

January 27, 2014

NOTICE OF MEETING
OF THE
BOARD OF PILOT COMMISSIONERS
FOR THE
PORTS OF HARRIS COUNTY

In accordance with official practice of the Board of Pilot Commissioners for the Ports of Harris County, there is attached hereto a copy of the Agenda of the meeting of the Board of Pilot Commissioners for the Ports of Harris County to be held on January 31, 2014. The Pilot Board will meet at 9:30 a.m., or thereafter, immediately following the adjournment of the regular Port Commission meeting, at the Port of Houston Authority Executive Office Building, Fourth Floor Boardroom, 111 East Loop North, Houston, Texas 77029.

BOARD OF PILOT COMMISSIONERS
PORTS OF HARRIS COUNTY, TEXAS



ASSISTANT SECRETARY

AGENDA

**BOARD OF PILOT COMMISSIONERS
for
HARRIS COUNTY PORTS**

**January 31, 2014
9:30 a.m.**

**Fourth Floor Boardroom
111 East Loop North
Houston, TX 77029**

A. CALL TO ORDER

B. APPROVAL OF MINUTES

December 10, 2013 Public Meeting

C. APPEARANCES

D. STAFF REPORTS

E. PILOT MATTERS

1. Action regarding "Decision and Reasons For Decision on 2014 Harris County Pilot Rates"
2. Appointment of Pilot Board Application Review Committee (ARC) Members
3. Appointment of Pilot Board Investigation and Recommendation Committee (PBIRC) Members
4. Recommendation for renewal of Branch Pilot Commission for the Houston Ship Channel and Galveston Bar: Captain Richard D. Moore
5. Recommendation for Branch Pilot Commission for the Houston Ship Channel and Galveston Bar: Captain Robert C.S. Roberts

(Recess Open Meeting and convene Executive Session)

F. EXECUTIVE SESSION

1. Consultation with Attorneys (Section 551.071, Texas Open Meetings Act)
2. Real Estate (Section 551.072, Texas Open Meeting Act)
3. Economic Development Negotiations or Incentives (Section 551.087, Texas Open Meetings Act)
4. Employment and Evaluation of Public Employees (Section 551.074, Texas Open Meetings Act), including deliberations regarding public employees
5. Security-Related Matters (Sections 418.175-418.183 of the Texas Government Code, and Section 551.076, Texas Open Meetings Act)

G. ADJOURN EXECUTIVE SESSION AND RECONVENE OPEN MEETING

(Announce any items from Executive Session requiring Pilot Commission action)

H. ADJOURN

NEXT MEETING REQUESTED

February 25, 2014

Request for Pilot Board Action

Category: Pilot Matters	Agenda Date: January 31, 2014	Agenda Section: E - 1
From: Division: Legal	Staff Contact: Erik Eriksson	
Summary Recommendation: Action regarding "Decision and Reasons For Decision on 2014 Harris County Pilot Rates."		
Background: The Houston Pilots Licensing and Regulatory Act, Chapter 66 of the Texas Transportation Code (the "Act"), requires the Board of Pilot Commissioners for the Ports of Harris County (the "Pilot Board") to establish pilotage rates for the Ports of Harris County, as provided therein. By letter dated September 16, 2013, the Houston Pilots (the "Pilots") submitted an application to the Pilot Board for a change in such pilotage rates (the "Application"). The Pilots proposed (i) overall pilotage rate increases of 3.5%, effective January 1, 2014, (ii) extending the "Pilot Away" grace period by 5 minutes to 35 minutes from first line "on a revenue neutral basis," (iii) adjusting cancellation charges to exclude "automatics," (iv) adding \$7 to the transportation charge to retroactively recover pilot boat increased fuel costs pursuant to the fuel factor formula, and (v) extending promotional discounts at Bayport Terminal for large cruise ships and container ships, as set forth in the Application. On September 24, 2013, the Pilot Board set the regularly scheduled Pilot Board meeting of October 22, 2013 to commence its hearing on the Application. The hearing commenced on that date and was continued to November 19, 2013, at which interested parties spoke in connection with the Pilot Board's consideration of the Application. The hearing was continued again to December 10, 2013, and on that date, the Pilot Board further considered and indicated its intention to "provisionally" approve the Application, subject to further negotiation between the Pilots and interested parties, instructed its attorneys to prepare written findings as it directed them to do during the hearing and as required by law, and continued the hearing.		
Staff Evaluation/Justification: Section 9 of the Rules and Regulations Governing Pilots and Pilotage on the Houston Ship Channel between the Galveston Bar and Turning Basin adopted by the Pilot Board in July 2013 set forth the Pilot Board's procedures for the establishment of pilotage rates. In addition, Sec. 66.065 of the Act requires that: 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. Staff anticipates that on January 31, 2014 the Pilot Board will reconvene its hearing to further consider the Pilot's Application, and may take action on the Application as provided by the Transportation Code, as more particularly set forth in attached "Decision and Reasons For Decision on 2014 Harris County Pilot Rates."		

Full Recommendation:

The Pilot Board of Commissioners, at its January 31, 2014 meeting, consider and take possible action regarding "Decision and Reasons For Decision on 2014 Harris County Pilot Rates," 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.

In re: Pilot Rate Change Application for Harris County, Texas

Before

The Board of Pilot Commissioners of Harris County, Texas

DECISION AND REASONS FOR DECISION ON 2014 HARRIS COUNTY PILOT RATES

I. Background

By letter dated September 16, 2013, the Houston Pilots (“Pilots”) submitted their application (the “Application”) for an increase in pilot rates under the Houston Pilots Licensing and Regulatory Act, Title 4, Subtitle B, Chapter 66, Subchapter D, Sections 66.061, *et seq.*, TEX. TRANSPORTATION CODE (“Chapter 66”). The requested increase is 3.5% as to all items for which pilotage is charged and would become effective January 1, 2014.

The Board of Pilot Commissioners of Harris County, Texas (the “Board”) proceeded to consider the Application pursuant to Chapter 66 and the Board’s Rules and Regulations Governing Pilots and Pilotage.¹

The Pilots submitted their financial statement (required by Section 66.063 of Chapter 66) by letter dated October 11, 2013, and their Submission in support of their Application on October 22, 2013.

On October 22, 2013, the Board met in public session, commenced its consideration of the Application, established a schedule for a hearing on the Application, and continued the hearing until November 19, 2013. Parties opposing the Application submitted controverting materials on November 1, 2013.

On November 19, 2013, the Board heard the oral presentations of interested parties and continued the hearing until December 10, 2013. Interested parties provided rebuttal submissions on December 2, 2013.

The Board deliberated in public session on December 10, 2013, directed its attorneys to draft a decision and reasons for decision consistent with provisional approval of the Application, and continued the hearing until the Board’s next scheduled public meeting on January 31, 2014.

The Board now adopts this written decision pursuant to Section 66.065 of Chapter 66.

¹ <http://www.houstonpilotboard.com/rules-adopted.html>

II. Decision

A reasonable and just disposition of the Pilot's Application, supported by substantial evidence, follows:

1. The Pilots' Application is hereby provisionally granted, to take effect from January 1, 2014, such that Pilotage rates for Harris County ports are increased as reflected by the Application and the schedule attached to the Application.

2. The amount of the increase in pilot rates collected after January 1, 2014, and an accounting sufficient to identify the parties paying such amounts, shall be periodically remitted by the Pilots to the Secretary of the Board, who shall hold the increase until such time as the Pilots and the West Gulf Maritime Association ("WGMA") have reached agreement on Harris County pilotage rates for 2014, and reasonable and necessary revisions to the Pilots' Navigation Safety Guidelines², and any related revisions to this Board's Rules and Regulations. If agreement is reached, the Secretary shall disburse such funds to the Pilots. If no such agreement has been reached by the close of business on March 3, 2014, the Board shall take further action to determine appropriate rates, guidelines, and rules and regulations as necessary to serve the best interests of stakeholders of the Port of Houston, considering the factors stated by Section 66.064.

3. In the event that the Pilots and the WGMA do not reach agreement by March 3, 2014, the Board requests that the Pilots and the WGMA inform the Board in writing, and in detail, of the points on which agreement was reached and the specific issues on which they remain in disagreement.

4. Future financial reports submitted by the Pilots as required by Section 66.063 shall be supported by audited financials for the three calendar years prior to the year in which the application is made and shall be approved by a certified public accountant.

III. Reasons for Decision

5. Harris County pilotage rates impact all seagoing cargo and passenger vessels calling at all marine terminal facilities in the Port of Houston, and not just vessels calling on Port of Houston Authority ("Port Authority") terminals. The Port of Houston includes multiple private marine terminals, while cargo crossing docks owned or operated by the Port Authority comprises less than 15% of the total tonnage of the Port of Houston.

6. The WGMA is a non-profit association having over 160 members, which include steamship owners, operators, and agents, as well as stevedoring terminal companies located in all Texas ports. Of the parties opposing the Application, the WGMA submitted the most detailed comments. WGMA members include interests that submitted their own, separate comments on the Application.

² <http://www.houston-pilots.com/documents/pdf/NavigationSafetyGuidelines.pdf>

7. In reaching its decision as to reasonable and just pilotage rates, the Board has considered the factors stated in Section 66.064 of Chapter 66 as well as the issues and arguments presented by the Pilots and by opponents of the Pilots' Application.

8. The submissions of the Pilots address all of the factors stated by Section 66.064.

9. The factors stated by Section 66.064 are interrelated. Economic factors, safe navigation practices, efficiency of pilot service, as well as the need to maximize the utility of the Houston Ship Channel ("HSC") for the industries that it serves, pose interrelated issues.

10. The fourth factor listed by Section 66.064 – "the public interest in maintaining safe, efficient, and reliable pilot services" – encompasses consideration of safe navigation in the HSC and the efficacy of pilotage service to industry and business.

11. Safe navigation is vital not only for the protection of persons and property but also advances the goal of twenty-four hour, seven-day-a-week availability of the HSC for vessel transit.

12. Efficient and reliable pilot services and optimal utilization of the HSC are vital to industry in Harris County and to the local, regional, and national economies.

13. All parties that commented on the goals of safety and efficiency suggest that these goals are being met by the Pilots.

14. The HSC is a 52-mile long, complex channel, with a lengthy transit time of approximately 4 to 8 hours, depending on the destination terminal.

15. Piloting large, wide-body tankers and Panamax container vessels in the HSC is more difficult, and requires greater training and skill, than piloting smaller seagoing cargo vessels.

16. No party has urged that the Pilots' current level of compensation is excessive given the task they must perform.

17. The Board takes notice that at its Pilot rate application hearing of November 15, 2011, testimony was given that cargo interests, including those represented by the WGMA, agreed that the Pilots merited increased rates, including a 3.5% increase to be effective January 1, 2014.

18. The large majority of HSC transits are made by vessels carrying cargo other than containers. Non-container-cargo interests, including representatives of the petro-chemical industry, have not opposed the Pilots' Application.

19. The economic factors impacting the amount of pilotage rates broadly include all aspects of the shipping and related industries in Harris County and all cargo categories.

20. The competitiveness of the Port of Houston is primarily an issue of the total cost of calling on the Port's terminals, and not of a single item of expense, such as the cost of pilotage.

21. In the past, the Pilots and representatives of the shipping industry have reached agreement on pilotage rates and on other details of pilot services in the Port of Houston. This past practice of agreement between the Pilots and industry on pilotage rates and operational issues, subject to the Board's oversight, serves the objective of reasonable and just pilotage rates and of safe and efficient pilot services.

22. The Board makes no finding on the question of whether two pilots, as are used for piloting wide-body tanker vessels, are required as a matter of safety for wide-body container vessels. The Board notes that the guidelines had required two pilots, but that in an effort to provide a more cost-effective approach for wide-body container vessels, the Pilots revised the guidelines to require one pilot at 1.5 times the customary rate, rather than requiring two pilots, each at the customary rate. The container shipping industry has complained that a charge of 1.5 for one pilot is inappropriate. This is one of the issues that should be discussed between the Pilots and representatives of the container shipping industry for resolution. If this issue is not resolved, the Pilot Board reserves the right to make a determination on the appropriate resolution of this matter, along with the requested rate increase.

23. The Board further reserves the right to order a resolution of the stated issues for a term longer than one year.

Dated January 31, 2014