

ISSUED: March 18, 2022

**BEFORE THE OREGON BOARD OF MARITIME PILOTS**

BP 13

In the Matter of

COOS BAY/YAQUINA BAY  
PILOTS ASSOCIATION,

FINAL ORDER

Petition For a Change in Pilotage Rates.

DISPOSITION: STIPULATION AND REVISED RATE SCHEDULE ADOPTED IN MOST ASPECTS<sup>1</sup>

**I. INTRODUCTION AND PROCEDURAL HISTORY**

On March 12, 2021, pursuant to ORS 776.115(5) and OAR 856-030-0010, the Coos Bay/Yaquina Bay Pilots Association (CBP) filed a pre-petition notice for a change in pilotage rates for the Coos Bay and Yaquina Bay pilotage grounds. CPB filed an amended petition on October 5, 2021. The most recent CBP rate proceeding resulted in the issuance of Final Board Order No. 08-1 on February 26, 2008. Due to subsequent economic downturn, that order was amended by Final Board Order No. 09-02, with the tariff effective date of May 1, 2009.

In its amended petition, CBP proposes changes, memorialized in a stipulation, to Sections 4 and 5 of the current *Oregon Pilotage Tariff* (for Coos Bay and Yaquina Bay, respectively).<sup>2</sup> These include increasing the inbound and outbound pilotage charges, harbor moves charges, the “pilot carried away from station” per diem, maximum detention charge, and the boarding fee, and all minimums<sup>3</sup>, each by 15 percent. In addition, the proposal increases the uncorrected orders and detention hourly rates by 15 percent. The per diem for a pilot requested to board a vessel other than at a normal station increases 15 percent under the proposal. Finally, the charge per draft foot and per gross registered ton (GRT) for a vessel under tow is modified. The proposed rate of each charge is increased by 15 percent, but each charge is applied independently only to whichever vessel (either towing or being towed) has

<sup>1</sup> Although the Disposition cited in the Proposed Order was “Stipulation and Revised Rate Schedule Adopted,” the Proposed Order correctly did not recommend adoption of the portion of the parties’ stipulated agreement related to additional pilots and party arbitration. We have adopted these omissions from the Proposed Order, agree that this order is not the appropriate forum for discussion of a potential pilot increase or party arbitration issues, and clarify the disposition accordingly.

<sup>2</sup> Exhibit CBP 3 (Stipulation between CBP, CRSOA and Oregon International Port of Coos Bay (Sep. 3, 2021)).

<sup>3</sup> The Proposed Order omitted a 15% increase of all minimums. However, as the Proposed Order recommended approval of the increases requested in the petition and stipulated order, we believe that omission was inadvertent. We also find a 15% increase of all minimums is reasonable and just, and increase all minimums by 15% in this order.

the deepest draft and the larger GRT.<sup>4</sup> In addition, and similar to changes in BP 11 and BP 12, CPB proposes an increase of one-half percent in the annual cost-of-living adjustments (COLA), effective upon approval of the proposed rates, and then in each September for each year that the approved rates remain in effect. All remaining tariff provisions (the calculation of and applied charge for continuing professional development, board operations fee, and boat service) remain unchanged.<sup>5</sup>

In its pre-petition, CPB requested a waiver of the 90-day pre-petition period required by OAR 856-030-0002(1). The Columbia River Steamship Operators Association (CRSOA) objected to the waiver. Settlement discussions, involving CPB, CRSOA, and certain port operators were completed. The negotiating parties entered into a settlement agreement.<sup>6</sup> Under the settlement, the parties agreed that the stipulated tariff changes are fair and reasonable, and should stand for two years from the date put into effect by the Oregon Board of Maritime Pilots (Board).<sup>7</sup> The settlement agreement is silent on how the expenses of the Board related to this proceeding will be assigned or shared among the parties.

On November 3, 2021, the administrative law judge (ALJ) assigned to the proceedings held a procedural conference. On the same day, the ALJ issued a memorandum adopting a procedural schedule and encouraged CRSOA to file an intervention in order to obtain full party status in this proceeding. CRSOA filed its petition to intervene on November 9, 2021.<sup>8</sup>

On November 23, 2021, CPB's opening brief, along with declarations of Todd Zilbert, the direct testimony of Captain George Wales, Captain Steven Woods, the exhibit list and thirty-six exhibits were docketed by the PUC Administrative Hearings Division. On November 24, 2021, CRSOA filed an opening brief, with the declaration of John Coyle. On December 16, 2021, the ALJ conducted an evidentiary hearing with the parties.

On February 18, 2022, the ALJ issued a Proposed Order, recommending adoption of most of the parties' stipulations and most of the revised rate schedule proposed by Coos Bay/ Yaquina Bay Pilots Association. No exceptions were filed. On March 2, 2022, the Board issued a Bill of Costs to both parties. No exceptions to the Bill of Costs were filed.

The Board adopts the Proposed order in its entirety, except for minor modifications provided herein and identified via footnotes, or with minor corrections for punctuation or other scrivener's errors.<sup>9</sup>

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<sup>4</sup> In other words, each charge is only applied to one vessel. The tonnage charge applies only to the larger of the two vessels, and the draft charge only applies to the deeper of the two vessels. *See* Exhibits CBP 3 and CBP 40.

<sup>5</sup> *See* CBP 3 at 2, Agreements Section, numbered paragraph 8.

<sup>6</sup> The official parties in this case are the CPB and the CRSOA. The signatories to the stipulation include those two parties plus the Oregon International Port of Coos Bay.

<sup>7</sup> CBP 3 at 2, paragraph 7.

<sup>8</sup> The CRSOA petition to intervene was granted via the ALJ's ruling the same day.

<sup>9</sup> Issuance of an Amended Proposed Order is not required because the Board is not issuing an order adverse to a party after the ALJ issued a Proposed Order in favor of that party. *See* OAR 137-003-0655(3).

## II. EVIDENTIARY RULINGS

Exhibits CBP 1 through CBP 36 offered by CBP were admitted into the record without objection. On December 29, 2021, the parties filed a joint motion to supplement the case record by replacing one exhibit and adding additional exhibits. CBP 4 was originally a web link to a 1989 video demonstrating the pilotage challenges associated with Coos Bay. A compact disc containing the video was substituted, as the online link was no longer reliable.

Additional exhibits consist of CBP 37 (*Oregon Pilotage Tariff* No. A-10 (effective September 1, 2020) and CPB 38 (*Oregon Pilotage Tariff* effective September 1, 2021). These items were used during the hearing in order to understand the scope of the rate change to the listed tariff items. In addition, movants submitted a summary of pilotage revenue and target net income calculations, and a summary of requested tariff changes. These were admitted to the record as CBP 39 and CPB 40, respectively.

## III. REGULATORY BACKGROUND AND APPLICABLE LAW

**Statutory, Rule, and Order Requirements.**<sup>10</sup> ORS 776.115(2) provides that the Board shall provide for efficient and competent pilotage service on all pilotage grounds. In furtherance of this goal, the Board shall “[r]egulate and limit the number of licensees and trainees under this chapter, such number of licensees and trainees to be regulated and limited to the number found by the board to be required to render efficient and competent pilotage service.”<sup>11</sup> Public safety is the Board’s primary consideration.

ORS 776.115(5)(a) authorizes and directs the Board to set “reasonable and just” rates. ORS 776.115(8) requires the Board to establish rates for a period of not less than two years. The rates may include automatic adjustment provisions reflecting changes in economic conditions. Under ORS 776.115(5)(b), the Board must consider the following factors in setting rates:

- (A) The length and net tonnage of the vessels to be piloted.
- (B) The difficulty and inconvenience of the particular service and the skill required to render it.
- (C) The supply of and demand for pilotage services.
- (D) The public interest in maintaining efficient, economical and reliable pilotage service.
- (E) Other factors relevant to the determination of reasonable and just rates.

Under OAR 856-030-0000, the Board is charged with establishing a rate structure that provides for efficient, economical, and competent pilotage services and fair

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<sup>10</sup> Administrative rules and surviving provisions of current Board rate orders also apply.

<sup>11</sup> ORS 776.115(2).

compensation for pilotage services and expenses. In determining the number of pilot positions needed, target net income (TNI), and expenses, the Board shall consider:

- (a) The amount of activity, including number of vessels, number of pilot assignments, size of vessels by gross registered tonnage (GRT), length, and draft;
  - (b) Any change in the amount of activity since the last rate order;
  - (c) The public interest in prompt and efficient service;
  - (d) The professional skills and experience required of a pilot and the difficulty and inconvenience of providing the service, including time necessary to perform the service;
  - (e) Evidence of compensation for comparable maritime professions, including other state regulated pilotage associations;
  - (f) Evidence of the economic and market conditions existing both locally and within the region of any pilotage association used for the purpose of comparison;
  - (g) Total gross and net income for the pilots' group since the last rate order, or as directed by the Board, including sources of income by tariff category; and
  - (h) Individual amounts paid to pilots since the last rate order, or as directed by the Board, which may be shown as both gross and adjusted gross income, as reported for tax purposes.
- (2) For the purposes of subsection (1)(e) above, the Board shall at a minimum consider evidence of the compensation and benefits provided to pilots in pilotage associations serving Puget Sound and San Francisco.
- (3) In determining compensation for expenses, the Board shall consider evidence of appropriate expenses related to the provision of pilotage services as shown by records of the pilots' group, and verified by an independent audit.<sup>12</sup>

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

First, the Board determines the appropriate TNI per pilot. The TNI per pilot is then multiplied by the number of licensed pilots the Board finds are necessary to provide adequate pilotage services to vessels crossing the pilotage ground. Historically, the Board's practice has been to add to that figure the projected reasonable operating expenses and costs that the pilot group is expected to incur in providing the pilotage services. The resulting amount represents the total revenues that must be generated under the tariff to reach the target total revenue  $[(TNI) \times (\text{pilots}) + (\text{expenses}) = \text{target total revenue}]$ . Next, a projection about the

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<sup>12</sup> OAR 856-030-0000.

anticipated amount of ship traffic (in this case, the estimated number of inbound and outbound vessels over the pilotage grounds) is used to determine how much each vessel must pay to generate the total amount of revenue necessary to cover projected costs and pilot incomes.

Actual pilot income varies from TNI based on the differences between the levels of vessel traffic and operating costs from those assumed during the ratemaking process. These variations between target and actual levels of income are a fundamental result of the rate setting process. Historically, when target and actual income levels varied greatly, usually due to economic conditions, the rate setting process would be initiated to reset the tariff. Due to the Board's approval of annual cost of living adjustments to the tariff starting in 1993, inflation is no longer an economic factor creating significant variations in actual net income level. Under the current Oregon Pilotage tariff, CBP's rates are subject to an automatic adjustment mechanism for inflation, as well as an annual adjustment to the charge to fund continuing professional development.<sup>13</sup> Ratemaking is, nevertheless, a prospective process. The rate setting process is not designed to address events retroactively to compensate for either windfall or shortfall. Evidence of current and projected levels of relevant factors form the bases for the ratemaking process.

**Burden of Proof.** CBP has the burden of proving by a preponderance of the evidence the legal sufficiency of its proposed rate increase, consistent with ORS 183.450(2) and (5). In order to support its proposed rates, CBP submitted direct testimony of two witnesses (both of whom testified during the hearing) and supplied a total of 40 exhibits. In the opinion below, we address whether CBP has met its burden of proof under the criteria set forth in the statutes and regulations relative to the ratemaking process.

#### IV. FINDINGS OF FACT

- (1) The current rate orders for Coos Bay and Yaquina Bay Pilotage Grounds were established in Final Order No. 08-1, adopted February 26, 2008, and amended by Final Order No. 09-02, adopted April 29, 2009.
- (2) In the 11-year period, from 2010 through June of 2021, CBP pilots served an average of just over 80 vessels per year, and an average of close to 160 pilot assignments per year.
- (3) During this 11-year period, the average GRT per vessel was 21,337, and a total average GRT of 1,714,063 annually.<sup>14</sup>
- (4) Piloting large vessels, including commercial cargo vessels over the bars into Coos Bay and Yaquina Bay, respectively, and through the channels of each bay is considered very difficult, with the current width of 300 feet at the narrowest parts of the Coos Bay channel and a current depth of 37 feet.
- (5) Piloting large vessels into Yaquina Bay and Coos Bay requires each pilot to possess the skill sets required to pilot over an ocean bar and a second skill set to guide the vessel through the narrow channels and into a destination berth.

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<sup>13</sup> CBP 38 at 2. Under the *NOTES* section, number 2, the board may adjust annually any excess or deficit in fees collected for continuing professional development. On the same page, under *AUTOMATIC ADJUSTMENTS*, the first bullet point refers to the annual automatic rate adjustment to reflect changes in the Consumer Price Index occurring each September.

<sup>14</sup> CBP 5 contains ship logs beginning May 1, 2009, through August 7, 2021.

- (6) The public has an interest in prompt, efficient, economical, safe and reliable pilotage service for both Coos Bay and Yaquina Bay.
- (7) The current annual compensation of the CBP pilots is behind that of other maritime pilot groups in Oregon and Washington.
- (8) CBP's operating expenses are increasing, despite significant fluctuations in vessel traffic and overall revenue.
- (9) The interested parties in this proceeding, with differing and sometimes competing interests, support the tariff changes presented in the stipulation.

## V. ANALYSIS AND OPINION

The analysis below addresses the factors set forth in ORS 776.115(5)(b) and OAR 856-030-0000, reviewing each factor and evaluating CBP's evidence in support of its proposed tariff changes, in reaching a determination that the proposed changes are supported on the record, and result in just and reasonable rates.

An important source of evidence in this hearing is the testimony at the hearing of both Captain Steven Woods and Captain George Wales. Both provided complete, compelling, and detailed testimony on the difficulties, challenges, and time it takes to become an experienced pilot in such unique areas that may not have the same opportunities for income, via vessel traffic, available to pilots in other areas. The commitment demonstrated by both of these pilots to their pilotage grounds, to the communities they serve, and towards the safety of themselves and those that benefit through their efforts was inspiring and should be a source of pride to all Oregonians.

ORS 776.115(5)(b)(A) and OAR 856-030-0000(1)(a) require consideration of the amount of activity, including number of vessels, number of pilot assignments, size of vessels by tonnage, length, and draft. Under OAR 856-030-0000(1)(b), the Board also considers any change in the amount of activity since the last rate order. In general, and according to the evidence submitted, the ships that primarily visit Coos Bay are log ships and wood chip carriers. CBP provided ship logs from May 2009 to August of 2021, and invoices from January 2020 to June 2021. The ship logs show CBP pilots served an average of just over 80 vessels per year, so about 160 assignments annually. The average GRT per vessel was 21,337, and a total average GRT of 1,714,063 annually.<sup>15</sup> Net tonnage of the barges piloted is nearly the same as the vessels' gross tonnage, while net tonnage of other cargo vessels will be less than their gross tonnage. Net tonnage of towing vessels may vary depending on whether they are using U.S. tonnage system or the International Convention on Tonnage Measurement of Ships, but will not be more than their gross tonnage. It is, therefore, reasonable for us to continue our historic practice of basing rates on gross tonnage rather than net tonnage.<sup>16</sup>

The evidence demonstrates that vessel traffic volume was inconsistent during this time period, which makes forecasting difficult. There were 115 vessels served in 2013, yet only 49 in 2014. 134 vessels in 2018, yet only 67 in 2020.<sup>17</sup> The piloting assignments are basically double the number of vessels served, as each generates an inbound and an outbound

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<sup>15</sup> *Id.*

<sup>16</sup> We add our consideration of net tonnage, per the requirements of ORS 776.115(5)(b)(A).

<sup>17</sup> See CPB 5, which lists each pilot assignment individually from May 2009 through August 7, 2021.

assignment.<sup>18</sup> The overall size of ships is increasing. The largest ships to call on Coos Bay, in terms of GRT, were both wood chip carriers serviced by CBP in 2021 at Coos Bay. The M/V Crystal invoiced GRT was 52,906, and the M/V Ruby was listed in the Ship Log at the same weight.<sup>19</sup> Captain Wales noted the gradual increase of vessel size over the last several years during the hearing.<sup>20</sup> The increase in GRT per ship, however, does not make up for a recent decrease in overall traffic and other lost opportunities as described below.

Testimony by CBP witnesses cite two regulatory issues directly affecting the work of the CBP pilots as part of the reason for decreased pilot assignments. In 2017, Oregon passed a law that provided an exemption from compulsory pilotage. U.S. flagged tugs, towing barges originating in a foreign country, from Vancouver, British Columbia to Coos Bay do not require a Coos Bay Pilot.<sup>21</sup> Thus, any barge traffic under this scenario represents a loss of work and income for CBP. The second is that the Coos Bay pilots were prohibited from owning any interest in the tug companies assisting the ships. This was another opportunity for pilot income eliminated by statute.<sup>22</sup> Thus, the primary income for the CBP is piloting large commercial vessels, and the maintenance of a sufficient wage for licensed pilots in this area must come primarily from primarily those fees.

ORS 776.115(5)(b)(B) and OAR 856-030-0000(d) require consideration of the professional skills and experience required of a pilot and the difficulty and inconvenience of the particular service, including the skill and time necessary to perform the service. Captain Steven Woods provided testimony at the evidentiary hearing regarding the significant knowledge, training, and experience necessary to provide pilotages services on the Coos Bay and Yaquina Bay pilotage grounds. Captain Woods noted his pilotage of vessels over all four of Oregon's pilotage grounds and at has been state licensed for three of the four. He testified that the state license—as opposed to a federal license—involves much more training, and that, if a vessel is under registry or coming from a foreign port, and is going to enter Coos Bay or Yaquina Bay, the pilot must be state licensed.<sup>23</sup>

Captain Woods is currently the only licensed pilot for the Yaquina Bay pilotage grounds, but he is in the process of training Captain George Wales for licensure there. Yaquina Bay does not currently experience much traffic, so it represents less of an opportunity for pilots to earn income but still required maintenance of a licensed pilot. However, Captain Wales noted recent infrastructure improvements made, and speculated that Yaquina Bay could see more vessel traffic in the future.<sup>24</sup>

Captain Woods testified to the difficulties of piloting over the Coos Bay bar and into Coos Bay. He noted the intensity of piloting in the area compared to the Columbia because, although the trip is shorter, it has less space than the Columbia bar (1,600 ft. vs. 2,000 ft.). In addition, the Coos bay channel narrows considerably, down to 300 feet in some places, as opposed to 600 feet in the Columbia River.<sup>25</sup> So, while each space has specific obstacles and

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<sup>18</sup> Tr. at 60-61.

<sup>19</sup> See CPB 5, August of 2021, for the listing for the M/V Ruby. CPB 6, for calendar year 2021, contains 2 invoices for the M/V Crystal (dated 4/16/21 and 6/19/21). Also, see Tr. at 62.

<sup>20</sup> Tr. at 64-65.

<sup>21</sup> Tr. at 90.

<sup>22</sup> Tr. at 55-56, 88-89.

<sup>23</sup> Tr. at 32-33 (Dec 16, 2021).

<sup>24</sup> Tr. at 58-59.

<sup>25</sup> Tr. at 34-36.

challenges, Coos Bay and Yaquina Bay require significant maneuvering in a very small space.

Captain Woods also discussed the training schools where the pilots receive mandatory training. At first, it was only the Sogreah Institute in France, but now there are several schools where pilots may train using scale models of real ships. For the state license, pilots are required to attend one week of school at one of these training schools once every five years.<sup>26</sup> Captain Wales also testified on training requirements.<sup>27</sup>

Captain Wales stated that Captain Tim Petrusha received his unlimited license for the Coos Bay pilotage grounds in October 2021. Captain Wales noted that it took Captain Petrusha three years of training, both with Captain Woods and himself, for Captain Petrusha to obtain this license. Captain Petrusha was already a licensed pilot for Humboldt Bay in California, so he was not starting the process from scratch. Captain Petrusha already had pilot experience, and it took him three years to understand and become licensed to pilot in Coos Bay.<sup>28</sup>

Captain Wales also noted that, as the President of the Coos Bay and Yaquina Bay Pilots Association, that he completes much of the administrative work in addition to being a pilot. He noted that the pilots must communicate and work with several groups to ensure safety in and around Coos Bay.<sup>29</sup> These additional tasks are a part of the required work in Coos Bay and no additional compensation is provided for this work.

ORS 776.115(5)(b)(C) requires that the Board consider the supply of and demand for pilotage services. As discussed above, Yaquina Bay currently has very little vessel traffic. The Coos Bay vessel traffic fluctuates significantly. However, CBP's evidence, and accompanying industry interest and engagement in this process supports a need to maintain two full time pilots for these areas, and ensure competitive pay for pilots on the Coos Bay and Yaquina Bay pilotage grounds in order to maintain adequate coverage of these areas. Captain Wales noted the potential for future, additional traffic in Yaquina Bay.<sup>30</sup> Other evidence provided by CBP demonstrates that while some anticipated development has not occurred, future development may occur within the next 3-5 years.<sup>31</sup>

ORS 776.115(5)(b)(D) and OAR 856-030-0000(c) require the Board to consider the public interest in maintaining prompt, efficient, economical, and reliable pilotage service. CPB provided the Pacific Maritime Association's annual report summarizing west coast maritime cargo operations and demonstrating the economic significance of the industry in terms of international trade and jobs.<sup>32</sup> Captain Woods also noted that the maritime industry, as it currently exists in Coos Bay, supplies several jobs in the area, including longshoremen, truck drivers, railroad workers, and towboat operators.<sup>33</sup> Captain Wales also noted that the

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<sup>26</sup> Tr. at 42-45

<sup>27</sup> Tr. at 54-55.

<sup>28</sup> Tr. at 49-50.

<sup>29</sup> Tr. at 51-53.

<sup>30</sup> Tr. at 57-59.

<sup>31</sup> See CBP 31, noting the "pause" in the development of a liquefied natural gas terminal, and CBP 11, noting that the Oregon International Port of Coos Bay has entered into a memorandum of understanding with a Missouri development firm to build a multimodal container facility on the North Spit. Captain Wales discusses this in his hearing testimony (Tr. at 77-78).

<sup>32</sup> CBP 9.

<sup>33</sup> Tr. at 45-47.



maritime industry is interested in ensuring that Coos Bay and Yaquina Bay remain competitive with other ports and want to “keep the cargo moving.”<sup>34</sup> The cargo exported from the Roseburg terminal is expected to be over 2 million short tons in 2022 and in 2023. Thus, industry, and the economic boost it represents to the area, have a stated interest in efficient, economical and reliable pilotage.<sup>35</sup>

Under OAR 856-030-0000(1)(e) & (2), the Board considers evidence of compensation for comparable maritime professions, including other state regulated pilotage associations and, at a minimum, the compensation and benefits provided to pilots in pilotage associations serving Puget Sound and San Francisco. The Board also considers individual amounts paid to the pilots since the last rate order pursuant to OAR 856-030-0000(1)(h). Here, CBP provided evidence regarding compensation for certain other pilot groups. CBP demonstrated that the income of the CBP pilots lags significantly behind Columbia River Bar and Columbia River Pilots, Puget Sound Pilots, San Francisco Bar Pilots and Gray’s Harbor Pilots. San Francisco pilots average net earnings of \$503,130.<sup>36</sup> Counsel for CBP offered a declaration that due to a recent order, Puget Sound Pilots will average just over \$400,000 in 2021 and 2022. Columbia River Bar Pilots will average \$403,566 to \$428,948.<sup>37</sup> The Columbia River Pilots’ recent case resulted in per pilot net income of \$455,555.<sup>38</sup> Gray’s Harbor Pilots average \$455,000.<sup>39</sup>

The CBP provided its calculations of past and future revenue. The three-year average of pilot compensation for the years 2018-2020 was \$356,000.<sup>40</sup> However, the number is skewed upward due to the pilotage grounds only having one pilot in 2019. The net per pilot in 2020 was \$94,575.

Under OAR 856-030-0000(1)(f), evidence of the economic and market conditions existing both locally and within the region of any pilotage association used for the purpose of comparison is considered. The current economic and market conditions in Coos Bay and Yaquina Bay appear to be less robust compared to other pilotage grounds in Oregon, given the fluctuation in vessel traffic. As noted above, CBP provided evidence regarding a forecasted increase in shipping from the Roseburg Coos Bay terminal, a memorandum of understanding regarding the potential for new intermodal container facility in Coos Bay, and infrastructure upgrades in Yaquina Bay.

Under OAR 856-030-0000(1)(g), the Board considers the total gross and net income for the pilots’ group since the last rate order, or as directed by the Board, including sources of income by tariff category. CBP provided financial statements for the years 2018 through 2020. These show expenses increasing over time, with some expenses deferred, such as the maintenance and code updates required for the boat service assets. The gross income during that time period averaged out to 1.9 million dollars. The average net income was \$356,294.<sup>41</sup> As noted above, the fluctuation in traffic from year to year can make these averages misleading. The amount of gross revenue for 2021 was projected at \$1,640,000, primarily

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<sup>34</sup> Tr. at 68-69.

<sup>35</sup> See CPB 12, a letter from the terminal manager of Roseburg Coos Bay Shipping Terminal (Mar. 28, 2021).

<sup>36</sup> CBP 14.

<sup>37</sup> CBP 34.

<sup>38</sup> CBP 35 at p. 7-8.

<sup>39</sup> CBP 29 at p. 13.

<sup>40</sup> CBP 7 and CBP 8.

<sup>41</sup> CBP 7 and CBP 8.

derived from wood chip ships and log carriers.<sup>42</sup> Using this projected total revenue, the expected TNI per pilot, upon approval of the new tariff rates, would be \$246,590.<sup>43</sup> This assumes an amount of vessel traffic consistent with projected year 2021.

OAR 856-030-0000(3) provides that “[i]n determining compensation for expenses the Board shall consider evidence of appropriate expenses related to the provision of pilotage services as shown by records of the pilots’ group, and verified by an independent audit.” Here, CBP provided audited financial statements for the period of 2018-2020.<sup>44</sup> Captain Wales testified that he anticipated increases in expenses in the near term for maritime insurance and noted that the boat service assets were in need of significant code upgrades.<sup>45</sup>

Under ORS 776.115(5)(b)(E), the Board may consider other factors relevant to the determination of reasonable and just rates. CRSOA and the International Port of Coos Bay support the settlement as a fair and reasonable outcome for pilotage pay that will continue to attract, support and maintain safe and efficient pilotage service at Coos Bay and Yaquina Bay. The existence of a settlement between parties with differing interests, as is the case with the settlement submitted on this record, supports a conclusion that these rates are reasonable, given the compromises made by the parties in the development of the settlement. Even so, the findings of this order determining that the rates proposed by the CBP are just and reasonable are made independent of the settlement.

**Transit Charges (GRT and Draft Rate), Harbor Move Charge, Boarding Fees and Detention hourly charges.** CBP proposes increasing the inbound and outbound pilotage charges, harbor moves charges, the “pilot carried away from station” per diem, maximum detention charge, and the boarding fee, each by 15 percent. In addition, the proposal increases the uncorrected orders and detention hourly rates by 15 percent. The per diem for a pilot requested to board a vessel other than at a normal station increases 15 percent under the proposal. Finally, the charge per draft foot and per gross registered ton (GRT) for a vessel under tow (listed as Item 2 in the current and proposed tariff) is modified. Charges per Item 1 (the inbound and outbound charge per GRT and per draft foot) are applied to the largest GRT and the deepest draft of the combined towed and towing vessels.<sup>46</sup>

Evidence demonstrates that the CBP Pilots are not compensated as highly as pilots in other regional pilot groups and that operating expenses are increasing. The record supports a determination that CBP’s proposed increase in rates will bring CBP’s compensation into close parity with other regional pilotage groups and provide for the recovery of CBP’s operating expenses. Additionally, the proposed increases in the transit fees and other charges are designed to address the trend of increasing vessel size and decreasing vessel traffic on the Coos Bay and Yaquina Bay pilotage grounds. The increases will allow the CBP to maintain 2 licensed pilots at steady rates for the maritime industry in the area, as they work to increase development and business in both areas.

**Modification of COLA.** CBP proposes to continue annual COLAs to all tariff charges, except the continuing professional development charge, and increase the annual adjustments by one-half percent, effective immediately upon approval of the new tariffs, and

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<sup>42</sup> CPB 39.

<sup>43</sup> *Id.*

<sup>44</sup> CBP 7 and CBP 8.

<sup>45</sup> Tr. at 124-125.

<sup>46</sup> CBP 40 shows the proposed increase of each item in redline.

then in September for each of the following years for which the new rates are effective. This would result in annual COLAs by an additional one-half of one percent over the Consumer Price Index.

**Boat Service, Continuing Professional Development and Board Fee.** CBP proposes no changes in any of these tariffs. Boat service will continue to be provided at actual cost. The calculation of the continuing professional development fee and the Board operations fee are determined via processes described in previous orders or via statute.

**Term.** CBP proposes that the rates sought in its petition extend for a minimum of two years from the date that a final order is issued in this proceeding and continue in force until the adoption of new rates pursuant to a subsequent final order of the Oregon Board of Maritime Pilots. This term is reasonable given the demonstrated fluctuation in traffic in the area.

**Costs.** The settlement did not provide instruction on how to distribute or share the expenses of the Board related to this proceeding. Pursuant to ORS 776.129(2), the Board may defray the costs and expenses of the hearing by assessing, in its final order, all or a portion of the costs and expenses of the hearing to a party to the hearing. While the Board has no authority to assess costs of this proceeding to any entities other than parties to the hearing, those who participated in the pre-petition settlement are not prevented from agreeing to share any costs of the proceeding assessed by the Board. Any such agreement is a matter between those entities, and need not be addressed herein.

## VI. CONCLUSIONS OF LAW

- (1) The record in this proceeding contains sufficient evidence to substantially satisfy the requirements set forth in provisions of ORS 776.115(5)(b) and OAR 856-030-0000.
- (2) The changes proposed by CBP and the CRSOA in the stipulation discussed above<sup>47</sup> are supported by a preponderance of the evidence and the resulting rates are reasonable and just.

## VII. ORDER

For all the foregoing reasons, the Oregon Board of Maritime Pilots HEREBY ORDERS the following:

For purposes of setting the tariff:

**(1) Inbound and Outbound Fee, Harbor Move Charge, Detention Hourly Rates, Boarding Fee, all Minimums, and Other Fees.** The charges for the CBP as listed in Sections 4 and 5 of the Coos Bay and Yaquina Bay Pilotage Grounds, respectively, are HEREBY approved as follows:

a. An increase of 15 percent of Item 1 (inbound and outbound pilotage charges) including all minimums, Item 4 (harbor moves charges), Item 5 (per diem for a pilot carried away from the station), Item 6 (uncorrected orders hourly rate, Item 7 (per diem for a pilot

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<sup>47</sup> Again, we note that we decline to adopt the parties' stipulated agreement terms regarding future pilot increases or arbitration.

requested to board a vessel other than at a normal station), the Item 8 (hourly and maximum detention charges), and Item 9 (boarding fees), and;

**b.** The Item 1 charges per draft foot and gross registered ton as applied to a barge under tow in Item 2 including all minimums are increased by 15 percent, and will be adjusted so that charges for tug and barge traffic will no longer apply to both tug and tow. The GRT charge will be applied only to the larger of the two vessels and the draft charge will be applied only to the deeper of the two vessels. Articulated tug and barges will be charged based on the combined GRT of the tug and barge and on the draft of the deeper of the two vessels.<sup>48</sup>

(2) **COLA.** The annual COLA mechanism is modified by increasing the annual COLA by an additional one-half of one percent over the Consumer Price Index, as published by the Bureau of Labor Statistics of the United States Department of Labor, effective immediately upon the adoption of the proposed rates, and then applied the first of each September.

(3) **All Other Provisions.** All existing provisions of the prior Coos Bay and Yaquina Bay Tariffs rate orders<sup>49</sup> that are not modified herein are HEREBY ratified and incorporated by reference.

(4) **Term.** The rates established under this ORDER shall be in force for a minimum of two years from the date the tariff established under this ORDER goes into effect.

(5) **Costs.** Coos Bay/Yaquina Bay Pilots Association and CRSOA are each hereby assessed one-half of the costs of this proceeding, for a total of: **\$8,621.33 to Coos Bay/Yaquina Bay Pilots Association** (\$9,621.33 minus the petitioner's \$1,000 deposit); **\$9,621.33 to CRSOA.** Costs are due upon issuance of this Final Order, payable to the Oregon Board of Maritime Pilots.

The Board shall recover the costs of the proceedings from the named parties to the proceeding as allowed by ORS 776.129(2).

DATE: March 18, 2022

  
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Dan Retzlaff, Chair  
Oregon Board of Maritime Pilots

#### **APPEAL RIGHTS**

Either party may appeal this final order by filing a petition for review with the Oregon Court of Appeals within 60 days after it is served upon the parties. *See* ORS 183.480 *et seq.*

<sup>48</sup> Here we use the language from the parties' stipulated order as we find it more clearly articulates the rate changes being adopted, and it is also consistent with the Proposed Order's explanation on page 1 and footnote 2.

<sup>49</sup> We clarify that it is the unchanged terms of prior rate orders that we ratify here. The tariff simply reflects the terms of those orders.

## **CERTIFICATE OF SERVICE**

I hereby certify that on March 18, 2022, I served **Order BP 13** by emailing a true copy to said person(s), to said person(s) at the last-known address(es) indicated below:

Coos Bay Pilots Assn.  
[pilotcb12@frontier.com](mailto:pilotcb12@frontier.com)

Columbia River Steamship Operators Assn.  
[kate@crsoa.net](mailto:kate@crsoa.net)

Todd Zilbert  
[toddzilbert@gmail.com](mailto:toddzilbert@gmail.com)

Darien Loielle  
[dloielle@schwabe.com](mailto:dloielle@schwabe.com)

  
\_\_\_\_\_  
Susan Johnson, Administrator  
Oregon Board of Maritime Pilots