pilots will be trained. He stated "when you can't get people to fill the turns, ... when no extra guys will come out and work, it's time to make pilots." (Deposition of Pilot 113, p. 125) That's when we call for apprentices. Any member of CRPPA can get a petition for more pilots. Once 75 percent of the pilots agree that more pilots are needed and have signed the petition, there is a call for apprentices. He described otherwise there was no mathematical formula to determine when additional pilots were needed. (Deposition of Pilot 113, p. 127) He further described there had been previous petitions to "make more pilots" that had failed. (Deposition of Pilot 113, p. 128) Whoever makes it through the apprenticeship becomes a deputy pilot and those deputy pilots are trained for a period of one to two years before becoming a full pilot. (Deposition of Pilot 113, pp. 130-31) When a pilot receives his state commission as a riverboat pilot, he becomes a full member of the CRPPA. (Deposition of Pilot 113, p. 132)

Regarding the different work duties of the pilots, each is annually assigned two weeks of harbor duty, two weeks of vessel traffic service (VTS) duty, and the remaining weeks are route duty. (Deposition of Pilot 113, p. 99) Then pilots trade their assignments, so some pilots end up working predominately the route duty, while others may work predominately VTS or harbor duty.<sup>10</sup> (Deposition of Pilot 113, pp. 98-99) Pilots typically work seven days on and seven days off, and they have two weeks of vacation time annually. (Deposition of Pilot No. 7, p. 5) For every day a pilot works, he earns an off day. (Deposition of Pilot 113, p. 150) Based on the standard work schedule, each pilot works about 168 days per year. Sometimes individual pilots trade shifts or work extra shifts. The pilots described that a rotation system is used whereby off-duty pilots are called when extra pilots are needed to satisfy the demands of river traffic.

A VTS pilot oversees the river traffic in conjunction with the Coast Guard and provides emergency service if there is a collision or allision on the river or any other type of traffic situation. (Deposition of Pilot No. 84, p. 8) A VTS pilot works six eight-hour watches or 48 hours over the course of seven days. The pilots are in a room with computer monitors and live cameras. (Deposition of Pilot No. 9, pp. 49-50) VTS duty involves less bridge hour time in a week than a route duty typically would. (Deposition of Pilot No 9, p. 64)

Pilots working the harbor duty, cover the area between Belle Chasse to the top of CRPPA's route. These pilots typically work between two and four bridge hours for each harbor turn; the harbor turns are short turns that do not take as long as a route turn. (Deposition of Pilot No. 84, pp. 8-9) Pilot No. 113 described a lighter day of harbor duty as boarding two ships and a real busy day as boarding four to five ships. (Deposition of

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<sup>10</sup> According to the Circadian report, three pilots are assigned to administrative duties, four pilots are assigned to VTS duty, five pilots are assigned to the harbor duty with an additional pilot assigned to respond to seasonal challenges, vacation time, sick time, and pilots not available because they are in training. Further, an extra pilot is routinely scheduled on the harbor duty from mid-December until April to respond to the difficulties associated with rising water levels and increased occurrence of fog.

Pilot No. 113, p. 32) Harbor pilots can avail themselves of an eight-hour rest period when they complete three jobs within a 24-hour period or if they accumulate seven hours or more of bridge time within a 24-hour period. (Deposition of Pilot No. 113, pp. 53-54) CRPPA does not require a rest at this juncture, but generally a pilot takes a rest period if he is tired. (Deposition of Pilot No. 113, p. 55) Pilot No. 113 then testified, "It's up to the pilot to ... assure that he is rested and sharp enough to do the job. So I'm bound by commission rules that if I'm tired, ... whether I am eligible for rest or not, it's my duty to take myself off if I feel like I'm not safe." (Deposition of Pilot No. 113, pp. 55-56) He further testified, "If I feel like I need rest, I'm going to take rest. There have been times when I felt like ... I've been fatigued, but, ... I'll take measures to mitigate ... that feeling of fatigue, but if it's too great, I'll have to take off." (Deposition of Pilot No. 113, p. 57) When asked whether CRPPA monitored or tested fatigue, he responded, "It's more of a personal feeling." (Deposition of Pilot No. 113, p. 58) CRPPA does not assign a fatigue or rest status to the pilots. (Deposition of Pilot 113, p. 59)

Pilots working the route turns typically pilot the majority of CRPPA's route and work longer turns, which are between six and eight hours per turn. (Deposition of Pilot No. 84, pp. 9 and 33) A round trip or turn involves taking a ship from Algiers Point to Pilottown and bringing a ship back up the river. Upon reaching Pilottown, there is a pilot station that provides facilities and meals for the pilots. The pilots will have a rest period before getting on another ship and completing the turn upriver. For the route pilots, the normal flow of traffic is a steady up and down procedure for the route pilots. (Deposition of Pilot No. 84, p. 15, Deposition of Pilot No. 7, p.11) A pilot's bridge hours start when he is in the wheelhouse and piloting the ship. (Deposition of Pilot No. 84, p. 18) After completing a turn, a pilot is allotted an hour of travel time and an eight-hour rest period. A pilot is not required to sleep during his rest period, but "the whole point of having a rest period is to get rest." (Deposition of Pilot No. 84, pp. 19-20) A pilot might not take his rest so he can service a vessel and keep commerce going, but that is in his discretion. (Deposition of Pilot No. 84, p. 29) The pilot decides what constitutes rest, but the pilot is not on duty or on task when he is entitled to a rest period. (Deposition of Pilot no. 7, p. 41) The pilots do not have

reporting requirements regarding their sleep during either an on-duty or off-duty week. (Deposition of Pilot no. 7, p. 42) Each pilot is paid by the number of turns he performs each month. (Deposition of Pilot 91, pp. 30-31)

Pilot No. 9, a CRPPA pilot for 31 years, testified that after completing a week-long shift, a pilot is scheduled to have a week off. But he explained he sometimes gets called to work during that week off when “they’ve run out of men on turn or people on rest.” The dispatch office asks whether he wants to take an “extra turn,” and he can either accept or decline the extra work. (Deposition of Pilot No. 9, pp. 40-44) When asked if there were instances when he asked for relief and there was no pilot to pick up the shift, he answered, “Somehow we manage.... Somebody will step up to the plate.” (Deposition of Pilot No. 7, p. 49)

Pilot No. 91 testified he works every other week but during his week off, he may decide to work extra days. (Deposition of Pilot No. 91, p. 24) “[I]f they call and they can’t find anybody, I’ll take the ship because we want to make sure the ships keep moving.” Pilot No. 91 testified there are rules and guidelines to follow regarding rest while piloting but there are no requirements imposed by CRPPA regarding how much each pilot should sleep. Whether to request relief is a personal decision for each pilot as to how rested he is and “if there [are] men in town.” If I’m feeling rested, I will not get a relief, especially if there’s no one in town to give it to because they’re on rest.” (Deposition Pilot No. 91, p. 22) Pilot No. 91 admitted that CRPPA does not conduct any type of fatigue testing on him or otherwise assign a fatigue score to him. (Deposition of Pilot No. 91, p. 27) Pilot No. 125, a CRPPA pilot for thirty years, testified he had never seen any circadian sleep scores addressing himself. (Deposition of Pilot No. 125, p. 36)

## VI. SUMMARY OF EVIDENCE AND ANALYSIS

Riverboat pilots have been subject to state regulation since 1837. Fees and rates were initially fixed by the legislature for each of the pilot associations. By Act 579 of 1968, a Pilotage Fee Commission was created for each pilot association. Members representing the particular pilot association and members of industry served by the steamships formed

each association. The Louisiana Public Service Commission originally served as a member of each pilotage fee commission in the event that the pilot and industry commissioners were unable to resolve any rate disputes. Pilot Fee Commissioners representing either pilots or industry were able to certify an issue to the LPSC for adjudication. *Hendrix v. Louisiana Pub. Serv. Comm'n*, 262 La. 420, 426; 263 So.2d 343, 345 (1972). In 2004, the LPFC was created to establish rates and fees charged by licensed river pilots on the Mississippi and Calcasieu rivers. 2004 La. Acts No. 902, §1.

Louisiana R.S. 34:1122 provides, in pertinent part:

A. (1) The fee commission shall have exclusive authority to fix and establish reasonable and just fees and rates for:

(a) Pilotage service to ships and vessels.

...

B. (1) Pilotage fees and rates shall provide for all ordinary and necessary operating and administrative costs and expenses, including but not limited to the cost of ... the expense of maintaining necessary employees ... and fair average annual compensation for a state ship pilot, in comparison to regulated state ship pilotage in other United States ports.

...

C. (1) In determining such fees and rates, the pilotage fee commission may give due regard to, but shall not be limited to:

(a) Consideration of the length, draft, dimensions, and tonnage of the vessels to be piloted.

(b) The difficulty and inconvenience of the particular service and the skill and additional expertise required to render it.

(c) The public interest in maintaining safe, efficient, and reliable pilotage service.

(d) The piloting time required; the distance traveled of the vessels to be serviced; the travel time required and distance traveled to and from vessels; the method of travel and travel cost required to and from vessels; the time devoted by pilots to making themselves available when needed; the time

required to be on station or on call while both on and off station; the length of time duty requires the pilot's absence away from home; the difficulty of the particular service including working conditions; risk factors of the route; inconvenience and living conditions; the skill and additional expertise required to render the particular service; the length of the training, experience, or apprenticeship program; and the number of trips the pilot is required to ride light.

(e) Any other factor relevant to the determination of reasonable and just fees and rates, including those factors previously considered and determined by the Louisiana Supreme Court, and the national average pilotage cost per mile for state regulated pilots operating in United States ports.

#### A) Increased Tariff

In its post-hearing briefs, CRPPA clarifies that its request for relief addresses only certain components of its overall rate structure and that the hearing master only needs to determine the pilot complement, target compensation based on an estimated number of billable turns, and the characteristics of the COLA in order to resolve the issues presented in the RFA. It submits these determinations, along with the known and measurable expenses, will ultimately produce the tariff rates.

According to the testimony of Mr. Mark L. Nelson, CRPPA's chief financial officer, he calculated that a tariff increase of 23.39 percent should be made, based on an estimated compensation of \$697,000 for 122 active pilots, the corresponding revenue from an estimated number of billed turns of 16,151 per year, and assuming an annual COLA of 1.5% based on historical CPI data. The estimated number of billable turns to project future demand for CRPPA's services was based on the number of turns being completed in 2019. (Pre-filed direct testimony of Mr. Nelson, p. 4; Rebuttal testimony of Mr. Nelson, pp. 2-4; August 16, 2021 hearing on the merits, Testimony of Mr. Nelson, p. 170) He explained these figures would change as additional pilots are commissioned. He assumed the number of pilots would increase at a rate of five newly commissioned pilots each year and that CRPPA's administrative expenses would remain relatively constant.

LCA/LMOGA maintains that CRPPA rates were set fairly in its last rate proceeding. However, since LCA/LMOGA has agreed to authorize 126 pilots as they are each commissioned, it acknowledges that the tariff will need to be increased by approximately \$1.9 million dollars to cover the additional cost of the four additional authorized pilots at the current target compensation level.

Thus, the component parts that will ultimately produce the tariff rates are discussed below.

#### B) Pilot Complement

CRPPA last received authorization for additional pilots in 2015; the consolidated order in Dockets No. P15-002 and P15-003 authorized CRPPA to increase its pilot complement from 114 pilots to 122 pilots. Since the 2015 settlement and despite having received authorization for rate recovery beginning as early as 2016 for moving up to 122 pilots, CRPPA has on average maintained a pilot complement of 116 pilots from the period 2016 to 2020. By the end of 2020, the number of pilots had increased to 122. (See UPC original report p. 35, citing Exhibit UPC-001, CRPPA Responses to Discovery Requests, at CRPPA Response to LPFC Staff Discovery Request 1-5, 1-6.)

CRPPA's contention is that the Commission should now authorize 150 pilots. CRPPA urges accidents caused by fatigue could be costly not only in terms of lives but also in terms of regional and national economic impacts. To support this contention, CRPPA commissioned a study performed by Dr. Martin Moore-Ede, M.D., Ph.D., of Circadian, who concluded CRPPA's current, maximum-allowable pilot complement needs to be increased to 150 pilots so that CRPPA may prevent pilot fatigue and be prepared for anticipated increased future shipping.<sup>11</sup>

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<sup>11</sup> In its pre-hearing brief, CRPPA urges that 2013-2019 data on vessel movements should be used to determine the current pilot complement, stating as follows:

“CRPPA has seen a decrease in its 2020 vessel movements to date due to the ongoing Covid-19 pandemic. Nonetheless, CRPPA expects that vessel movements will return to their pre-COVID-19 levels. CRPPA maintains that using the 2013-

CRPPA proposes its rates will be increased as pilots are actually commissioned, so that shippers do not have to pay fees for pilots yet to be commissioned. CRPPA also requests that its tariff rates and fees be subject to a temporary floor funding for 135 pilots, once such a pilot complement is achieved. If the pilot complement drops below 135 pilots thereafter, CRPPA requests that its tariff rates and fees be allowed to provide funding for 135 pilots for a two-year period after the pilot complement drops below this threshold. Although CRPPA does not anticipate the pilot complement dropping below 135 pilots once that number is achieved, CRPPA also recognizes training and commissioning new pilots is a time-consuming process and the suggested two-year grace period would be used to complete the training process.

Dr. Moore-Ede, who authored the Circadian report, conducted an analysis of the number of fully-qualified marine pilots required to meet the 24/7 demand for large vessel movements through the Lower Mississippi River and the Port of New Orleans without creating an unacceptable risk of pilot fatigue and fatigue-related accidents, injuries, and environmental damage.<sup>12</sup> Circadian's report documented that "[f]atigue in maritime operations is a well-recognized and common source of human error, allisions, collisions and groundings." (Circadian report, p.7) The report further reasoned how fatigue might affect pilot operations:

Pilot fatigue refers to a physiological state that often results in an impairment of mental and physical function manifested by a cluster of debilitating symptoms, usually including excessive sleepiness, reduced physical and mental performance ability, depressed mood and loss of motivation. The sustained vigilance required of vessel navigation, especially in or near ports, the monotonous nature of the tasks, the effects of adverse weather conditions and the non-stop 24/7 operations all significantly contribute to the risk of pilot fatigue.

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2019 data on vessel movements to determine its necessary [p]ilot complement is just and reasonable.

<sup>12</sup> Dr. Moore-Ede has a Ph.D. in Physiology and a M.B., B.S., which is the equivalent of an M.D. from a University in London.

(Circadian report, p. 7)<sup>13</sup>

To investigate the fatigue risks associated between the number of vessel movements per month to the pilots, Dr. Moore-Ede used the Circadian Alertness Simulator (CAS), described by him to be “a scientifically-validated transportation operator fatigue risk model developed and used by [him] and his colleagues at [Circadian] over the past 25 years ....”

(Circadian report, p. 2)

To analyze CRPPA’s pilot workload, Circadian analyzed the vessel movements and pilot assignments in the CRPPA service area for January 2013 to December 2019 and the specific types of assignments being performed. (Circadian report, p.16). Circadian also analyzed the number of orders and the total cargo tonnage that moved through the service area. (Circadian report, p. 17) Circadian additionally factored in the day-night variation of pilots on duty. The report noted that the duration of time that a CRPPA pilot spends completing an order is highly variable, with most completed orders lasting six to eight hours. (Circadian report, p. 18). Additionally, the report concluded that annual bridge hours of the pilots had increased by 14 percent in the last seven years and the orders had increased by 16 percent. (Circadian report, p. 20). Likewise, it was noted that the total duty time for all pilots had increased during the seven-year study period. (Circadian report, p. 21).

Circadian analyzed the type of job, the start and end time of each job order, and the time of rest for pilots on the Pilottown slate. Each of the different types of duties with

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<sup>13</sup> Circadian’s report sets forth that a substantial body of science on circadian rhythms, sleep, alertness, and fatigue have been published that have radically changed the scientific understanding of the issues underlying marine pilot fatigue risk. (Circadian report, p.8) The report concluded the primary cause of both acute and cumulative fatigue in marine pilots is the circadian disruption due to the irregular 24-hour operation performed by the riverboat pilots. (Circadian report, p. 8-9) Additionally, the report addressed other specific risks of pilot fatigue in CRPPA operations, i.e., weather, proximity of vessels to land, shallow waters, and other vessels, potential environmental hazard of cargo being transported, unpredictability of service hours, and off-duty rest. (Circadian report, p. 14-16).

variable rest time rules were taken into account.<sup>14</sup> Additionally the duration, timing, and sequence of the total duty times and off-duty periods for each individual pilot were considered and downloaded into the CAS fatigue model. (Circadian report, p. 24) Alertness levels for each pilot were calculated via this model.<sup>15</sup> Based on the accumulated data, Circadian recommended that in “safety-critical operations where zero increased fatigue risk is acceptable,” [operations] “should be designed to avoid CAS Fatigue Scores above

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<sup>14</sup> Additionally, CRPPA’s different practices for managing fatigue risk were analyzed along with how the CRPPA pilots conformed to these scheduling practices. (Circadian report, p. 29)

<sup>15</sup> According to the report, the impact on individual pilot duty-rest patterns was analyzed in determining the fatigue risk applicable to CRPPA pilots:

The combination of unpredictable length and varying start and end times for vessel movement and the first-in, first-out work arrangement, contributes significantly to the irregularity of marine pilots’ duty, rest and sleep schedule. Unless the size of the pilot complement is very large, no pilot can maintain a consistent duty-rest pattern but rather every pilot is constantly working different times of day.... [The analysis showed] that approximately half ... of the consecutive start times for the duty periods require that the CRPPA pilots flip between day and nighttime work and hence will have a negative effect on pilot fatigue....

(Circadian report, p. 28)

Circadian’s report sets forth that a substantial body of science on circadian rhythms, sleep, alertness, and fatigue have been published that have radically changed the scientific understanding of the issues underlying marine pilot fatigue risk. (Circadian report, p.8) The report concluded the primary cause of both acute and cumulative fatigue in marine pilots is the circadian disruption due to the irregular 24-hour operation performed by the riverboat pilots. (Circadian report, pp. 8-9) Five key factors were utilized in the report to determine the required pilot complement size to minimize the risk of pilot fatigue related errors: 1) Time of Circadian Day (relates to the individual pilot’s level of alertness and sleepiness during the course of the 24-hour day); 2) Elapsed Time Awake (period of grogginess after waking with a drive for sleep building with time until the next sleep period occurs); 3) Duration of Last Sleep (focusing on length of rest period, time of circadian day, and individual differences in sleep need); 4) Quality of Sleep (sleep fragmentation, time of day that sleep occurs, and sleep environment); and 5) Cumulative Sleep Deprivation (length of rest periods over the past week and time of circadian day of rest periods over the past week). (Circadian report, p. 9) Additionally, the report addressed other specific risks of pilot fatigue in CRPPA operations, i.e., weather, proximity of vessels to land, shallow waters, and other vessels, potential environmental hazard of cargo being transported, unpredictability of service hours, and off-duty rest. (Circadian report, p. 14-16).

56.” Thus, this score was used “as a cut-off Fatigue Score for the [p]ilots responsible for large vessel movements in the CRPPA service area.” (Circadian report, p. 27) To comply with this fatigue risk limit and not exceed a fatigue score of 56, Circadian determined that the existing operating rules with respect to rest and relief and alternating watches with 7-days on-call and 7-days off call periods were required to be consistently enforced.

Circadian found that over the study period, the number of pilots who had a monthly fatigue score greater than 56 increased over the study period, peaking in the summer of 2016. The addition of seven CRPPA pilots between 2016 and 2019 contributed to the decrease in the number of pilots with a monthly fatigue score of greater than 56. (Circadian report, p. 32) Circadian also concluded that in 2019, there was “an average of 2.33 CRPPA Pilots in any month with a Fatigue Score that was greater than 56.” (Circadian report, p. 32) The report noted that “having a fatigue score above 56 does not mean that there will be an incident, but that with more instances of [f]atigue [s]cores greater than 56, the risk of operational incidents increases. (Circadian report, p. 34) Ultimately, however, based on a fatigue risk analysis of the CRPPA data from the study period, 2013-2019, Circadian concluded that a pilots complement of 150 pilots (147 active pilots and 3 administrative pilots) would reduce the risk of CRPPA pilot fatigue to a CAS fatigue score below 56. (Circadian report, p. 39) Thus, Circadian found that CPRRA, currently authorized for 122 fully qualified pilots, was at a deficit of 28 pilots below the optimal pilot complement required to safely cover the fluctuating levels of vessel traffic in the CRPPA service area. (Circadian report, p. 39)

In further support of its request for an increased pilot complement, CRPPA offered the pre-filed direct testimony of Captain E. Michael Bopp. Cpt. Bopp is an active pilot and partner in CRPPA since 1997, and is currently CRPPA’s President, who oversees all of CRPPA’s operations. He also serves as a Commissioner on the Pilot Fee Commission. Regarding CRPPA’s request for additional authorized pilots, Cpt. Bopp testified the primary reason for the request is to improve the availability of safe service and to ensure the uninterrupted flow of cargo transported on the Mississippi River. He explained the navigation of large, high-environmental-risk vessels through CRPPA’s service territory

requires Pilots who are not only skilled and experienced, but also alert and unimpaired by fatigue. He described this is a challenge due to the industry demand for “round-the-clock, irregular, and unpredictably timed vessel movements. (Pre-filed testimony of Cpt. Bopp, pp. 4-5). He testified the current shipping volume is significantly above the shipping volume utilized to establish CRPPA’s currently funded allowance of 122 pilots. He stated that between 2013 and 2019, there was an approximately 19% increase in the total cargo tonnage moved by CRPPA pilots. He explained that while lower Mississippi River traffic fluctuates from year to year, shipping traffic is generally trending upwards. He opined that increasing CRPPA’s pilot complement to 150 Pilots would allow CRPPA to better assure the availability of adequately rested pilots. He described that any accident could be costly not only in terms of lives but also in terms of regional and national economic impacts should river traffic be halted. (Pre-filed testimony of Cpt. Bopp, p. 7).

Cpt. Bopp proposed that CRPPA seeks to add pilots as quickly as possible to achieve a full complement of 150 pilots. But he also proposed that its rates be increased as pilots are actually commissioned. (Pre-filed testimony of Cpt. Bopp, p. 8). Thus, CRPPA requests that its tariff rates and fees be increased to support the cost of the increased pilot complement.

LCA/LMOGA asserts CRPPA’s operational history does not support its claim that it needs 28 new pilots to serve its billable shipping requirements. LCA/LMOGA submits that in 2016, CRPPA had been authorized by the LPFC to have a complement of 114 pilots, but CRPPA elected to operate with an average of only 111 pilots to serve 16,059 billable turns. In 2017, CRPPA had been authorized to have a complement of 118 pilots, but CRPPA operated with 113 pilots to serve 17,035 billable turns. In 2018, CRPPA had been authorized for 122 pilots in its complement, but it operated with an average of only 113 pilots to serve 16,992 billable turns. In 2019, CRPPA was authorized for 122 pilots, but operated with an average of only 118 pilots to serve 16,151 billable turns. LCA/LMOGA also asserts that CRPPA handled its volume of shipping turns from 2015 to 2019 with a 99.98 safety record. (LCA/LMOGA post-hearing brief, pp 36-37)

To counter Dr. Moore-Ede/Circadian's conclusions regarding the pilot complement needed to provide safe pilotage services, LCA and LMOGA provided the direct testimony of Dr. David E. Dismukes, Ph.D.<sup>16</sup> Regarding CRPPA's requested increase, Dr. Dismukes reasoned that CRPPA's own analysis indicated that the pilot complement did not need to be increased.

According to Dr. Dismukes Exhibit DED-32, CRPPA estimated that "at most" during 2019, it had five pilots in any given months that had elevated levels of fatigue. Dr. Dismukes reasoned this is a small portion of CRPPA's total active pilots, which number varied between 111 and 114. He noted that CRPPA consistently had between seven and twelve vacant pilot positions every month during 2019. (Dr. Dismukes' Pre-filed direct testimony, pp. 46-47) Based on an examination of the entirety of CRPPA operations from 2015-2019, Dr. Dismukes noted that "on average CRPPA had 109.8 pilots... or approximately 110, total registered pilots each month." Based on his analysis, he concluded, "This means that on average approximately 97.4 percent of CRPPA's total contingent of pilots were available to the association in a non-fatigued status in any given month." (Dr. Dismukes' Pre-filed direct testimony, p. 47).

Dr. Dismukes opined the rate of fatigued pilots for CRPPA may be declining based on the increase in the pilot complement from 106 to 114 pursuant to Docket No. P15-002, "with provisions to add new pilots at a rate of no more than 4 per year until it reached 122 pilots." He stated that CRPPA had reached this new authorized level by July 2020. (Dr. Dismukes, Pre-filed direct testimony, p. 47-48). While the number of authorized CRPPA pilots and the number of actual CRPPA pilots have been generally increasing over the past decade, CRPPA had vacant pilot positions until mid-2020. (Dr. Dismukes, Pre-filed direct testimony, p. 48). Dr. Dismukes reasoned that the recent increase in CRPPA pilot counts has reduced occurrences of pilot fatigue. "Since 2017, ... the percentage of total CRPPA

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<sup>16</sup> Dr. Dismukes is a consulting economist with the Acadian Consulting Group ("ACG"), a research and consulting firm that specializes in the analysis of regulatory, economic, financial, accounting, statistical, and public policy issues associated with regulated and energy industries. Dr. Dismukes is also a Professor, Executive Director, and Director of Policy Analysis at the Center for Energy Studies, Louisiana State University.

pilots fatigued in any given month has fallen, such that in 2019 only 2.06 percent of CRPPA pilots were fatigued in any given month.” (Dr. Dismukes, Pre-filed direct testimony, pp. 48-49) Dr. Dismukes testified, “While CRPPA’s study claims that its pilots’ fatigue created an unacceptable risk in every month from 2013 to 2019, CRPPA has not claimed that any accidents have been caused by its pilot fatigue. (Dr. Dismukes, Pre-filed direct testimony, p. 49). He found a CAS fatigue score of 56 only equates to an approximate 2 percent risk of human error incidents, according to Dr. Dismukes’ testimony. (Dr. Dismukes, Pre-filed direct testimony, p. 29)

Dr. Dismukes then observed that the irregular distribution of estimated CAS fatigue scores among CRPPA pilots indicated that the minimal observed occurrences of stressed working conditions among CRPPA pilots may be the result of poor operational practices rather than inadequate staffing. Dr. Dismukes specifically noted, “[I]t appears that CRPPA pilots may be incentivized to take on heavier workloads, and not discouraged from working while fatigued.” (Dr. Dismukes, Pre-filed direct testimony, p. 50) He stated that pilot incomes are based on total days worked, and the pilot’s total income is adjusted downward if he does not work all of his scheduled days and adjusted upward if he works extra days. Thus, he found that “pilots have [an] incentive to work when scheduled (and to work extra days), even when fatigued.” (Dr. Dismukes, Pre-filed direct testimony, p. 51). Dr. Dismukes ultimately concluded Circadian’s analysis does not support CRPPA’s request to increase its authorized pilot complement from 122 to 150.

UPC, who was retained by the LPFC, largely rejected the conclusions reached by the Circadian Report on the basis that it could not independently validate the qualifications and research upon which it was based.<sup>17</sup> UPC further stated, “No support has been provided for why the selected period of 2013 through 2019 was a statistically relevant period for the purposes of projecting a future complement of pilots.” (UPC original report, p. 37) And

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<sup>17</sup> The UPC report delineated that it requested access to various documents upon which Circadian relied to reach its conclusions, and Circadian replied that documents were either “‘confidential’, ‘not publicly available’, and/or ‘proprietary.’” (UPC original report, pp. 36-37).

UPC also concluded, “The data used contradicts with data provided by CRPPA, has admitted corruptions which can impact results, and is not based on actual dispatch experience and thus not likely to be indicative of the true historical patterns.” (UPC original report, p. 37) UPC also rejected Circadian’s conclusions on the basis that Circadian based its decision on a study-imposed requirement that pilots have a CAS Fatigue Score of less than 56. UPC noted the selection of 56 as the fatigue score threshold appeared to be based in part on Circadian’s subjective determination based on past data from other studies, upon which data has only anonymously been available for review. UPC opined that one could argue that “60 could be accepted” as the appropriate level of risk. Circadian declined to provide sensitivities for CAS scores thresholds different from 56. (UPC original report, p. 39). UPC also noted, however, that a Circadian figure reflected that a fatigue score threshold of less than 57 was achieved at around 134 Pilots. And UPC opined the information on which the report was based only included approximately 6 months of data during which the pilot complement had increased to from 114 to 120 pilots. UPC reasoned that “multimillion dollar decisions” are being made “on the basis of a report whose results are based on subjective determinations and statistical trend lines and which materially change based just upon sample size....” (UPC original report, p. 41) UPC found that CRPPA’s nearly perfect safety record, as documented by CRPPA discovery request responses, contradicts CRPPA’s position that they are operating unsafely based on the current pilot complement. (UPC original report, pp. 41-42) UPC stated, “The conclusions of the Circadian Report that based on its proprietary analysis CRPPA has unsafely managed its pilot complement does not appear to reconcile with data provided by CRPPA itself. To rely on that same analysis to add 28 additional pilots is a cause of concern.” (UPC original report, p. 42).

Further buttressing UPC’s conclusion is its finding that “the Circadian recommendation is completely unrelated to any actual decision of how many pilots will be added.” (UPC original report, p. 42) UPC reasoned that according to the deposition of Pilot No. 113, [CRPPA has] no formal process in place that would analyze data ... and determine the appropriate number of pilots to be added.” (UPC original report, p. 42) UPC concludes

there is no expectation of a petition by a member Pilot seeking the addition of 28 pilots and, based on recent history regarding the procedure of adding new pilots, there is no expectation any such petition would pass. Based on CRPPA's actions to date, UPC concluded there should be another RFA to adjust rates for the inclusion of greater than 126 pilots. (UPC original report, p. 44) Thus, UPC recommended using 126 pilots for the purpose of setting rates for this RFA.

However, recognizing the administrative burden of a full rate case, UPC recognized that in past decisions of the Commission, industry representatives and the river pilots in Louisiana have been able to agree to automatic mechanisms to allow for additions of pilots without the administrative burden of a full rate case. Based on that history and the uncertainty related to the timing of the loss of pilots and the time it takes to train pilots, UPC stated it could support such a mechanism to allow a reasonable increase of pilots without requiring a full rate increase "if the LPFC and concerned parties to this RFA continued to be supportive of this approach...." (UPC original report, p. 44). But here, industry (LCA and LMOGA) has not agreed to the use of any such automatic mechanism to authorize more than 126 pilots.

In rebuttal of UPC's report and the testimony of Dr. Dismukes, Dr. Moore-Ede of Circadian maintained that although some of the studies upon which the CAS model rely are not publicly available, it does not undermine the scientific validity of the model. Dr. Moore-Ede testified that the only studies that are not publicly available are the independent studies conducted on behalf of transportation companies. (Dr. Moore-Ede rebuttal testimony, p. 2). Dr. Moore Ede further explained that the absence of safety incidents was not the same as the absence of risk. He stated, "A fatigued pilot ... may not have an incident, but their statistical risk of having an incident increases as their fatigue increases." (Dr. Moore-Ede rebuttal testimony, p. 8) He opined that in an industry such as marine pilotage, where losses can be catastrophic, "it is critical to be as close to zero risk as possible." (Dr. Moore-Ede rebuttal testimony, p. 8) He explained that Circadian's simulation assumed that all assignments were evenly distributed across the pilot complement and that any departure from an even distribution would have resulted in more

extreme fatigue scores. (Dr. Moore-Ede rebuttal testimony, p. 8) Thus, he reasoned that changing CRPPA's operational practices would not be a solution for reduced fatigue amongst the current pilot complement, and concluded, "[I]t cannot be stated that fatigue is solely tied to inappropriate scheduling and incentive practices." (Dr. Moore-Ede rebuttal testimony, pp 11 and 15)

In UPC's supplemental report, UPC delineated that it requested access to various supporting documents for the Circadian study, and UPC was told that either the documents were confidential, proprietary, not publicly available, that no studies existed, or that the data was corrupted. Further UPC stated Circadian's conclusions were based on assumptions for hard constraints on rest that do not exist because according to the deposition testimonies of the pilots, individual pilots determine whether they will actually take a recommended rest period. (UPC supplemental report, pp. 3-6).

In its post-hearing brief, CRPPA acknowledged that UPC "highlighted that Circadian's analysis revealed that a Fatigue Score of less than 57 may be achieved with a 134 Pilot compl[e]ment." (CRPPA's post hearing brief, p. 4) CPRRA then stated, "If the Hearing Master recommends an increase in the Pilot complement to 134 Pilots, CRPPA would retain the ability to file a RFA to address Pilot fatigue and authorized Pilot complement should the fatigue issue persist or grow, based on vessel traffic volume on the river or other circumstances. (CRPPA's post hearing brief, p. 5)

Louisiana Revised Statutes 34:1122 generally authorizes that pilotage fees and rates shall provide for "the expense of maintaining necessary employees." The statutory authority does not however require that the LPFC authorize a specific number of pilots to meet a particular circadian score. UPC reasoned that the portion of Circadian's analysis employing the fatigue score threshold of 56 was based on subjective determinations and that a different threshold could be otherwise deemed appropriate. Thus, Circadian's conclusion that 150 authorized pilots are needed for CRPPA to operate safely is somewhat undermined. In any event, the LPFC is not required to apply a specific formula or scientific methodology to determine the appropriate complement of riverboat pilots who are "necessary employees" within the meaning of La. R.S. 34:1122(B)(1).

While much of the evidence presented is conflicting, the evidence nevertheless demonstrates that at least some pilots are working at times in a fatigued state. Others are accepting assignments for extra turns to keep the shipping industry moving when they should be off duty to have the opportunity for rest. Cpt. Bopp testified that river traffic is trending upwards, which supports CRPPA's request for adding authorized pilots to accommodate the increasing demand. Overall, Dr. Moore-Ede's complex study supports an increase in the pilot complement. And while Dr. Dismukes challenges Dr. Moore-Ede's conclusions, Dr. Dismukes acknowledges that some pilots have been working fatigued in recent years. Although Dr. Dismukes concludes there is an absence of accidents related to fatigue, the LPFC should not wait for a calamitous event to authorize additional pilots to address established fatigue. As Dr. Moore-Ede recognized, because the industry is inherently dangerous and any accident could be catastrophic, it is critical to aim for zero percentage of fatigue and resulting risk. Further, Dr. Moore-Ede's testimony that fatigue cannot be remedied solely by changes in operational procedure is convincing. While UPC stands firmly behind authorizing 126 pilots, it has also indicated that if the parties were to agree, it could support an approach whereby pilots could be added into rates up to a maximum of 132 Pilots without the need for a new rate case.

Despite the lack of agreement between counsel regarding the total number of pilots who should be authorized, the LPFC should authorize a substantial increase in the pilot complement. The Commission must place paramount emphasis on the "public interest in maintaining safe, efficient, and reliable pilotage service," one of the factors addressed in La. R.S. 34:1122(C)(1), and should not be overly concerned about meeting a precise circadian score or otherwise be overly swayed by statistical analysis. The evidence indeed establishes ongoing fatigue. Due to the demanding nature of the profession, the constant variation in schedules and sleep routines impacting the pilots' level of alertness, and the resulting risk of injuries, deaths, and potentially disastrous losses, it is apparent that operating with any level of known fatigue is unacceptable. Adding fifteen more pilots to increase the pilot complement from 122 to 137 pilots should lessen the frequency of calling pilots to duty during their prescribed rest periods and promote more habitual rest

schedules, thereby alleviating fatigue risk. As CRPPA noted, if fatigue persists or resurfaces due to increased traffic volume, CRPPA can file a new RFA. While the number of fifteen additional authorized pilots is not derived based on a specific expert witness' recommendation, the recommended increase is set sufficiently high to preclude the need for repeated RFA's each time a few additional pilots are needed to accommodate increased demand. To limit the economic hardship associated with authorizing additional pilots, these additional pilots should be included in rates when they are actually commissioned. Annual tariffs should reflect the current number of commissioned pilots so that industry does not bear additional tariff costs if the pilots are not actually commissioned.

### C) Annual Compensation Per Pilot

CRPPA offered the testimony of several different witnesses to support its request for an increased target pilot compensation from \$473,692 to \$697,000 per pilot. Cpt. Bopp testified in support of increasing the compensation for CRPPA pilots, maintaining that the pay request is to achieve compensation parity with NOBRA's pilots, although CRPPA Pilots service more vessels and perform more vessel movements at a lower rate per mile than NOBRA. Cpt. Bopp testified that in 2019, NOBRA reported that its pilots earned an average net income of \$696,399 per pilot. NOBRA's 2019 annual report reflected that its 119 pilots had completed 13,001 billable turns in 2019, resulting in an average of 109.25 billable turns per pilot. In comparison, CRPPA completed 16,151 billable turns in 2019, resulting in an average of 133.5 billable turns per pilot. (Pre-filed direct testimony of Cpt. Bopp, p. 14.)<sup>18</sup> Cpt. Bopp testified that the proposed increase in CRPPA's estimated

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<sup>18</sup> If CRPPA Pilots were compensated at the same rate per billable turn completed as NOBRA pilots, CRPPA Pilots would each earn an average annual income of approximately \$850,977. Because CRPPA also seeks to increase its pilot complement and because the difference in work load will decrease with more pilots, CRPPA does not seek to have its estimated average annual compensation per pilot increased above \$697,000. (Pre-filed direct testimony of Cpt. Bopp at pp. 14-15, Rebuttal testimony of Captain Shawn Gibbs, p. 16.)

compensation will also allow CRPPA to arrive at parity with other state pilotage groups in the United States. (August 16, 2021 hearing, Testimony of Cpt. Bopp, p. 14.)

CRPPA also submitted a SYCG Port & Maritime Consultants (SY&CG) report, prepared by Dr. Schmucl Yahalom, Ph.D.<sup>19</sup> The report concluded CRPPA's request for increased pay is supported, as follows:

A comparison of eight pilots' associations (four from Louisiana and four from Texas) that are operating in close proximity and under similar conditions to CRPPA indicates that CRPPA has the lowest net income compared to the other pilots operating on the Mississippi River, the second lowest in the state of Louisiana, and the second to the lowest when compared to the relevant Texas pilot groups. When applying a weighted average (excluding CRPPA) to the net income, the CRPPA Pilots are annually behind the other pilots operating on the Mississippi River by \$127,849 (19.52%). Furthermore, the analysis also indicates that CRPPA is annually behind the weighted average of the eight associations (including CRPPA) by \$90,191 (14.61%). This analysis shows that CRPPA Pilots are significantly undercompensated in comparison to other relevant pilot groups in the Western Gulf of Mexico. Thus, an upward adjustment to CRPPA's tariff rates to increase revenues and net income is appropriate and should be approved. Our analysis indicates that CRPPA's request for parity with New Orleans-Baton Rouge (net annual income of \$696,399) is fully justified and should be approved.

The SY&GC report stated that the pilot associations used for comparison were selected because they are similar in characteristics and services to CRPPA. The net income per pilot information used in the analysis was derived from the expert report of Mr. Brent Dibner of Dibner Maritime Associates, LLC. (SY&CG report, p. 66). The report also stated the NOBRA pilots' average compensation is reasonably consistent with other comparable pilot groups in the western Gulf of Mexico. (SY&CG report, p. 68) Thus, the report concluded, "[T]he LPFC should establish tariff rates for CRPPA that will yield an average net compensation per pilot of \$696,399." (SY&CG report, p. 70).

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<sup>19</sup> According to his curriculum vitae, Dr. Yahalom holds a Ph.D. in Economics. He specializes in economics and finance of ports and terminals, maritime transportation, ocean shipping, and port maritime security.

CRPPA also offered the expert report of Mr. Dibner, who opined that “[g]iven the central role that the CRPPA pilots play in both the safety and success of the Lower Mississippi River and the industries operating therein, ... CRPPA’s request for a rate increase is reasonable.<sup>20</sup> He concluded, “CRPPA is currently the lowest compensated pilot group operating on the Lower Mississippi River and among the lowest compensated in the entire region.”

To examine compensation of the state licensed pilots, Mr. Dibner’s report examined eight organizations providing pilotage services to ships engaged in foreign trade. According to the report, these particular pilot groups were selected because they cover the largest groups of pilots and large-scale international shipping activity in the Gulf. (Dibner report, p. 3.) The report explained that two eastern pilot groups in the Gulf of Mexico, Mobile, AL, and Pascagoula, MS, were not included because they were smaller in terms of both cargo tonnage and shipping scale and they serve a limited breadth of customer types and cargo. Dibner found neither was an appropriate comparison for CRPPA. Likewise, Dibner did not include pilotage organizations working along the Atlantic coast in the CRPPA Pilots’ peer group because of differences in their pricing structures and operations. (Dibner report, p. 4). Dibner further found that on average, the CRPPA Pilots are currently the least compensated pilots of the three pilotage groups operating on the Lower Mississippi River, explaining as follows:

The average CRPPA Pilot receives a net income of \$526,958. However, the average NOBRA and [Bar Pilot] receives an annual net income of \$696,399 and \$548,369, respectively and the weighted average of these two groups is annual average income of \$654,807. The weighted average compensation of these two groups was 19.52 percent higher than CRPPA Pilots’ compensation in 2019. Therefore, the average CRPPA Pilot makes approximately \$127,849 less than their peers working on the Lower Mississippi.

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<sup>20</sup> Mr. Dibner holds a Bachelor of Science and Engineering Degree in Naval Architecture and Marine Engineering from the University of Michigan and a Master of Business Administration from Harvard University. During his career, he has worked approximately 45 years as a consultant to the marine industry.

Moreover, the CRPPA Pilots are among the lowest compensated pilots operating in the entire western Gulf of Mexico. Of the eight pilot groups examined for this report, average annual net income per pilot ranged from \$401,697 to \$778,051. On a weighted average basis, the average pilot working in the western Gulf of Mexico (excluding CRPPA Pilots) has an annual net income of approximately \$650,037. This means that when examining the pay of pilots across the entire region, not just those working on the Lower Mississippi River, the average CRPPA Pilot still makes approximately \$123,079 less than his or her peers working in the area.

Dibner report, pp. 4-5.<sup>21</sup>

Dibner's report ultimately concluded that CRPPAs average annual estimated compensation per pilot should be increased to \$697,000. He posited that such an increase in compensation would allow CRPPA's Pilots to achieve compensation parity with NOBRA's pilots and with the average pilot working on the western Gulf of Mexico. (Dibner report, p. 23). Comparing average billable turns completed by CRPPA and NOBRA pilots, Dibner found that even though CRPPA pilots completed more billable turns than NOBRA pilots, the average CRPPA pilot earned \$169,441 less annually than the average NOBRA pilot in 2019.

After filing his report, Mr. Dibner had to withdraw from participating in this proceeding for personal reasons. Mr. Dibner's conclusion that CRPPA's average annual income should be increased to \$697,000, however, was largely supported by another CRPPA witness, Mr. Ralph Zarumba. Mr. Zarumba, while employed as Vice President of Concentric Energy Advisors, Inc. (Concentric) prepared an expert report entitled, "Analysis of per Mile Pilot Charges."<sup>22</sup> Pursuant to his testimony, Zarumba explained that

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<sup>21</sup> Dibner's report included an extensive analysis of state pilot compensation in the Central and Western U.S. Gulf and in the State of Louisiana, comparing the incomes of the individual pilotage groups within the state and outside the state. (Dibner report, pp. 9-20). The report also examined many factors to be considered when examining CRPPA's workload and the difficulty of its route in determining appropriate pay, such as the time involved traveling to or from home or at the pilots' station, separate from the actual bridge time involved in piloting ships. (Dibner report, pp 21-22).

<sup>22</sup> Mr. Zarumba testified he holds a bachelor of science in Economics, a Master of Arts in Economics, and he has completed extensive undergraduate coursework in accounting. He has worked as a consultant for twenty-five years, and prior to that, he worked in various regulated

he adopted the previously-filed expert report of Dibner with minor adjustments regarding input data and calculations. Mr. Zarumba explained that his changes were considered *de minimis* and did not alter the overarching findings of the Dibner Report, i.e., that CRPPA pilots were significantly undercompensated when compared to their peers.

Concentric's report explained that tariffs contain a number of different elements and the differences in the tariff structure between the pilot organizations make a direct comparison of the pricing elements impossible. Thus, Concentric adopted a "typical bill" approach which compares the pilot fees charged by each pilot association based upon their posted tariffs for specific vessel types and under the most basic conditions considered appropriate. The resulting total tariffs were divided by the average mileage traveled for each vessel type for each port association, yielding an average pilot charge per mile. (Concentric report, p. 1.) Concentric analyzed the tariffs for pilot associations located in the Gulf Coast region of the southeastern United States. (Concentric report, p. 2). The Concentric report concluded that CRPPA's average per mile charge ranges from 22.8% to 78.5% lower than the average of the other pilot associations in the peer group utilized. (Concentric report, p. 3). Concentric limited its analysis to ports geographically similar to CPRRA and with similar service territory and operational workload. As a result, the Mobile and Pascagoula pilot associations were excluded from the analysis. (Concentric report, pp 8-9). Concentric thus restricted the analysis to similar-sized ports located in the western portion of the Gulf of Mexico, concluding such restriction provided a population that is generally comparable to CRPPA and other pilotage services on the Lower Mississippi River. (Concentric Report, p. 8) Concentric found that even with the requested rate increase, CRPPA pilots would remain competitive with its peer organizations on a per mile basis.

Captain Johnny D. Doyle, a member of the NOBRA Board of Directors and NOBRA's secretary/treasurer, agreed that "for the same year, [CRPPA Pilots] should be given parity" in actual compensation as NOBRA pilots. He opined that multiple issues

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utilities in the United States. He has appeared as an expert witness in sixty regulatory and legal proceedings.

should be considered. “Not only how long you work on the bridge of a ship, but the complexities associated with the different routes, and the inherent risks in those routes should be considered. (Deposition of Cpt. Doyle, p. 11) “[CPPRA pilots are] working longer on a bridge of a ship, but ... the NOBRA route has much more inherent risk.” (Deposition of Cpt. Doyle, pp. 12-13.) He concluded CPRRA performed extra work but NOBRA’s route is more difficult. (Deposition of Cpt. Doyle, pp. 13 and 35.) He concluded the amount of money that [CRPPA Pilots] earn in a given year should be close [to that earned by NOBRA pilots.]. (Deposition of Cpt. Doyle, p. 35).

LCA/LMOGA submitted Dr. Dismukes’ direct testimony to counter CRPPA’s claim for increased average annual pilot compensation rates. Dismukes testified that CRPPA rates are already set at parity with NOBRA and that CRPPA’s analysis is limited in scope. He concluded, “When appropriately examined, average net income for state regulated pilots at other U.S. ports is \$521,563 per year, which is less than CRPPA pilot’s average net income of \$552,448 in 2019. (Dr. Dismukes, Pre-filed direct testimony, p. 4)

Dr. Dismukes testified that the LPFC should reject CRPPA’s request for increased pilot compensation rates because parity with NOBRA pilots has already been achieved. He disagreed with the principal conclusions reached in the 2020 Dibner/Zarumba analyses. Dr. Dismukes explained their analyses are flawed because of the exceptionally limited and selective comparison or “peer” group utilized. (Dr. Dismukes, Pre-filed direct testimony, p. 12) The Dibner/Zarumba analyses excluded the Mobile, AL and Pascagoula, MS pilot associations due to the limited scale and nature of the shipping and pilotage that occurs in those areas. But Dr. Dismukes maintained that the types of ships that enter those areas are comparable to those that travel the lower Mississippi River. (Dr. Dismukes, Pre-filed direct testimony, p. 14) He reported that the Dibner/Zarumba analyses also excluded the Freeport, TX and Tampa Bay, FL ports, but it did not explain the basis for doing so. (Dr. Dismukes, direct testimony, p. 16) Dr. Dismukes opined there was no statistical reason to exclude these ports and pilot associations since they are clearly comparable, if not larger, than the ones included in the Dibner/Zarumba analysis. Dr. Dismukes explained that using a smaller group of eight associations leads to an upwards bias in average pilot earnings. (Dr.

Dismukes, Pre-filed direct testimony, p. 15) Because the excluded Gulf pilot associations tended to have lower net incomes, excluding them from the Dibner analysis caused the calculated average net income for Gulf pilot associations to be overstated.<sup>23</sup> (Dr. Dismukes, Pre-filed direct testimony, p. 17)

Dr. Dismukes performed an expanded comparison of CRPPA's annual pilot compensation to fifteen other U.S. River Pilot Associations. His revised analysis found CRPPA's current pilots' average net income is roughly equal to the average net income for state regulated pilots working in U.S. ports. (Dr. Dismukes, Pre-filed direct testimony, p. 21). He set forth that CRPPA pilots' actual average net income of \$552,448 per pilot was well above Lake Charles Pilots' average net income of \$401,697, comparable to the Branch Pilots' average net income of \$548,369 and below NOBRA's average net income of \$696,399 per pilot. (Dr. Dismukes, Pre-filed direct testimony, p. 21). He concluded CRPPA's target annual compensation approved in its last rate filing is generally consistent with the target compensation for NOBRA, with CRPPA's approved annual compensation being \$473,692 in 2019 and NOBRA's being \$473,591. (Dr. Dismukes, Pre-filed direct testimony, p. 21)

Dr. Dismukes also concluded that CRPPA Pilots have consistently earned annual compensation that was greater than the Commission's targeted compensation rate since 2010. He testified that CRPPA Pilots have generally seen earned compensation grow with the increase in shipping activities along the Lower Mississippi River. Thus, he reasoned there is no cost justification for CRPPA's requested increase. (Dr. Dismukes, Pre-filed direct testimony, p. 26) While noting that billable turns have generally increased for CRPPA over the past decade, Dr. Dismukes reported there has been a more recent downturn in shipping activity from prior peak levels in CRPPA's service territory. He also noted this downturn occurred when CRPPA increased its average number of registered

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<sup>23</sup> Dr. Dismukes also found the Concentric analysis to be flawed in part because it excluded the pilot associations associated with the Ports of Mobile, AL and Pascagoula, MS. (Dr. Dismukes, Pre-filed direct testimony, p. 37)

pilots from 112 to 119. Thus, he found the average worked bridge-hours per pilot decreased. (Dr. Dismukes, Pre-filed direct testimony, p. 28)

Regarding the compensation issue, UPC characterized CRPPA's support for the proposed compensation increase as "speculative net income ... projections from just four non-Louisiana United States ports .... that are not based on independently sourced or verifiable data ...." (UPC original report, p. 48). And UPC noted the 2020 CRPPA Dibner Report selectively only included 4 non-Louisiana pilotage associations. (UPC original report, p. 49). UPC found that in order to eliminate pilot groups from consideration, there needs to be a justification greater than generalized statements of differences in port activity. (UPC original report, p. 54) UPC pointed out that the restrictive group of four non-Louisiana ports used by Dibner, coincidentally or not, all have projected net income per pilots higher than the target compensations of all Louisiana port pilot groups. And he noted that despite having performed several prior studies, most for other Louisiana pilotage associations, this is the first time Dibner has ever taken such a restrictive approach. (UPC original report, p. 51)

The UPC report stated that it also had a concern regarding Dibner's use of net income per pilot as a key metric of his study. UPC explained, "La. R.S. 34:1122 refers to 'fair average annual compensation,' not 'net income.'" (UPC original report, p. 55). UPC concluded, "Net income per pilot is not similar to salary paid to an employee and should not be the metric utilized to establish a reasonable compensation for ratemaking purposes." (Bolding removed.) (UPC original report, p. 55) UPC reasoned, "The use of net income per pilot to serve as the compensation to be used for setting rates is fundamentally unsound as it seeks to include regulatory lag caused by non-compensation issues, such as growing volumetric revenues and changes in number of pilots, as generating additional entitled compensation." (UPC original report, p. 56)

In the instant RFA, UPC explained that by using the net income per pilot of another entity, CRPPA is inappropriately proposing to incorporate into its rates the regulatory lag of that other organization. He opined that volatile net income per pilot numbers does not lead to sound and consistent ratemaking. (UPC original report, p. 59) Thus, UPC reasoned:

Rates should not be set to address gaps in ‘net income per pilot’ created by different organizations’ management of the size of their respective pilot complements. Rates should be set using the appropriate number of pilots necessary to safely pilot the river and provide for each pilot to receive a just and reasonable compensation for the typical workload associated with such safe pilotage.... UPC disagrees with any use of the net income per pilot for the purposes of setting rates ....

(UPC original report, p. 60)

UPC also expressed concern with the manner in which Mr. Dibner, determined each of the net incomes of the four non-Louisiana pilot associations. In large part, UPC found Mr. Dibner’s analysis to be based on unsupported and unreliable figures and/or figures that were not independently verifiable. (UPC original report, pp. 64-67) UPC acknowledged, however, that it was difficult to retrieve comparable compensation amounts because most pilot organizations are private partnerships that “do not provide the same transparency of the LPFC.” (UPC original report, p. 68)

To ameliorate the purported deficiencies in the Dibner/Zarumba analyses, UPC conducted an analysis that expanded the scope of pilot compensation to all United States ports. UPC’s analysis found that an average compensation to pilots in United States ports other than the State of Louisiana to be \$478,374 per pilot, reflecting a range from \$414,559 to \$586,797. When calculating the average using the net income per pilot of Louisiana pilots, the average moved to \$484,147 with the top of the range moving to \$599,045 last reported by NOBRA. (UPC original report, p. 73) Thus, UPC concluded, “[T]he Louisiana Pilots association target compensations appear to remain reasonable as compared to the only compensation information that has been able to be gathered related to a wide sample of other United States ports.” UPC also found, “[I]t is appropriate to continue to consider the current target compensation amounts for Louisiana pilot groups, which amounts have been prior agreed to by the pilots, industry and the LPFC, as fair compensation for setting rates. (UPC original report, p. 74)

In light of UPC's full analysis and the parity principles of *Hayden v. La. Pub. Serv. Comm'n*, 512 So.3d 370, 374-75 (La. 1987),<sup>24</sup> UPC recommended that the average annual pilot compensations to be used for ratemaking purposes is \$586,019. (UPC original report, p. 77) The following is UPC's rationale to support this number:

NOBRA's reasonable target compensation for the Test Year is \$467,966. In that year, CRPPA had 22.67% more movements/turns per pilot [than] NOBRA. Multiplying \$467,966 times 122.67% yields a parity reasonable compensation rate for CRPPA of \$571,740. Since the Test Year, NOBRA compensation has been adjusted for inflation via a COLA mechanism that has raised its target compensation by 1.02497. Applying that increase to CRPPA target income at parity produces a known and measurable target compensation at parity of \$586,019.

(UPC original report, p. 77.)

CRPPA offered the testimony of Captain Shawn Gibbs, a CRPPA pilot who is also an alternate fee commissioner on the LPFC, to rebut the testimony of UPC and Dr. Dismukes. Cpt. Gibbs testified that CRPPA pilots are currently the lowest compensated of the three Mississippi River pilotage groups. He further testified that an average target compensation per pilot of \$697,000 would allow CRPPA pilots the opportunity to achieve actual compensation parity with NOBRA's pilots. (June 1, 2021 Rebuttal testimony of Cpt. Shawn Gibbs, p. 4). He explained the average CRPPA pilot completed approximately 24 more billable turns than the average NOBRA pilot in 2019, but earned approximately \$169,441 less compensation than the average NOBRA pilot. (Rebuttal testimony of Cpt. Gibbs, p. 6) CRPPA did not, however, perform a bridge hour analysis between NOBRA and CRPPA, because reported bridge hour data for NOBRA is not available. But Cpt. Gibbs testified that historically it has been recognized that CRPPA pilots have had more

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<sup>24</sup> In *Hayden v. La. Pub. Serv. Comm'n*, 512 So.2d at 374-75, the Court held that the Louisiana Public Service Commission acted reasonably when it set pilotage rates to establish "parity of annual compensation between NOBRA and [CRPPA Pilots]," since "the working conditions of the NOBRA and [CRPPA Pilots] were sufficiently similar that 'relatively little difference in compensation, if any, can be justified.'"

bridge hours per turn than NOBRA pilots. (Rebuttal testimony of Cpt. Gibbs, p. 6) Cpt. Gibbs testified, “Given the number of billable turns completed by the average CRPPA and NOBRA pilot, respectively, and the analysis ... regarding the interconnection of distance traveled and bridge time, it is safe to say that CRPPA pilots carry a heavier workload than NOBRA pilots. (Rebuttal testimony of Cpt. Gibbs, p. 10).

Cpt. Gibbs explained that pilots do not earn a set salary but rather the average net income of a pilot fluctuates according to the volume of pilotage services provided to ratepayers; pilot income generally remains relative to billable turns. He testified there is no such thing as “overearning,” because where vessel traffic on the river is high, it makes sense for pilots to make more money because they are performing more work than anticipated when the revenue requirement was established. Conversely, pilots are not “underearning” in years when traffic is slower than the amount of the test year. (Rebuttal testimony of Cpt. Gibbs, p. 11) With respect to varying methodologies, Cpt Gibbs testified that while UPC used “target compensation” to determine proposed target annual compensation of \$586,019 for CPRRA’s pilots, the LPSC has compared “actual income” of the pilot associations to determine whether compensation parity exists.

In its supplemental report, UPC clarified that while Cpt. Gibbs testified in favor of using actual income to determine compensation parity, Cpt. Gibbs ultimately recommended using a compensation that is equal to NOBRA’s actual net income per pilot, not relatively equal in relation to the turns per pilot as per the parity standard adopted by the *Hayden* Supreme Court. UPC’s supplemental report maintained its original position of using target compensation versus actual net income per pilot, stating:

UPC continues to believe that using the NOBRA target compensation as the base for determining parity with CRPPA is appropriate because that NOBRA target compensation was the product of a settlement amongst parties with diverse interest in the establishment of that amount and therefore, can be considered a reasonable compensation for purpose of the parity requirement.

(UPC supplemental report, p. 2)

In its post-hearing brief, CPRRA maintains that due to both the volume of the pilotage services it renders and the pilots' productivity, the requested estimated compensation level of \$697,000 should be granted. CRPPA referenced Dr. Yahalom's selection of the western Gulf of Mexico pilot associations as a peer group as being the most appropriate comparison. Additionally, CRPPA urges that Mr. Zarumba's/Concentric's study demonstrates that CRPPA's current tariffs generate a revenue amount far less than their peer pilot organizations on a per-mile basis. CRPPA asserts that UPC's reliance on non-typical vessels, such as large cargo and tanker vessels, renders UPC's report unhelpful. CRPPA urges it is appropriate and necessary to normalize the varied tariff calculation by distance and that UPC and Dr. Dismukes' contrary arguments should be disregarded. CRPPA also cites *Hayden* to support its claim of parity with NOBRA pilots, urging that the *Hayden* court relied upon actual pilot compensation rather than target pilot compensation to support its ruling.

In LCA/LMOGA's post-hearing brief, they maintain that CRPPA's current target pilot compensation of \$473,692, plus benefits, is fair and reasonable compared to other pilot associations. Further, they maintain that CRPPA's current target pilot compensation is already at parity with NOBRA's target pilot compensation of \$473,591 in 2020. They assert that creating a \$106,000 per pilot (22.67%) "parity" differentiation between target compensations of CRPPA and NOBRA is contrary to the overall evidence. LCA/LMOGA assert that CRPPA relies on speculative net income per pilot from only four non-Louisiana ports to support its proposed target compensation, while excluding other Gulf of Mexico and Florida Atlantic coast pilot associations. As a result, LCA/LMOGA urge that the Dibner Report (that only included the four non-Louisiana pilotage associations in its analysis), does not provide the comparative analysis necessary to determine fair average annual compensation for CRPPA pilots. LCA/LMOGA urge that CRPPA's request for increased compensation is not supported by its work levels and history of actual earnings. Further, they assert that CRPPA's proposal to increase its target compensation based on NOBRA's 2019 average net earnings is unreasonable. They contend CPRRA is requesting to set its authorized "target" pilot compensation at parity with the annual net income of

NOBRA pilots in 2019, instead of NOBRA's currently authorized target compensation. Thus, LCA/LMOGA urge CRPPA has presented no credible evidence to support its proposed \$697,000 in target compensation.

The LPFC has “exclusive authority to fix and establish reasonable and just fees and rates for pilotage service to ships and vessels.” La. R.S. 34:1122(A)(1)(a). Pilotage fees and rates shall provide for all ordinary and necessary operating and administrative costs and expenses, including “fair average annual compensation for a state ship pilot in comparison to regulated state ship pilotage in other United States ports.” La. R.S. 34:1122(B)(1). In determining such fees and rates, the pilotage fee commission may give due regard to “[a]ny other factor relevant to the determination of reasonable and just fees and rates ....” La. R.S. 34:1122(C)(1)(e).

Relevant jurisprudence addressing pilotage rate regulation is limited. Most pertinent to this matter is *Hayden*, wherein the industry commissioners of the NOBRA Fee Commission appealed the district court's affirmance of LPSC Order NO. T-16499 that increased pilotage rates charged by NOBRA. After a hearing on the merits before the LPSC, it concluded that parity in annual compensation should be established between NOBRA and CRPPA pilots because of the similarity of the work performed by the two associations. Industry commissioners of the NOBRA Fee Commission appealed to first the district court and then to the Supreme Court, seeking reversal of the LPSC order.

The Supreme Court reasoned that the increase in NOBRA pilotage rates ordered by the LPSC was calculated to establish parity of annual compensation between NOBRA and CRPPA pilots. Adjustments to compensation were made to account for obvious differences between the two pilot groups, including a proportionate increase to account for the additional time that CRPPA pilots spent “on the bridge” of piloted vessels. Aside from those differences, the LPSC concluded that the working conditions of the NOBRA and CRPPA pilots were sufficiently similar that “relatively little difference in compensation, if any, can be justified.” *Hayden*, 512 So.2d at 373. On that basis, the LPSC ordered a rate increase of approximately 6.4% more than the 11.3% increase offered to NOBRA by

industry commissioners at the commencement of the proceeding in order to achieve parity in compensation between NOBRA and CRPPA pilots.

Before the Supreme Court, industry commissioners challenged the LPSC's logic, urging that all of the pilot groups were overcompensated and NOBRA pilots were not entitled to any increase in pilotage rates based on "bootstrap logic." The industry commissioners relied on a report prepared in conjunction with the case, wherein the LPSC staff economist stated, "[T]he best estimate of a Mississippi river pilot's opportunity cost is the \$48,500 earned by Masters and pilots of 'line boats' in the lower Mississippi River." *Id.* The Supreme Court found insufficient evidence to conclude that NOBRA pilots should be compared to masters and pilots of line boats in determining the appropriate level of annual compensation for NOBRA pilots. The Court noted that "[CRPPA] pilots earned \$96,421 and \$92,970 in 1984 and 1985, respectively, before considering the 11.3% cumulative rate increase over the years 1985 and 1986 offered by industry and accepted by the [CRPPA] pilots." Thus, the Court concluded that the salary earned by masters and pilots of line boats provided an inappropriate comparison in determining the economic worth of Mississippi River pilots. The Court reasoned, "[W]e consider it more logical to compare Mississippi River pilots to each other as much as is feasible in determining a fair compensation for the services they provide. *Id.* As such, the Court rejected the industry commissioners' bootstrapping argument with the following reasoning, "Considering industry's offer and [CRPPA] pilots' acceptance of the 11.3% rate increase, we are unable to say that the [LPSC] erred in assuming that the [CRPPA] pilots are reasonably compensated for their services." *Id.*

The industry commissioners also argued that the rate increase order was arbitrary because the Commission failed to establish that NOBRA pilots were performing an appropriate level of full-time work for Mississippi River pilots. The Commission had compared the average bridge time per turn for NOBRA and CRPPA pilots in the test years of 1984 and 1985. The bridge time was estimated to be 5.5 hours per turn for both NOBRA and CRPPA pilots. The Supreme Court found the Commission's order proportionately compensated CRPPA pilots for the additional total annual bridge time performed by them

in its calculation to establish parity. The Court reasoned it could not say this was an unreasonable approach. It found, “There was ... enough evidence of similarity in the working conditions aboard the piloted vessels between the NOBRA and [CRPPA] pilots to support our finding that the conclusion reached by the Commission was neither arbitrary nor capricious.” *Hayden*, 512 So.2d at 374. The Court affirmed the judgment of the district court affirming the LPSC’s Order. *Hayden*, 512 So.2d at 375.

It is apparent from the pertinent statutory language and the jurisprudence that pilotage rate regulation is not a precise calculation. Multiple factors delineated in La. R.S. 34:1122 need to be considered along with the goal of parity with the NOBRA pilots. While NOBRA’s route and pilotage duties differ in some respects from CRPPA’s route and pilotage duties, the *Hayden* court found the LPSC was not arbitrary and capricious in concluding that little difference in compensation could be justified. That conclusion was reached despite the fact the Commission’s order in *Hayden* proportionately compensated CRPPA pilots for the additional total annual bridge time performed by them to establish parity. In any event, the facts in *Hayden* are specific to CRPPA and NOBRA operations 34 years ago; it does not present a mandated formula for determining the just and reasonable compensation of these two pilotage groups in every instance.

LCA/LMOGA argues that target compensation should not be increased to \$586,019 per pilot based on UPC’s misapplication of *Hayden*. They assert that UPC improperly uses a “parity” billable turn adder to recommend that CRPPA’s target compensation be increased to \$586,019 per pilot. The evidence here reveals that during the 2019 test year, CRPPA completed 16,151 billable turns in 2019, resulting in an average of 133.5 billable turns per pilot compared to NOBRA pilots, who completed 13,001 billable turns in 2019, resulting in an average of 109.25 billable turns per pilot. The testimony also established that while NOBRA does not keep a record of bridge hours, Cpt. Gibbs testified that historically it has been recognized that CRPPA pilots have had more bridge hours per turn than NOBRA pilots. (Rebuttal testimony of Cpt. Gibbs, p. 6). Thus, because there is no evidence that NOBRA performrf more bridge hours than CRPPA, it is logical that an

adjustment for the difference in billable-turns volume would be made based on parity principles as UPC did in setting forth its conclusion regarding target compensation.

Reviewing all of the expert opinions about estimated pilot compensation, UPC's conclusion to use target income rather than net income along with a parity adjustment is most sound. Further, before focusing on NOBRA's target compensation, UPC conducted an analysis of the scope of pilot compensation of pilotage groups in all United States ports rather than limiting the focus group as CRPPA's experts did. In doing so, UPC established that the Louisiana Pilots association target compensations are reasonable when compared to compensation information regarding a wide sample of other United States ports. UPC's report established that the national average of \$478,374 per pilot is very near NOBRA's target compensation for the Test Year of \$467,966. UPC then multiplied that figure by 122.67% to create a parity adjustment for the additional turns performed by CRPPA pilots to arrive at \$571,740. Applying COLA adjustments since the Test Year, UPC arrived at a known and measurable target compensation, adjusted for parity, of \$586,019.

UPC explained that if actual income is used for the comparison, operations could fluctuate from year to year based on factors that contribute to regulatory lag, deterring rate stability. Further, as UPC explained, if NOBRA's 2019 \$697,000 net income per pilot amount is adjusted based on parity principles for CRPPA's additional workload/turns, CRPPA's compensation would have to be set at \$850,829, an amount higher than CRPPA is claiming. UPC also explained that using the NOBRA target compensation as the base for determining parity with CRPPA is appropriate because that NOBRA target compensation was the product of a settlement amongst parties with diverse interest in the establishment of that amount, and therefore, can be considered a reasonable compensation for purpose of the parity requirement. The *Hayden* court used a similar logic in determining that the LPSC had not been arbitrary and capricious in adjusting NOBRA's compensation by the same percentage rate as CPRRA's compensation because the rate increase was based on a previous offer by industry and an acceptance by CRPPA Pilots. Because that amount in *Hayden* was in essence agreed to by both industry and CRPPA, the Court was "unable to say the Commission erred in assuming that the [CRPPA] pilots [were] reasonably

compensated for their services” when setting NOBRA’s pay. *Hayden*, 512 So.2d at 373. In this matter, UPC’s use of NOBRA target compensation to support its analysis is analogous.

CRPPA’s claim for a target salary of \$697,000 is primarily based on expert analysis that considered a limited number of pilotage groups with higher target salaries. Louisiana Revised Statutes 34:1122B(1) references “fair average annual compensation for a state ship pilot in comparison to regulated state ship pilotage in other United States ports.” Thus by limiting the pilotage groups being analyzed, CPRRA’s experts conclusions were effectively weighted towards a higher target salary. UPC appropriately discounted these conclusions in its analysis.

Accordingly, a target compensation of \$586,019 is supported by the evidence, particularly by the analysis of UPC, who was independently hired by the LPFC. UPC’s reports and the testimony of Mr. Sisung are noted to be very objective, thorough, and persuasive.

D) COLA

CRPPA had a COLA mechanism in effect, but it expired on December 31, 2019. (Pre-filed deposition testimony of Cpt. Bopp, p. 20). CRPPA is requesting that a permanent COLA mechanism be applied to the newly estimated income per pilot for the previous calendar year, such that CRPPA’s rates and fees would be adjusted annually by applying the three-year rolling average of the Consumer Price Index (CPI) for the South region for the three most recently available calendar years, beginning on January 1, 2021, and on each September 1 thereafter. (Pre-filed deposition testimony of Cpt. Bopp, p. 20). CRPPA urges COLA mechanisms are routinely used in utility regulation nationwide, including by the Louisiana Public Service Commission. Because state pilotage tariffs are approved by LPFC, a state regulatory body, CRPPA asserts its tariffs should likewise be adjusted for inflation via the COLA mechanism. CRPPA urges such implementation of a COLA reduces the need for “additional ratemaking expenses in [the] future ....” (CRPPA post-hearing brief, p. 29) While CRPPA maintains that an evergreen COLA based on a three-year rolling average of CPI is reasonable, because NOBRA’s current evergreen COLA is

based on a five-year rolling average of CPI, CRPPA submits that, based on parity, a five-year rolling average would also be reasonable.

LCA/LMOGA opposes the requested COLA on grounds that: 1) the LPFC lacks authority to grant a COLA in the absence of an agreement between the parties; 2) its implementation constitutes single-issue ratemaking and is not frequently used by either utilities or other pilot fee commissions; and 3) it is not required to achieve compensation parity with NOBRA.

The SY&GC report determined that CRPPA's rates and charges should be adjusted annually pursuant to a COLA mechanism. The report reasoned that COLAs in the United States are often tied to the CPI, and although the private sector generally does not have an automatic COLA, since CRPPA's compensation is set by the state, use of a COLA is appropriate. (SY&CG report, p. 72) The report found that to neutralize the negative effect of inflation on tariffs, they should be adjusted for inflation pursuant to this RFA, via an automatic annual COLA mechanism. The report recounted the LPSC's history of implementing COLAs, concluding it has been beneficial to pilots, industry, and the LPFC for years. The report recommended the implementation of the permanent COLA mechanism in the format requested by CPRRA. (SY&CG report, p. 76)

During the hearing on the merits, Cpt. Bopp testified that the requested COLA would have no expiration but would continue indefinitely unless terminated or modified by the Commission in a future rate case. He admitted the COLA would be implemented even if the pilot income for the previous year had exceed the target compensation level approved by the Commission. (August 16, 2021 hearing on the merits, Testimony of Cpt. Bopp, p. 135).

Alternatively, Dr. Dismukes testified the use of a COLA to adjust pilotage rates will create an unnecessary and unfair guaranteed price increase to CRPPA. (Dr. Dismukes, Pre-filed direct testimony, p. 55-56) He believed that a COLA would shift regulatory risk onto the shippers/ratepayers, and they would bear the risk of paying rates above the reasonable and just level, if the COLA increased faster than CRPPA's actual costs. (Dr. Dismukes, Pre-filed direct testimony, pp. 58 and 60) Further, he opined the CPI is not an

appropriate COLA adjustment factor. He explained the CPI measures the change in prices paid by consumers for food, clothing, shelter, fuels, services, drugs, and other retail goods purchased by households. Dr. Dismukes testified the CPI is not a measure of business input costs that are measured by an alternative price index called the “Producer Price Index” or “PPI.” (Dr. Dismukes, Pre-filed direct testimony, p. 56) In the event a COLA is considered, he testified COLA-related increases should be rejected in any year where CRPPA Pilots earn above authorized target levels. (LCA-LMOGA Hearing Exhibit 2, Cross Answering Testimony of Dr. Dismukes, p. 11)

UPC stated a COLA is generally considered contrary to regulatory ratemaking principles “because it has the potential of adjusting rates only in one direction without full consideration that there may be offsetting changes to that one directional change.” “It can be harmful to ratepayers because it has the potential of increasing rates when there are offsetting factors that may have not allowed that increase. (August 16, 2021 hearing on the merits, Testimony of Lane Sisung, pp. 314-315) However, despite that testimony, because the LPFC has allowed a COLA adjustment regarding NOBRA’s ratemaking mechanisms, UPC stated it did not object to the proposed COLA to the extent that it provides parity with NOBRA rates. (UPC report, p. 78) UPC acknowledged that although “NOBRA is currently operating under a settlement which allows it to make annual COLA adjustments, if CRPPA is not allowed a similar adjustment[,], the parity requirement would immediately be vitiated after one year.” (UPC supplement report, p. 25)

In rebuttal, CRPPA offered Dr. Zarumba’s testimony in support of implementing the automatic COLA mechanism. Dr. Zarumba found the CPI to be the appropriate index because the pilot industry is labor intensive, and he explained the COLA would only apply to the pilot compensation portion of the tariff. In response to Dr. Dismukes’ opinion that COLA shifts regulatory risk onto its customers, he opined, “the regulatory mechanism places the pilot association in the position of being perpetually under-compensated.” (Rebuttal testimony, p. 18)

LCA/LMOGA urges that La. R.S. 34:1122 contemplates setting costs at a fixed level until new rates and fees are established in a subsequent rate proceeding because the

statute does not expressly reference inflation or adjustments for inflation. Notably, however, LCA/LMOGA have participated in LPFC proceedings in which COLAs have been implemented pursuant to settlement agreements. Yet, LCA/LMOGA now challenges the LPFC's authority to implement a COLA.

Louisiana Revised Statutes 34:1222 is broadly worded, and it is logically interpreted to authorize the LPFC to use sound economic principles, such as an annual COLA adjustment, to accomplish the fixing of "just fees and rates." Louisiana Revised Statutes 34:1122(C)(1)(e) authorizes the LPFC to give due regard to "[a]ny relevant factor relevant to the determination of reasonable and just fees and rates." The evidence establishes that pilotage regulatory bodies in Louisiana have implemented COLAs as part of pilotage rates for at least twenty years. In 1999, an annual COLA was implemented for CRPPA based on the 5-year moving average of the CPI.<sup>25</sup> (See LPSC Order No. T-23268-A) In subsequent dockets, the same COLA mechanism remained in effect until regulatory authority over pilotage rates and fees was vested in the LPFC in 2004. (SY&GC report, p. 76.) Thereafter the LPFC adopted the same COLA mechanism for adjusting pilot target compensation in a Bar Pilot docket in 2008 pursuant to Order No. P08-001; the order language stated it was implemented "[i]n view of the support of industry and the lack of any opposition to the Bar Pilots' request ...." The mechanism provided for an initial three-year term with an optional two-year extension. In 2011, the COLA mechanism was ultimately extended for an additional five-year term pursuant to P-08-001. Pursuant to Order No. P07-001, effective January 1, 2009, the LPFC authorized a COLA mechanism for CRPPA, that adjusted the target average annual compensation by a COLA equal to 100% of the preceding five-year rolling average of the CPI, with the tariff rates and fees to be adjusted accordingly from January 1, 2010, through January 2014. In Docket Nos. P12-001 and P13-001, the LPFC implemented the COLA mechanism for the Lake Charles Pilots and the NOBRA pilots, respectively. This order language does not provide an expiration term for the COLA mechanisms. In Order No. P13-001, the COLA mechanism

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<sup>25</sup> All references to the CPI specifically referenced the "Consumer Price Index – All Urban Consumers – South Urban area."

approved for NOBRA was based upon the preceding five-year rolling average of the CPI. CRPPA's most recent COLA mechanism, that expired on December 31, 2019, was a fixed 1.5% annual adjustment that was agreed to by CRPPA and industry groups and approved by the LPFC in Order No. P15-002/003. Despite the fact that these COLAs were implemented pursuant to settlements between pilot associations and industry, it would strain logic to conclude that the LPFC does not have authority to implement COLAs, considering the broadly-worded statutory language and historical implementation of COLAs pursuant to LPFC proceedings. The LPFC has the exclusive authority to set pilotage rates. While the parties may present a proposed stipulated settlement to a disputed rate case, it is the LPFC who "shall accept or reject the settlement." La. R.S. 34:1122D(6).

LCA/LMOGA also argues the COLA should not be implemented based on the doctrine of single-issue ratemaking. Single-issue ratemaking occurs when a utility's rates are altered on the basis of only one of the numerous factors that are considered when determining the revenue requirements of a regulated utility. *Entergy Louisiana, LLC v. Louisiana Pub. Serv. Comm'n*, 2008-0284 (La. 7/1/08), 990 So. 2d 716, 727. While every individual element of CRPPA's tariff is not at issue in this request for action, the broad issue of target pilot compensation is appropriately addressed herein. To require that every element of a tariff must be examined to provide relief in any request for action would be an absurd result. While there are some elements of CPRRA's tariff that would not be fairly considered in isolation without examining offsetting costs, the prohibition of single-issue ratemaking should not be so broadly applied to hamper the Commission's ability to determine appropriate target pilot compensation, as is contemplated by its broad statutory grant of authority. It would be egregious not to also consider in these proceedings whether a COLA is needed to prevent the erosion of that figure. Whether a COLA mechanism is needed to ensure the fixing of just rates is logically considered as part and parcel of the larger, comprehensive issue of target pilot compensation.

The evidence here establishes that COLAs have been regularly used to adjust pilotage compensation in previous years. The fact these COLAs were implemented as part

of settlements does not mean they were without sound and logical purpose. A COLA is a simple monetary correction, typically an adjustment to income due to the deterioration of the value of currency. (SY&CG report, p. 72) Generally inflation is an ongoing monetary phenomenon of price increases that requires businesses to adjust prices to keep pace. The implementation of COLA mechanisms has become a standardized first resort correction to eroding pay. (SY&CG report, p. 73.) To neutralize the negative effect of inflation on tariffs, tariffs should be adjusted for inflation and therefore, brought back to par with the pre-inflation tariff purchasing power. (SY&CG report, p. 74). Pilotage tariffs should be pegged to the CPI via a COLA mechanism. (SY&CG report, p. 74). A COLA only keeps the tariff rates at a constant purchasing power equal to last year's rate. A COLA does not provide new or additional benefits. (SY&CG report, p. 75).

Although the lack of a COLA mechanism may provide short-term benefits to customers, this lack would trigger an increased frequency of rate requests and increased regulatory expenses. According to the SY&GC report, use of the COLA mechanism would eliminate the need for the filing of frequent full rate cases and serve to keep tariff rates consistent with the levels last authorized by the LPFC. (SY&CG report, pp. 72-75) If the LPFC ignores the effect of inflation, the logical result is that it will have to conduct more frequent reviews of pilot compensation.

While LCA/LMOGA challenge use of the CPI, they failed to present sufficient evidence to establish the PPI is a more logical index. The weight of the evidence supports using the CPI to support the labor-intensive pilot industry. Further, the CPI has been the index that the LPSC and the LPFC have used historically in the various COLAs regulating the different pilot associations.

The COLAs addressing NOBRA and the Bar Pilots provide no expiration date and apply a five-year rolling average of the CPI. Logically, to promote parity with other pilot associations, the CRPPA COLA should have similar terms.

Based on the entirety of the evidence presented, the Commission should implement a permanent COLA mechanism applied to the newly estimated income per pilot for the previous calendar year, such that CRPPA's rates and fees will automatically adjust

annually by applying a five-year rolling average of the CPI for the South region of the United States for the five most recently available calendar years, beginning on January 1, 2021 and on each September 1 thereafter.

E) Prior decisions and orders:

The last sentence of CPRRA’s request for action specifically prayed, “That all other decisions and orders of the Commission applicable to CRPPA, including LPFC Order P07-001, remain in full force and effect.” No specific argument or testimony was offered in support of this prayer. Pursuant to the terms of LPFC Order P07-001, the parties previously agreed to implement an Expense Mechanism.<sup>26</sup> LCA/LMOGA now seeks termination of that mechanism in this proceeding. LCA/LMOGA submits that the revenues and over-recoveries resulting from the Expense Mechanism are integral to the analysis of pilot

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<sup>26</sup> The parties agreed to the following pertinent settlement terms as part of the resolution of the issues in the proceeding in LPFC Docket No. P07-001:

**Expense “True-Up” Mechanism:**

The “true-up” mechanism proposed in the CRPPA Request for Action is an appropriate methodology to mitigate the over- or under-recovery of pilotage expenses on an annual basis. The parties further agree that the “true-up” methodology as proposed, shall be implemented in tariff year 2010. Annual filings of financial statement by CRPPA are to be made no later than July of the preceding year ... and the true-up mechanism to be employed shall be the same type that was recently authorized by the Commission for the Associated Branch Pilots of the Port of New Orleans in P06-005.

The request for action in LPFC Docket No. P07-007 simply prayed for the Commission to “[c]onsider and implement an annual “true-up mechanism for the reconciliation of actual versus projected expenses ....”

The pertinent language of Order No. P-06005 described the True-Up Mechanism as follows:

Effective January 1, 2007, the Bar Pilots shall project their annual expenses, allow for comment or protest, provide audited year-end expenses and reconcile the projected and audited expenses ..., which will continue for a period of three (3) years subject to renewal based upon the mutual consent of the Bar Pilots and industry or as otherwise ordered by the Commission.

revenues and compensation and the requested tariff changes at issue in this proceeding. (LCA/LMOGA post-hearing brief, p. 54.) They further submit, “The implementation of the mechanism is lopsided, as CRPPA expenses are trued up annually but its shipping volumes are not trued up; thus, the mechanism unfairly allows rates to increase [based on increased] expenses without recognizing [these] expenses are offset by increased revenues from increases in shipping volume, with the excess revenues being distributed to pilots.” (LCA/LMOGA post-hearing brief, p. 55.)

Dr. Dismukes testified, “[T]he expense mechanism utilized by CRPPA is integrally related to the revenue requirement and rate issues in this proceeding. The CRPPA [Expense Mechanism] is flawed because it facilitates over-recovery from ratepayers and should be discontinued . . . .” “Further, to the extent there is any consideration of continuation of the [Expense Mechanism], [it] needs to be reformed such that it: (1) provides a true-up for variations in shipping “turns” relative to the amount of “turns” upon which the tariff was last set, and (2) disallows rate increases for operating expenses where CRPPA earned above its authorized revenue requirement for the previous year in amounts that exceed the increase in operating expenses.” (Cross-Answering Testimony of Dr. Dismukes, p. 12) During the hearing, Dr. Dismukes testified, “[W]hen . . . you are earning more revenues than what you are allowed to, there is no need to go back and add additional revenues and exacerbate that overearning situation by allowing and changing additional expenses.” (August 16, 2021 hearing, Dr. Dismukes’ testimony, p. 273.)

UPC determined that CRPPA’s reference to the prior order was not a general request for an affirmative LPFC decision reinstating the prior order, but rather was a request that this RFA not include within its scope the subject matter contained in the prior order. Thus, UPC did not provide specific recommendations with regard to the Expense Mechanism but rather recommended that such matter be addressed at some point in the future through a separate RFA specific to CRPPA or through a rulemaking to the extent the mechanism is applicable to more than one pilot group. In response to UPC’s position, Dr. Dismukes posited that single-issue ratemaking should be grounds enough for rejecting UPC’s proposal to defer analysis of this mechanism to a future proceeding.

Louisiana Revised Statutes 34:1124 provides, “All pilotage fees and charges provided by applicable laws shall remain in full force and effect until changed by majority vote of the Pilotage Fee Commission.” The terms of Order P07-001, implementing the true up mechanism, is silent as to an expiration date and thus continues in effect absent a determination by the LPFC to terminate the mechanism on a prospective basis. (LPFC Order P07-001 at p. 4 (January 1, 2009); August 16, 2021 hearing on the merits, p. 332 and August 17, 2021 hearing on the merits, p. 109-110, Testimony of Mr. Lane Sisung). Although LCA/LMOGA previously consented to the terms of Order P07-001, which included the Expense Mechanism, they now seek to have it rescinded. But the evidence submitted does not demonstrate that the Expense Mechanism operates to allow CRPPA’s over-recovery of operating expenses as urged by LCA/LMOGA. As explained by Cpt. Gibbs, any earnings above the projected target compensation amounts resulted from the pilots performing more work than anticipated when the revenue requirement was established. Although LCA/LMOGA focus on CRPPA’s “overearnings” or earnings above their projected target amount, the evidence does not establish that the Expense Mechanism is not providing appropriate adjustments as contemplated pursuant to Order P07-001. Thus, the record does not contain sufficient information to establish that it should be terminated or that its implementation should be modified. As such, the Expense Mechanism should continue in accordance with the terms of that Order.

***Findings of Fact***

- 1.) In *Hendrix v. Louisiana Pub. Serv. Comm'n*, 262 La. 420, 426; 263 So.2d 343, 345 (1972) the Louisiana Supreme Court acknowledged that pilots are responsible for “the safety of the vessel, its passengers, crew and cargo,” and that a “pilot’s work is dangerous.” *Id.* at 349. The Supreme Court also noted, “Only extreme conditions will excuse a failure to respond to a call for a pilot.” *Id.*
- 2.) The Louisiana Supreme Court has recognized that the LPFC is authorized to “take evidence and determine which facts are necessary for the determination of the final tariff.” *CITGO Petroleum Co. v. Louisiana Pub. Serv. Comm'n*, 04-0914 (La. 3/2/05), 898 So. 2d 291, 298.
- 3.) CRPPA’s rates, target pilot compensation and pilot complement were last authorized in Docket P15-002/003, pursuant to settlement approval by the LPFC.
- 4.) CRPPA’s current authorized target compensation is \$473,692 per pilot.
- 5.) CRPPA’s current authorized pilot complement is 122 pilots; CRPPA is currently recovering funding for 122 pilots in its tariff rates. CRPPA currently has 120 active pilots and six more pilots are in the process of being trained.
- 6.) Currently, if there are no on-duty CRPPA Pilots available to service a vessel, then CRPPA must call an off-duty pilot to service the vessel.
- 7.) CRPPA Pilots’ off-duty weeks are intended to provide them with rest.
- 8.) CRPPA Pilots sometimes accept extra work rather than resting when they are called during their off-duty week so that the vessels will be serviced and commerce will continue to flow.
- 9.) The evidence presented demonstrates that at least some CRPPA Pilots are working at times in a fatigued state.
- 10.) The round-the-clock demand for vessel movements in the CRPPA service area can create a significant risk of pilot fatigue and related errors and accidents if the pilot complement is kept too low. Pilots working in a fatigued state present a risk of catastrophic danger.
- 11.) If the LPFC authorizes CRPPA to have additional pilots, CRPPA would be less likely to need to call off-duty pilots to assist with servicing vessels.

- 12.) Circadian Expert Service, Inc.'s selection of 56 as the acceptable fatigue risk threshold pursuant to the Circadian Alertness Simulator (CAS) is based at least in part on subjective data. Moreover, CRPPA Pilots are not currently scored according to the CAS analysis.
- 13.) Authorizing fifteen more pilots to increase the pilot complement from 122 to 137 pilots is needed to promote safety and should lessen the frequency of calling pilots to duty during their prescribed rest periods and promote more habitual rest schedules, thereby alleviating fatigue risk.
- 14.) In the 2019 test year, CRPPA Pilots performed 16151 billable turns, resulting in an average of 133.5 billable turns per pilot compared to NOBRA pilots who completed 13,001 billable turns, resulting in an average of 109.25 billable turns per pilot.
- 15.) The Louisiana Supreme Court has recognized that when considering annual compensation for Pilot services, parity between NOBRA pilots and CRPPA Pilots' compensation is appropriate, due to the similarity of the work performed by these two pilotage associations. *Hayden v. La. Pub. Serv. Comm'n*, 512 So.3d 370, 374-75 (La. 1987).
- 16.) CRPPA's current estimated target compensation level was determined when both traffic on the Lower Mississippi River and the demand for CRPPA's services were lower. Since CRPPA's last rate proceeding, there has been an increased volume in river traffic and in CRPPA Pilots' activity.
- 17.) An increase in CRPPA's annual target pilot compensation is supported by the evidence, particularly the findings of UPC.
- 18.) The LPFC has authorized COLA mechanisms many times in the past.
- 19.) The most recent COLA mechanism applicable to CRPPA was a fixed 1.5% annual adjustment that was agreed to by CRPPA and industry groups and approved by the LPFC in Order No. P15-002/003 (August 1, 2015), but this mechanism expired on December 31, 2019.
- 20.) UPC testified that CRPPA should be awarded a COLA and the COLA should be based on a five-year rolling average to be consistent with the terms of NOBRA's evergreen COLA.
- 21.) A permanent COLA mechanism would adjust CRPPA's tariff to correct for the negative effects of inflation, thereby lessening the future need for full rate cases.

- 22.) The Expense Mechanism is a mechanism that allows CRPPA to change its tariff rates annually for changes in operating expenses.

***Conclusions of Law***

- 1.) The LPFC has the “exclusive authority to fix and establish reasonable and just fees and rates” for pilotage services. La. R.S. 34:1122(A).
- 2.) Louisiana Revised Statutes 34:1121 *et seq* does not require that the LPFC authorize a specific number of pilots to meet a specific circadian score.
- 3.) The LPFC is not required to apply a specific mathematical or scientific formula to determine the appropriate complement of riverboat pilots who are “necessary employees.” La. R.S. 34:1122(B)(1).
- 4.) The majority of the testimony supports an increase in the number of authorized CRPPA pilots.
- 5.) The “public interest in maintaining safe, efficient, and reliable pilotage service,” supports the increase of authorized pilots from 122 to 137. La. R.S. 34:1122(C)(1)(c).
- 6.) A tariff rate is not “reasonable and just” when it includes the revenue requirement associated with pilots, who are authorized but do not actually exist. La. R.S. 34:1122(A).
- 7.) It is “reasonable and just” to annually adjust CRPPA’s tariff rates to account for the revenue requirement for the pilots’ target compensation at the then current number of active pilots but not to exceed the authorized pilot complement. La. RS. 34:1122(A).
- 8.) The LPFC must provide a “fair average annual compensation [for pilots] in comparison to regulated state ship pilotage in other United States ports. La. R.S. 34:1122(B).
- 9.) CRPPA’s requested increase in target pilot compensation to \$697,000 per pilot is not “fair average annual compensation” when compared to other United States pilot associations.
- 10.) *Hayden v. La. Pub. Serv. Comm’n*, 512 So.3d 370, 374-75 (La. 1987) does not prohibit and generally supports a parity analysis to allow adjustments to be made for variations in billable turns in setting CRPPA’s target pilot compensation.

- 11.) It is appropriate for CRPPA's Pilots to be proportionately compensated for performing more billable turns than NOBRA's pilots.
- 12.) In comparing the compensation of riverboat pilotage associations, use of target income is more appropriate than the use of actual income to calculate compensation.
- 13.) The evidence supports an increase in CRPPA's target compensation per pilot from \$473,692 to \$586,019 to achieve compensation parity with NOBRA pilots.
- 14.) CRPPA is authorized to increase annual tariff rates and fees to cover the cost of the increase in CRPPA Pilots' target income. Any such increase shall be consistent with an increased pilot complement of 137 pilots earning a target compensation of \$586,019, based on an estimated number of billed turns of 16,151 and the corresponding revenue, and assuming an annual COLA of 1.5% based on historical CPI data.
- 15.) CRPPA is authorized to increase the tariff rates and fees as new pilots are commissioned. Annual tariff adjustments shall be based on the number of commissioned pilots at that time and shall not be based on the total number of authorized pilots. Further, rates shall also be adjusted downwards if the complement of pilots decreases on an annual basis.
- 16.) The LPFC is authorized to modify previous orders, as it deems appropriate, and to issue ratemaking orders, COLA mechanisms, and expense true-up mechanisms in the absence of a stipulated settlement. These fundamental powers flow from its exclusive jurisdiction to regulate pilotage in Louisiana.
- 17.) Pursuant to this Request for Action, an evergreen COLA shall be implemented to promote parity between NOBRA and CRPPA and to offset the effect of inflation on pilot compensation.
- 18.) The Consumer Price Index is the appropriate index to use in establishing a COLA mechanism because the COLA addresses the cost of labor rather than the cost of goods and prior COLA mechanisms approved for pilot organizations have been based on the CPI.
- 19.) CRPPA's existing Expense Mechanism has already been approved by the LPFC.
- 20.) The evidence fails to establish that the Expense Mechanism is allowing an improper over-recovery of expenses by CRPPA.

## **ORDERING PARAGRAPHS**

- 1). The LPFC authorizes an increase in the pilot complement from 122 to 137 pilots, including the additional pilots in rates only when they are actually commissioned. Tariff rates shall reflect only the cost to compensate active pilots, and tariff rates shall increase and decrease as the pilot complement changes.
- 2). The LPFC authorizes an upward adjustment in the estimated, average annual target compensation per pilot from \$473,692 to \$586,019.
- 3.) The LPFC authorizes a tariff adjustment based on 137 pilots being paid a target salary of \$586,019 for 16,151 billable turns per year, to be implemented consistent with Ordering Paragraph 1.
- 4.) The LPFC authorizes implementation of a permanent COLA mechanism applied to the newly estimated income per pilot for the previous calendar year, such that CRPPA's rates and fees will be adjusted annually by applying a five-year rolling average of the CPI for the South region of the United States for the five most recently available calendar years, beginning on January 1, 2021, and on each September 1 thereafter.
- 5.) All other decisions and orders of the Commission applicable to CRPPA, including LPFC Order P07-001, remain in full force and effect.

IT IS SO ORDERED  
BY THE LOUISIANA PILOTAGE FEE COMMISSION  
BATON ROUGE, LOUISIANA

EFFECTIVE DECEMBER 1, 2021

*/S/ Bruce Mohon\**

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CHAIRPERSON  
COMMISSIONER BRUCE MOHON

*/S/ Noel Cassanova\**

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COMMISSIONER NOEL CASSANOVA

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COMMISSIONER COURTNEY BAKER

*/S/ Michael Bopp\**

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COMMISSIONER MICHAEL BOPP

---

COMMISSIONER GREGORY BOWSER

---

COMMISSIONER TYLER GRAY

*/S/ Toby Wattigney\**

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COMMISSIONER MAURICE "TOBY" WATTIGNEY

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COMMISSIONER JOHN HYATT

*/S/ Michael TD Miller\**

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COMMISSIONER MICHAEL T.D. MILLER

*/S/ Brett Palmer\**

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COMMISSIONER BRETT PALMER

*/S/ Edward Robinson\**

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COMMISSIONER EDWARD ROBINSON



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\*EXECUTED BY ADMINISTRATOR  
LARRY E. MCNUTT, JR.  
WITH WRITTEN AUTHORITY