

I N D E X

THE BOARD OF PILOT COMMISSIONERS  
OF THE PORTS OF HARRIS COUNTY, TEXAS

June 25, 2013

<i>Minute No.</i>	<i>Event/Action</i>
	Chairman Longoria convened the meeting of the Board of Pilot Commissioners
(PB-2013-0625-01)	Approve the Minutes of the Board of Pilot Commissioners Meeting – May 21, 2013
(PB-2013-0625-02)	Marcus Woodring, Managing Director, Health, Safety, Security, and Environmental Departments reported on Pilot Board Investigation and Recommendation Committee (PBIRC) activities
(PB-2013-0625-03)	Authorize the staff to submit for public comment proposed amendments to Section 9, regarding Pilotage Charges, of the Rules and Regulations Governing Pilots and Pilotage on the Houston Ship Channel between the Galveston Bar and Turing Basin
	Adjourn the meeting of the Board of Pilot Commissioners

**Board of Pilot Commissioners for Harris County Ports  
Public Meeting**

**Houston, Texas  
June 25, 2013**

A public meeting of the Board of Pilot Commissioners for Harris County Ports (the "Pilot Board") was convened on June 25, 2013 at 9:58 a.m., at the Port of Houston Authority Executive Offices, Fourth Floor Boardroom, at 111 East Loop North, Houston, Texas 77029. The following Commissioners and staff were present:

Janiece Longoria, Chairman  
Jimmy A. Burke, Commissioner  
Dean E. Corgey, Commissioner  
John D. Kennedy, Commissioner  
Steve L. Phelps, Commissioner  
Leonard Waterworth, Secretary  
Erik Eriksson, General Counsel and Assistant Secretary

Chairman Longoria called the meeting of the Pilot Board to order.

(PB-2013-0625-01) Chairman Longoria asked for a motion to approve the Pilot Board minutes of its May 21, 2013 meeting. The motion was brought by Commissioner Corgey, seconded by Commissioner Phelps. Chairman Longoria, and Commissioners Burke, Corgey, Kennedy, and Phelps voted Aye. Nays none. The minutes were approved as written.

(PB-2013-0625-02) Chairman Longoria called for the staff report on the Pilot Board Investigation and Recommendation Committee (PBIRC) activities, presented by Marcus Woodring, Managing Director, Health, Safety, Security, and Environmental Departments.

Mr. Woodring reported that upon his appointment as chairman of the PBIRC in January 2013, one of the first orders of business was to hold a hearing on the MSC Nederland matter. Immediately following that hearing, a meeting of the PBIRC sub-committee was held, to review eight pending cases dating back to 2011. Six cases were closed to file and two cases will proceed to full hearings in July 2013.

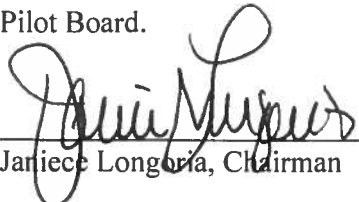
He noted several recurring themes were observed upon review of the cases that will be disseminated at the next Lone Star Harbor Safety Committee meeting. The general themes seen within the waterways in the Houston area are regarding: communications – intentions must be made very clear on the radio, in particular with heavy radio traffic; known hot spots – the Texas City Y and by the Lynchburg Ferry; and allisions with docks and wharfs – maintenance of these areas will help minimize damage to facilities and vessels when mooring.

The Pilot Board then considered a Request for Pilot Board Action ("RPBA"), submitted by Chairman Longoria, attached to these minutes as Exhibit "A."


(PB-2013-0625-03) RPBA D1 was presented, moved by Commissioner Phelps, seconded by Commissioner Kennedy. Chairman Longoria, and Commissioners Burke, Corgy, Kennedy, and Phelps voted Aye. Nays none. RPBA D1 PASSED.

At 10:01 a.m. Chairman Longoria adjourned the meeting of the Pilot Board.

The above is a correct copy of the Minutes of the June 25, 2013 meeting of the Pilot Board.

  
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Jariece Longoria, Chairman

ATTEST:

  
\_\_\_\_\_  
Erik A. Eriksson, General Counsel and  
Assistant Secretary

**Request for Board of Pilot Commissioners Action**

<p><b>Category:</b> General</p>	<p><b>Agenda Date:</b> June 25, 2013</p>	<p><b>Agenda Section:</b> D - 1</p>
<p><b>From:</b> <b>Division:</b> Legal <b>Department:</b> Pilot Administration</p>	<p><b>Staff Contact:</b> Erik Eriksson</p>	
<p><b>Summary Recommendation:</b> Authorize the staff to submit for public comment proposed amendments to Section 9, regarding Pilotage Charges, of the Rules and Regulations Governing Pilots and Pilotage on the Houston Ship Channel between the Galveston Bar and Turning Basin</p>		
<p><b>Background:</b> The Houston Pilots Licensing and Regulatory Act, Chapter 66 of the Texas Transportation Code, requires the Board of Pilot Commissioners for the Ports of Harris County ("Pilot Board") to establish pilotage rates for the ports of Harris County, as provided therein.</p> <p>Section 9 of the Rules and Regulations Governing Pilots and Pilotage on the Houston Ship Channel between the Galveston Bar and Turning Basin ("Pilot Rules") include procedural provisions regarding the establishment of pilotage rates.</p>		
<p><b>Staff Evaluation/Justification:</b> Staff and outside counsel have prepared proposed revisions to Section 9 of the Pilot Rules, attached hereto. The revisions set forth more detailed procedural rules regarding Pilot Board action on pilotage charges, to better achieve transparency, fairness, and independence during the process.</p> <p>Staff recommends that the proposed revisions be submitted for public comment, prior to further action by the Pilot Board.</p>		
<p><b>Full Recommendation:</b> The Pilot Board at its June 25, 2013 meeting authorize the staff to submit for public comment the proposed amendments to Section 9, regarding Pilotage Charges, of the Rules and Regulations Governing Pilots and Pilotage on the Houston Ship Channel between the Galveston Bar and Turning Basin, and further authorize the Secretary of the Pilot Board to do any and all things in his opinion reasonable or necessary to give effect to the foregoing.</p>		

Rules and Regulations Governing Pilots and Pilotage  
On the Houston Ship Channel Between the Galveston Bar and Turning Basin  
PROPOSED REVISION – Section 9 Pilotage Charges

9. PILOTAGE RATES

- A. All provisions of Subchapter D of the Act, namely Sections 66.061 through 66.071, are incorporated into these Rules by reference. Sections 66.061, et seq., are repeated in bold font, followed by the Rules adopted by the Pilot Board.

**Sec. 66.061. PILOTAGE RATE CHANGE. The board may not change pilotage rates before the first anniversary of the preceding rate change.**

**Sec. 66.062. PILOTAGE RATE CHANGE APPLICATION. (a) An application for a change in pilotage rates may be submitted to the board by:**

- (1) a pilot;**
- (2) an association of pilots;**
- (3) a consignee liable under Section 66.070 to pay pilotage rates; or**
- (4) an association of consignees.**

**(b) The application must be written and must state specifically the changes requested.**

**(c) The board shall set a hearing date within two weeks of receipt of an application. The board shall hold the hearing not earlier than the 20th day and not later than the 40th day after the date the board sets the hearing date.**

**(d) An applicant shall give notice of the application and the hearing date, by certified mail to the last known address, to:**

- (1) all pilots licensed or certified in the port;**
- (2) all known pilots' associations; and**
- (3) all steamship agencies and associations in the port.**

- B. An application made under Section 66.062 of the Act shall be delivered to the office of the Executive Director of the Port Authority, who shall note the date of receipt thereon and inform the Pilot Board thereof.

- 1) Any interested party may provide a written submission supporting, opposing or otherwise addressing an application.
- 2) Ex parte communications with members of the Pilot Board on substantive issues posed by an application by parties having an interest in pilot rates for the Port of Houston are prohibited.
- 3) No submissions received after the deadline posted on the Pilot Board's website for the submission of written materials shall be considered by the Pilot Board.

- C. The application, the pilot financial report required by Section 66.063 of the Act, all written submissions received, and all reports of any consultant, expert, or other persons or entity providing substantive advice to the Pilot Board regarding the application, as well as a transcript of the oral presentations received by the Board, shall promptly be posted on the Pilot Board's website.
- D. The Chairman of the Pilot Board shall direct the course of proceedings under this section and shall determine all matters of procedure and schedule, subject to the provisions of the Act, including the deadlines and dates by which the pilot financial report and written submissions by interested parties must be received by the Secretary, the date on all written materials received must be provided to the members of the Pilot Board, the date and time at which the Pilot Board will hear oral presentations, and the date by which parties may submit post-presentation submissions. The Chairman of the Pilot Board may make reasonable adjustments to the schedule and time periods stated by any of these Rules in the interest of fairness to all parties.
- 1) The Chairman of the Pilot Board shall appoint such persons as are necessary to administer the process provided by these Rules, including a Secretary.
  - 2) The Secretary, or the Secretary's staff, shall note the date of receipt on each application or submission received. The terms "received," "date of receipt," "receipt," "delivered" or "delivery" as used by these Rules means the date noted on an item by the Secretary's staff as reflecting the date of receipt.
  - 3) The Secretary shall promptly post the schedule and all dates and deadlines on the Pilot Board's website.
- E. Subject to a majority vote of the Pilot Board making a superseding decision, the Chairman of the Pilot Board may engage consultants, experts, or others, including an auditor or accountant, as contemplated by Section 66.063(c) of the Act, to assist the Pilot Board in analyzing the application, the pilot financial report required by Section 66.063, and any submissions received, and may engage attorneys, including an attorney to act as general counsel to the Pilot Board and to assist in preparing the Pilot Board's written decision, as required by Section 66.065 of the Act.
- F. The hearing required by Section 66.061(c) of the Act shall be informal, without the formal admission of evidence as in a court of law. The hearing shall include:
- 1) The submission to all members of the Pilot Board on an announced date of the written application, the pilot financial report, all written submissions received from interested parties, and all reports of all consultants, experts,

or other persons or entities providing substantive advice to the Pilot Board members on the rate issue; and

- 2) Oral presentations by the applicant and any other interested parties to the Pilot Board while meeting in public session. The Chairman of the Pilot Board may establish appropriate time limits for oral presentations and may require advance notice from those desiring to make oral presentations to the board.
- G. The Chairman of the Pilot Board shall determine, and the Secretary shall post, a deadline by which any party may deliver to the Secretary an additional or rebuttal written submission responding to information provided by the Pilot Board by another party or to the oral presentations presented to the Pilot Board. The Secretary shall submit all such additional submissions to each member of the Pilot Board promptly after such deadline and shall post the date of such submission to the Pilot Board members.
- H. The hearing referenced by Sections 66.062(c) and 66.065 of the Act shall be deemed complete and the written decision required by Section 66.065 shall be publicly announced and posted by the Secretary on the thirtieth (30th) day after the date of submission posted by the Secretary under Section 9(G).

**Sec. 66.063. PILOT FINANCIAL REPORT. (a) Not later than the 10th day before the date set for a pilotage rate hearing, the pilots who are licensed or certified to serve the port for which the rates are being considered shall submit in writing to the board and to any party designated by the board complete accounts of:**

- (1) all amounts received from performing pilot services, organized by categories or classifications of rates, if rates are set in that manner;**
- (2) all earnings from capital assets devoted to providing pilot services;**
- (3) all expenses incurred in connection with activities for which amounts described by Subdivisions (1) and (2) were received and earned; and**
- (4) estimates of receipts and expenses anticipated to result from the requested changes in pilotage rates.**

**(b) The pilots shall provide the information for:**

- (1) the calendar or fiscal year preceding the date of the pilotage rate change application; and**
- (2) the subsequent period to within 60 days of the date of the application.**

**(c) The board may require an independent audit of financial information submitted under Subsection (a) by an accountant selected by the board. The board, as it considers fair and just, shall assess the costs of the audit against one or more of the applicants and objecting parties.**

**(d) The board may require relevant additional information it considers necessary to determine a proper pilotage rate.**

- I. The financial report required by Section 66.063 of the Act shall be delivered to the Secretary on or before the date provided by the schedule announced per

Section 9(D). In addition to the information listed in Section 66.063, the required report shall:

- 1) Set forth the pilots' analysis of the requested rate change in view of each of the factors stated by Section 66.064 of the Act;
- 2) Address the issue of pilotage rates at other representative United States ports and the reasons for the differences, if any, between pilotage rates at those ports and the rates proposed by the applicant for the Port of Houston; and
- 3) Address the impact, if any, on the proposed pilotage rates of an award of costs as permitted by Section 66.066 of the Act.

If the applicant for the rate change is other than the licensed pilots, and if the applicant's application does not contain the information required of the licensed pilots by this rule, then the applicant shall deliver to the Secretary a written submission providing the information required by this rule on or before the deadline posted under Section 9(D).

**Sec. 66.064. FACTORS FOR BOARD CONSIDERATION.** In establishing pilotage rates, the board shall consider factors relevant to determining reasonable and just pilotage rates, including:

- (1) characteristics of vessels to be piloted;
- (2) the average number of hours spent by a pilot performing:
  - (A) pilot services on board vessels; and
  - (B) all pilot services;
- (3) costs to pilots to provide the required pilot services;
- (4) the public interest in maintaining safe, efficient, and reliable pilot services;
- (5) the average wages of masters of United States flag vessels that navigate in the board's jurisdiction and for which the pilotage rate is to be established;
- (6) economic factors affecting the shipping industry in the area in which the port is located; and
- (7) an adequate and reasonable compensation for the pilots and a fair return on the equipment and vessels that the pilots employ in connection with their duties.

**Sec. 66.065. RATE DECISION.** Not later than the 10th day after the date of the completion of a hearing on an application for a change in pilotage rates, the board shall issue a written decision that:

- (1) grants or denies the application in whole or in part;
- (2) states the reasons for the decision; and
- (3) states each new pilotage rate.

**Sec. 66.066. COSTS.** The board, in a final order under this subchapter, may charge all or part of the costs of processing an application to the parties in the proceedings.



**Sec. 66.067. APPEAL OF BOARD DECISION.** Any party aggrieved by a board decision on pilotage rates, after exhausting all administrative remedies, may appeal the order to a court.

- J. A rate decision under Section 66.065 of the Act shall state the date on which any change in pilotage Rules becomes effective. Such date shall be no earlier than the fifteenth (15th) day after the date on which the decision is publicly announced.
- K. A party aggrieved by a Pilot Board decision under Section 66.065 of the Act and desiring to appeal to a court shall, prior to filing an appeal, submit a request for reconsideration to the Secretary on or before the fourteenth (14th) day after the public announcement of the rate decision. The request shall set forth in reasonable detail the basis for the request.
  - 1) The Chairman of the Pilot Board shall promptly determine, and the Secretary shall post on the Pilot Board's website, a timetable and procedures for disposition of the request for reconsideration on or before the thirtieth (30th) day after the request is received by the Secretary.
  - 2) The timetable shall state the point in time at which all administrative remedies shall have been exhausted.
- L. The Secretary's timely receipt of a request for reconsideration shall have the effect of suspending any change in pilotage rates for a period of thirty (30) days after the date of the Secretary's receipt of the request for reconsideration unless otherwise determined by the Pilot Board.
- M. The Pilot Board may amend its rate decision in any respect prior to the point in time that the decision becomes effective under these Rules.

**Sec. 66.068. EMERGENCY PILOTAGE RATES.** (a) The board may establish emergency pilotage rates for the period of an emergency, not to exceed 30 days, if the board finds that:

- (1) a natural or man-made disaster has created a substantial hazard to piloting vessels into and out of a port; and
  - (2) the existence of the hazard overrides the necessity to comply with normal pilotage rate-setting procedures.
- (b) In adopting emergency pilotage rates, the board is not required to comply with the procedures in this chapter or in its rules relating to adoption of pilotage rates.
- (c) Emergency pilotage rates may not be appealed.
- (d) The board shall adopt rules to carry out this section.

**Sec. 66.069. PILOT SERVICES REQUIRED.** The consignee of a vessel under the consignee's control shall obtain pilot services for the vessel and shall pay the pilot who pilots the vessel into and out of the port area compensation according to the pilotage rates filed by the board.

**Sec. 66.070. PILOTAGE RATE LIABILITY. (a) A consignee who declines the services of a pilot offered outside the bar and enters the port without the aid of a pilot is liable for the payment of pilotage to the first pilot whose services were declined.**

**(b) A consignee is liable for the payment of pilotage to the pilot who brings a vessel in if the vessel goes out without employing a pilot.**

**(c) A consignee is liable for the payment of pilotage for a vessel that goes out without the aid of a pilot and that came in without the aid of a pilot to the pilot who first offered services before the vessel came in.**

**(d) A consignee is not liable for the payment of pilotage for a vessel going out without a pilot if the vessel came in without the aid of a pilot or came in without the offer of a pilot outside.**

**(e) Subsections (a)-(d) do not apply to a consignee exempt under this chapter from payment of pilotage rates.**

**(f) A pilot who charges a rate for pilot services different from the pilotage rates established under this chapter for the port in which the pilot serves is liable to each person who was charged the different rate for double the amount of pilotage.**

**(g) A court may include in a judgment in favor of a person who files suit to collect an amount owed under this chapter an award to cover court costs and reasonable attorney's fees.**

N. The rates of pilotage charged by the pilots operating under the Act and these Rules shall at all times be the rates established by the Pilot Board in accordance with the Act and these Rules.

- 1) A schedule of such rates shall at all times be on file in the office of the Secretary.
- 2) No Pilot shall demand or receive any greater, lesser or different compensation for rendering pilotage service than the rates established by the Pilot Board.

**Sec. 66.071. RECOVERY OF COMPENSATION. A pilot who offers pilot services to a vessel required under this chapter to obtain pilot services and whose services are refused is entitled to recover from the consignee the pilotage rate for the services.**