

**THE BOARD OF MARITIME PILOTS
STATE OF OREGON**

**SINGLE-ISSUE
RATE PROCEEDING**

IN RE: PROPOSED SETTING OF)	
EFFECTIVE COLA DATE)	FINAL ORDER UPON DEFAULT
)	
Columbia and Willamette River Pilotage Ground.)	CASE NO. BP-16
)	

BACKGROUND

On November 22, 2024, the Oregon Board of Maritime Pilots (Board) issued a Notice of Proposed Setting of Effective COLA Date (Notice) to promulgate a single-issue order, clarifying language in BP 12 provisions regarding the annual cost-of-living adjustments (COLA) with hearing rights to all parties.¹ The Notice set forth the Board’s intention to apply the COLA to the pilotage ground on September 1st of each year, consistent with historical practice. The Board noticed the Columbia River Bar Pilots; the Columbia River Pilots; the Coos Bay Pilots Association; the Columbia River Steamship Operators Association; and the Ports of Portland, Vancouver, Astoria, Longview, Coos Bay, Yaquina Bay, Columbia County and Kalama as parties interested in the proceeding. The Notice designated the Board’s file on this matter as the record for purposes of establishing a prima facie case upon default. No hearing was requested. No response, pleading, answer or counter-petition was filed.

¹ The Board did not propose to adjust the rates themselves, only to clarify ambiguous language.

FINDING OF FACTS

- (1) The current rates of pilotage for the Columbia River Pilots (COLRIP) were established in BP 12, issued August 1, 2021.
- (2) The language in BP 12 (2) provides,

COLA. The annual COLA mechanism is modified by increasing the annual COLA by an additional one-half of one percent of the Consumer Price Index for All Urban Consumers West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor *effective in September* for each of the five years 2021 through 2025. (emphasis added)
- (3) No provision of BP 12 specifies whether the annual COLA should become effective in September or, in the alternative, if COLA calculation is based on the Bureau of Labor Statistics of the United States Department of Labor data which is effective in September.
- (4) Pursuant to COLRIP's rate order, the COLA is applied annually to all tariff charges, except the continuing professional development charge.
- (5) Historically COLA has been applied to all pilotage grounds on September 1st of each year.

DISCUSSION

It is the Board's specific statutory responsibility to fix rates, set automatic adjustments to those rates, and ensure that its orders are enforceable. ORS 776.115(5) provides the Board with the authority to fix just and reasonable rates for pilotage services. ORS 776.115(8) states that the Board may

Establish rates pursuant to subsection (5) of this section, for a period of not less than two years, that continue in effect until a subsequent hearing process. *Rates may include automatic adjustment provisions to reflect changing economic conditions.* (Emphasis added)

An Order Upon Default is reasonable in this instance since, as of January 6, 2025,² the Board had received no requests for a hearing. Similarly, no answer, pleading, or response was submitted. Lastly there is no known opposition to clarification of the language regarding COLA.

Given the ambiguity in the existing language, adoption of clarifying language is the most just and reasonable means to fulfill the intent of the Board and the parties associated with the current rate order. The Board has concluded that a single-issue order addressing clarifying when COLA occurs is required to avoid confusion and facilitate compliance with the Board's order. The Board issues this new, single-issue order, clarifying the language on application of COLA to ensure the current rate order is enforceable, not to amend its current rate order.³ The clarification of language does not change the amount of the annual COLA adjustment, otherwise alter any amounts or requirements established in BP 12, nor deviate from the Board's established practices. Further, the adoption of this change will result in rates which are just and reasonable and will not prejudice the rights of any party.

ORDER

Based on the facts, law, and analysis above, IT IS ORDERED as follows:

- (1) *For purposes of setting the tariff:* The annual COLA mechanism is modified by increasing the annual COLA by an additional one-half of one percent of the Consumer Price Index for All Urban Consumers West Region (All Items), as published by the Bureau of Labor

² More than 30 days after date of service in compliance with OAR 860-033-0033(1)(d).

³ The Board has no statutory authority to modify final rate orders.

Statistics of the United States Department of Labor applied the first of September for each of the five years 2021 through 2025.

(2) All other aspects of the Board's current rate orders, including but not limited to all other details of the Automatic Tariff Adjustment Mechanism and the date when a new petition may be filed with the Board to make changes to rates for pilotage on any of the pilotage grounds regulated by the Board, remain unaffected by this Final Order.

Dated this 21st day of January 2025.



Leslie Goss, Chair

Oregon Board of Maritime Pilots

APPEAL RIGHTS: Any party who filed response, pleading, answer, counter-petition, or request for hearing on the Notice may appeal any final order ultimately issued in this case by filing a petition for review with the Oregon Court of Appeals within 60 days after it is served upon all interested parties. See ORS 183.480 et seq.

**THE BOARD OF MARITIME PILOTS
STATE OF OREGON**

**SINGLE-ISSUE
RATE PROCEEDING**

IN RE: SPECIAL FEES,)	NOTICE OF PROPOSED SETTING
)	OF EFFECTIVE COLA DATE
Columbia and Willamette River Pilotage Ground.)	
)	CASE NO. BP-15
)	

Pursuant to ORS chapter 776.115(5) and (8), 776.129, and OAR 856-030-0033, the Oregon Board of Maritime Pilots (Board) intends to address the single issue of the annual cost-of-living adjustments (COLA), clarifying language from BP 12 (2) regarding appropriate data used to determine the COLA adjustment and when the annual COLA rate should be published.

INTERESTED PARTIES

The following parties have an interest in these proceedings: the Columbia River Bar Pilots; the Columbia River Pilots; the Coos Bay Pilots Association; the Columbia River Steamship Operators Association; and the Ports of Portland, Vancouver, Astoria, Longview, Coos Bay, Yaquina Bay, Columbia County and Kalama.

NEED FOR PROCEEDING

ORS 776.115(2) provides that the Board shall provide for efficient and competent pilotage service on all pilotage grounds. ORS 776.115(8) permits the inclusion of automatic adjustment provisions reflecting changes in economic conditions. On August 1, 2021, the Board adopted Rate Order BP 12 setting rates for the Columbia and Willamette River Pilotage Ground.

BP 12 states, “**COLA.** The annual COLA mechanism is modified by increasing the annual COLA by an additional one-half of one percent of the Consumer Price Index for All Urban Consumers West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor effective in September for each of the five years 2021 through 2025.”

Historically COLA has been applied to all pilotage grounds on September 1st of each year. The language in BP 12 is ambiguous and can be read in a way that would require a rate adjustment based on data published in September requiring the adjusted rate would have to be applied on October 1st. This single-issue order will clarify the Order language.

FACTORS CONSIDERED

In determining the proposed fees, the Board has considered, as required by ORS 776.115(5)(b) and OAR 856-030-0000:

(a) The amount of activity, including number of vessels, number of pilot assignments, size of vessels by net tonnage, gross registered tonnage (GRT), length, and draft;

This order only clarifies the language describing when the annual COLA should be applied to the existing rates. The number of pilot assignments and the size of vessels by GRT, length and draft are contained in the factual findings of Rate Order BP 12 and is not affected by this order.

(b) Any change in the amount of activity since the last rate order;

This order does not impact underlying rates, and instead only clarifies the calculation and timing of COLA.

(c) The public interest in prompt, efficient, and economical service;

As established in Rate Order BP 12, the public interest in prompt and efficient service is high, this is not impacted by clarification of the COLA calculation.

(d) The professional skills and experience required of a pilot and the difficulty and inconvenience of providing the service, including time necessary to perform the service;

As established in Rate Order BP 12, the public interest in prompt and efficient service is high, this is not impacted by clarification of the COLA calculation.

- (e) *Evidence of compensation for comparable maritime professions, including other state regulated pilotage associations, Puget Sound and San Francisco at a minimum;*

Evidence and factors considered in BP 12 remain valid. This single-issue order will only clarify when COLA should be applied.

- (f) *Evidence of the economic and market conditions existing both locally and within the region of any pilotage association used for the purpose of comparison;*

The rates established in Rate Order BP 12 remain in effect and will not change with the clarification of when COLA should be applied.

- (g) *Total gross and net income for the pilots' group since the last rate order, or as directed by the Board, including sources of income by tariff category; and*

Evidence and factors considered in BP 12 remain valid. This single-issue order will only clarify when COLA should be applied.

- (h) *Individual amounts paid to pilots since the last rate order, or as directed by the Board, which may be shown as both gross and adjusted gross income, as reported for tax purposes.*

Evidence and factors considered in BP 12 remain valid. This single-issue order will only clarify when COLA should be applied.

- (i) *Evidence of appropriate expenses related to the provision of pilotage services as shown by records of the pilots' group, and verified by an independent audit.*

Evidence and factors considered in BP 12 remain valid. This single-issue order will only clarify when COLA should be applied.

- (j) *The demand for these services and the supply of pilots to provide them.*

Evidence and factors considered in BP 12 remain valid. This single-issue order will only clarify when COLA should be applied.

FEES PROPOSED

Replace BP 12 (2) with, “**COLA.** The annual COLA mechanism is modified by increasing the annual COLA by an additional one-half of one percent of the Consumer Price Index for All Urban Consumers West Region (All Items), as published by the Bureau of Labor

Statistics of the United States Department of Labor applied the first of September for each of the five years 2021 through 2025.”

FILING RESPONSES

Any interested party who wishes to file a counter-petition, answer, applicable pleading, request for hearing, or response must do so, in writing, within 30 calendar days of the date this Notice was mailed. Such filing may be served on the Board offices by electronic mail or first-class mail, to the following addresses:

Kim.Oster@obmp.oregon.gov

or

Kim Oster, Administrator
800 N.E. Oregon Street, Suite 507
Portland, Oregon 97232

DEFAULT

If no party timely files a response, pleading, answer, counter-petition, request for hearing, or answer, the Board may issue a final order by default. If the Board issues a final order by default, the Board designates the discoverable material which comprises the file as the record for the purpose of proving a *prima facie* case.

However, even if no party files a request for hearing, but at least one party files a response, pleading, answer, or counter-petition, the Board will consider such filings, and will issue a proposed order rather than a final order by default. And all parties who filed a response, pleading, answer, or counter-petition will have the right to timely file written exceptions to the proposed order, which the Board must consider before issuing any final order.

Failure to request a hearing, failure to appear at any hearing scheduled by the Board, withdrawal of the request for hearing, or failure to appear at any hearing scheduled by the Board on time will constitute waiver of the right to a contested case hearing.

APPEAL

Any party who filed response, pleading, answer, counter-petition, or request for hearing may appeal any final order ultimately issued in this case by filing a petition for review with the Oregon Court of Appeals within 60 days after it is served upon all interested parties. See ORS 183.480 et seq.

DATED: 11/22/2024



Tom Griffiths
Executive Director
OREGON BOARD OF MARITIME PILOTS

BEFORE THE OREGON BOARD OF MARITIME PILOTS

In the Matter of

COLUMBIA RIVER
PILOTS ASSOCIATION,

Petition For a Change in Pilotage Rates.

FINAL ORDER
BP 12

DISPOSITION: REVISED RATE SCHEDULE ADOPTED

I. INTRODUCTION AND PROCEDURAL HISTORY

On March 11, 2021, pursuant to ORS 776.115(5) and OAR 856-030-0010, the Columbia River Pilots Association (COLRIP) filed a petition for a change in pilotage rates for the Columbia and Willamette River Pilotage Ground (CWRPG). The most recent COLRIP rate proceeding, BP 9, resulted in the issuance of Final Order 10-01 on May 19, 2010, with the tariff effective June 1, 2010.

In its petition, COLRIP proposes changes to Section 3 of the Oregon Pilotage tariff, No. A-10, including increasing the transit fee and draft rate, increasing the detention fee and moving to a flat rate with a 12-hour maximum, and implementing a harbor move charge for all transits to or from Astoria that are over eight hours (exempting articulated tug-barge (ATB) vessels). Additionally, COLRIP proposes an increase of one-half percent in the annual cost-of-living adjustments (COLA), effective in September for each of the five years, 2021 through 2025. Finally, COLRIP proposes a 10 percent discount for container vessels calling at Port of Portland, Terminal 6 for a one-year period, applicable to all CWRPG rates and charges.

COLRIP explains that prior to filing its petition, COLRIP engaged in settlement negotiations with the Columbia River Steamship Operators Association (CRSOA), and the ports of Portland, Vancouver, Longview and Kalama, with all parties except one entering into a settlement agreement. Under the settlement, the parties agreed that COLRIP's proposed tariff changes are fair and reasonable, and should stand for at least five years from the date put into effect by the Oregon Board of Maritime Pilots (Board).¹ The settlement agreement also provides that the expenses of the Board related to this proceeding shall be shared equally among all parties.

On April 15, 2021, the ALJ assigned to the proceedings held a procedural conference. On April 16, 2021, the ALJ issued a memorandum adopting the procedural schedule jointly

¹ COLRIP2. COLRIP represents that the Port of Kalama opted to remain neutral. Petitioner's Opening Brief at 3.

proposed by COLRIP and the CRSOA, and granting CRSOA full party status in this proceeding.

On April 30, 2021, COLRIP filed an opening brief, with declarations of Todd Zilbert, Captain Wesley Balensifer, Kenneth Lawrenson, and Captain Jeremy Nielsen, exhibits, and an exhibit list. On May 14, 2021, CRSOA filed an opening brief, with the declaration of John Coyle. COLRIP responded to bench requests on May 25, 2021. On May 27, 2021, the ALJ conducted an evidentiary hearing. On June 4, 2021, COLRIP filed a supplemental memorandum, the supplemental declaration of Captain Jeremy Nielsen, a revised exhibit list, and six additional exhibits.

On June 17, 2021, the ALJ issued a Proposed Order, recommending adoption of the revised rate schedule proposed by COLRIP. Both parties filed timely exceptions, noting the ALJ had omitted discussion, findings, and recommendations on COLRIP's proposed elimination of the harbor move exemption for docking requests charge. The parties suggested that, because the ALJ otherwise recommended adoption of Petitioner's proposed rate changes, omission of the proposed elimination of the docking request charge exemption was likely a simple oversight. On June 18, 2021, the Board issued a Bill of Costs to both parties. No exceptions to the Bill of Costs were filed.

The Board has considered the parties' exceptions and agrees. Consequently, it includes elimination of the harbor move exemption for docking requests charge in the final order below, with accompanying facts and analysis. Otherwise, the Board adopts the Proposed order in its entirety, except for minor modifications provided herein and identified via footnotes, or with minor corrections for punctuation or other scrivener's errors.²

II. EVIDENTIARY RULINGS

Exhibits COLRIP1 through COLRIP41 offered by COLRIP were admitted into the record without objection. The record also includes COLRIP's responses to bench requests, to which no party objected. Additionally, the declarations of Todd Zilbert, Captain Wesley Balensifer, Kenneth Lawrenson, Captain Jeremy Nielsen, and John Coyle were admitted into the record without objection.

III. REGULATORY BACKGROUND AND APPLICABLE LAW

Statutory, Rule, and Order Requirements. ORS 776.115(2) provides that the Board shall provide for efficient and competent pilotage service on all pilotage grounds. In furtherance of this goal, the Board shall "[r]egulate and limit the number of licensees and trainees under this chapter, such number of licensees and trainees to be regulated and limited to the number found by the board to be required to render efficient and competent pilotage service."³ Public safety is the Board's primary consideration.

ORS 776.115(5)(a) authorizes and directs the Board to set "reasonable and just" rates. ORS 776.115(8) requires the Board to establish rates for a period of not less than two years.

² Issuance of an Amended Proposed Order is not required because the Board is not issuing an order adverse to a party after the ALJ issued a Proposed Order in favor of that party. *See* OAR 137-003-0655(3).

³ ORS 776.115(2).

The rates may include automatic adjustment provisions reflecting changes in economic conditions. Under ORS 776.115(5)(b), the Board must consider the following factors in setting rates:

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

Under OAR 856-030-0000, the Board is charged with establishing a rate structure that provides for efficient, economical, and competent pilotage services and fair compensation for pilotage services and expenses. In determining the number of pilot positions needed, target net income (TNI), and expenses, the Board shall consider:

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

(3) In determining compensation for expenses the Board shall consider evidence of appropriate expenses related to the provision of pilotage services as shown by records of the pilots group, and verified by an independent audit.⁴

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

First, the Board determines the appropriate TNI per pilot. The TNI per pilot is then multiplied by the number of licensed pilots the Board finds are necessary to provide adequate pilotage services to vessels crossing the pilotage ground. Historically, the Board's practice has been to add to that figure the projected reasonable operating expenses and costs that the pilot group is expected to incur in providing the pilotage services. The resulting amount represents the total revenues that must be generated under the tariff to reach the target total revenue [(TNI) x (pilots) + (expenses) = target total revenue]⁵. Next, a projection about the anticipated amount of ship traffic (the number of transits) is used to determine how much each vessel must pay to generate the total amount of revenue necessary to cover projected costs and pilot incomes.

Actual pilot income varies from TNI based on the differences between the levels of vessel traffic and operating costs from those assumed during the ratemaking process. These variations between target and actual levels of income are a fundamental result of the rate setting process. Historically, when target and actual income levels varied greatly, usually due to economic conditions, the rate setting process would be initiated to reset the tariff. Due to the Board's approval of annual cost of living adjustments to the tariff starting in 1993, inflation is no longer an economic factor creating significant variations in actual net income level. Under the Oregon Pilotage tariff, No. A-10, COLRIP's rates are subject to automatic adjustment mechanisms for inflation, Fare-box benefits expenses, and traffic-related increases, as well as an annual adjustment to the charge to fund continuing professional development. Ratemaking is, nevertheless, a prospective process. The rate setting process is not designed to address events retroactively to compensate for either windfall or shortfall. Evidence of current and projected levels of relevant factors form the bases for the ratemaking process.⁶

⁴ OAR 856-030-0000.

⁵ Net distribution per pilot is an alternative term for "TNI." TNI is net of all pilot benefits and expenses.

⁶ COLRIP argued in its brief and at hearing that TNI should not be the basis for rate making process, and that it was not so for the Board's final order in case BP11. However, COLRIP appears to mistake the absence of the express terms "TNI" or "Target Net Income" in the detailed analysis of the particular changes proposed in BP11 for a disregard of the concept that rate making is driven by the goal of a prospective ("target") and necessarily approximate increase or decrease in net pilot income. Rates cannot be "just and reasonable" in a vacuum. Under the Board's statutes and rules, rates must be just and reasonable with respect to the compensation provided to the pilots for their services, and with respect to the fee paid by vessels for the services they receive. The current Board administrative rules favor more detailed consideration of pilot compensation justification and comparators than of the value to vessel owners of the piloting services provided or comparators of amounts paid per vessel on other pilotage grounds. In case BP 11, the proposed rate increase was primarily for two distinct purposes: a change to the COLA, and an increase specifically allocated to funding pilot pensions. By way of contrast, in addition to a proposal to increase the COLA adjustment, COLRIP proposed a more significant and

Burden of Proof. COLRIP has the burden of proving by a preponderance of the evidence the legal sufficiency of its proposed rate increase, consistent with ORS 183.450(2) and (5). In order to support its proposed rates, COLRIP submitted declarations of four witnesses and 41 exhibits. In the opinion below, we address whether COLRIP has met its burden of proof under the criteria set forth in the statutes and regulations relative to the ratemaking process.

IV. FINDINGS OF FACT

- (1) In the four-year period, 2017–2020, COLRIP pilots averaged 4,319 piloting assignments per year, serving an average of 1,407 vessels annually, resulting in a workload factor of 105.88. During the four-year period preceding its prior rate order, 2006-2009, COLRIP pilots averaged 4,623 piloting assignments per year, serving an average of 1,616 vessels annually, resulting in a workload factor of 106.9.
- (2) COLRIP’s pilot workload factor of 106 is consistent with the level of activity over the most recent four-year period.
- (3) Fourth quarter 2020 operations involved 745 vessel transits, 1200 pilot assignments, 29.8 average draft feet per vessel, and 34,992 average gross registered tons per vessel.
- (4) Piloting large vessels, including commercial cargo vessels, up and down the Columbia and Willamette Rivers is difficult, inconvenient, and requires a great deal of skill and specialized knowledge.
- (5) The public has an interest in prompt, efficient, economical, and reliable pilotage service on the CWRPG.
- (6) The current annual compensation of the COLRIP pilots is behind that of other maritime pilot groups in Oregon and Washington.
- (7) COLRIP’s operating expenses are increasing, with an overall increase of 32 percent since 2010.
- (8) The interested parties in this proceeding, with differing and sometimes competing interests, support the changes proposed by COLRIP.
- (9) Container liner service was resumed at Port of Portland Terminal 6 in January 2020.

V. ANALYSIS AND OPINION

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

ORS 776.115(5)(b)(A) and OAR 856-030-0000(1)(a) require consideration of the amount of activity, including number of vessels, number of pilot assignments, size of vessels

general increase to pilot income, not be tied or traceable to a single element of their compensation. While the parties themselves are free to filter their pre-petition settlement discussion through any lens they wish, because the *Board's* rules are focused on fair compensation for pilots and because COLRIP’s proposed changes are more general in effect than those proposed by CRBP in BP 11, our more thorough consideration of TNI was called for in this case.

by tonnage, length, and draft. Under OAR 856-030-0000(1)(b), the Board also considers any change in the amount of activity since the last rate order. COLRIP provided quarterly reports for the four-year period 2017 through 2020, demonstrating average pilot assignments of 4,319, average gross registered tonnage of 32,763.5, and average transit drafts of 29.21 feet, with testimony indicating that vessels vary in length from 100 to over 1000 feet.⁷ The evidence shows that vessel size and cargo tonnages have increased, with a 16 percent increase over the average GRT, and an increase in average draft by over 4 percent since the last rate proceeding.⁸ COLRIP presented evidence that during this same period traffic volumes have decreased by approximately 13 percent and the average number of pilot assignments has decreased by about six percent.⁹ COLRIP explained that vessel sizes have increased, due in part to a federal project that deepened the maintained navigation channel from 40 to 43 feet in 2010, which has allowed larger cargo volumes on fewer ships.¹⁰ The prior order was based on an annual projection of 4,040 pilot assignments, and provided for tariff revisions if the actual number of assignments exceeded 1,037 for two consecutive quarters. This adjustment mechanism resulted in two increases since the last rate case, in January 2011 and April 2014. The 4,319 average assignments during the period 2017 to 2020, represents an eight percent increase over the 4,040 assignments underlying the 2010 rate order.

ORS 776.115(5)(b)(B) and OAR 856-030-0000(d) require consideration of the professional skills and experience required of a pilot and the difficulty and inconvenience of the particular service, including the skill and time necessary to perform the service. COLRIP provided evidence of the significant knowledge, training, and experience necessary to provide pilotages services on the CWRPG. Captain Nielsen testified regarding the licensing requirements, including the extensive two and a half year training program on the CWRPG for new pilots, and the specialized knowledge of the river, its geographical features, and navigational aids that pilots must demonstrate.¹¹ COLRIP provided evidence of the ongoing requirements for pilots for drug testing, annual physicals, as well as personal safety and continuing development training. Additionally, in his declaration, Captain Nielsen addressed the hazards associated with the 85 mile transit from Astoria to Portland Harbor, including changing depths, sand bars, fog, current, visibility issues, other river traffic, and differing port facilities. COLRIP provided evidence of the time for such transits and demonstrated that the total time to provide such services also includes additional time to travel to the vessel, board, brief the Master about the intended transit, learn about the vessel's characteristics, and departure from the vessel.¹² COLRIP also addressed the significant administrative burden associated with providing service 24 hours a day, 365 days a year.¹³ COLRIP has demonstrated the difficulty and inconvenience of the pilotage, including the risk to pilot safety, to render these services on the CWRPG

ORS 776.115(5)(b)(C) requires that the Board consider the supply of and demand for pilotage services. COLRIP provided quarterly operations reports for the period 2017 through

⁷ COLRIP4; Nielsen Declaration at 5.

⁸ Lawrenson Declaration at 3-4.

⁹ *Id.*

¹⁰ Nielsen Declaration at 5; COLRIP11 (Port of Portland marine cargo data sheet demonstrating relative stability in cargo tonnage versus ship calls due to increases in the cargo per vessel).

¹¹ Nielsen Declaration at 2-4.

¹² Nielsen Declaration at 7-8.

¹³ *See* COLRIP3 (COLRIP internal rules and regulations, addressing dispatch, work rotation, fatigue rules, development of trainees, management).

2020 demonstrating an average of 105.88 assignments per pilot annually.¹⁴ During the four-year period preceding the Board's 2010 rate order for the CWRPG, which set a workload of 106 assignments per pilot, the average was 106.9.¹⁵ COLRIP provided evidence that fatigue management program requirements adopted in 2015, limit the duration and frequency of piloting assignments. COLRIP demonstrated that the process of training and licensing additional pilots is a multi-year process, and that maintaining sufficient candidates in the training pipeline is essential, particularly in light of anticipated retirements.¹⁶ Captain Nielsen emphasized the need to attract additional qualified candidates, testifying that COLRIP currently has forty pilots with unlimited licenses, with six trainees, and six candidates on the ranked list, as compared to eight trainees and 19 candidates on ranked list for San Francisco Bar Pilots as of December 31, 2019.¹⁷ In his declaration, Mr. Lawrenson addressed the impact of its adoption of a 401k defined contribution unified retirement plan in 2017, explaining that this change shifted the burden of retirement saving and planning onto individual pilots, making COLRIP less attractive for applicants than pilot organizations that provide defined benefit retirement plans. COLRIP's evidence supports a need for competitive pay for pilots on the CWRPG to attract an adequate supply of qualified applicants.

ORS 776.115(5)(b)(D) and OAR 856-030-0000(c) require the Board to consider the public interest in maintaining prompt, efficient, economical, and reliable pilotage service. COLRIP provided the Pacific Maritime Association's annual report summarizing west coast maritime cargo operations and demonstrating the economic significance of the industry in terms of international trade and jobs.¹⁸ The report specified that the Oregon & Columbia River area constituted eight percent of the 340 million tons of cargo annually passing through the west coast. COLRIP also provided terminal statistics for the Port of Portland, which is the largest CWRPG port, demonstrating the importance of this industry to the local economy, as well as studies identifying \$1 billion in new terminal and port investment between 2010 and 2015 associated with the channel deepening project.¹⁹ COLRIP's evidence demonstrates that safe and efficient pilotage is critical to the economy of the Pacific Northwest.

Under OAR 856-030-0000(1)(e) & (2), the Board considers evidence of compensation for comparable maritime professions, including other state regulated pilotage associations and, at a minimum, the compensation and benefits provided to pilots in pilotage associations serving Puget Sound and San Francisco. The Board also considers individual amounts paid to the pilots since the last rate order pursuant to OAR 856-030-0000(1)(h). Here, COLRIP provided evidence regarding compensation for certain other pilot groups in Oregon and Washington: the Columbia River Bar Pilots, Puget Sound Pilots, San Francisco Bar Pilots, and Gray's Harbor Pilots.²⁰ COLRIP also addressed the projected compensation level for the Columbia River Bar Pilots under recently approved rates.²¹ COLRIP's net compensation per pilot was \$389,462 in 2017, \$384,940 in 2018, \$365,829 in 2019, and \$391,233 in 2020. The evidence demonstrates that COLRIP's current compensation lags

¹⁴ COLRIP4; Lawrenson Declaration at 2.

¹⁵ *In the Matter of the Petition of the Columbia River Pilots for a Change in Pilotage Rates*, Docket No. BP 9, Order No. 10-01 at 7 (May 19, 2010); COLRIP5.

¹⁶ Tr. at 32-33, 43-44.

¹⁷ Nielsen Declaration at 12; Tr. at 37, 39.

¹⁸ COLRIP7.

¹⁹ COLRIP9; COLRIP10; COLRIP11.

²⁰ Lawrenson Declaration at 6-7, COLRIP14, 15, 17, 22, 23, 24, 30.

²¹ Supplemental Memorandum at 6.

behind other pilot groups in the region. COLRIP also provided summary compensation data from 2017 through 2020 for ten pilot groups,²² representing 42.9 percent of all licensed maritime pilots in the U.S., demonstrating that COLRIP's current compensation level is in the lower tier of these groups.²³ COLRIP provided illustrative calculations demonstrating that its initial proposed rates would support per pilot net distributions of \$445,555, based on the three-year average of 45.30 licensed pilots.²⁴

Under OAR 856-030-0000(1)(f), evidence of the economic and market conditions existing both locally and within the region of any pilotage association used for the purpose of comparison is considered. COLRIP provided evidence regarding annual cargo tonnage data from maritime economies in three west coast areas²⁵ since 2006, relevant to the comparison groups in Oregon.²⁶ As noted by COLRIP, each of these pilotage grounds is unique, with differing challenges and vessels served, with the data showing impacts across all three areas during the 2009 recession and 2020 COVID-19 pandemic.

Under OAR 856-030-0000(1)(g), the Board considers the total gross and net income for the pilots' group since the last rate order, or as directed by the Board, including sources of income by tariff category. COLRIP provided financial statements for the years 2011 through 2020.²⁷ Additionally, COLRIP provided a financial summary for 2017 through 2020, Special Purpose Financial Statements (SPFS) for 2018 through 2020, and billings by assignment type for the same period, with an explanation of how its billing codes relate to tariff categories.²⁸

OAR 856-030-0000(3) provides that "[i]n determining compensation for expenses the Board shall consider evidence of appropriate expenses related to the provision of pilotage services as shown by records of the pilots' group, and verified by an independent audit." Here, COLRIP provided audited financial statements for the period 2011 through 2020 as well as SPFS for 2018, 2019, and 2020.²⁹ In his declaration, Mr. Lawrenson testified to increasing operating expenses, with an overall increase of 32 percent since 2010. COLRIP's SPFS show an increase of \$382,558, or 11.84 percent, from 2018 to 2020, as compared to the COLAs during this period, which totaled 8.16 percent. COLRIP also testified to anticipated increases in expenses in the near term for license insurance and new tax liabilities.³⁰

Under ORS 776.115(5)(b)(E), the Board may consider other factors relevant to the determination of reasonable and just rates. CRSOA supports the settlement as a fair and reasonable outcome for pilotage pay that will continue to support safe and efficient pilotage service. The existence of a settlement between parties with differing interests, as is the case with the settlement submitted on this record, supports a conclusion that these rates are

²² This summary included pilot groups from Oregon (Columbia River Bar Pilots, Puget Sound Pilots, San Francisco Bar Pilots) and also included New Orleans-Baton Rouge Steamship Pilots Association, Associated Branch Pilots (Mississippi Bar), Crescent River Port Pilots (Lower Mississippi), Port Everglades Pilots Association, the Great Lakes Pilots, and Los Angeles Port Pilots Association.

²³ COLRIP15-28, summarized in Petitioner's Opening Brief at 19.

²⁴ COLRIP37.

²⁵ While COLRIP also provided summary compensation information for pilotage associations from other regions, COLRIP properly focused on these west coast areas for the purpose of comparison, as provided in Board administrative rule.

²⁶ Zilbert Declaration at 2.

²⁷ COLRIP41.

²⁸ COLRIP12, 25, 35.

²⁹ COLRIP25, 35, 41.

³⁰ Lawrenson Declaration at 7-8.

reasonable, given the compromises made by the parties in the development of the settlement. Even so, the findings of this order determining that the rates proposed by the COLRIP are just and reasonable are made independent of the settlement.

Transit Fee, Draft Rate, Detention Fee, Harbor Move Charge. COLRIP proposes increasing the transit fee to \$1,350, and increasing the draft rate to \$50 per foot. Additionally COLRIP proposes increasing the detention fee to a flat rate of \$355 per hour with a 12-hour maximum. COLRIP also proposes applying the harbor move charge to transits to or from Astoria that are over eight hours (exempting ATB vessels) and eliminating the harbor move exemption from the \$353.51 flat fee for docking a vessel stern first in slip, head down (when at the master's, owner's, or agent's request).³¹

Petitioner calculates that the projected gross pilotage revenue resulting from the changes in rates would be approximately \$32,220,504 in the first full year, including the ten percent container ship discount and the projected modified COLA adjustment. This represents an increase of approximately \$3,528,946 over 2020 gross pilotage revenues of \$28,691,558.

Evidence demonstrates that the Columbia and Willamette River Pilots are not compensated as highly as pilots in other regional pilot groups and that operating expenses are increasing. The record supports a determination that COLRIP's proposed increase in rates will bring COLRIP's compensation into parity with other regional pilotage groups and provide for the recovery of COLRIP's operating expenses. Additionally, the proposed increases in the transit fee and draft charge are designed to address the trend of increasing vessel size and decreasing vessel traffic on the CWRPG. Further, the application of the harbor move charge to transits in excess of 8 hours is reasonable given the increased expense for these transits as a result of the fatigue management rules. Finally, the proposed changes to the detention fee and docking fee³², which will simplify its rate structure, are reasonable.

Modification of COLA. COLRIP proposes to continue annual COLA to all tariff charges, except the continuing professional development charge, and increase the annual adjustments by one-half percent, effective in September for each of the five years 2021 through 2025. This would result in annual COLA by an additional one-half of one percent over the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor.³³ This increase will support the overall compensation of COLRIP pilots over the next five years, continuing to bring compensation in line with that provided to other pilots in the region.

T-6 Discount. COLRIP proposes a 10 percent discount for container vessels calling at Port of Portland, Terminal 6 for a one-year period, applicable to all CWRPG rates and charges. This temporary measure is consistent with encouraging the container liner service recently resumed at Port of Portland Terminal 6.

³¹ Added as part of the Board's modification of the Proposed Order, in support of the exceptions filed.

³² Added as part of the Board's modification of the Proposed Order, in support of the exceptions filed.

³³ *In the Matter of Automatic Cost of Living Adjustments to Rates of Pilotage for the Columbia and Willamette Rivers*, Case No. 2018-02, Order No. BP 18-01, (Nov 30, 2018) (establishing that effective September 1, 2018, the Western Region all urban consumers Consumer Price Index is the index on which the annual automatic cost of living adjustment to the established rates shall be based).

Term. COLRIP proposes that the rates sought in its petition extend for a minimum of five years from the date that a Final Order is issued in this proceeding and continue in force until the adoption of new rates pursuant to a subsequent Final Order of the Oregon Board of Maritime pilots. This term is reasonable, and consistent with past orders.

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

VI. CONCLUSIONS OF LAW

- (1) The record in this proceeding contains sufficient evidence to substantially satisfy the requirements set forth in provisions of ORS 776.115(5)(b) and OAR 856-030-0000.
- (2) The changes proposed by COLRIP are supported by a preponderance of the evidence and the resulting rates are reasonable and just.

VII. ORDER

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

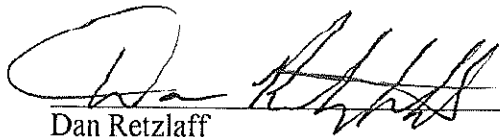
For purposes of setting the tariff:

- (1) **Transit Fee, Draft Rate, Detention Fee, Harbor Move Charge, Docking Charge.** The charges for the CWRPG are HEREBY approved as follows: a transit fee of \$1,350, a draft rate of \$50 per foot, and a detention fee of \$355 per hour with a 12-hour maximum. The harbor move charge is HEREBY applicable to transits to or from Astoria that are over eight hours (exempting ATB vessels). The harbor move exemption from the fee for docking a vessel stern first in slip, head down (when at the master's, owner's, or agent's request) is HEREBY eliminated. The rates established in this order are subject to future adjustments per the automatic rate adjustment mechanisms of the Columbia and Willamette River tariff.
- (2) **COLA.** The annual COLA mechanism is modified by increasing the annual COLA by an additional one-half of one percent over the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor effective in September for each of the five years 2021 through 2025.
- (3) **T-6 Discount.** The ten percent discount for container vessels calling at Port of Portland, Terminal 6 for a one-year period, applicable to all CWRPG rates and charges, is approved.
- (4) **All Other Provisions.** All provisions of the Columbia and Willamette River tariff that are not modified herein are HEREBY ratified and incorporated by reference.

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

(6) **Costs.** COLRIP and CRSOA are each hereby assessed one-half of the costs of this proceeding, for a total of: **\$2384.77 to COLRIP** (\$3384.77 minus the petitioner's \$1,000 deposit); **\$3384.77 to CRSOA**. Costs are due upon issuance of this Final Order, payable to the Oregon Board of Maritime Pilots.

DATE: August 1, 2021



Dan Retzlaff
Chair
Oregon Board of Maritime Pilots

APPEAL RIGHTS

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

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2021, I served a **BP 12 Final Order** by emailing or mailing a true copy to said person(s), to said person(s) at the last-known address(es) indicated below:

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Susan Johnson, Administrator
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