

I N D E X

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

July 23, 2013

*Minute No.*

*Event/Action*

**General**

Chairman Longoria convened the meeting of the Board of Pilot Commissioners

Recess Open Meeting and Convene Executive Session

Adjourn Executive Session and Reconvene Open Meeting

**Minutes**

(PB-2013-0723-01) Approve the Minutes of the Board of Pilot Commissioners Meeting – June 25, 2013

**Appearances**

(PB-2013-0723-02A) Chairman Longoria introduced Captain Robert L. Thompson, Presiding Officer, Houston Pilots Association, who addressed the Pilot Board

(PB-2013-0723-02B) Chairman Longoria recognized Jim Brown of Legge, Farrow, Kimmitt, McGrath & Brown, LLP, who addressed the Pilot Board

(PB-2013-0723-02C) Chairman Longoria recognized Niels Aalund, Senior Vice President, West Gulf Maritime Association, who addressed the Pilot Board

(PB-2013-0723-02D) Chairman Longoria asked if anyone else would like to address the Pilot Board; there was no response

**Pilot Matters**

(PB-2013-0723-03) Recommendation for renewal of Branch Pilot commission in and for the Houston Ship Channel and Galveston Bar: Captain James T. Concagh

(PB-2013-0723-04) Recommendation for renewal of Branch Pilot commission in and for the Houston Ship Channel and Galveston Bar: Captain Michael A. Curtiss

(PB-2013-0723-05) Recommendation for renewal of Branch Pilot commission in and for the Houston Ship Channel and Galveston Bar: Captain Daniel J. Doty

(PB-2013-0723-06) Recommendation for renewal of Branch Pilot commission in and for the Houston Ship Channel and Galveston Bar: Captain Randy L. Rhoads

*Minute No.*

*Event/Action*

(PB-2013-0723-07)

Recommendation for renewal of Branch Pilot commission in and for the Houston Ship Channel and Galveston Bar: Captain Robert L. Thompson

(PB-2013-0723-08)

Approve 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 (as amended re paragraph 9(C))

Adjourn the meeting of the Board of Pilot Commissioners

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

**Houston, Texas  
July 23, 2013**

A public meeting of the Board of Pilot Commissioners for Harris County Ports (the "Pilot Board") was convened on July 23, 2013 at 11:32 a.m., at the Port of Houston Authority Executive Offices, Fourth Floor Boardroom, at 111 East Loop North, Houston, Texas 77029. The following Commissioners, staff, and counsel were present:

Janiece Longoria, Chairman  
Jimmy A. Burke, Commissioner  
Dean E. Corgey, Commissioner  
Clyde E. Fitzgerald, Commissioner  
John D. Kennedy, Commissioner  
Kase L. Lawal, Commissioner  
Steve L. Phelps, Commissioner  
Len Waterworth, Secretary  
Erik Eriksson, General Counsel and Assistant Secretary  
David H. Brown, Brown & Kornegay, LLP  
J. Kent Friedman, Haynes and Boone, LLP

Chairman Longoria called the meeting to order and instructed Mr. Eriksson to read the following announcement:

It is now 11:32 a.m. The Board of Pilot Commissioners for Harris County Ports will now convene in a closed meeting, as permitted by the Texas Open Meetings Act and Government Code, to conduct a private consultation with its attorneys (Section 551.071, Texas Open Meetings Act), including consultations regarding 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. The Board of Pilot Commissioners will reconvene in public session after the closed meeting is adjourned.

Immediately thereafter the Board of Pilot Commissioners retired into closed session.

At 11:43 a.m., the open meeting reconvened at the Port of Houston Authority Executive Office Boardroom, at 111 East Loop North, Houston, Texas 77029, with the following Commissioners, staff, and counsel in attendance:

Janiece Longoria, Chairman  
Jimmy A. Burke, Commissioner  
Dean E. Corgey, Commissioner  
Clyde E. Fitzgerald, Commissioner  
John D. Kennedy, Commissioner

Kase L. Lawal, Commissioner  
Steve L. Phelps, Commissioner  
Len Waterworth, Secretary  
Erik Eriksson, General Counsel and Assistant Secretary  
David H. Brown, Brown & Kornegay, LLP  
J. Kent Friedman, Haynes and Boone, LLP

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

(PB-2013-0723-01) Chairman Longoria asked for a motion to approve the Pilot Board minutes of its June 25, 2013 meeting. The motion was brought by Commissioner Corgey, seconded by Commissioner Burke. Chairman Longoria, and Commissioners Burke, Corgey, Fitzgerald, Kennedy, Lawal, and Phelps voted Aye. Nays none. The minutes were approved as written.

(PB-2013-0723-02) Appearances

(A) Chairman Longoria introduced Captain Robert L. Thompson, Presiding Officer, Houston Pilots Association (“Houston Pilots”), who addressed the Pilot Board.

Captain Thompson presented the second quarter Houston Pilots update, noting ship count was down 8% in June, and the overall ship count year-to-date is 10,056, in comparison to 10,503 during the prior year. He reported a total of 447 transits during the period, consisting of 161 transits in small ships (ships under 1,000 units) and 286 transits in large ships (ships over 1,000 units). Captain Thompson explained that the decline related to domestic crude production, which reduced business.

He remarked that the Houston Pilots support the work the Port Commission is doing and its efforts to look outside the box to bring industry into the region.

Captain Thompson next reported on a contract entered into in 2012 between the Houston Pilots and Circadian to (i) conduct an independent scientific analysis of pilot alertness and fatigue, and (ii) to provide appropriate recommendations to increase alertness and decrease fatigue, based on results of the analysis. He noted that Circadian is one of the leaders in fatigue risk assessments, has offices in five countries, and its founder, Dr. Martin Moore-Ede, is a Harvard University-trained psychologist and professor who has pioneered research in this area.

Captain Thomson went on to describe various processes and activities Circadian used to evaluate and perform the analysis. He stated the results of the study indicated an appropriate match between workload and pilot manpower. The benchmark, the pilot’s scores against the scores of other 24/7 industries, found the duty/rest patterns of the pilots

do not create excessive fatigue. Negotiations are in process for a second phase of the analysis that will not only evaluate past data, but future workload performance.

Captain Thompson next reported on a shoaling incident, during which the U.S. Army Corps of Engineers had to be contacted and a draft restriction issued for the second time in a year, to facilitate safer navigation. He mentioned the Army Corps will be putting out a request for bids for a contract to dredge the area, and that the contract is anticipated to be awarded in August.

Captain Thompson provided an update on the Houston Pilots man model, and that he anticipates the Bayport Ship Channel replica to be complete in two months, so practice runs can commence. He concluded his presentation by showing various simulations at the docks that are used for evaluation purposes.

Chairman Longoria expressed her thanks on behalf of the Pilot Board for the help the Houston Pilots provide to enable the Port Authority to achieve its mission.

(B) Chairman Longoria recognized Jim Brown of Legge, Farrow, Kimmitt, McGrath & Brown, LLP, who addressed the Pilot Board.

Mr. Brown commented on the proposed revisions 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. He stated his comments relate specifically to the proposed posting of pilot financial reports on the web. He noted that this would be considered private information, and generally under the law, a person's financial information is protected (the protection is set aside if there is a valid or legislative reason to do so). He further noted that the Houston Pilots are required to provide financial reports but are not paid by the state.

Mr. Brown stated he believes it is inappropriate to post a pilot's financial information on a public website as it is legally considered protected private information. He stated if the information is later deemed to be required by a party, a public information request can be filed and the determination then made by the Texas Attorney General whether or not the information can be disclosed.

Chairman Longoria commented the Pilot Board has been considering this rule change, and independent of the privacy concern, it is not in the best interest of the competitiveness of the Port Authority for pilot information to be published online. She noted that Section 9(C) will be amended to delete the requirement, and in lieu of that, all written submissions will be available at a central location. This allows stakeholders who provide reasonable notice with access to the information.

(C) Chairman Longoria recognized Niels Aalund, Senior Vice President, West Gulf Maritime Association (“WGMA”), who addressed the Pilot Board.

Mr. Aalund stated one of his comments also relates to Section 9 and agreed with Mr. Brown’s assessment relating to the privacy concerns. He also said that as an interested stakeholder, he believes the information should remain private but would like access to the information if needed.

Mr. Aalund next commented on Section 9(F). He noted that the WGMA made several suggestions and staff supported all the revisions with the exception of its comment 3 on this section. He explained the rationale for this comment and stated that based on the WGMA’s previous experience, cross-examination is appropriate, offers added value to process information, and has proven to be beneficial. He requested consideration to allow the process of cross-examination, as is done elsewhere, but with the caveat of rules and time limits.

(D) Chairman Longoria asked if anyone else would like to address the Pilot Board; there was no response.

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

(PB-2013-0723-03) RPBA E1 was presented, moved by Commissioner Corgey, seconded by Commissioner Phelps. Chairman Longoria, and Commissioners Burke, Corgey, Fitzgerald, Kennedy, Lawal, and Phelps voted Aye. Nays none. RPBA E1 PASSED.

(PB-2013-0723-04) RPBA E2 was presented, moved by Commissioner Corgey, seconded by Commissioner Fitzgerald. Chairman Longoria, and Commissioners Burke, Corgey, Fitzgerald, Kennedy, Lawal, and Phelps voted Aye. Nays none. RPBA E2 PASSED.

(PB-2013-0723-05) RPBA E3 was presented, moved by Commissioner Kennedy, seconded by Commissioner Lawal. Chairman Longoria, and Commissioners Burke, Corgey, Fitzgerald, Kennedy, Lawal, and Phelps voted Aye. Nays none. RPBA E3 PASSED.

(PB-2013-0723-06) RPBA E4 was presented, moved by Commissioner Corgey, seconded by Commissioner Lawal. Chairman Longoria, and Commissioners Burke, Corgey, Fitzgerald, Kennedy, Lawal, and Phelps voted Aye. Nays none. RPBA E4 PASSED.

(PB-2013-0723-07) RPBA E5 was presented, moved by Chairman Longoria, unanimously seconded. Chairman Longoria, and Commissioners Burke, Corgey, Fitzgerald, Kennedy, Lawal, and Phelps voted Aye. Nays none. RPBA E5 PASSED.

(PB-2013-0723-08) Chairman Longoria made a motion to approve 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 (as amended re paragraph 9(C)), seconded by Commissioner Burke. Chairman Longoria, and Commissioners Burke, Corgey, Fitzgerald, Kennedy, Lawal, and Phelps voted Aye. Nays none. Motion PASSED.

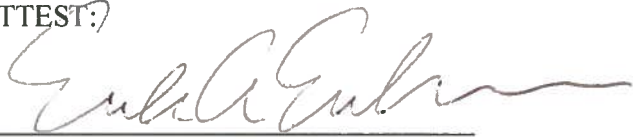
Chairman Longoria commented that the Pilot Board understands the importance of industry working together with the pilots and with the Port of Houston to come up with a negotiated rate solution that is win-win for all involved. She stated nothing in the rules is intended to eliminate that, and items exist in the rules to assure that continues to happen. She noted the Pilot Commissioners are fully on board to assist in making that happen and are hoping in the future that is the way it will work.

At 12:07 p.m. Chairman Longoria adjourned the meeting of the Pilot Board.

The above is a correct copy of the Minutes of the July 23, 2013 meeting of the Pilot Board.

  
\_\_\_\_\_  
Janiece Longoria, Chairman

ATTEST:

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

## Request for Pilot Board Action

<b>Category:</b> Pilot Matters	<b>Agenda Date:</b> July 23, 2013	<b>Agenda Section:</b> E - 1
<b>From:</b> <b>Division:</b> Legal <b>Department:</b> Pilot Administration	<b>Staff Contact:</b> Erik Eriksson	
<b>Summary Recommendation:</b> Recommendation for renewal of Branch Pilot Commission in and for the Houston Ship Channel and Galveston Bar: Captain James T. Concagh.		
<b>Background:</b> Prior authorizing Pilot Board action: Minute No. 2009-0825-39  The Application Review Committee (ARC) of the Pilot Board considers whether applicants meet the statutory and regulatory requirements for pilots on the Houston Ship Channel. Among other things, applicants undergo a physical examination to determine if an applicant is in good mental and physical health in order to perform the duties of pilotage on the Houston Ship Channel, and an investigation including a criminal background check and the applicant's accident history is conducted.		
<b>Staff Evaluation/Justification:</b> Captain James T. Concagh has applied for renewal of his commission as Branch Pilot for the Galveston Bar and Houston Ship Channel. The application includes evidence of continued education training in Fatigue, Sleep, & Medication, Manned Model Ship Handling, Legal Aspects of Piloting, and Radar Observer during his last commission cycle, and a renewal request on his behalf from the Houston Pilots, with evidence of his ability to enter into a faithful performance bond in the amount of \$25,000 payable to the governor.  After an assessment of his qualifications and the documents filed with his application, the ARC determined that Captain James T. Concagh meets the requirements of Chapter 66 of the Texas Transportation Code, Houston Pilots Licensing and Regulatory Act, Section 66.041, and the Rules and Regulations governing Pilots and Pilotage on the Houston Ship Channel Between the Galveston Bar and the Turning Basin Terminal.  Accordingly, the ARC respectfully submits to the Pilot Board the application of Captain James T. Concagh to renew his commission as Branch Pilot for the Galveston Bar and the Houston Ship Channel. Such commission is for a four-year term.		
<b>Full Recommendation:</b> The Pilot Board, at its July 23, 2013 meeting, recommend to the Governor the renewal of the commission of Captain James T. Concagh as Branch Pilot for the Galveston Bar and the Houston Ship Channel for a four-year term effective October 27, 2013, 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.		



## Request for Pilot Board Action

<b>Category:</b> Pilot Matters	<b>Agenda Date:</b> July 23, 2013	<b>Agenda Section:</b> E - 2
<b>From:</b> <b>Division:</b> Legal <b>Department:</b> Pilot Administration	<b>Staff Contact:</b> Erik Eriksson	
<b>Summary Recommendation:</b> Recommendation for renewal of Branch Pilot Commission in and for the Houston Ship Channel and Galveston Bar: Captain Michael A. Curtiss.		
<b>Background:</b> Prior authorizing Pilot Board action: Minute No. 2009-0825-40  The Application Review Committee (ARC) of the Pilot Board considers whether applicants meet the statutory and regulatory requirements for pilots on the Houston Ship Channel. Among other things, applicants undergo a physical examination to determine if an applicant is in good mental and physical health in order to perform the duties of pilotage on the Houston Ship Channel, and an investigation including a criminal background check and the applicant's accident history is conducted.		
<b>Staff Evaluation/Justification:</b> Captain Michael A. Curtiss has applied for renewal of his commission as Branch Pilot for the Galveston Bar and Houston Ship Channel. The application includes evidence of continued education training in ARPA, Error Detection and Advanced Radar Techniques in restricted waters, Emergency Ship Handling, Fatigue, Sleep, & Medication course, BRM-Pilots, and Legal Aspects of Piloting during his last commission cycle, and a renewal request on his behalf from the Houston Pilots, with evidence of his ability to enter into a faithful performance bond in the amount of \$25,000 payable to the governor.  After an assessment of his qualifications and the documents filed with his application, the ARC determined that Captain Michael A. Curtiss meets the requirements of Chapter 66 of the Texas Transportation Code, Houston Pilots Licensing and Regulatory Act, Section 66.041, and the Rules and Regulations governing Pilots and Pilotage on the Houston Ship Channel Between the Galveston Bar and the Turning Basin Terminal.  Accordingly, the ARC respectfully submits to the Pilot Board the application of Captain Michael A. Curtiss to renew his commission as Branch Pilot for the Galveston Bar and the Houston Ship Channel. Such commission is for a four-year term.		
<b>Full Recommendation:</b> The Pilot Board, at its July 23, 2013 meeting, recommend to the Governor the renewal of the commission of Captain Michael A. Curtiss as Branch Pilot for the Galveston Bar and the Houston Ship Channel for a four-year term effective November 23, 2013, 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.		

## Request for Pilot Board Action

<b>Category:</b> Pilot Matters	<b>Agenda Date:</b> July 23, 2013	<b>Agenda Section:</b> E - 3
<b>From:</b> <b>Division:</b> Legal <b>Department:</b> Pilot Administration	<b>Staff Contact:</b> Erik Eriksson	
<b>Summary Recommendation:</b> Recommendation for renewal of Branch Pilot Commission in and for the Houston Ship Channel and Galveston Bar: Captain Daniel J. Doty.		
<b>Background:</b> Prior authorizing Pilot Board action: Minute No. 2009-0825-37  The Application Review Committee (ARC) of the Pilot Board considers whether applicants meet the statutory and regulatory requirements for pilots on the Houston Ship Channel. Among other things, applicants undergo a physical examination to determine if an applicant is in good mental and physical health in order to perform the duties of pilotage on the Houston Ship Channel, and an investigation including a criminal background check and the applicant's accident history is conducted.		
<b>Staff Evaluation/Justification:</b> Captain Daniel J. Doty has applied for renewal of his commission as Branch Pilot for the Galveston Bar and Houston Ship Channel. The application includes evidence of continued education training in Emergency Ship Handling, a Fatigue, Sleep, & Medication course, BRM-Pilots, and AIS during his last commission cycle, and a renewal request on his behalf from the Houston Pilots, with evidence of his ability to enter into a faithful performance bond in the amount of \$25,000 payable to the governor.  After an assessment of his qualifications and the documents filed with his application, the ARC determined that Captain Daniel J. Doty meets the requirements of Chapter 66 of the Texas Transportation Code, Houston Pilots Licensing and Regulatory Act, Section 66.041, and the Rules and Regulations governing Pilots and Pilotage on the Houston Ship Channel Between the Galveston Bar and the Turning Basin Terminal.  Accordingly, the ARC respectfully submits to the Pilot Board the application of Captain Daniel J. Doty to renew his commission as Branch Pilot for the Galveston Bar and the Houston Ship Channel. Such commission is for a four-year term.		
<b>Full Recommendation:</b> The Pilot Board, at its July 23, 2013 meeting, recommend to the Governor the renewal of the commission of Captain Daniel J. Doty as Branch Pilot for the Galveston Bar and the Houston Ship Channel for a four-year term effective November 16, 2013, 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.		

## Request for Pilot Board Action

<b>Category:</b> Pilot Matters	<b>Agenda Date:</b> July 23, 2013	<b>Agenda Section:</b> E - 4
<b>From:</b> <b>Division:</b> Legal <b>Department:</b> Pilot Administration	<b>Staff Contact:</b> Erik Eriksson	
<b>Summary Recommendation:</b> Recommendation for renewal of Branch Pilot Commission in and for the Houston Ship Channel and Galveston Bar: Captain Randy L. Rhoads.		
<b>Background:</b> Prior authorizing Pilot Board action: Minute No. 2009-0825-36  The Application Review Committee (ARC) of the Pilot Board considers whether applicants meet the statutory and regulatory requirements for pilots on the Houston Ship Channel. Among other things, applicants undergo a physical examination to determine if an applicant is in good mental and physical health in order to perform the duties of pilotage on the Houston Ship Channel, and an investigation including a criminal background check and the applicant's accident history is conducted.		
<b>Staff Evaluation/Justification:</b> Captain Randy L. Rhoads has applied for renewal of his commission as Branch Pilot for the Galveston Bar and Houston Ship Channel. The application includes evidence of continued education training in Error Detection and Advanced Radar Techniques in restricted waters, Emergency Ship Handling, a Fatigue, Sleep, & Medication course, BRM-Pilots, Legal Aspects of Piloting, Incident Management for Pilots, and COLREGS during his last commission cycle, and a renewal request on his behalf from the Houston Pilots, with evidence of his ability to enter into a faithful performance bond in the amount of \$25,000 payable to the governor.  After an assessment of his qualifications and the documents filed with his application, the ARC determined that Captain Randy L. Rhoads meets the requirements of Chapter 66 of the Texas Transportation Code, Houston Pilots Licensing and Regulatory Act, Section 66.041, and the Rules and Regulations governing Pilots and Pilotage on the Houston Ship Channel between the Galveston Bar and the Turning Basin Terminal.  Accordingly, the ARC respectfully submits to the Pilot Board the application of Captain Randy L. Rhoads to renew his commission as Branch Pilot for the Galveston Bar and the Houston Ship Channel. Such commission is for a four-year term.		
<b>Full Recommendation:</b> The Pilot Board, at its July 23, 2013 meeting, recommend to the Governor the renewal of the commission of Captain Randy L. Rhoads as Branch Pilot for the Galveston Bar and the Houston Ship Channel for a four-year term effective November 16, 2013, 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.		

## Request for Pilot Board Action

<b>Category:</b> Pilot Matters	<b>Agenda Date:</b> July 23, 2013	<b>Agenda Section:</b> E - 5
<b>From:</b> <b>Division:</b> Legal <b>Department:</b> Pilot Administration	<b>Staff Contact:</b> Erik Eriksson	
<b>Summary Recommendation:</b> Recommendation for renewal of Branch Pilot Commission in and for the Houston Ship Channel and Galveston Bar: Captain Robert L. Thompson.		
<b>Background:</b> Prior authorizing Pilot Board action: Minute No. 2009-0825-35  The Application Review Committee (ARC) of the Pilot Board considers whether applicants meet the statutory and regulatory requirements for pilots on the Houston Ship Channel. Among other things, applicants undergo a physical examination to determine if an applicant is in good mental and physical health in order to perform the duties of pilotage on the Houston Ship Channel, and an investigation including a criminal background check and the applicant's accident history is conducted.		
<b>Staff Evaluation/Justification:</b> Captain Robert L. Thompson has applied for renewal of his commission as Branch Pilot for the Galveston Bar and Houston Ship Channel. The application includes evidence of continued education training in ARPA, Error Detection and Advanced Radar Techniques in restricted waters, a Fatigue, Sleep, & Medication course, BRM-Pilots, Manned Model Ship Handling, Radar observer, ECDIS, Legal Aspects of Piloting, Incident management for pilots, AIS, & COLREGS during his last commission cycle, and a renewal request on his behalf from the Houston Pilots, with evidence of his ability to enter into a faithful performance bond in the amount of \$25,000 payable to the governor.  After an assessment of his qualifications and the documents filed with his application, the ARC determined that Captain Robert L. Thompson meets the requirements of Chapter 66 of the Texas Transportation Code, Houston Pilots Licensing and Regulatory Act, Section 66.041, and the Rules and Regulations governing Pilots and Pilotage on the Houston Ship Channel Between the Galveston Bar and the Turning Basin Terminal.  Accordingly, the ARC respectfully submits to the Pilot Board the application of Captain Robert L. Thompson to renew his commission as Branch Pilot for the Galveston Bar and the Houston Ship Channel. Such commission is for a four-year term.		
<b>Full Recommendation:</b> The Pilot Board, at its July 23, 2013 meeting, recommend to the Governor the renewal of the commission of Captain Robert L. Thompson as Branch Pilot for the Galveston Bar and the Houston Ship Channel for a four-year term effective November 16, 2013, 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.		

## Request for Board of Pilot Commissioners Action

<b>Category:</b> General	<b>Agenda Date:</b> July 23, 2013	<b>Agenda Section:</b> E - 6
<b>From:</b> <b>Division:</b> Legal <b>Department:</b> Pilot Administration	<b>Staff Contact:</b> Erik Eriksson	
<b>Summary Recommendation:</b> Approve 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.		
<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.  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.		
<b>Staff Evaluation/Justification:</b> Earlier this year, staff and outside counsel prepared proposed revisions to Section 9 of the Pilot Rules. 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. These rules do not preclude interested parties from working together to negotiate recommended pilotage charges.  At its June 25 meeting, the Pilot Board directed staff to submit the proposed revisions for public comment, prior to further action by the Pilot Board. Staff requested comments by July 5.  Three comments were received prior to that date. They are attached, along with the staff response to each.  A typographical correction, and certain changes reflecting the public comments, were made to the proposed Rules revisions, and are shown on the attached document "Redlined" Rules and Regulations Governing Pilots and Pilotage On the Houston Ship Channel Between the Galveston Bar and Turning Basin SECOND REVISION – Section 9 Pilotage Charges. The revised draft Rules and Regulations Governing Pilots and Pilotage On the Houston Ship Channel Between the Galveston Bar and Turning Basin SECOND REVISION – Section 9 Pilotage Charges are also attached.  On July 12, the latter document and notice were posted at the Port of Houston Authority Executive Office Building. Additional materials, including the attached, were also posted on the website of the Pilot Board.  Two comments were received after that date, which are also attached.  Staff recommends that the Pilot Board approve the proposed amendments.		

**Full Recommendation:**

The Pilot Board at its July 23, 2013 meeting approved 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.

**Report on Public Comments Concerning Proposed Revisions to Section 9 Pilotage Charges  
of the  
Rules and Regulations Governing Pilots and Pilotage on the Houston Ship Between the  
Galveston Bar and Turning Basin**

On June 23, 2013 the Board of Pilot Commissioners for Harris County Ports (Pilot Board) directed staff to solicit comments concerning proposed revisions to Section 9, Pilotage Charges, of the Rules and Regulations Governing Pilots and Pilotage on the Houston Ship Channel Between the Galveston Bar and Turning Basin (Rules). On June 27, 2013, staff distributed a press release to the public media and interested parties requesting public comment, and updated the Pilot Board website to include that request, along with the text of the proposed revisions.

The proposed revisions concern procedures for the establishment of pilotage rates. 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.

Three comments were received. They are set forth below, along with the response of staff representatives of the Pilot Board.

**1. Mr. Jonathan Hale commented on July 5, 2013 as follows:**

As the proposed changes Are actually to the Texas transportation code, shouldn't this be determined by the Texas Legislature?

**Staff response to Mr. Hale:**

The proposed revisions are not intended to modify the provisions of Transportation Code Chapter 66 Houston Pilots Licensing and Regulatory Act (Act), nor can they do so. However, the revisions are intended to assist with implementation of the requirements of Subchapter D of the Act, with are set forth in bold in the proposed revisions. The Pilot Board has the authority to implement such rules under Section 66.016 of the Act, which authorizes the Board “to adopt rules to carry out this chapter.”

**2. Mr. Nathan Wesely commented on July 5, 2013 as follows:**

The West Gulf Maritime Association is a trade association of 200 members organized in early 1968 to represent the interests of ship owners, operators, agents, as well as stevedoring and terminal companies located in all ports from Brownsville, Texas, to the Port of Lake Charles, Louisiana. Over the past six years the West Gulf Maritime Association has participated in pilot rate hearings for the Galtex Pilots and the Aransas-Corpus Christi Pilots, and has participated in negotiations and uncontested hearings in Lake Charles, Sabine, Houston, Freeport, Galtex, and Corpus Christi.

On behalf of its members, the West Gulf Maritime Association makes the following specific comments on the proposed revisions to Section 9 Pilotage Charges of the Rules and Regulations Governing Pilots and Pilotage on the Houston Ship Channel between the Galveston Bar and Turning Basin:

**Section F:**

Section F regarding the conduct of any hearing states:

*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.*

**Comment:**

The hearings in which we have participated that gave the Commission latitude to set rules for the admission of evidence have proceeded much more efficiently. We suggest the following language for the first sentence:

*The hearing required by Section 66.061(c) of the Act shall be informal, **but the Board may adopt rules for admission of evidence at the outset of a hearing.***

Section F does not allow for cross examination. In the hearings we have participated in, the cross examination was highly informative for the commission. Accordingly, we recommend adding the following paragraph:

- 3) **Cross examination of all witnesses shall be permitted by interested parties and by the Pilot Board. The Chairman of the Pilot Board may establish appropriate time limits for cross examination and may require advance notice from those desiring to appear as an interested party.***

**Staff response to Mr. Wesely's comments regarding Section 9(F):**



Staff appreciates the intent of this suggested change, but does not concur with it. The adoption of formal rules of evidence, including cross-examination, is difficult in the circumstances of such a hearing, since the Pilot Board has not been granted customary adjudicatory powers, including the power to subpoena or otherwise enforce the appearance of witnesses or production of documents.

#### **Section I:**

The last paragraph of Section I regarding the submission of a financial report states:

*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).*

#### **Comment:**

The pilots have their financial information that is required by Section 66.063, and should be required to submit their financial information. The information by the rule in addition to the financial information listed in Section 66.063 should be required of the applicant. The revised wording would be as follows:

*If the applicant for the rate change is other than the licensed pilots, and if the applicant's application does not contain the information **in addition to that required in Section 66.063 of the licensed pilots**, then the applicant shall deliver to the Secretary a written submission providing the **additional** information required by this rule on or before the deadline posted under Section 9(D) **and the pilots shall submit the information set out in Section 66.063 on or before the deadline posted under Section 9(D).***

#### **Staff response to Mr. Wesely's comment regarding Section 9(I):**

Staff concurs with this suggested change and it has been incorporated into the proposed revision.

#### **3. Mr. Mark Reilly commented on July 8, 2013 as follows:**

After reading the proposed rules there seems to be enough rules regarding the qualifications of the pilot to lead a vessel from the Galveston Jetties to the

Turning Basin. However, I did not see many rules regarding the safety of individuals to operate vessels under the influence of drugs and/or alcohol.

Many companies in the Transportation industry have procedures for pre-employment, random and post accident drug and alcohol testing. These rules are promulgated by the U.S. Department of Transportation for the protection and safety of the public. The one most used is in Title 49 CFR Part 199. This drug and alcohol plan has been in use for decades and has eliminated the use of drugs and alcohol as a cause of accidents in safety sensitive positions. I feel your rules need more than a physicians nod as to the mental well being of a pilot.

The Houston Ship Channel has a long history of accident free ton/miles on the Channel. There will be increased traffic on the channel in the years to come with dangerous cargos and large Panamax vessels. I want the Pilot Board to continue its safety record by implementing drug and alcohol testing for its members in the interest of the public, its customers and companies on the channel.

**Staff response to Mr. Reilly:**

Staff appreciates these comments; however, the proposed revisions address procedures for the establishment of pilotage rates, rather than other matters.

Please note separately that staff currently requires that applicants for Deputy Pilot certificates, and Branch Pilot commissions and commission renewals, provide evidence of random drug screening, in accordance with Title 49 CFR Part 199. Additionally, drug screen reports are obtained in connection with marine casualty investigations conducted by the Pilot Board.