ORDER NO. 95-2

ENTERED: March 20, 1995

BEFORE THE
OREGON BOARD OF MARITIME PILOTS

BP 1
(Columbia/Willamette River)

In the Matter of Revised Tariffs for the Columbia and Willamette River Pilotage Ground.	))	ORDER

SUMMARY

In this order, the Board adopts a plan for structuring a transition from the fare-box pension system to the deferred income approach the Board adopted in Order No. 93-4. The plan came to the Board as a stipulation among four of the parties. The stipulating parties proposed to freeze accrual of fare-box credits on the effective date of this order and continue paying benefits for existing credits pursuant to the terms of the existing plans. The resulting transition will take about 50 years with active pilots and ratepayers sharing in the cost.

INTRODUCTION

Order No. 93-4

On March 26, 1993, the Board issued Order No. 93-4 which set new rates for the Columbia/Willamette River ground. The order adopted rates, but not the methodology, which the two pilot groups–the Columbia River Pilots (COLRIP) and Lewis & Clark Pilotage, Inc. (Lewis & Clark)–and the Columbia River Steamship Operators Association (CRSOA)[1] proposed in a stipulation.

The order rejected provisions of the stipulation that would have required the Board to implicitly approve a fare-box pension system. Order No. 93-4 at 1. The Board stated that:

> [Fare-box benefit] payments are different than COLRIP's other

[1] At the time CRSOA was the Portland Steamship Operators Association (PSOA).

"expenses" (such as fuel for the pilot boat)[2] because they are not part of the cost of providing present services. COLRIP makes its payments because it has a contractual obligation to individual retirees arising from past pilotage services. COLRIP, in response to the Port of Kalama, calls the payments a distribution of present income. That is the most appropriate way to view the payments, so the Board will no longer treat fare-box pension benefit payments as a pilot association expense for ratemaking purposes.[3]

... In future rate cases, the Board will set the target net income at a level which will provide individual pilots with a reasonable current income level and a reasonable additional amount to fund their retirements.[4] Pilots participating in an association's fare-box plan may distribute part of their total income to existing retirees and others may use part to fund their retirement plans.

Conclusion. All pilots are independent contractors with relatively high incomes and ought to be able to provide for their own retirements. There is no need for the Board to mandate a retirement plan for them.

Order No. 93-4 at 20.

Request for Reconsideration

On April 19, 1993, COLRIP asked the Board to reconsider the retirement income funding decision.[5] The Board considered the request at its May 18, 1993, regular meeting and decided to reopen the record for additional evidence and argument on the best transition from the old policy to the new policy.[6]

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[2] This is an illustrative example because COLRIP does not operate a pilot boat. A better example would have been the cost of transportation to/from the ship.

[3] In footnote [12], the Board stated: "This policy will apply to all of Oregon's pilotage grounds." The only other ground making fare-box benefit payments is the Columbia River Bar.

[4] In footnote [13], the Board set out its ratemaking formulae.

[5] The Columbia River Bar Pilots and CRSOA supported the request while the Port of Kalama opposed it.

[6] Reconsideration applies in part to the Columbia River Bar Pilots because, while they froze their fare-box plan after the Board's 1986 rate order, they continue to pay benefits which accrued before the freeze. Their existing rates include a component to cover both fare-box benefit payments and deferred income. Their next rate case, under the policy the Board adopted in Order No. 93-4, would result in loss of the fare-box benefit component.

Issues on Reconsideration

The Board set forth its reconsideration decision in Order No. 93-5. That order specified the following issues for the reconsideration phase of this proceeding:

1. What is the present value of [COLRIP's] fare-box pension benefit liability for credits which accrued before the:
   a. 1986 rate orders; and
   b: 1993 rate orders?

2. What annual dollar amount would be necessary to retire, over a reasonable period of time, the liability which accrued before the:
   a: 1986 rate orders; and
   b: 1993 rate orders?

3. Who should contribute the funds to retire the liability which accrued before the:
   a: 1986 rate orders; and
   b: 1993 rate orders?

Procedural Summary

Sequence. The first issue raised a question of fact, the second a question of mathematics, and the third a question of policy. This led to a sequential process.

Contested Case Hearings. The first question was of interest primarily to COLRIP, CRSOA, the Port of Kalama, and the Port of Portland with some participation by Lewis & Clark. The primary parties had numerous settlement discussions which narrowed the range of technical issues the Board would have to resolve before determining the present value of the fare-box pension benefit liability. They then presented evidence and filed briefs on the remaining issues; Hearings Officer Karl Craine recommended a finding for ratemaking purposes of $14,046,742[7] for credits which accrued before the 1993 rate order; and the Board adopted the recommendation at its July 21, 1994 meeting. The recommendation is Appendix "A".

Mediation. The third question had a potential direct impact on the Bar Pilots and existing retirees from both the river and the bar.[8] The following groups agreed to mediate the

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[7] This figure does not include credits for the two Lewis & Clark pilots. The figure for all pilots on December 31, 1994, is $17,369,019.

[8] It did not have a potential impact on the Coos Bay/Yaquina Bay pilots because they never had a fare-box plan.

pension issues: COLRIP, Lewis & Clark, the Bar Pilots, Retirees, CRSOA, the Port of Kalama, and the Port of Portland. The participants entered the process with the following basic interests:

COLRIP Pilots. COLRIP, with 43 pilots, is the dominant pilot organization on the river. It also is the one with a contractual obligation to pay fare-box benefits. It desired additional rate revenue to cover benefit costs during a transition from the fare-box system to a deferred income system. In the absence of additional rate revenues, its active members would have to finance a deferred income retirement system by reducing their current income significantly below the Board's target. The active members also would loose benefits for credits they earned under the fare-box system if the COLRIP organization defaulted on its fare-box obligations at some point in the future.

Lewis & Clark Pilots. The Lewis & Clark pilots[9] spun off from COLRIP and hold credits under COLRIP's fare-box plan. However, they had less concern about COLRIP's ability to make future benefit payments because the status of their credits was a point of dispute between the two groups and, unless COLRIP agreed to honor the credits, the Lewis & Clark pilots could not expect payments anyway. When the Lewis & Clark pilots spun off from COLRIP, they negotiated a contract with ConAgra (which owns the Peavey grain elevator they serve at the Port of Kalama) entitling them to retirement income from ConAgra.. The Lewis & Clark pilots have no obligation to pay fare-box benefits, so they have been able to use the fare-box benefit expense component of previous rates to fund deferred income plans or for other purposes.

Bar Pilots. The bar pilots started a transition from a fare-box system to a deferred income system in response to the Board's 1986 rate order. The bar's current rates contain a fare-box component and a deferred income component, but the terms of Order No. 93-4 would cause the bar to lose the fare-box benefit component in its next rate case. The bar's interest was continued rate support for transitional fare-box benefit payments.

Retirees. Retirees from both the river and bar grounds also had an interest in at least some rate support for fare-box benefit payments. A complete loss of support would greatly increase the risk that their respective pilot organizations would default on their fare-box benefit obligations.

CRSOA. The ship operators wanted to avoid paying significantly higher rates for the purpose of funding two retirement systems.

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[9] When the Lewis & Clark pilots spun off in 1989 there were two pilots in the organization. One of them retired at the beginning of this year, leaving the other founding member as the sole owner of the corporation.

The Ports. The Port of Kalama and the Port of Portland had an interest in avoiding higher rates because pilotage costs are one of the factors shippers consider when selecting a port.

Pursuant to the mediation agreement in Appendix "B", the Board Chair, Board Counsel, and Hearings Officer participated in the process.

The formal process started on July 24, 1994, and lasted for 2½ days. There were initial meetings among all the participants, but the focus naturally shifted to the fundamental conflict between COLRIP's desire for higher rates and the CRSOA/Port desire to avoid funding two retirement systems. Those participants had to agree to at least general parameters for resolving that issue before progress would be possible on others. They were not able to reach agreement during the 2½ days, but the formal sessions ended with the understanding that talks would continue on an informal basis.

The informal process produced agreement between COLRIP and CRSOA by mid December. Those parties then went to the ports and reached a broader agreement by mid January. At that point, the stipulating parties sought agreement with the other participants.

Prehearing Conference. On February 10, 1995, the Hearings Officer held a prehearing conference to determine the scope of support for the stipulation and establish a schedule for the remainder of the case. All of the parties attended and, while none indicated an intention to oppose the stipulation, it appeared that it would not be possible to obtain signatures from all the retirees. The parties agreed to a schedule which included a hearing on March 2 and Board action at its March 14 meeting.

Preliminary Hearing Notice. On February 14, 1995, the Hearings Officer issued a memorandum setting forth the results of the prehearing conference, including the schedule. On February 16, 1995, the Board Administrator served a copy of the memorandum on the parties, with separate copies to all individual pilots, retirees, and steamship operators.

Stipulation. On February 24, 1995, COLRIP, CRSOA, the Port of Kalama, and the Port of Portland filed the stipulation in Appendix "C". On March 8, Captain Rex Pollitt brought COLRIP participation in the stipulation to 100 percent.

When the parties signed the stipulation, it contained a typographical error in its Exhibit A. Exhibit A sets forth the actuarial assumptions underlying the stipulated present value of the unfunded fare-box liability on December 31, 1994. The $17,396,019 present value figure in the stipulation is correct, but Item 4 of Exhibit A should have read "Set forward ten years grading down to five years during a ten-year select period." instead of "Set forward five years during a ten-year select period." The sentence did not make actuarial sense in its original form, so the correction did not change the terms of the stipulation.

Second Hearing Notice. On February 24, 1995, the Board served a copy of the stipulation and notice of hearing on the parties, including all individual pilots, retirees, and steamship operators. The notice repeated the memorandum's statement that anyone opposing the stipulation be prepared to present their evidence and arguments at the hearing.

Hearing. On March 2, 1995, the Hearings Officer held the hearing and received evidence supporting the stipulation from the signatories. There was opposition to the stipulation from Lewis & Clark.

Procedural Motions. Just before, at, and after the hearing, Lewis & Clark made a variety of procedural motions which the Board denied in Order No. 95-1.

Proposed Order

The Hearings Officer issued his proposed order on March 10, 1995. It recommended that the Board adopt the plan in the stipulation with two additions relating to transfer payments from Lewis & Clark to COLRIP.

COLRIP asked the Board to delete the second addition on the grounds that the signatories simply intended to give half the transfer payments to retirees and half to ratepayers. COLRIP expressed concern that changing the split might change the stipulation and invalidate it as a contract among the signatories.

The other signatories viewed monitoring the split and keeping it on target as an addition to the stipulation which would not invalidate the contract. CRSOA and the Port of Kalama stated that the signatories' intended the retiree's share of the revenues to offset the effect of lower active pilot income. Their concept differs from COLRIP's concept, but both accomplish same result at this point in time in terms of the benefit level for retirees.

As to the future, the question of what the signatories intended to happen in response to a change in circumstances is an ambiguity which the Board can resolve in this order without destroying the validity of the stipulation as a contract among the signatories. The signatories agreed that the Board can add detail to the stipulation to resolve ambiguity without changing the stipulation. They also agreed that, as an addition to the stipulation, the Board would be free to either include the monitoring and adjustment mechanism or exclude it.

The mechanism ensures that the signatories' representations about the impact of the plan on retirees — a representation that benefits would be very close to the benefits retirees would receive under a continuation of the fare-box system — will not turn out to have been misleading. Those representations are the Board's best guide to the signatories' intentions when the signed the stipulation. The Board decided to retain the Hearings Officer's adjustment mechanism.

The Hearings Officer had made some changes to the proposed order in response to comments from the signatories. The signatories agreed at the Board's meeting that the Hearings Officer's explanation of the plan in stipulation, as it appeared in the revised proposed order, accurately captured their intentions.

Board Decision

At its March 14, 1995, public meeting, the Board decided to adopt the revised final order.

Scope of this Order

Policy Decision. The policy of providing rate revenues for a transition away from the fare-box concept applies to both the bar and river grounds.

Implementation. The bar pilots started their transition after the 1986 rate order, so there was no need to develop an implementation plan for the bar grounds. The plan which the Board approves in this order is for the river grounds.

Future Interpretation

This order and Order No. 93-4 embody the Board's entire statement on this matter. Other statements by individual Board members, the parties, or anyone else which conflict with, or are absent from, the two orders are not a part of the Board's decision as a body.

The Board's intent is to adopt the plan in the stipulation. The Board based its decision on the stipulation itself, the written testimony of Christoper "Tiff" Wood[10], and the explanation in the Hearings Officer's revised proposed order. The Board notes that the signatories to the stipulation reviewed the Hearings Officer's explanation and agreed that it captured their intent.

The Board issued this order because the order accurately expresses the Board's understanding of the plan. The Board cannot delegate is decision making authority to the parties, so the relevant intent for future interpretation is the Board's intent. If there is a conflict between this order and the stipulation, this order controls.

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[10] Mr. Wood is the actuary who performed the computations for the stipulation.

FINDINGS OF FACT

Note: The following findings reflect the preponderance of the evidence.

Basic Concept

The plan will result in a transition from the fare-box system because, for ratemaking purposes, pilots will no longer accrue fare-box credits after the effective date of this order. Fare-box beneficiaries will continue to receive benefits for accrued credits. Benefit costs will eventually decline to zero over a period of about 50 years.

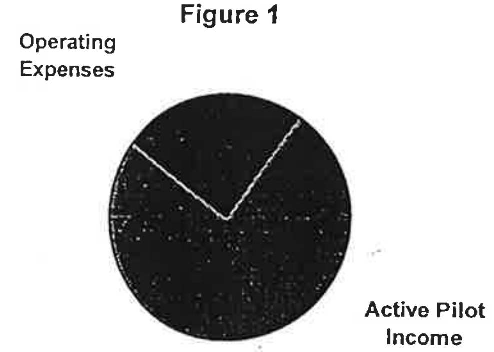
Coverage

All pilots in all pilot groups on the Columbia River/Willamette River grounds will contribute funds to pay benefits under COLRIP's fare-box plans. All pilots holding credits under the plans will receive benefits when they retire.

Existing Rate Structure

In Order No. 93-4, the Board added a deferred income component to active pilot target net income and stated that it would no longer recognize fare-box benefit expenses in setting rates. The existing structure has two pieces. *See* Figure 1. The two pieces have three components:

Figure 1



Operating Expenses. Under Order No. 93-4, this includes benefits for active pilots–such as health insurance–but does not include fare-box retirement benefit payments.

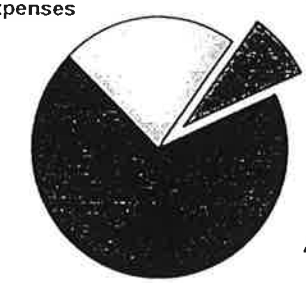
Deferred Income. The Board created this component when, in Order No. 93-4, it adopted the deferred income approach to providing funds for retirement income. The Board did not allocate any specific amount of total pilot income to retirement. Retirement income is simply part of the active pilot total income piece.

Income for Current Consumption. Under Order No. 93-4, this component is the other part of the active pilot total income piece. It is equivalent to the Active Pilot Target Net Share figure under the fare-box system.

Transitional Fare-box Benefit Expenses

Under the existing rate structure, the Board would provide funds for transitional fare-box benefit payments by adding a fare-box benefits piece to the total revenue pie. *See* Figure 2. This would clearly show that the Board was providing funds for fare-box benefit payments as a temporary exception to the policy the Board adopted in Order No. 93-4.

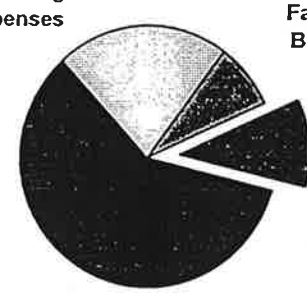
Figure 2



Proposed Rate Structure

The stipulation assumes that existing rates include a fare-box benefit expense component. The stipulation provides additional funds for a transition away from the fare-box system by creating new tariff items and allocating the resulting revenues to deferred income for active pilots. *See* Figure 3. While this approach conflicts with Order No. 93-4 by adding deferred income onto the fare-box system, three factors make it the most practical approach:

Figure 3



Development of Existing Rates. When COLRIP and CRSOA developed the rates that the Board adopted in Order No. 93-4, they based their calculations on the fare-box system instead of the deferred compensation concept. Since the fare-box system was the actual basis for the existing rates, it was easier to add a deferred compensation component than to reallocate existing revenues and add a fare-box component.

Maintaining Fare-box Benefit Levels. Both COLRIP fare-box plans pay a percentage of an active pilot's net income. Total income is higher now because of the new deferred income component, but the current income component–which is equivalent to the old Active Pilot Net Share–has remained the same. To avoid a windfall for retirees, there must be some mechanism to allocate an appropriate amount of total income to the new deferred income component and exclude it from benefit calculations. Adding a deferred income component to a fare-box base accomplishes that in a clear manner.

Burden Sharing & Certainty. Adding a deferred compensation component allows active pilots to share in funding the transition while providing retirees with explicit rate recognition of full fare-box benefit costs.

Impact on the Parties

CRSOA. The new tariff items in the stipulation would increase rates by about 5 percent. This is a smaller addition to the total revenue pie than the amount which would fully fund the transition. The result over the life of the transition would look like the graph in Appendix "D".

The graph reflects actuarial assumptions slightly different than the ones the Board adopted for determining the amount of the unfunded liability. The differences are:

Starting Active Pilot Income. The graph uses $140,000 instead of $135,000 to change the starting point from 1993 to 1994.

Inflation Adjustment. There is no adjustment for inflation in the graph. This allows it to show future rates in 1994 dollars for easier year-to-year comparison.

Rate of Disability. The graph uses a different rate of disability table because the different one was more readily available at the time. While there are some differences between the two tables, the differences are small and the rate of disability itself is small: The rate for age 50 in the table for the present value analysis is 0.005383 while the table for the graph shows 0.005144 for a difference of 0.000239. The small rate of disability reduces the impact of a difference between the two tables because reducing a factor's probability of occurrence reduces a formula's sensitivity to changes in the factor.

Rate of Disabled Mortality. To simplify computer programming, the actuary merely set the regular mortality table ahead 10 years and did not grade it downward over a 10 year period. This produces a generally higher rate of disabled mortality and tends to understate the rate impact by shifting the curve down and to the right of the position it would occupy on the graph under the more complicated assumptions. The understatement probably is not significant because, even with a significant difference between the two assumptions, the rate of disability is small.

Spousal Mortality. To further simplify computer programming, the actuary set the male mortality table back six years instead of using a separate female mortality table. This produces a higher rate of mortality up to age 77 and then a lower rate. Even at age 30, the difference is only 0.000102.

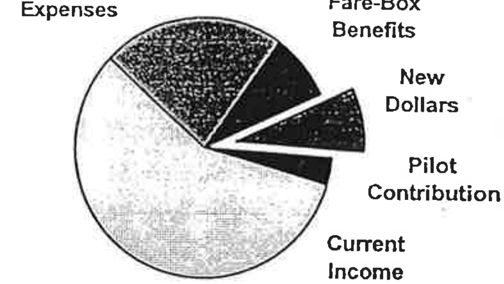
The net effect is a graph very close to what the graph would look like under the present value calculation assumptions.

All Active Pilots. The Board, when it sets rates, will assume that pilots allocate revenues to deferred income from the following sources:

New Tariff Items. The new tariff items will provide target deferred income of $11,363 per pilot per year. That is about 8½ percent of the $135,000 Active Pilot Net Share which the pilots and CRSOA proposed in their stipulation for the 1993 rate case.

Net Income. The Board will assume that pilots additionally set aside 2½ percent of their gross pilotage receipts. The result is a reduction in current income of about 3½ percent. *See* Figure 4.

Figure 4



The combination of the new tariff items and the 2½ percent set aside is an allocation, for ratemaking purposes, of about 12 percent of total income for retirement. That is below the amount a typical current pilot would need to replace the Plan III fare-box benefits.[11] Pilots can allocate, for ratemaking purposes, reasonable additional amounts to deferred income when shipping volumes are high (provided the additional allocations do not reduce current income below the target set by the Board).

A pilot's actual retirement plan remains a matter of personal choice. A pilot who sets aside less than the 2½ percent amount cannot, under the stipulation, argue in a rate proceeding that the Board has not provided enough funds for retirement. Similarly, a pilot who sets aside more than 2½ percent cannot argue that the Board has not provided sufficient income for current consumption.

The 2½ percent figure will be easy to calculate because accurate information about gross revenues will be easily available. The focus on gross revenues instead of net income has the effect of presuming, for ratemaking purposes, that pilots set aside funds for retirement before using funds for current consumption.

Lewis & Clark Pilots. Pilots who are not in the COLRIP association must additionally pay COLRIP a portion of their tariff revenues to help cover fare-box benefits. The portion is the same percentage of gross revenues that COLRIP pays. This prevents pilots outside the COLRIP organization from receiving a windfall from the absence of an obligation to pay

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[11] The exact amount an individual pilot would have to set aside depends on the pilot's age and retirement date. The amount is lower at the start of the pilot's career and higher near the end because later contributions have less time to earn interest.

benefits. At the onset, half of the funds will go to retirees and the other half will indirectly pass back to rate payers.

Retirees. The plan in the stipulation has two impacts on retirees:

Benefits. While the stipulation does not change the terms of COLRIP fare-box plans, benefits will drop to the extent the 2½ percent retirement allocation decreases current active pilot income. They will increase to the extent payments from Lewis & Clark make more funds available. The net effect for 1993 would have been a slight increase in benefits: Retirees would have split $23,535 of extra total revenue from Lewis & Clark minus a reduction of about $20,000 from the 2½ allocation for a net total revenue increase of $3535. That produces a net increase of $11 per month for the 29 retirees drawing benefits at the end of 1993. The net effect over the duration of the transition is hard to predict, but retiree's should receive benefits close to the existing benefits.

Certainty. Benefits will be much more secure because all pilots now must contribute to benefit payments. Benefits no longer will be dependent on the COLRIP association's ability to pay. COLRIP will still administer the fare-box plans, but COLRIP is in a stronger position now that pilots cannot avoid responsibility for paying benefits by leaving the association.

Future Rate Adjustments

Duration of the Stipulation. The parties intend for the stipulation to remain effective until the last fare-box beneficiary dies or until the signatories mutually agree to renegotiate it.

Automatic Adjustments. There now will be two automatic rate adjustment mechanisms:

Inflation. Order No. 93-4 approved an automatic rate adjustment each September to reflect changes in the Consumer Price Index. This adjustment will continue to apply to all tariff items for as long as it continues.

Fare-box Benefit Expenses. The stipulation provides for annual automatic rate adjustments, starting September 1996, to reflect changes in fare-box benefit expenses from deaths or retirements. The adjustments will be pursuant to the formulae in the stipulation. (*See* the explanation of the formulae in the next section.) Each adjustment will occur immediately after the corresponding annual Consumer Price Index adjustment. This sequence, in conjunction with the formulae in the stipulation, will ensure that rate revenues cover changes in benefits arising from changes in active pilot income.

Other Changes. Any party may request a change in rates for the new tariff items if the revenues from those items varies 10 percent or more from the $11,363 target. The change in the new tariff items would be for the purpose of restoring the target figure. The target figure will change over time because it will track changes in total revenues from the annual inflation adjustment which the Board authorized in Order No. 93-4, any subsequent annual inflation adjustment which the Board may authorize, or any other general rate filing. For example, a 10 percent increase in total revenues from either the inflation adjustment or a general rate case would increase the target by 10 percent. If there is no annual inflation adjustment for a particular year, there will be no automatic inflation adjustment for the target.

Formulae for Annual Fare-box Adjustments

The basic concept is to adjust the tariff to reflect the impact of deaths and retirements on the total revenues necessary to pay benefits. The steps are:

Adjust Gross Revenues. Benefits are a percentage of active pilot *current* income, so the first step is to exclude revenues allocated to deferred income. This is accomplished by (1) subtracting revenues from the new tariff items from gross revenues, and then (2) factoring out the 2½ percent of gross revenues that the pilots allocate to retirement. The resulting formula is: Applicable Gross Revenue (AGR) = (Total Receipts - New Tariff Items) * (1 - 0.025).

Determine Full Time Equivalency. Full Time Equivalent (FTE) benefits are credits equal to 100 percent of an active pilots current income ("Active Pilot Net Share" in the plans). Credits entitling beneficiaries to total payments equal to the current income for 4.5 active pilots would produce 4.5 Retirement Full Time Equivalents (RFTEs).

Create a Gross Revenue Conversion Factor. This part of the formula is the percentage of Applicable Gross Revenue necessary for COLRIP to pay benefits equal to one active pilot's current income. The formula is: Net-to-Gross Conversion Factor (NGC) = Amount COLRIP Paid to Retirees ÷ COLRIP Applicable Gross Revenues ÷ Average Retirement Full Time Equivalents. The conversion factor for one year uses numbers from the previous year.

Create a Remittance Adjustment Factor. This part of the formula reduces rate payer costs by 50 percent of amounts which other pilot organizations paid to COLRIP during the previous year. The formula is: Remittance Adjustment Factor (RAF) = (Amounts Remitted to COLRIP * 0.5) ÷ (Net-to-Gross Conversion Factor * Applicable Gross Revenues). The adjustment factor for one year uses numbers from the previous year. It will not be a part of the adjustment for 1996 because COLRIP will not receive contributions until September 15, 1996.

Measure Changes. The formula measures the change in retirees by subtracting the Retirement Full Time Equivalents for the previous year from the Retirement Full Time Equivalents for the present year. It measures the change in contributions from other pilot groups by subtracting the Remittance Adjustment Factor for the previous year from the Remittance Adjustment Factor for the present year. In both cases, a decline produces a negative number.

Calculate the Rate Adjustment. The fare-box adjustment formula adjusts all tariff items except the new deferred income items. The adjusted items are called "CPT" in the stipulation. The CPT for the 1996 adjustment would be CPT(96), the CPT for the 1997 adjustment would be CPT(97), and so on. The same designation shows the year for other parts of the formula. The formula for 1997 would be:

CPT(97) = CPT(96) * [[Change in Retirement Full Time Equivalents - Change in the Remittance Adjustment Factor] * Net-to-Gross Conversion Factor for 1996]

The full mathematical expression is:

CPT(97) = CPT(96) * [1 + [[[RFTE(97) - RFTE(96)] - [RAF(97) - RAF(96)]] * NGC(96)]]

Future Formula Adjustments

The stipulation contemplates rates which contain both a fare-box benefit payment component and a deferred income component. Both components are necessary for COLRIP pilots to achieve their target current income because COLRIP has the obligation to pay fare-box benefits. Only the deferred income component is necessary for Lewis & Clark pilots. If Lewis & Clark pilots retain revenues from the fare-box component, they will receive a windfall.

The prospective windfall gave the signatories an opportunity to (1) protect retirees by offsetting lower active pilot current income and (2) minimize the rate increase by refunding the remainder of the windfall to ratepayers. They developed a formula which:

- Defines the windfall as the same percentage of Lewis & Clark's gross revenues as the percentage of gross revenues that COLRIP devotes to fare-box benefit payments.
- Assumes that paying half of the windfall to retirees accurately offsets the lower active pilot current income which results from allocating 2½ percent of gross revenues to deferred income.

The signatories used 1993 data[12] to develop the formula. The formula does not have a mechanism for tracking changes in the multitude of factors affecting the percentage of total revenues for the ground that actually go to fare-box benefit payments for any particular month. With benefit payments still tied to COLRIP active pilot current income, there is a complex relationship among COLRIP gross revenues *vs.* Lewis & Clark gross revenues,

[12] The expense figures for Lewis & Clark were estimates.

COLRIP operating expenses *vs.* Lewis & Clark expenses, and COLRIP association size *vs.* Lewis & Clark association size. If the net effect of those factors changes much from the 1993 experience, the Board may need to revise the formula.

Reporting Requirements

COLRIP will report on the following items each year at the Board's July meeting:

- Retirement Full Time Equivalents as of June 30;
- Net-to-Gross Conversion Factor for the prior calendar year;
- Total amount paid to retirees, disabled pilots, and widows for the 12 months preceding July 1; and
- Total amounts received during the prior 12 months from other pilot organizations.

1993 Data

In the opinion section, the Board illustrates the effect of the formulae by using the following 1993 data: \$523,000 for annual Lewis & Clark gross revenues, \$43,583 for average monthly Lewis & Clark gross revenues, \$8,521,000 for annual COLRIP gross revenues, \$9,044,000 for annual total river revenues, and \$776,564 for total annual fare-box payments.

OPINION

Lewis & Clark Issues

Rate Impact Forecast Assumptions

There are differences between the assumptions the actuary used to calculate the present value of the fare-box liability and the assumptions he used to project the rate impact over the life of the transition. The differences either reflect the different purposes of the two exercises or they are too small to make any real difference. They are not significant and not particularly relevant:

Present Value Analysis. The present value of COLRIP's liability was important in the absence of the stipulation as the starting point for the Board's decision about ratemaking treatment for fare-box benefit payments. It does not have a significant bearing on the desirability of the stipulation.

Rate Impact Forecast. The Board's interest in the graph extends only to the existence or absence of a future rate spike which would threaten the long term viability of the plan. The Board is not concerned that simplifying assumptions may have moved the curve slightly up, down, right, or left of its coordinates under the present value analysis assumptions.

Transfer Payments

The Concept. Lewis & Clark opposes provisions of the stipulation which would require Lewis & Clark to contribute funds to the transition. It argues that the transfer payments would be an illegal "tax" which would "subsidize" COLRIP to the detriment of competition on the river.

The subsidy argument is not persuasive because the only benefit to COLRIP from the payments is use of the ratepayer's share of the money for a year. The interest earnings would be a trivial part of COLRIP's total revenues.[13] It would make no more sense to factor interest earnings into the refund formula than it would to allocate a portion of COLRIP's pension plan administration costs to Lewis & Clark on the theory that Lewis & Clark pilots will be receiving benefits under the plan. The small economic advantage to COLRIP certainly does not justify allowing Lewis & Clark to keep the windfall.

There is even less merit to the argument that the payments would be a tax. The payments merely help the Board apply revenues from the fare-box component of rates to fare-box benefits with any excess returning to ratepayers. The Board's general rate setting authority allows it to allocate rate revenues to specific purposes and then enforce the allocation by establishing procedures for pilots to follow in disbursing the funds. The Board can direct Lewis & Clark to transfer funds to COLRIP for the benefit of retirees and ratepayers if that will help the Board achieve its ratemaking goals.

Lewis & Clark asserts that it will have to make the payments even if it operates at a loss. That may be true, but Lewis & Clark would be no worse off than it would be without the fare-box benefit component in its rates.

Lewis & Clark essentially asks the Board to reduce benefits for retirees and/or raise rates for ship operators so that Lewis & Clark can retain a windfall and achieve current income above the Board's target. It is a request for preferential treatment which the Board will not grant.

The Formulae. Lewis & Clark correctly asserts that the transfer payment formula in the stipulation would only coincidentally produce the correct results over the next 50

[13] In 1993, COLRIP devoted about 9 percent to its revenues to fare-box benefit payments and Lewis & Clark had total revenues of about $523,000 which would produce a transfer payment of about $47,000 and interest earnings at 10 percent total $2,350 during the first year and $4,700 during subsequent years. The $4,700 earnings would be 0.05 percent of COLRIP's 1993 total revenues ($8,521,000).

years. It also correctly asserts that the stipulation does not contain standards for revising the formula.

Those are not fatal flaws from the Board's perspective because the Board can establish standards in this order for triggering Board review of the formula, monitor the results of the formula, and then change it as necessary.[14] The Board would not need to change the terms of the stipulation because the stipulation envisions possible future Board revision of the formula. The Board would not need to conduct future general rate proceedings because the Board would not be changing rates.

The Board will incorporate review of the transfer formula into the stipulations annual reporting cycle by additionally requiring all pilot organizations to report their gross revenues. The Board does not see a need for annual small revisions to the formula, so the Board will revise the formula only if:

1) The formula deviates more than 10 percent from:

   a) *Transfer Target 1.* The amount necessary to eliminate the windfall to Lewis & Clark from adding a fare-box benefit component to its rates.

   b) *Transfer Target 2.* The amount necessary to offset the reduction in fare-box benefits from allocating 2½ percent of gross revenues to deferred income; and

2) Someone requests revision in time for the Board to put the request on its agenda and act on the request at a regular meeting before the next automatic rate adjustment.

The Board will avoid the cost in time and money of disputes over revenue/expense forecasts by basing the new formula on data from the previous year. The result will be a ministerial process in which the Board revises the formula to achieve Transfer Target 1 and Transfer Target 2. In determining the need for revisions, the Board will use the following formulae:

Transfer Target 1

The fare-box component of the rate structure is the percentage of total revenue for the ground which goes to fare-box benefit payments. The percentage of COLRIP's revenues going to fare-box benefits will be somewhat higher that the average for the river because COLRIP pays 100 percent of the benefits but has less than 100 percent of the market. The

[14] The Board will not need to monitor the formula at any time there is a single pilot organization on the river.

higher-than-average COLRIP percentage makes the formula in the stipulation tend to transfer too much revenue from Lewis & Clark. The excess is less than a simple comparison of the percentages might suggest because COLRIP's sole responsibility for fare-box benefit payments depresses COLRIP active pilot income which in turn depresses fare-box benefits. That reduces the fare-box component of Lewis & Clark's rate revenues and thereby reduces the amount Lewis & Clark would have to pay to disgorge the windfall. It appears circular because it is.

In the current situation, COLRIP has about 94 percent of the market[15] so its fare-box payment percentage is close to the percentage for the river as a whole and the stipulation's formula requires Lewis & Clark to pay close to what it should pay.[16] The formula would not work as well if COLRIP held only 50 percent of the market. That situation probably would cause the formula to extract significant excess revenues from Lewis & Clark.

A good way to determine whether transfer payments are close to the target would be to calculate the annual windfall, create an adjustment factor which would neutralize the difference between COLRIP's fare-box payment percentage and the average percentage for the ground, and add the adjustment factor to the formula in the stipulation:

Annual L&C Windfall = Annual L&C Revenues * Total Annual Fare-box Benefit Payments ÷ Total Annual River Revenues

Transfer Target 1 Adjustment Factor = Annual L&C Windfall ÷ Annual L&C Revenues * Annual COLRIP Revenues ÷ Total Annual Fare-box Benefit Payments

Monthly Transfer Payment = Monthly L&C Revenues * Total Annual Fare-box Benefit Payments ÷ Annual COLRIP Revenues * Transfer Target 1 Adjustment Factor

Using the 1993 data from page 15, the formulae produce the following results:

Annual L&C Windfall: $523,000 * $776,564 ÷ $9,044,000 = $44,907.

Transfer Target 1 Adjustment Factor: $44,907 ÷ $523,000 * $8,521,000 ÷ $776,564 = 0.94.

Monthly Transfer Payment: $43,583 * $776,564 ÷ $8,521,000 * 0.94 = $3,734

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15 The 94% figure is COLRIP's market share for 1993.

16 Using 1993 figures of $766,564 for total fare-box benefit payments, and $9,044,000 for total river revenues, the fare-box rate component would be 8½ percent of Lewis & Clark's revenues. Lewis & Clark would have paid COLRIP 9 percent under the stipulation.

The transfer payment under the stipulation would be $3,922 which is only $188 (5.0%) above the target. That is close enough, particularly when the Board considers that the transfer payments will not start until September 1996. The 17 month delay will enable Lewis & Clark to retain a windfall of $63,478.

Transfer Target 2

When the signatories developed the formula in the stipulation, it happened that a 50/50 split between retirees and ratepayers achieved the goal of offsetting the effects of the 2½ gross revenue allocation. A change in that situation would require the Board to calculate the retiree's share and apply that percentage to the monthly transfer payments. A good way to determine whether the split produces benefit payments close to the target would be to use the following formulae:

Retiree Share = Total Annual Fare-box Benefit Payments * 2½ percent ÷ Annual L&C Windfall[17]

Monthly Payment to Retirees = Monthly Transfer Payment * Retiree Share

Using the 1993 data, the formulae produce the following results:

Retiree Share: $776,890 * 0.025 ÷ $44,907 = 0.43

Monthly Payment to Retirees: $3,922 * 0.43 = $1,686.

The monthly payment under the stipulation is $1,961 which is $275 (16.3%) above the target. That is a sufficient difference for a party to ask the Board to revise the formula, but CRSOA is the likely moving party, and it is willing to accept the starting formula in the stipulation, so there is no need for the Board to change it now.

In the event the Board revises the formula, it will be important to note that the parties intended the ".5" figure in the Remittance Adjustment Factor formula to be shorthand for the ratepayer's share of the transfer payments. They agreed that revising the formula will not change the terms of the stipulation.

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[17] The full formula is: (Annual COLRIP Gross Revenues * 0.025) *which equals the reduction from the 2½ allocation* * (Total Annual Fare-box Benefit Payments ÷ Annual COLRIP Gross Revenues) *which equals the retiree's share of the reduction* ÷ Annual L&C Windfall. Since Annual COLRIP Gross Revenues appears in both the numerator and denominator, it drops out of the formula.

The Stipulation

Issue

The issue before the Board at this stage of the proceeding is whether the plan in the stipulation is a reasonable transition from the old policy of basing rates on COLRIP's fare-box expenses to the new policy of adding a deferred income component to individual pilot income.

Standard for Review

In reviewing the stipulation, the Board must exercise independent judgment. The Board cannot conclude that the plan in the stipulation is reasonable simply because the signatories agreed to the terms.

Resolution

Basic Objective. The stipulation meets the basic objective of a transition from the old policy to the new policy because it freezes accrual of fare-box credits, for ratemaking purposes, on the effective date of this order. It is consistent with the Board's policy statement in Order No. 93-4 because it does not require pilots to use retirement funds in any particular way.

Effectiveness. The concept of continuing to pay fare-box benefits as they become due has the advantage of simplicity. It is particularly advantageous in that there is no need to change the terms of the retirement plans. There are minimal additional administrative costs and no need to compensate a third party for assuming the risk that actual benefit expenses will be higher than projected expenses or that actual rate revenues will fall short of projected revenues.

Long Term Viability. The actuarial projection shows no sharp rate spikes. There is nothing inherent in the plan that would create future rate problems.

Relative Fairness. All parties and the public will realize a net benefit from the plan:

Retirees. Retirees benefit from greatly increased certainty with no appreciable change in benefits.

Current Active Pilots. Current active pilots benefit from recognition of existing fare-box credits for ratemaking purposes at the cost of some lost current income and, at the assumed 12 percent contribution level, some lost retirement income.

Future Active Pilots. Future active pilots will benefit from a retirement system which does not depend on future rate revenues at the cost of somewhat lower current income and, at the assumed 12 percent contribution level, somewhat lower retirement income than their predecessors.

CRSOA and the Ports. CRSOA directly benefits, and the Ports indirectly benefit, from greater stability at the cost of slightly higher rates.

The Public. Everyone benefits from more predictable rates and the greater ability to attract competent pilots that comes from a more stable environment.

Future Compliance. The signatories to the stipulation have contractually committed themselves to a long term solution to a problem which has created friction for over a decade. They built adequate reporting requirements into the stipulation for the Board to effectively monitor use of funds for fare-box benefits.

Conclusion

The Board should adopt the plan in the stipulation subject to the terms of this order.

IMPACT ON ORDER NO. 93-4

In Order No. 93-4, the Board stated that it would no longer treat fare-box pension benefit payments as a pilot association expense for ratemaking purposes. *See* Order No. 93-4 at 20. The Board, if it is to adopt the stipulation in this phase of the proceeding, must modify Order No. 93-4 as follows:

Recognition of Fare-box Benefit Expenses. The Board will recognize fare-box benefit expenses as a pilot association expense for both river pilots and bar pilots during the transition away from their fare-box systems. The transition for the bar pilots will be pursuant to the plan they adopted after the 1986 rate order. The transition for the river pilots will be pursuant to the terms of this order.

The River Transition. The transition for the river will start on the effective date of this order rather than the effective date of Order No. 93-4. This means that the Board will recognize benefit payments and credit accruals during the reconsideration phase of this proceeding. It also means that, as a conceptual matter, rates during the reconsideration phase contained a fare-box benefit expense component but no deferred income component.

The Bar Transition. The bar pilots started their transition shortly after the 1986 rate order. Their existing rates contain both a transitional fare-box benefit expense component and a deferred income component. The appropriate rate contribution to the bar's transition was not an issue in this proceeding. It may be an issue in the bar's next rate case.

Effective Date for Order No. 93-4. Rates for both grounds, as a conceptual matter, will continue to add the deferred income component to the fare-box system during the transition. After the transition for each pilotage ground, only the deferred income component will remain and the Board will set rates for the ground pursuant to the policy it adopted in Order No. 93-4. The transitions are temporary exceptions to the Order No. 93-4 policy, so the order takes effect automatically at the end of each transition.

CONCLUSIONS

1. The plan in the stipulation is a reasonable transition plan for the river ground.
2. The Board should adopt it.
3. The Board should modify Order No. 93-4 to conform to this order.

ORDER

IT IS ORDERED THAT:

1. The plan in the stipulation in Appendix "C" is adopted.
2. Order No. 93-4 is modified to conform to this order.

Made, entered, and effective at midnight this 20th day of March, 1994.

Irving Potter
Chair

Notice: You may appeal this order to the Oregon Court of Appeals. To do so, you must file a Petition for Judicial Review with the Court within 60 days from the date the Board served you with a copy of the order. Judicial review is pursuant to ORS 183.480.

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of March, 1995, I served the foregoing ORDER NO. 95-2, by depositing in a sealed envelope with first-class postage prepaid, in the U.S. Post Office at Portland, Oregon, a full, true and correct copy thereof, addressed to the following:

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