

**LOUISIANA PUBLIC SERVICE COMMISSION  
ADMINISTRATIVE HEARINGS DIVISION**

**DOCKET NO. T-23792**

**LAKE CHARLES PILOTS, INC. DULY INCORPORATED ASSOCIATION OF THE  
ASSOCIATED BRANCH PILOTS OF THE PORT OF LAKE CHARLES  
(LAKE CHARLES, LOUISIANA), EX PARTE  
(ON REMAND)**

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*In re: Request for increase in pilotage fees pursuant to La. Revised Statutes 34:1122.*

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**FINAL RECOMMENDATION  
OF THE ADMINISTRATIVE LAW JUDGE**

**DRAFT ORDER T-23792-C**

***History of the Proceeding***

The petitioner in this proceeding, Lake Charles Pilots, Inc., is an incorporated association of the Associated Branch Pilots of the Port of Lake Charles. (Hereinafter, Lake Charles Pilots, Inc. shall be referred to simply as the “Pilots” or the “Lake Charles Pilots”). The Lake Charles Pilots are described in Louisiana statutes as River Port Pilots. They are appointed by the Governor and take an oath of office, as state-commissioned pilots, to fulfill a specific duty: to pilot seagoing vessels on the Calcasieu Ship Channel – described more specifically in State law as Louisiana’s “navigable streams, channels, and boundary waters, within the Intracoastal Canal, Calcasieu and Sabine Rivers, bars and passes” and “across the bars and passes.”<sup>1</sup>

The Lake Charles Pilots, along with three other river piloting groups which pilot vessels into and along the Mississippi River, have had a long and unique history in this state, providing safe passage for foreign-flag ships through Louisiana waterways and port approaches. *Hayden v. New Orleans Baton Rouge Steamship Pilots Fee Commission*, 707 So.2d 3 (La. 1998). The Louisiana legislature recognized the importance of safe passage on the state’s waterways and, in 1837, imposed the first regulations on the state’s pilots. *Id.*

Until 1968, the Louisiana legislature established the fees and rates which could be charged by the state piloting associations.<sup>2</sup> Through Act 579 of 1968, the legislature turned that responsibility over to pilotage fee commissions, established for each pilot association. As provided in the Act, each fee commission is comprised of eight members and eight alternate members appointed by the Governor to represent, in equal numbers, the interests of the pilot association and the interests of industry.<sup>3</sup> It is the

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<sup>1</sup> La. R.S. 34:1072, 1073, and 1074.

<sup>2</sup> The Louisiana pilot groups operate as individual associations, as is permitted by State law. La. R.S. 34:1075.

<sup>3</sup> La. R.S. 34:1121.

function of the pilotage fee commission to negotiate pilotage fees and rates which may be charged by the pilotage association for a specific waterway.

Louisiana law instructs the fee commission concerning specific factors which must be considered in establishing pilotage fees and rates: the fees and rates “shall provide for all ordinary and necessary operating and administrative costs and expenses” *and* “fair average annual compensation for a state ship pilot, in comparison to regulated state ship pilotage in other United States ports.”<sup>4</sup> The statute also provides a listing of factors which *may* be considered by the fee commission.

If it happens that a pilotage fee commission is unable to resolve a dispute among its members with regard to pilotage fees and rates, Louisiana law provides that the Louisiana Public Service Commission “shall constitute the [pilotage fee] commission for the purpose of making a decision relative to the dispute.”<sup>5</sup> Specifically, when a majority of pilotage fee commission members are unable to decide an issue within ninety days of a request for negotiation, “any member” of the fee commission may certify the issue to the LPSC for adjudication.<sup>6</sup>

On September 17, 1998, Captain Malcolm Gillis, a pilot representative to the Associated Branch Pilots of the Port of Lake Charles Fee Commission (hereinafter, the “Fee Commission”), took such an action – certifying to the LPSC the question of reasonable and just pilotage fees and rates to be charged by the Lake Charles Pilots on the Calcasieu Ship Channel. Captain Gillis’ certification accompanied a proposed tariff (the 1998 Proposed Tariff) and a petition by the Pilots for an increase in pilotage fees and rates.

The Pilots’ petition explained that a five-year tariff negotiated by the pilot and industry members of the Fee Commission in 1994 and amended in 1997 was scheduled to expire by its own terms in September, 1999; before a new tariff could be negotiated to succeed the 1994 tariff, the industry representatives to the Fee Commission resigned, leaving the question of pilotage fees and rates unresolved. Under the statutory design, the certification of the issue to the LPSC placed the LPSC in the position of the Fee Commission, for the purpose of making a decision relative to the Pilots’ proposed increase in pilotage fees and rates.

Notice of the Pilots’ request was published in the Commission’s Official Bulletin on December 25, 1998 and the matter was assigned to the Administrative Hearings Division. The New Orleans-Baton Rouge Steamship Pilots Association (the “NOBRA Pilots”) and the New Orleans-Baton Rouge Steamship Fee Commissioners (the “NOBRA Fee Commissioners”) timely intervened in the proceeding. On

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<sup>4</sup> La. R.S. 34:1122(b).

<sup>5</sup> La. R.S. 34:1121(c).

February 1, 1999, a status conference was held and a procedural schedule was established - providing for discovery and deadlines for the filing of testimony and exhibits by all parties. A hearing was scheduled to begin on May 12, 1999.

In the ensuing months, the procedural schedule was revised several times in response to motions for filing extensions. The Lake Charles Harbor & Terminal District (the "Port"), Conoco, Inc. ("Conoco"), and CITGO Petroleum Corporation ("CITGO") were permitted to intervene into the proceeding as additional parties.

In July, 1999, the Pilots sought and were granted permission to file an amended tariff (the July 16, 1999 Proposed Tariff). Accordingly, additional time was allotted for discovery concerning the revised tariff and for the filing of additional testimony. The July 16, 1999 Proposed Tariff, unlike the Pilots' previous tariffs, provided for regulated pilotage rates and fees only on the "inner bar," the portion of the Calcasieu Ship Channel located within three geographical miles of the Louisiana coastline; pilotage fees and rates on the "outer bar," the portion of the channel seaward of three geographical miles beyond the Louisiana coastline, would be charged under a separate *unregulated* tariff.

On July 26, 1999, the hearing on the merits was convened. It was completed on August 4, 1999. However, on August 20, 1999, the administrative law judge convened a status conference, at which she advised the parties that she had determined that the record in the proceeding was incomplete, as the LPSC Staff had presented no evidence of a Staff audit of the Pilots' operations and expenses and the results of such an audit. The ALJ stated that it was her opinion that a Commission Staff audit of the Pilots' operations and expenses was necessary to the Commission's determination of reasonable and just fees and rates, and that, accordingly, the record would be re-opened for the purpose of receiving evidence concerning the Staff's audit. A procedural schedule was established, allotting time for the Staff's audit and the filing of an audit report, discovery by the other parties, and the filing of rebuttal testimony and exhibits by the Pilots. October 14 and 15, 1999 were set as additional hearing dates. Those dates were subsequently continued without date, in response to a motion for continuance by the Pilots and the LPSC Staff. The hearing was ultimately rescheduled for January 24, 2000. In the meantime, the parties filed numerous and varied motions and exceptions, including challenges to the LPSC's jurisdiction as well as challenges to CITGO's and Conoco's status as intervenors.

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<sup>6</sup> La. R.S. 34:1122(d).

In August, 1999, the Pilots had also requested the Commission to place into effect its July 16, 1999 Proposed Tariff as an *interim tariff*, pending a final decision by the Commission.<sup>7</sup> The Pilots submitted a proposed escrow agreement, providing for the escrow of the additional funds generated by the interim tariff pending the Commission's final determination in this proceeding. At their October 13, 1999 Business and Executive Session, the Commissioners voted to place the July 16, 1999 Proposed Tariff into effect as an interim tariff, and on November 9, 1999, the Commission's Order T-23792 was issued, placing the proposed July 16, 1999 Proposed Tariff into effect on an interim basis, subject to an escrow agreement.

At the January 19, 2000 Business and Executive Session, the Commissioners directed the ALJ to complete the currently scheduled hearings regarding the Staff's audit, with Staff counsel to prepare a recommendation on the merits for the Commissioners' consideration. The hearings were completed on January 24, 2000, and the LPSC Staff issued a recommendation on March 17, 2000.

On March 22, 2000, the Commissioners considered the Pilots' request for increased fees and rates, voting (1) that the "outer bar," beyond three miles of the Louisiana coastline, was not subject to the jurisdiction of the State of Louisiana or the LPSC; and (2) to implement the Pilots' previous tariff, the 1994 tariff as amended in 1997, within the "compulsory pilotage area" only (the "inner bar"). The Commission's decision was issued on April 5, 2000, as Order T-23792-A. A motion by one commissioner to reconsider the Commission's decision concerning regulation of the "outer bar" died for lack of a second, at the October 4, 2000 Business and Executive Session.

Following the LPSC's issuance of Order T-23792-A, appeals were taken to the Nineteenth Judicial District Court by CITGO, Conoco, and the Pilots. On April 5, 2001, that court issued its decision, vacating the LPSC's Orders Numbered T-23792 and T-23792-A and remanding the matter to the LPSC with instructions that pilotage fees on the "outer bar" were to be regulated as part of a final tariff.

On further appeal to the Louisiana Supreme Court, that Court on March 15, 2002 affirmed the trial court's decision concerning the outer bar, and ordered the LPSC to regulate pilotage on the outer bar in compliance with La. Rev. Stat. 34:1073. *CITGO Petroleum Corporation v. LPSC*, 815 So.2d 19 (La.

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<sup>7</sup> LA. R.S. 34:1122(d)(3)(a) permits the LPSC to put a proposed increase in fees and rates into effect prior to a final decision, subject to protective bonding and other security requirements. Further La. 34:1122(d)(3)(b) provides that a proposed increase shall go into effect, pending a final decision, if the LPSC has not rendered a decision after the lapse of twelve months following certification of the issue, again, subject to protective bonding and other security requirements.

2002). The Court affirmed the trial court's remand of the matter to the LPSC for further proceedings, but amended the trial court's judgment to reinstate the interim tariff pending completion of proceedings.<sup>8</sup>

In August, 2002, this matter was referred to the LPSC Administrative Hearings Division, and on August 23, 2002, the LPSC administrative law judge convened a status conference for the purpose of addressing the issues remanded to the Commission by the Louisiana Supreme Court. The parties agreed that the remand phase of this proceeding should begin with the Pilots' filing of a new tariff which would include pilotage fees and rates on both the inner and outer bars. The parties also agreed that information previously assembled in this case was now stale, necessitating the development of new data from which a new tariff could be analyzed. Finally, the parties agreed that the Pilots' fiscal year of April 1, 2001 to March 31, 2002 should be used as the test year.<sup>9</sup> A procedural schedule was established, with the hearing scheduled to commence on March 31, 2003.

Almost immediately, disputes arose concerning the Pilots' request for confidential treatment of its financial information, the specifics of an escrow agreement, and the methodology to be used by the Staff in conducting a survey concerning annual earnings by other pilot groups. The procedural schedule was revised several times, in response to motions for additional time, and also as necessary to accommodate the resolution of various disputed issues. At the February 19, 2003 Business and Executive Session, the Commissioners addressed appeals of certain interlocutory rulings of the ALJ and further directed the ALJ to proceed with the procedural schedule then in place and not deviate from it without good cause. *Order T-23792-B, issued on March 7, 2003*. Ultimately, the hearing was convened on August 11, 12, 13, and 14, 2003.

### ***The Pilots' Request:***

The Pilots seek in this proceeding the LPSC's approval of a new tariff, filed on September 20, 2002 (the "Proposed Tariff"). According to the Pilots, the Proposed Tariff should generate total annual revenue of \$9,412,083, if the test year is an accurate representation of the number and kind of vessels which will be served in the coming year. The Pilots' proposed annual revenue requirement is comprised of the following categories:

- \$4,184,013 to cover the Pilots' ordinary and necessary costs and expenses (including employee benefits, such as insurance and pension funds);

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<sup>8</sup>The district court's denial of CITGO and Conoco's exception to the LPSC's subject matter jurisdiction was also affirmed by the Louisiana Supreme Court.

<sup>9</sup>Report of August 23, 2003 Status Conference and Establishment of Procedural Schedule.

- \$4,788,784 to provide each individual Pilot with a net annual income of \$368,368 (exclusive of benefits); and
- \$439,286 for estimated capital improvements.

The Pilots also request the LPSC's:

- \* Approval of a proposed tariff structure which changes the manner in which rates are calculated and makes pilotage services on the outer bar mandatory for vessels entering and transiting the outer bar from the open sea.
- \* Establishment of a surcharge for capital improvements: a new pilot boat, renovation and repair of the pilot station, and replacement of the existing pilot station dock with a new dock and steel bulkhead;
- \* Establishment of an annual automatic tariff rate adjustment mechanism (ATRAM); and
- Approval of the addition of a fourteenth pilot.

***The Hearing:***

At the hearing, the Lake Charles Pilots presented the following witnesses:

- *Captain George W. Mobray*, an appointed “pilot” member of the Fee Commission and Vice President of Operations for the Lake Charles Pilots. Captain Mobray presented fact testimony concerning the number of bridge hours worked by the Lake Charles Pilots during the test year.
- *Captain Michael G. Miller*, current President of the Lake Charles Pilots. Captain Miller presented fact testimony concerning the Pilots’ request for an increase in revenue, the structure of the Pilots’ Proposed Tariff, the Pilots’ request for a capital improvements surcharge, the Pilots’ request for the establishment of an ATRAM, and the Pilots’ request for a fourteenth pilot.
- *Renee P. Pettaway*, a Certified Public Accountant who has personally provided tax and accounting services to the Lake Charles Pilots since 1992. Ms. Pettaway presented both expert (accounting) and fact testimony, concerning her financial calculations and projections which provide the basis for the Pilots’ proposed increases in revenue.
- *Retired Naval Captain Franklin D. Julian*, an instructor on bridge resource management at Marine Safety International Training Center in Newport, Rhode Island, who spent thirty-five years in the United States Navy and served as Master or Captain of four vessels.

Captain Julian testified as an expert witness in matters concerning marine piloting, related marine activities, and demands on pilots. Captain Julian also testified concerning his personal experiences in transiting the Calcasieu Ship Channel in preparation for his testimony in this proceeding.<sup>10</sup>

The LPSC Staff presented the testimony of

- *Stanley B. Perkins, Sr.*, Audit Manager and Director of the LPSC Audit Division. Mr. Perkins testified with regard to the LPSC Staff's audit of the Pilots financial records and presented the Staff's recommendations concerning the Pilots' proposed revenue requirement and the Pilots' additional requests in this proceeding.

Intervenors CITGO, Conoco, and the Port<sup>11</sup> presented the following witnesses:

- *Captain Julian P. Walters*, a professional mariner, a licensed ship master and licensed pilot, and a retired Lieutenant-Commander in the United States Naval Reserve, who testified as an expert witness in the areas of marine piloting and related marine activities. Captain Walters compared piloting on the Calcasieu Ship Channel to piloting in other ports worldwide. Captain Walters also testified concerning his personal experiences on the Calcasieu Channel, which he transited and observed in preparation for his testimony here and where he once served as Master of a hopper dredge and was responsible for dredging and maintaining the Channel as an employee of the United States Army Corps of Engineers.
- *Dr. Robert J. Newman*, a tenured professor of economics at Louisiana State University and Chairman of the LSU Economics Department, who was accepted as an expert in the field of economics. Dr. Newman testified concerning an economic analysis he performed to determine fair annual compensation for a Lake Charles Pilot, utilizing publicly available government information to examine the compensation of highly skilled personnel in the transportation industry as well as other markets.
- *Scott A. Poyer*, who provided expert opinion concerning costs which are recoverable in pilotage fees. Mr. Poyer served in the United States Department of Transportation, where

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<sup>10</sup> A fifth witness presented by the Pilots, Brent Dibner, was not accepted as an expert in the areas specified by the Pilots and his testimony was stricken in full as based upon unreliable data, in response to a motion to strike by intervenors CITGO, Conoco, and the Port and after extensive voir dire.

<sup>11</sup> The NOBRA Pilots and the NOBRA Pilot Fee Commissioners, who intervened early in this proceeding and participated actively in the first phase, did not participate in the remand phase of the proceeding.

he worked in the Office of Great Lakes Pilotage – the office responsible for the regulation of all registered pilots on the Great Lakes/St. Lawrence Seaway. Mr. Poyer served as the Coast Guard’s expert on pilotage regulation with responsibility for regulation of all federal pilots in the United States and authored the Great Lakes Pilotage Rate-Making Methodology, used to set pilotage rates on the Great Lakes. In this proceeding, Mr. Poyer reviewed the Pilots’ financial books, records, and underlying invoices, categorized the Pilots’ costs and expenses, and made recommendations concerning which of those costs and expenses are appropriately recovered in pilotage rates.

- *David J. Moore*, a Certified Public Accountant with the firm of Postlethwaite and Netterville, APAC, who testified as an expert in the field of accounting. Mr. Moore has been retained by the LPSC in the past to provide expert assistance in various telecommunications proceedings and to verify that fee collections by the Crescent River Port Pilots Association under an interim tariff were deposited as required and that credits were refunded. In this proceeding, Mr. Moore reviewed the financial books and records of the Lake Charles Pilots and utilized conclusions reached by Dr. Newman (concerning compensation) and Mr. Poyer (concerning recoverable costs and expenses) to determine a recommended revenue requirement for the Lake Charles Pilots and to construct a tariff designed to generate that amount of revenue annually.<sup>12</sup>

***Applicable Law:***

*Jurisdiction and Mandate*

By virtue of the Louisiana Constitution, Article 4, Section 21, the LPSC has the authority to and shall regulate all common carriers and public utilities “*and have such other regulatory authority as provide by law.*” The LPSC’s authority to regulate pilotage fees is “not found in the constitution, but is ‘other regulatory authority’ given to the LPSC by the legislature,” via La. R.S. 34:1121 and 1122. *Hayden v. LPSC*, 553 So.2d 435 at 439 (La. 1989), citing *Giallanza v. LPSC*, 412 So.2d 1369 (La. 1982).

In this proceeding, the LPSC is charged with the responsibility of establishing “reasonable and just fees and rates” for pilotage service to ships and vessels in the Calcasieu Ship Channel, in accordance with La. R.S. 34:1122. That statute provides (in part B) a list of factors which the LPSC *must* consider during

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<sup>12</sup> At the hearing, the Port elected not to present the testimony of an additional witness who had filed pre-filed testimony, Daryl V. Burckel.

this rate-making process,<sup>13</sup> as well as a list of factors which the LPSC “may give due regard.” Neither list is exclusive.

The LPSC *must* factor in

(1) “all ordinary and necessary operating and administrative costs and expenses, including, but not limited to”:

- The cost of, replacement of, and reasonable return on investment of:
  - pilot stations,
  - administrative offices,
  - furniture and fixtures,
  - communication equipment and facilities,
  - vessels, launches and other required vehicles of transportation and the expenses of maintaining and repairing same,
  - other transportation expenses,
  
- The expense of maintaining:
  - necessary employees,
  - operating materials,
  - consumables, and
  - services,
  
- Pensions and pension plans,
- Hospitalization,
- Disability compensation,
- Taxes and licenses,
- Life insurance,
- License insurance,
- Trade promotions,
- Public relations,
- Legal expense,
- Accounting expense,
- Professional dues,
- Administrative and professional publications,
- State pilot commissions, and
- State and federal requirements,

*and*

(2) “fair average annual compensation for a state ship pilot, in comparison to regulated state ship pilotage in other United States ports.”

The LPSC may give due regard to other factors in establishing rates and fees, including the length, draft, dimensions, and tonnage of the vessels to be piloted; the difficulty and inconvenience of the particular service and the skill and additional expertise required to render it; the public interest in maintaining safe, efficient, and reliable pilotage service; the piloting time required; the distance traveled of the vessels to be serviced; the travel time required and distance traveled to and from vessels; the method of travel and travel cost required to and from vessels; the time devoted by pilots to making

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<sup>13</sup> The Louisiana Supreme Court has emphasized the mandate contained in La. R.S. 34:1122, concluding, “not only do we find that the legislature has the power to mandate the LPSC to consider these factors, but we find the failure of the LPSC to do so would result in an arbitrary and capricious decision.” *Hayden, supra*, at 440.

themselves available when needed; the time required to be on station or on call while both on and of station; the length of time duty requires the pilot's absence away from home; the difficulty of the particular service including working conditions; risk factors of the route; inconvenience and living conditions; the skill and additional expertise required to render the particular service; the length of the training, experience, or apprenticeship program; the number of trips the pilot is required to ride light; and the national average pilotage cost per mile for state regulated pilots operating in United States ports.

### The Rate-Making Process

As opposed to the "negotiation" process utilized by the pilotage fee commissions to establish rates, the LPSC, as Fee Commission, is directed to hold hearings to receive evidence and argument.<sup>14</sup> Because of the differing natures of the two processes – negotiation and adjudication – little if any guidance may be gleaned from the pilotage fee commission proceedings of the past. And while the LPSC has recently addressed pilotage rates for the three Mississippi River pilotage associations, the rates for all three associations were ultimately established through stipulations reached by the parties and approved by the LPSC.<sup>15</sup> The Commission made no specific findings of fact or conclusions of law in those proceedings concerning the rate-making process.

The Louisiana Supreme Court, however, has provided specific guidance concerning the LPSC's role in establishing pilotage rates and fees. In *Giallanza v. LPSC, supra*, the Court opined that the LPSC, in determining pilotage rates, "*necessarily must follow a procedure similar to that which it employs in regulating the rates of a public utility.*" *Id.* at 1373. (Italics added.) In fact, the Court acknowledged the LPSC's "historic dominance of rate-making in Louisiana" and voiced approval of the LPSC's use of *its own expertise and independent judgment* to establish just and reasonable rates for pilotage – which the Court described as "an important public service" and "a vital area of public service regulation." *Id.* at 1372.<sup>16</sup> The Court stated that the primary purpose of the LPSC's process of determining pilotage rates is

to set pilotage fees at such a level that the pilots' revenues will be sufficient to permit them to both pay their *legitimate* operating expenses and to provide them compensation for their services and investment *adequate to maintain efficient, economical and reliable pilotage service, . . . .* When this level is achieved the pilots' revenues may be said to produce a fair rate of return and rates which produce such a return are reasonable and just." *Id.* At 1373. (Italics added.)

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<sup>14</sup> La. R.S. 34:1122(d)(2).

<sup>15</sup> Order T-23268-A, issued on February 26, 1999 (Crescent River Port Pilots Association); Order T-23689, issued September 21, 1999 (Associated Branch Pilots of the Port of New Orleans); Order T-24644, issued March 6, 2001 (New Orleans-Baton Rouge Steamship Pilot Fee Commission).

<sup>16</sup> The LPSC's role in pilotage rate regulation is considered to be well settled. See, e.g. *Hayden v. LPSC*, 512 So.2d 370, 371 (La. 1987) citing its decision in *Giallanza*.

Pursuant to that guidance, we find that pilotage is an area of public service regulation and that we may best establish just and reasonable rates and fees for the Lake Charles Pilots by utilizing traditional rate-making principles and methodology, fine-tuned as necessary to reflect the mandates of La. R.S. 34:1122.

### Burden of Proof

The general rule in rate-making proceedings is that the party requesting a rate increase has the burden of producing the evidence to support the increase.<sup>17</sup> This is particularly appropriate in light of the fact that the applicant in a rate case is the sole possessor of most, if not all, of the information needed to analyze the request. Placing the burden of proof on the applicant is also justified “to counterbalance the monopolistic effects on the ratepayers who do not have a choice about which company provides their utility service.” *Entergy Gulf States, Inc. v. LPSC*, 726 So.2d 870 at 873, 874 (La. 1999), citing *Gulf States Util. Co. v. LPSC*, 678 So.2d 71 at 84, n. 6 (La. 1991). Customers of a monopolistic enterprise do not have the choice to take their business elsewhere; thus, market forces provide no incentive to utilities to act prudently. “Therefore, a utility’s only motivation to act prudently ‘arises from the prospect that imprudent costs’ may be disallowed.” *Id.* At 874, citing *Gulf States Util. Co. v. LPSC*, 96-2046, p. 12 (2/25/97), 689 So.2d 1337, 1345 at n.9.

Nevertheless, capital and other expenditures presented by a utility in support of a requested rate hike are generally accepted by the LPSC as appropriate and necessary *unless* the reasonableness of the expenditure is seriously questioned. At that point, the burden shifts back to the utility to prove that the expenditure was in fact necessary and appropriate. *Gulf States Utilities v. LPSC*, 578 So.2d 71, 85 (La. 1991).

In this proceeding, we must determine reasonable and just rates for pilotage service – a vital and regulated public service provided in a monopolistic environment. Because of the similarities between the context of this rate proceeding and public utility ratemaking proceedings, we find that the “burden of proof” principles applicable to public utility ratemaking proceedings are applicable here as well.

### ***Determination of Reasonable and Just Fees and Rates for the Lake Charles Pilots:***

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<sup>17</sup> *The Process of Ratemaking, Volume 1, Page 59, Public Utility Reports, Inc., 1998.*

In accordance with our determination that we may best establish just and reasonable rates and fees for the Lake Charles Pilots by utilizing traditional rate-making principles and methodology, fine-tuned as necessary to reflect the mandates of La. R.S. 34:1122, we will proceed as follows:

- Determination of the test year;
- Determination of appropriate adjustments to the Pilots' test year operating and administrative costs and expenses to reflect the requirements of La. R.S. 34:1122.
- Determination of fair average annual compensation for the Lake Charles Pilots;
- Determination of the Pilots' revenue requirement, by adding together what we have determined to be the recoverable costs and expenses and what we have determined to be fair annual compensation; and
- Construction of a tariff designed to produce the revenue requirement.

**(1) Determination of the test year**

In this proceeding, the parties agreed to a test year beginning on April 1, 2001 and ending on March 31, 2002. We approve of the stipulated test year.

**(2) Determination of appropriate adjustments to the Pilots' test year costs and expenses to reflect the requirements of La. R.S. 34:1122**

*“Ordinary and Necessary” Operating and Administrative Costs and Expenses*

The Pilots have submitted a figure of \$4,184,013 as the total amount of operating and administrative costs and expenses they seek to recover through their Proposed Tariff. This figure is challenged by the LPSC Staff as well as the intervenors. Much of the dispute concerns the interpretation of La. R.S. 34:1122, and particularly the words “ordinary and necessary,” used in the statute to describe the operating and administrative costs and expenses which are recoverable in pilotage rates. To our knowledge, this particular issue of interpretation has not been the subject of prior case law or previous decisions by the LPSC.

La. R.S. 34:1122 states that the pilotage fees and rates established by the LPSC in this proceeding shall provide for all “ordinary and necessary” operating and administrative costs and expenses, including, but not limited, to categories of costs and expenses specifically listed in the statute. The intervenors argue that this language should be interpreted to mean that costs and expenses are recoverable in rates only if they are proven to be customary and necessary to the provision of pilotage services. The Pilots urge a much broader interpretation of “ordinary and necessary.” The Pilots have included for recovery in their pilotage rates virtually all of their costs and expenses, relying upon what their CPA, Ms. Pettaway, describes as the “accounting” definition of “ordinary and necessary.” In accounting practice, Ms. Pettaway advises, “ordinary and necessary” expenses are expenses which are common and accepted in the general industry or type of activity engaged in and which are appropriate and helpful in furthering the business. The LPSC Staff did not address the issue.

It must be assumed, in applying the statute, that the legislature included the words “ordinary and necessary” for a reason. Louisiana Civil Code Article 11 provides that “[t]he words of a law must be given their generally prevailing meaning.” Both “ordinary” and “necessary” are commonly used words. The word “ordinary” is defined in Webster’s Dictionary as “usual” or “normal.” The word “necessary” is defined as “essential to an end or condition.” It appears that both the intervenors and the Pilots accept the Webster’s definition of “ordinary” as meaning “usual” or “customary.” The dispute lies, for the most part, in the interpretation of the word “necessary.” There, the intervenors urge an interpretation similar to that found in Webster’s Dictionary: the expenses must be necessary to the provision of pilotage services – or “essential to an end.” The Pilots’ interpretation presents a much lower hurdle than the Webster’s definition: they argue that, to be recoverable in rates, the expenses need only be “*helpful* in furthering the business.”

Louisiana Civil Code Article 10 provides that “[w]hen the language of the law is susceptible of different meanings, it must be interpreted as having the meaning that best conforms to the purpose of the law.” Thus, to resolve the dispute over interpretation, we must consider the words “ordinary and necessary” in the context of La. R.S. 34:1122 and surrounding statutes. Those statutes direct the establishment of “reasonable and just” fees and rates for state pilotage services provided to vessels whose owners have no choice but to take on a pilot and pay for pilotage services – i.e., the establishment of rates in a monopoly setting.

We find that this context – the monopolistic provision of an important public service – is quite similar to the context in which public utility rates are established and quite different from the context of unregulated free enterprise. Given the similarities of pilotage rate regulation and public utility regulation, and with the Louisiana Supreme Court’s approval of our use of traditional rate-making methodology in establishing pilotage rates,<sup>18</sup> we find it helpful and appropriate in this proceeding, to look for guidance to rate-making principles traditionally applicable to public utility regulation. One such principle is that, in the monopoly context of public service regulation - imprudent, extravagant, unnecessary, or inefficient costs are not included in rates.

In other words, the consumer is responsible for the lowest cost of providing reasonable service, and no more. And the commission is responsible for seeing that the consumer does not pay more. . . . Costs frequently questioned include the costs of good will and institutional advertising, charitable contributions, social memberships, and political activities. These expenditures are generally unnecessary for a utility to maintain its market, as it has an exclusive franchise. Provision of a reasonable level and quality of service serves to enhance the utility’s public image, in any case. The utility is not prohibited from making such unreasonable expenditures; it is only prevented from recovering from rates the costs of such activities. *Public Utility Economics and Finance, Keith M. Howe and Eugene F. Rasmussen, 1982, at page 74.*

Accordingly, we find that the statute should be interpreted more narrowly than the Pilots suggest – in recognition of the context of the statute and to give meaning to the statute’s specific use of the words “ordinary and necessary.” We conclude that the appropriate meaning to be given the words “ordinary and necessary” in La. R.S. 34:1122 is this: In order for the Pilots’ operating and administrative costs and expenses to be recoverable in their rates, those costs and expenses must be (1) usual, common, or normal expenses associated with the provision of pilotage service, and (2) reasonably necessary for the provision of pilotage services. This interpretation of recoverable costs and expenses comports with traditional rate-making principles for public utilities.<sup>19</sup>

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<sup>18</sup> See *Giallanza, supra*.

<sup>19</sup> Our definition also comports with Coast Guard guidelines for Great Lakes pilotage ratemaking, which directs that “[e]ach expense item included in the rate base is evaluated to determine if it is necessary for the provision of pilotage service, and if so, what dollar

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amount is reasonable for that expense item.” *Title 46 CFR 404.5*. Expense items which are determined to be unreasonable and unnecessary for the provision of pilotage services are not recognized for ratemaking purposes.

*Analysis of the Pilots' Test Year Costs and Expenses*

As we approach our analysis of the Pilots' test year administrative and operating costs and expenses, we find that our task is not an easy one. First, the one witness presented by the Pilots to testify in support of the Pilots' costs and expenses, CPA Renee Pettaway, acknowledged numerous times under cross examination that she did not review any underlying invoices for the expenses which the Pilots seek to recover in their rates. She relied upon check registers, accounts payable reports, and bank statements, as well as unaudited financial statements and tax returns, but she did not analyze or verify the invoices underlying the claimed expenses, and, instead, relied upon the Pilots' verification and classification of expenses. Thus, when asked about certain expenses at the hearing, she had very little information to provide other than her opinion - based upon what we have determined to be an inappropriately broad interpretation of La.RS. 34:1122 - that virtually all of the Pilots' expenses should be considered ordinary and necessary. Second, the Pilots presented their proposed expenses in a two-page summary chart attached to Ms. Pettaway's Pre-filed Direct Testimony as Exhibit A, with very little explanation of the individual entries, and utilizing expense classifications which do not correspond with the categories of recoverable expenses provided in La. R.S. 34:1122. Finally, the Pilots provided no rationale for their expenditures. Ms. Pettaway's chart of expenses includes amounts spent for continuing education, advertising, gifts and florals, political contributions, and lobbying - to list just a few examples - without specifics or cost breakdowns and without any explanation of what those expenses actually were, why those expenses were incurred, and how those expenses were related to the provision of pilotage services during the test year.

Thus, despite the fact that the Pilots have the burden of proving their entitlement to a rate increase and despite the significance of costs and expenses to a determination of the Pilots' revenue requirement, the Pilots have done very little to make their case. While pre-trial rulings in this proceeding required the Pilots to provide underlying documentation of expenses to the intervenors, very little of that documentation is part of the record of this proceeding. In fact, the only underlying expense documentation submitted into evidence in this case was submitted by the intervenors. The Staff's witness, Mr. Perkins, testified that he never saw or reviewed the underlying invoices for the Pilots' claimed expenses.

In fact, the only witness who personally reviewed all of the underlying invoices provided by the Pilots was the intervenors' witness, Scott Poyer, who served as the Coast Guard's expert on pilotage regulation and was accepted in this proceeding as an expert in the area of costs recoverable through pilotage rates. With the help of another of the intervenors' witnesses, C.P.A. David Moore, Mr. Poyer re-

categorized the Pilots' expenses in a meaningful way, using the categories described in La. R.S. 34:1122. While Mr. Poyer's classification of costs is not the only logical way to approach an analysis of pilotage costs and expenses, it is the best attempt by any witness to this proceeding to bring some order to the analysis. Accordingly, we will utilize Mr. Poyer's classification in our analysis of the Pilots' costs and expenses.

In conducting our analysis, we will focus on test year expenditures which have specifically been challenged by the LPSC Staff or intervenors, in accordance with the general utility regulation principle described above – that capital and other expenditures presented by a utility in support of a requested rate hike are generally accepted by the LPSC as appropriate and necessary *unless* the reasonableness of the expenditure is seriously questioned. At that point, the burden shifts to the utility to prove that the expenditure was in fact necessary and appropriate.

Finally, we want to make clear that any disallowances we order in this proceeding may not be recovered in pilotage rates. The Pilots may continue to incur such expenses, but those which are disallowed may not be utilized in calculating their annual revenue requirement.

### **Proposed Disallowances**

The following chart organizes the costs and expenses to be analyzed into categories which conform with the language of La. R.S. 34:1122. The first column contains the expenditures which the Pilots have proposed for recovery through rates. The figures are drawn from Exhibit A to Ms. Pettaway's Pre-Filed Direct Testimony, in which the Pilots presented test year totals together with known and measurable adjustments. The total of the proposed expenses is \$3,846,641. The Pilots subsequently increased this total to \$4,184,013, in rebuttal testimony filed by Ms. Pettaway. We will address the increases requested in Ms. Pettaway's rebuttal testimony in a later section. The second and third columns, respectively, reflect disallowances proposed by the LPSC Staff and by the intervenors.

<b>Category</b>	<b>Pilots' Proposed</b>	<b>Staff Disallowance</b>	<b>Intervenors' Disallowance</b>
<b>Administrative Costs</b>			
Consumables	72,127	0	34,559
Pilot Office			
Employee Sal. & Benefits	158,849	0	112,443
Furn. & Fixtures			
Depreciation	6,409	0	0
Dues and Subsc.	44,419	1,835	31,874
Taxes	5,133	0	5,133
Legal Fees	522,725	233,075	515,225
Accounting Fees	62,485	0	33,507
Continuing Education	71,938	0	71,938
Public Relations	164,065	135,138	164,065
Utilities	8,963	0	0
Rent for Adm. Office	19,932	0	0
Insurance-Casualty, Collision & Liability	127,963	0	0
Miscellaneous:	1,006,541		
Travel	7,657	2,657	7,657
Bank Service Charge	376	0	0
Contract Labor	1,273	0	388
Pilots' Expenses	2,485	1,485	2,485
Medical Expenses	1,166	0	1,166
Int. on Working Cap.	52,393	0	52,393
Unreconciled Payroll	18,908	0	18,908
Repair & Maint	2,414	0	0
Penalties & Fines	1,060	1,060	1,060
Employee Ben. Exp.	34,313	0	34,313
Pilot Taxes-Payroll	152,862	0	152,862
Pilot Ins.-Hosp.	191,760	0	191,760
Ret. Plan Contrib.	539,874	0	539,874
<b>Operating Costs</b>			
Dispatchers	270,364	0	85,694
Telephone & Radio	50,012	0	23,964
Land Transportation	149,486	0	79,996
Water Transportation	1,105,232	82,037	428,283
<b>Grand Totals</b>	<b>3,846,641</b>	<b>(457,287)</b>	<b>(2,589,545)</b>

We have considered the disallowances proposed by the intervenors and the LPSC Staff, together with the reasons provided by Mr. Poyer and Mr. Perkins for those disallowances. We found Mr. Poyer's expertise in pilot regulation to be very helpful in several instances and have relied upon his expert opinion and specific reasoning in reaching several of our conclusions.

Our reliance on the Staff's recommended adjustments is necessarily impacted, however, by the Staff's failure to provide specific, logical reasons for the proposed disallowances. Mr. Perkins's pre-filed testimony states, for example, that the Staff recommends disallowances of lobbying and political contribution expenses based upon "a commissioner's" recommendation to the Staff. No further rationale

is provided. Under cross examination at the hearing, Mr. Perkins testified in support of those disallowances, stating that lobbying and political contributions are outside the meaning of “public relations,” a category of recoverable expense described in La. R.S. 34:1122, but did not provide the rationale for his conclusion.

Mr. Perkins testified that the Staff reached the remainder of its recommended disallowances by comparing test year expense totals to those of previous years. According to Mr. Perkins, the Staff went through the line items of Ms. Pettaway’s Exhibit A to her pre-filed direct testimony and reduced some amounts which seemed high compared to previous years. Thus, his recommended disallowances are based entirely upon a historical comparison of expenses and not upon a determination of whether the expenses are “ordinary and necessary operating and administrative expenses,” as provided in the statute.

We find the Staff’s “historical comparison” methodology of analyzing the Pilots’ costs and expenses – to be inadequate and unhelpful to our analysis. A historical comparison of expenses provides no information whatsoever on the nature of the expenses claimed by the Pilots and whether or not they are expenses which should appropriately be charged to the Pilots’ ratepayers through “just and reasonable rates and fees.” If we were to rely upon historical comparisons only – almost any expense could be recovered, provided that the line item expense totals did not increase too much from year to year. We find that a historic comparison of expenses may be a helpful and enlightening tool in monitoring fluctuations in expenses from year to year, but such comparison is insufficient, alone, to determine which of the Pilots’ costs and expenses should be recovered in pilotage rates.

The following is a list of the disallowances we find appropriate in this case. We note that our conclusions rest, necessarily, on the argument and evidence presented. Where an expense has been seriously challenged and the Pilots presented no evidence to rebut that challenge or to support the reasonableness of the expense, we have disallowed it.

**Administrative Costs**

<b>Category</b>	<b>Pilots’ Proposed</b>	<b>Disallowance</b>	<b>Recoverable Balance</b>
Consummables	72,127	34,559	37,568

Consumable expenses are comprised of pilot station expenses, pilot office supplies, and postage. The LPSC Staff does not dispute any of these amounts. The intervenors recommend a disallowance of \$17,317 of the pilot station expenses, for the reason that they are not reasonably necessary for the provision of pilotage services. The challenged expenses are amounts paid to a market and deli, a food mart, Direct TV, Conn’s, and to three individuals (a total of \$1,179 paid to two Pilots and a third individual).

The Pilots did not rebut these proposed disallowances. However, at the hearing, Ms. Pettaway testified, under cross examination, concerning the Direct TV charges. Presented with the Direct TV invoices, when she acknowledged never having previously reviewed, she confirmed that they contained numerous charges for adult channels and adult movies. Nevertheless, Ms. Pettaway testified to her belief that these are “ordinary and necessary” expenses which should be recovered in pilotage rates. Ms. Pettaway’s conclusions highlight the unbridled and inappropriate interpretation of “ordinary and necessary” utilized by the Pilots in this proceeding.

The intervenors further propose a disallowance of \$17,242 of the pilot office supplies, suggesting that \$12,000 more closely conforms to the average office cost of an organization of this size. The Pilots have provided no support for this expense.

In the absence of rational support for these challenged expenses, we agree with the intervenors’ proposed disallowance of \$17,127 of the pilot station expenses and accept Mr. Poyer’s conclusion that \$12,000 is an appropriate cost for office supplies for an organization of this size. Our disallowances for consumables total \$34,559, leaving a balance of recoverable expense of \$37,568.

<b>Category</b>	<b>Pilots’ Proposed</b>	<b>LPSC Disallowance</b>	<b>Recoverable Balance</b>
Pilot Office			
Employee Sal. & Ben.	158,849	110,804	48,045

This category includes the salary and benefits of non-pilot, non-dispatcher employees. The Pilots claim \$86,312 in salary and benefits for one office manager, \$1,639 for one clerical worker, \$63,098 in salary and benefits for an un-specified new position, and \$7,800 for a new clerical worker – for a total of \$158,849. The Intervenors challenge \$112,443 of this amount.

Mr. Poyer suggests that based upon a test year total of 1,000 ships being serviced by the Pilots, the office manager handles invoices for less than three ships a day on average. He suggests that the one office manager, alone, should be able to handle the office administration without the additional employees. Poyer further suggests that the office manager’s salary and benefits – proposed by the Pilots to total \$86,312 – is far above the level of the average salary and benefits for supervisory administrative personnel in the State of Louisiana, which is reported by the U.S. Bureau of Statistics to be \$46,406.

Captain Miller testified that a new clerical worker is needed to assist the office manager with workload. He stated that the office manager handles payroll for thirteen pilots and seventeen employees and handle the billing and collection for approximately 1000 ships a year. The Pilots provided no support for the other new position being proposed by the Pilots.

We find that Captain Miller’s testimony, without documentation or supporting information, is insufficient to establish that the expense of additional employees is justified. However, we find no justification for a *reduction* in office employees. Accordingly, we will allow the expenses related to the office manager and one clerical employee and disallow the remainder. Further, as we find that the Pilots have not justified the office manager’s salary and benefits at the proposed level, we will disallow the amounts in excess of \$46,406, as recommended by Mr. Poyer. Our disallowances total \$110,804, leaving a balance of \$48,045.

<b>Category</b>	<b>Pilots’ Proposed</b>	<b>LPSC Disallowance</b>	<b>Recoverable Balance</b>
Dues and Subsc.	44,419	31,874	12,545

Under this category, the Pilots request \$2,835 for pilot commission expenses and the remainder for dues and subscriptions. The Staff recommends a disallowance of \$1,835 of pilot commission expenses. The intervenors recommend disallowance of all of the pilot commission expenses for lack of documentation. We conclude that disallowance of the full amount of the “pilot commission expense” is appropriate, as the Pilots have provided no explanation, much less support, for what that expense actually is.

The intervenors also propose a disallowance of \$29,039 of the costs of other dues and subscriptions on the basis that they are unnecessary to the provision of pilotage services. Mr. Poyer testified that his analysis of the Pilots’ invoices demonstrates that \$29,039 was paid for membership in non-professional organizations and for non-professional subscriptions. He testified that the Pilots have included, for example, payments to Louisiana Political Fax Weekly, Wall Street Journal and other newspapers, and the Governor’s Club (a political PAC), for example, as well as the portions of professional dues which are specifically designated for lobbying.

The Pilots have provided little support for these costs. At the hearing, Ms. Pettaway testified that the majority of the costs for dues and subscriptions is for membership in the Louisiana River Pilots Association and membership in the American Pilots Association, but that she does not know the purpose of either group. She also testified that a portion of the dues paid to the American Pilots Association is for lobbying purposes and that she does not know if some of the dues to the Louisiana River Pilots Association goes toward lobbying. She testified that she does not know the nature of some of the organizations – just that they are organizations the Pilots joined.

La. R.S. 34:1122 provides for recovery in rates of “professional dues, administrative and professional publications.” We find that in accordance with the statute, only the dues paid by the Pilots to professional piloting organizations and only subscriptions to professional piloting publications are

recoverable in the rates. Further, we agree that the portion of dues attributable to an organization’s lobbying effort is not appropriately considered professional dues, for purposes of the statute.<sup>20</sup> Accordingly, we accept the disallowance recommended by the intervenors.

<b>Category</b>	<b>Pilots’ Proposed</b>	<b>LPSC Disallowance</b>	<b>Recoverable Balance</b>
Taxes	5,133	0	5,133

The intervenors propose a disallowance of this full amount - which represents ad valorem and franchise taxes paid by the Pilots – arguing that because the Pilots are public officials, they should properly organize and claim an exemption on these taxes. We believe that the ramifications of the Pilots’ status as public officials has not been adequately explored in this proceeding and that the conclusion proposed by the intervenors would be premature. Accordingly, these tax expenses will not be disallowed at this point.

<b>Category</b>	<b>Pilots’ Proposed</b>	<b>LPSC Disallowance</b>	<b>Recoverable Balance</b>
Legal Fees	522,725	304,245	218,480

The Pilots have presented their proposed legal fees in a particularly confusing fashion, separating out and distinguishing certain areas of legal fees, while combining other legal fees with other professional fees. The figure shown here includes what the Pilots have presented as normally occurring legal fees, as well as non-recurring legal fees, averaged over the past five years. Ms. Pettaway’s Exhibit A notes that the Pilots have excluded from this number and from possible recovery through rates the Pilots’ legal expenses incurred in connection with a defamation suit, a political action group formed by the Pilots, and NOBRA matters.

The LPSC Staff recommends a disallowance of \$233,075 of the legal expenses. The intervenors, through Mr. Poyer recommend a disallowance of \$515,225, on the basis that the Pilots’ legal costs of anti-trust litigation, rate proceedings before the LPSC and the courts, and costs of lobbying and public relations which are included within the legal fees are not directly related to the provision of pilotage services and do not benefit the rate-payers.

We find that the legal costs of anti-trust litigation and the costs of lobbying and public relations included in the legal fees are not appropriately included and should be disallowed. We find, however, that some of the legal costs incurred as a result of this rate proceeding may be recovered through rates. A general principle of utility rate-making is that the costs of litigating commission and court proceedings arising in the normal course of business are generally allowed, although some such costs may be

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<sup>20</sup> See discussion on “lobbying fees” below.

disallowed in unusual circumstances.<sup>21</sup> The LPSC has, for example, disallowed some of the litigation costs connected with defending the utility against allegations of fraud. *Gulf States Utilities Co., 159 PUR4th 54 (La.PSC, 1994)*.

In this instance, we believe it is appropriate to include the Pilots' reasonable expenses of litigating this rate case, both before the LPSC and before the courts, particularly in light of the fact that the pilotage Fee Commission was unable to negotiate rates, leaving only the option of adjudication available to the Pilots. We also believe that a rate case can have benefits to both the Pilots and its ratepayers, in that important legal issues are explored and pilotage costs and compensation receive close scrutiny - ensuring fairness to both the ratepayers and the Pilots.

On the other hand, we do not find it reasonable for the Pilots to recover their costs of challenging the state's and the LPSC's regulatory jurisdiction, as they have done in this proceeding or the costs of the Pilots' attempts to block public review of their financial records. Those efforts were for the benefit of the Pilots only. And we do not find it reasonable for the Pilots to recover, within supposed "legal fees," costs which are more appropriately considered lobbying fees or political contributions, also for the benefit of the Pilots only. Pilot invoices provided by the intervenors during the hearing demonstrated that the Pilots' legal bills often included the costs associated with lunches and meetings with LPSC staff members and other public officials. We also find it inappropriate for the Pilots to recover their legal costs in connection with anti-trust litigation – which costs amounted to \$125,764 during the test year. The Pilots have provided no explanation of these costs and no support for their inclusion in rates.

Unfortunately, the Pilots have provided no breakdown of their legal fees, with the exception of those associated with the anti-trust litigation. Ms. Pettaway testified at the hearing that typical annual legal fees prior to this tariff proceeding totaled around \$85,000, but she presented no documentation to that effect and further testified that legal and other professional fees are often lumped together. Mr. Poyer, on the other hand, testified that \$7,500 is more in line with what a public organization of this size expends on an annual basis for legal fees.

Given the absence of specific breakdowns of the Pilots' legal fees, we cannot proceed with the level of detail we would prefer in cost analysis, except with regard to the anti-trust litigation, which costs we disallow in full (\$125,764). We are left, for the remainder, to fashion what we consider to be a fair division between allowable and excluded legal expense. Accordingly, we choose to allow \$40,000 as a fair amount for annual recurring legal fees and disallow one-half of the remainder – leaving a balance of recoverable legal fees in these amounts:

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<sup>21</sup> *The Process of Ratemaking, Vol. 1, Pages 329-330, Public Utilities Reports, Inc., 1998.*

• annual recurring legal fees	\$40,000
• annual non-recurring legal fees averaged over five years	\$178,480
Recoverable Total - Legal Fees	\$218,480.

<b>Category</b>	<b>Pilots' Proposed</b>	<b>LPSC Disallowance</b>	<b>Recoverable Balance</b>
Accounting Fees	62,485	33,507	28,978

The Pilots' proposed figure for accounting fees is almost totally without support in the record. Ms. Pettaway testified generally, concerning various "professional fees" paid by the Pilots, but provided no documentation or explanation of why this figure is what it is. The intervenors seek a disallowance of \$33,507 of this total, based upon Mr. Poyer's analysis of underlying records and his observation that the test year amounts were unusually high in comparison to prior years, when average accounting costs were \$28,978 (in 1998 and 1999).

We agree with Mr. Poyer's conclusions, in the absence of supporting documentation by the Pilots. Accordingly, we disallow \$33,507 of the Pilots' accounting expenses.

<b>Category</b>	<b>Pilots' Proposed</b>	<b>LPSC Disallowance</b>	<b>Recoverable Balance</b>
Continuing Education	71,938	71,938	0

The Pilots have presented proposed expenses totaling \$71,938 for continuing education at Port Revel in France (\$14,412 per pilot for 2 pilots per year), at Marine Safety International Training Center in Newport, Rhode Island (\$1,518 per pilot for 13 pilots per year), and at the American Pilot Association Conference in Baltimore, Maryland (\$2,550 per pilot for 6 pilots). The intervenors argue that these costs should be excluded in full, as the statute does not provide for continuing education costs and because there are no requirements of continuing education applicable to the Pilots, as opposed to the requirements in many other professions.

While safe pilotage is of significance to its users as well as to the populace as a whole, the lack of any professional requirements of continuing education, by the Coast Guard, by the State, or by the professional piloting associations, suggests that pilotage may be a skill best maintained through continuous piloting in a specific area. For that reason, we are hesitant to include in pilotage rates the costs associated with continuing education. In any event, the Pilots have not established the need for continuing education or that the particular courses described are the best and most cost-effective means of achieving continuing education. As La. R.S. 34:1122 does not provide an exclusive list of the costs which may be recovered through rates, it is possible that pilots could demonstrate the reasonableness and value of continuing education to the ratepayers. In this proceeding, however, the Pilots did not do that. Accordingly, we disallow the continuing education costs in full.

<b>Category</b>	<b>Pilots' Proposed</b>	<b>LPSC Disallowance</b>	<b>Recoverable Balance</b>
Public Relations	164,065	164,065	0

This proposed figure of \$174,065 for public relations includes expenses associated with contributions (\$3,425); gifts and florals (\$4,192); advertising (\$32,599); political contributions (\$25,731); dues not included under professional dues (\$936); professional fees not included under legal or accounting (\$7,800); food, beverage, and entertainment (\$23,221); and lobbying expenses (\$66,162). The LPSC Staff recommends disallowance of \$135,138 of this amount, including all of the lobbying expenses and political contributions, as well as \$2,424 of the contributions, \$22,599 of advertising fees, and \$18,221 of food, beverage and entertainment expense. The intervenors recommend disallowance of all of these costs, on the basis that they are unnecessary for the provision of pilotage services and they are not properly documented.

Captain Miller explained the lobbying expense, testifying that lobbying is necessary due to efforts by the intervenors in this proceeding “to impose financial hardship on the Lake Charles Pilot” and due to the intervenors’ promotion of legislation before the Louisiana Legislature “which would materially and negatively impact the Association and the maintenance of safe, efficient and reliable pilotage for the benefit of our users.” *Miller Pre-filed Rebuttal Testimony at 4, 5.* With regard to political contributions, Captain Miller testified that these expenses are ordinary and necessary because of “the enhanced goodwill and access created by such contributions.” *Miller Pre-filed Rebuttal Testimony at 5.* Ms. Pettaway testified that the Pilots’ lobbyists are paid \$5,000 per month for governmental consulting services plus reimbursements for room, board, and entertainment expense. Lobbying invoices presented by the intervenors at the hearing included charges for airline tickets, hotel charges, valet parking, telephone calls, meals with elected officials, lobbyists and other governmental officials, and contributions to an elected official. Ms. Pettaway testified that she had never seen these invoices.

Ms. Pettaway testified that the “food, beverage and entertainment” expenses were incurred by the Pilots themselves. “Professional fees” included amounts paid to a “consultant” in the amount of \$650 per month. Ms. Pettaway testified that she did not know what the consultant’s profession is. “Gifts and florals,” according to Ms. Pettaway, included baseball caps handed out by the Pilots, flowers sent to families in cases of illness or death, and souvenir ink pens and calendars. “Contributions” included gifts to schools, to churches, to individuals, and to organizations. Examples of recipients of the contributions which Ms. Pettaway includes as recoverable expenses are Barbe High School, Ashworth School of Performing Arts, the American Legion, and a relative of the office manager – who received a graduation check in the amount of \$1,300.

Captain Miller’s testimony and the examples of expenses Ms. Pettaway includes in the category of “public relations,” points up the importance of analyzing the nature of the individual expenses being proposed by the Pilots. While it is true that La. R.S. 34:1122 provides for the recovery of “public relations” expenses, those expenses must be reasonable and necessary to the provision of pilotage services in order to be recovered in pilotage rates. Thus, even “worthy” gifts to charities, for example, must be disallowed if they are not necessary to the provision of pilotage services. And if the Pilots wish to give generous gifts, that is their prerogative – but such gifts may not be recovered through rates; otherwise, such “gifts” would actually be gifts from the rate-payers.

The lobbying expenses and political contributions must be excluded as they are not necessary to the provision of pilotage services and are, instead, costs incurred by the Pilots to benefit themselves alone, despite claims that the expenses are incurred to ensure safe pilotage. Advertising costs are particularly suspect, in light of the fact that the Pilots are providing services and being paid for those services in a monopoly environment. In fact, the kind of “public relations” expenses which would seem most appropriate and recoverable would be expenses associated perhaps with efforts to assist the Pilots’ rate-payers – in understanding the rates, in understanding pilotage services, etc. However, there was no evidence of that kind of expenditure by the Pilots. Accordingly, the “public relations” expenses are disallowed in full.

<b>Category</b>	<b>Pilots’ Proposed</b>	<b>LPSC Disallowance</b>	<b>Recoverable Balance</b>
Miscellaneous	1,006,541	118,370	888,171

Included in this “miscellaneous” category are lesser expenses associated with travel, a bank service charge, contract labor, pilots’ expenses, medical expenses, repair and maintenance, and penalties and fines – as well as big expense items such as employee benefits, payroll taxes, pilot medical insurance, pilot retirement plan contributions, interest on working capital, and unreconciled payroll. The LPSC Staff recommends the exclusion of \$5,202 of these expenses, while the intervenors recommend adjustments to all but two of the categories under miscellaneous expense.

With regard to the smaller items, the Staff recommends exclusion of \$2,657 of the travel expenses, \$1,485 of the “pilots expenses,” and \$1,060 of the penalties and fines. The intervenors recommend disallowances of all of the travel expense (\$7,657), all of the “pilots expense” (\$2,485), all of the medical expenses (\$1,166), all of the contract labor expense (\$388), and all of the penalties and fines expense (\$1,060) – on the basis that the Pilots have provided no documentation of these expenses and no proof that these expenses are related to the provision of pilotage service. The Pilots provided no documentation of these expenses to rebut the Staff’s and the intervenors’ proposed disallowances. Under cross

examination concerning these expenses, Ms. Pettaway testified that the travel expenses are for travel associated with this proceeding and that the penalties and fines were paid in connection with late filings by a political action committee formed by the Pilots. Ms. Pettaway also testified that “pilot expenses” include the costs of nautical charts and pilot flotation devices – or supplies relating to pilotage. The Pilots provided no further explanation of these expenses.

In light of the Pilots’ failure to document these expenses – for travel, “pilots expense,” medical expenses, and penalties and fines - and because we further find with regard to penalties and fines that the Pilots’ payment of such is in no way necessary to the provision of pilotage services - we must disallow them in full.

In accordance with Mr. Poyer’s suggestion, we are addressing employee benefit expenses in other categories entitled employee salary and benefits, so we show a full disallowance of the benefits in this category (\$34,313).

The Pilots have not explained or documented interest on working capital. Mr. Poyer suggests that this refers to working capital utilized for the purpose of providing even monthly compensation to the Pilots and recommends disallowance as this expense benefits only the Pilots. Without support for this expense item from the Pilots, we must disallow it in full (\$52,393). Further relying upon Mr. Poyer’s expert opinion, and without benefit of support from the Pilots, we disallow an amount for “unreconciled payroll (\$18,908).

The intervenors recommend that the following expenses - pilot taxes-payroll (\$152,862), pilot insurance-hospital (\$191,760), and pilot retirement plan contributions (\$539,874) – be reclassified as pilot compensation, rather than as an administrative cost. However, we are not convinced at this time that such reclassification is necessary. La. R.S. 34:1122 specifically includes such benefits as recoverable costs.

We do find, however, that a rule-making proceeding should be instituted for the specific purpose of gathering information and developing regulations which set specific standards and guidelines for Pilot benefits. At this time, we do not believe we have sufficient information from which we can reasonably determine whether disallowances to these expense categories are appropriate.

**Operating Costs:**

<b>Category</b>	<b>Pilots' Proposed</b>	<b>LPSC Disallowance</b>	<b>Recoverable Balance</b>
Dispatchers	270,364	85,694	184,670

The Pilots' summary listing of expenses combines into one listing the salaries for all non-pilot employees. Mr. Poyer pulled from that total the proposed compensation for 8 dispatchers (\$270,364), classifying this cost as an operating expense rather than an administrative cost. The intervenors propose a disallowance of some of this cost, opining that the Pilots need only four dispatchers, as opposed to eight, and that the Pilots are currently overpaying their dispatchers in comparison to the average salary for dispatch personnel in the State of Louisiana (\$31,270), as calculated by the United States Department of Labor, Bureau of Statistics. Mr. Poyer points out that, with a test year total of 1000 ships serviced per year, and an average of less than three ships serviced per day, four dispatchers should be able to handle the work. The Pilots have provided no support for utilizing eight dispatchers and no rebuttal of Mr. Poyer's proposed disallowance.

It appears, in light of test year numbers, that four dispatchers should be adequate to handle dispatching responsibilities for the Pilots. Accordingly, and in light of the Pilots' failure to support its request for the costs associated with eight dispatchers, we will disallow the amounts proposed by the intervenors (\$85,694).

<b>Category</b>	<b>Pilots' Proposed</b>	<b>LPSC Disallowance</b>	<b>Recoverable Balance</b>
Telephone & Radio	50,012	23,964	26,047

The Pilots propose expenditures of \$42,925 for telephone and message service and \$7,088 for radio repairs, for a total of \$50,012. The intervenors propose a disallowance of \$23,964, based upon Mr. Poyer's opinion that this amount represents excessive costs for telephone services for an organization of this size. Mr. Poyer recommends \$60 per month for telephone service for each of the pilots (for a total of \$9,360), telephone and fax lines for the office and pilot station (at a cost of \$3,600), and 2-way radios (at a cost of \$6,000) - for a total cost of \$18,670. The intervenors recommend no disallowances of the radio repair expense.

Again, the Pilots have provided no documentation or other support for this expense item. We accept Mr. Poyer's expert opinion concerning appropriate costs for telephone service.

<b>Category</b>	<b>Pilots' Proposed</b>	<b>LPSC Disallowance</b>	<b>Recoverable Balance</b>
Land Transportation	149,486	79,996	69,490

This category contains the Pilots' proposed expenditures for drivers' salaries and benefits, costs of vehicles-amortization, and repairs, maintenance, and fuel. The intervenors challenge only the expenditures associated with drivers' salaries and benefits (totaling \$122,617). The intervenors propose a disallowance of \$79,996 of this amount, contending that the Pilots need only two drivers, as opposed to the four requested by the Pilots, in light of the fact that test year information indicates that drivers will need to deliver Pilots less than three times a day. Mr. Poyer further suggests that the salaries for the drivers should be reduced to \$16,780, to be in line with the average salary for drivers and chauffeurs in the State of Louisiana, as calculated by the United States Department of Labor, Bureau of Labor Statistics. The Pilots have provided no support for their employment of four drivers or for their salaries.

Without contradictory documentation or support from the Pilots, we accept Mr. Poyer's recommendation and disallow \$79,996 of drivers' salaries and benefits.

<b>Category</b>	<b>Pilots' Proposed</b>	<b>LPSC Disallowance</b>	<b>Recoverable Balance</b>
Water Transportation	1,105,232	469,298	635,934

The Pilots propose a total of \$1,105,232 for water transportation expenditures, including expenses associated with the following items: boat personnel salaries and benefits, cost of boats-amortization, interest on loan to acquire boat, fuel grease and oil for boats, repairs to boats, and boat rental from third party. The LPSC Staff proposes disallowances to boat repairs (\$28,737) and boat rental from third party (\$53,300). The intervenors propose disallowances to boat personnel salaries and benefits (\$278,506), cost of boats-amortization (\$92,737), and boat rental from third party (\$57,040).

Mr. Poyer recommends a reduction in the number of pilot boat captains employed by the Pilots from four to two (there are also two deckhands currently employed by the Pilots), based upon the test year data which indicates that less than three vessels will be serviced per day. Mr. Poyer further recommends a reduction in the compensation paid to the boat captains and deckhands, to come in line with the average salary for motor boat operators (\$31,980) and sailors (\$28,030), respectively, as calculated by the Bureau of Statistics.

The Pilots have actually requested the addition of two deckhands, so that there will be a boat captain and a deckhand on each of the two pilot boats, utilizing a one week on, one week off schedule in which two of the captains and two of the deckhands work at a time. The Pilots have not explained why this schedule is utilized, leaving us without information to determine the need for four captains and four deck hands. The Pilots have not rebutted the intervenors' suggestion that these employees are over compensated.

With the limited information available in the record, we find Mr. Poyer's recommended disallowance of two of the four boat captains to be reasonable, as well as his proposed reduction of compensation.

The intervenors also propose depreciation of the Pilots' pilot boats over a thirty-year period, rather than the Pilots' proposed ten-year period. The intervenors suggest that the longer time frame more realistically reflects the life expectancy of the boats and is fairer to the rate-payers. The Pilots have offered no rebuttal to this proposal.

We find that the intervenor's proposed lengthening of the depreciation period is reasonable and appropriate.

The LPSC Staff proposes a disallowance of a portion (\$28,737) of expenditures for repairs to boats, but has provided no specific rationale for the disallowance. In response to the Staff's challenge, Ms. Pettaway testified in rebuttal testimony that she adjusted this expense to reflect reductions in this expense as a result of the Pilots' purchase of new engines for the pilot boats. We will accept the Pilots' adjustment to boat repair expense – a reduction of \$41,015.

Finally, the intervenors propose a disallowance of a portion of the Pilots' proposed expenditures for boat rental from third parties. Mr. Poyer suggests that it would be more appropriate to utilize a five-year average for these costs, as Ms. Pettaway did with regard to boat repairs. The Pilots provided no response to this suggestion.

We conclude that a five-year average would provide a more reasonable calculation of boat rental expense.

Accordingly, we find that disallowances totaling \$469,298 are appropriate for these expense categories.

### **The Pilots' Proposal of Additional Known and Measurable Adjustments**

In her Pre-filed Rebuttal Testimony, filed on July 2, 2003, Ms. Pettaway presented a revised summary of expenses, showing proposed known and measurable adjustments to the expenses provided in her Exhibit A filing of September, 2002. Among the adjustments the Pilots propose are increases in employee salaries, health insurance, legal and professional fees, retirement contributions (due to increased employee salaries), and travel. Ms. Pettaway testified that the proposed increases reflect the addition of new employees, a dramatic increase in health insurance, and increases in legal and professional fees and travel as a result of this proceeding. The Pilots also include proposed reductions in third party boat rentals, interest expense, and repair and maintenance of the pilot boats. The Pilots explain that these

reductions in expense are the result of the Pilots' purchase of new engines, reducing the maintenance and rental expense for the pilot boats, and a reduction in debt.

We have already addressed and disallowed expenses associated with the addition of employees, which renders moot the Pilots' proposed increases for the additional employees and related increases in retirement plan contributions. Further, we have disallowed expenses associated with the Pilots' travel in connection with this proceeding. We have also addressed legal and professional fees incurred in connection with this proceeding and are not persuaded that the levels of these expense categories should be increased as requested by the Pilots. With very little information provided by the Pilots concerning the breakdown and nature of what they have classified as legal and professional expenses, we have reached what we believe to be a fair result with regard to those expenses. With regard to the proposed dramatic increase in health insurance premiums (an increase from the test year figure of \$345,808 to \$492,376 – for a difference of \$146,568), we will allow the adjustment at this time, but reiterate our intention to utilize a rule-making proceeding to address appropriate guidelines for such benefits.

The Pilots' proposed reduction in expense related to boat rental from third parties brings this figure in line with what we have already determined to be appropriate and reasonable. We have also reduced boat maintenance expenses in line with Ms. Pettaway's proposed adjustments, leaving the sole remaining negative adjustment a reduction in interest expense of \$24,137 – which we accept.

Accordingly, we will make two additional adjustments for known and measurable changes to test year expenses: an increase of \$146,568 health insurance expense and a reduction of \$24,137 in interest expense – for an overall increase of \$122,431. A summary of our adjustments follows:

<b>Category</b>	<b>Pilots' Proposed</b>	<b>LPSC Disallowance</b>	<b>Recoverable Balance</b>
<b>Administrative Costs:</b>			
Consumables	72,127	34,559	37,568
Pilot Office			
Employee Sal. & Ben.	158,849	110,804	48,045
Furn. & Fixt. – Deprec.	6,409	0	6,409
Dues and Subsc.	44,419	31,874	12,545
Taxes	5,133	0	5,133
Legal Fees	522,725	304,245	218,480
Accounting Fees	62,485	33,507	28,978
Continuing Education	71,938	71,938	0
Public Relations	164,065	164,065	0
Utilities	8,963	0	8,963
Rent-Admin. Offices	19,932	0	19,932
Insurance-Casualty, Collis. & Liab.	127,963	0	127,963
Miscellaneous	1,006,541	118,370	888,171

**Operating Costs:**

Dispatchers	270,364	85,694	184,670
Telephone & Radio	50,012	23,964	26,048
Land Transportation	149,486	79,996	69,490
Water Transportation	1,105,232	469,298	635,934

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Totals	3,846,641	(1,528,314)	2,318,329
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Plus addition of known and measurable adjustments			122,431
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<b>Total Costs and Expenses Recoverable in Rates</b>			<b>\$2,440,760</b>
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**(3) Determination of fair average annual compensation for the Pilots**

La. R.S 34:1122 states that pilotage fees and rates shall provide for the Pilots' recoverable costs and expenses *and* "fair average annual compensation for a state ship pilot, in comparison to regulated state ship pilotage in other United States ports." That language is problematic in this proceeding, as the Pilots, who have the burden of proof, have provided no evidence of actual annual compensation of any other state pilotage group in the United States, and, in fact, the record is devoid of any such evidence.<sup>22</sup>

Early in the remand phase of this proceeding, the administrative law judge addressed the issue of comparable compensation, noting that an LPSC Staff survey, conducted during the first phase of the proceeding, had met with strong objection by the Pilots to its reliability and usefulness – objections with which the administrative law judge agreed. With that in mind, the ALJ suggested that in this remand phase, the parties should cooperatively address the creation of a survey methodology. However, in a December 18, 2002 report to the Commissioners regarding pending matters, the ALJ concluded that the Staff and the intervenors had apparently made no headway in working out a mutually satisfactory methodology, and the Pilots had not participated in the effort whatsoever.<sup>23</sup> The ALJ also pointed out perceived problems with the Staff's proposed "confidential questionnaire" methodology, noting that the proposal did not include methods by which the Staff or any other party could verify the veracity or accuracy of the information provided in responses to the questionnaire. Ultimately, the LPSC Staff presented no survey results regarding the compensation of other state pilot groups.

What both the Pilots and the Staff relied upon in their computations of annual revenue in this proceeding are this Commission's orders issued in the three Mississippi River pilot associations rate cases, the earliest of which was issued in February of 1999 and the latest of which was issued in March, 2001. In those three proceedings, the Commission's orders confirmed stipulations reached by the parties. The Commission made no findings of fact and reached no conclusions of law on any matter, including fair average annual compensation. As the parties had reached agreement on all issues, there were no disputed issues which required findings or conclusions by the Commission.

The Pilots and the Staff argue that those orders are relevant, nonetheless, because those orders effectively established a "target annual compensation" for each of the Mississippi River pilot groups. Accordingly, the Pilots and the Staff have utilized that "target annual compensation" as a basis for their

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<sup>22</sup>The stricken testimony of Pilots' witness, Brent Dibner, contained some information which Mr. Dibner asserted to be compensation levels of some other state pilot groups; however, Mr. Dibner's information was determined to be unreliable.

<sup>23</sup> Report to Commissioners Regarding Matters Pending at Time of December Business and Executive Session, issued December 18, 2002.

proposals concerning what should be established in this proceeding as compensation for the Lake Charles Pilots.

The intervenors object to the relevance of this information, pointing out that the Mississippi River pilots' "target compensation" resulted from a negotiated settlement and was based upon the LPSC Staff survey which the ALJ found to be unreliable in both phases of this proceeding. Moreover, the intervenors point out that a "target compensation" level for the Mississippi River pilot groups does not constitute evidence of current actual compensation being realized by those groups.

Having considered these arguments and having reviewed the previous orders at issue, we conclude that reliance upon the "target compensation" established in those orders would be misplaced. The target compensation established in the three Mississippi River pilot cases was reached through negotiation of the parties to those cases, utilizing information and a methodology mutually agreed upon by the parties. By its nature, the negotiation process involves a give and take among the parties – a compromise. It can be an extremely valuable and efficient process - in that compromise often avoids the expense of time and money involved in litigation of the issues. It may not provide the results which would have resulted from litigation of the issues, but that is actually one of the incentives of negotiation – the parties can guarantee their results through compromise. And because of this guarantee, the parties to a stipulation may be willing to utilize information and methodology – in a give and take - which would not stand the test of an objection if the matter went to hearing. Ultimately, the process leads to a resolution which is satisfactory to all parties but which may be very different from the result which would have been reached through litigation.

This proceeding has its own set of parties, issues, and evidence, and a decision in this proceeding must be decided upon the merits of this case. It would be inappropriate and unjust to utilize as evidence in this proceeding the results of negotiations between other parties in other proceedings. Furthermore, the "target compensation" from the Mississippi River pilot cases is just that – "target" compensation; it is not comparable data concerning what is currently being earned by the Mississippi River pilots, and is thus, irrelevant.

Without evidence concerning the compensation of other state pilots, we cannot make the comparison described in La. R.S. 34:1122. However, the statute provides a listing of additional factors which may be utilized in determining pilotage rates – several of which specifically address the nature of a pilot's work. Specifically, we find that the factors relating to a pilot's skills, expertise, training, and experience are pertinent to compensation, together with hours worked and levels of risks facing pilots while performing their work.

The Pilots, through the testimony of Captain Miller, contend that the work they perform piloting large vessels – including large tankers delivering crude oil to the CITGO and Conoco refineries and the LNG ships delivering liquefied natural gas to the CMS-LNG terminal on the Industrial Canal - requires highly-developed skills, expertise, and on-the-job experience. The ability to maneuver these large vessels safely through the Calcasieu Ship Channel is critical to public welfare in general, as well as to the crew and cargo of any particular ship. The job requires a United States Coast Guard pilot's license, a commission from the State of Louisiana, and completion of a six-month apprenticeship.

Captain Miller also points out specific risks and hardships related to pilotage service – including dangers associated with what he suggests is a congested and substandard waterway (the Calcasieu Channel) and the risks inherent in boarding a ship in the open sea during varying weather and sea conditions. Captain Franklin Julian, a bridge resource management instructor at Marine Safety International in Newport, Rhode Island, testified that he had personally transited the Channel on three different days and agreed with Captain Miller that highly specialized skill and experience is necessary to ensure safe pilotage. Captain Julian further testified that the Channel's dimensions, together with such factors as language barriers between the Pilots and the crews of the foreign flag vessels they are piloting and uncertain weather conditions, point up the significance of a Pilot's skill and experience.

Neither the Staff nor the intervenors dispute the highly skilled nature of this work nor the importance of having pilots on the Calcasieu Ship Channel who are highly skilled and experienced. The intervenors have challenged as exaggeration, however, some of the risks and hardships suggested by the Pilots. Captain Julian P. Walters, a professional mariner for over thirty years and a licensed ship master and pilot for over twenty years, testified concerning his actual experience on the Calcasieu Ship Channel – both in 1983/1984 as the master on a hopper dredge responsible for dredging and maintaining the navigation project for the United States Army Corps of Engineers, and as a recent passenger on a piloted vessel. Captain Walters also compared pilotage in the Calcasieu Channel with pilotage he has observed in numerous ports all over the world.

Stating that the purpose of his testimony was to de-mystify pilotage on the Channel, Captain Walters provided videos of his uneventful transit of the full length of the Channel on a piloted oil carrier approximately 800 feet long and 150 feet wide. He also provided a video of various non-mariners boarding and disembarking vessels by climbing a pilot ladder at various times of the day and night and under various weather conditions – with no apparent difficulty. He also pointed out that a pilot may decline to board a ship if a pilot ladder appears to be in bad condition or if he thinks weather conditions would make boarding the vessel too dangerous. Captain Miller confirmed this to be true under cross-

examination. Captain Miller further acknowledged that he knows of no pilotage fatalities associated with embarking or disembarking a vessel within the last twelve years.

Captain Walters also disputed Captain Miller's testimony that the Channel is a substandard and congested waterway. Using nautical charts for several of the East and Gulf Coast Ports in the United States that are comparable to Lake Charles, and comparing length, geological nature, weather and sea conditions at the pilot boarding area, volume of ship traffic handled, and the size, value, risk, special hazards, and complexity of ships calling in those ports, Captain Walters asserts that the Channel is, in fact, well above average. He testified that the Channel is not at all congested, based upon the Pilots' test year information showing that there are only about 2.7 ship visits per day. Finally, Captain Walters utilized charts and aerial photographs to demonstrate his testimony that the Calcasieu Channel does not require frequent turns, as suggested by Pilot witnesses, but is actually fairly straight.

Lake Charles Pilot George Mobray testified that the average number of bridge hours (hours aboard a piloted vessel) for the test year was 1001. Captain Mobray pointed out that during the test year there were ten pilots for part of the year and thirteen for the remainder; accordingly, he calculated the average per pilot hours by dividing the total hours by 11.375. Under cross examination, Captain Mobray acknowledged that if the total number of test year bridge hours is divided by thirteen pilots, as the situation now exists, the average number of bridge hours per pilot is reduced to 876. Further, if the test year hours are divided by fourteen – in light of the fact that the Pilots have requested the addition of a fourteenth pilot – the average number of bridge hours is further reduced to just over 800. Captain Miller testified that he anticipates an increase in bridge hours in the future, but acknowledged that bridge hours are currently below the test year figure. Captain Miller also asserted that the Pilots spend significant time in additional travel – in cars and pilot boats – just to reach the vessels to be piloted. He testified that during the test year, each pilot averaged approximately 118 hours of travel time on pilot boats and 424 hours of travel time in cars.

Scott Poyer, who was previously employed as the Coast Guard's expert on pilot regulation, testified that pilots on the Great Lakes/St. Lawrence Seaway work double the number of hours the Lake Charles Pilots worked during the test year, in only nine months – since the waterway is closed during the coldest part of the winter. Mr. Poyer also testified that the number of Seaway pilots needed is determined based upon a bridge hour standard of 1,000 hours per pilot in more restricted waters and 1,800 hours per pilot in less restricted waters. The intervenors' witnesses also testified that additional travel time, to and from work, is a substantial factor in the daily work lives of many pilots as well as many other professions, and is not unique to the Lake Charles Pilots.

The intervenors suggest that fair annual compensation may best be determined in this proceeding by comparing the compensation levels of federal pilots as well as other professionals whose skill, responsibility, and risk levels are similar to the Lake Charles Pilots. Captain Walters testified that the functions, duties and responsibilities of the Lake Charles Pilots are very similar to those of federal pilots, requiring the same licensing from the United States Coast Guard and the same kinds of pilotage skills and involving exposure to the same kinds of risks.

The United States Navy, according to Captain Walters, employs its own marine pilots as U. S. Civil Servants at each of the ports where its battle groups are based – Pearl Harbor, Hawaii; Mayport, Florida; and Norfolk, Virginia. Captain Walters testified that these civil service pilots are entrusted with providing pilotage to the most expensive ships in the world, carrying the most dangerous weapons in the world. According to Captain Walters, there are many similarities between pilotage on the Calcasieu Channel and the conditions under which the Navy pilots provide service; however, the ships handled by the Navy civil service pilots are dramatically more valuable than those serviced by the Lake Charles Pilots, and the environmental and economic consequences of an oil spill in the Channel pale in comparison to the consequences of a collision which might rupture or otherwise expose the environment to the core materials of a nuclear reactor or an atomic bomb. Utilizing Department of Defense documentation concerning compensation of these pilots, Captain Walters testified that the U.S. Navy has set the salary for Ship Pilot at \$154,511 and Chief Ship Pilot (supervisor of pilots) at \$163,781.

Dr. Robert Newman, Chairman of the Louisiana State University Economics Department, performed an economic analysis comparing what the Pilots are requesting as annual compensation - \$368,368 – with the earnings of other highly skilled professions. He testified that he was unable to find information concerning annual compensation for other state pilot groups; however, he was able to obtain government documentation of average levels of compensation for high-skilled personnel in the transportation industry as well as personnel in other markets requiring high levels of skill and exposing those personnel to levels of risk comparable to those of the Lake Charles Pilots.

Dr. Newman testified that the guiding doctrine in regulated compensation settings is the “prevailing compensation principle,” which holds that compensation in regulated occupations should be equal to that paid for otherwise equivalent personnel in unregulated (competitive market) jobs. Compensation above that point is inefficient, as it implies an expenditure level that exceeds what is required to retain suitable personnel. Compensation below that point is also inefficient, because of the resulting difficulties in recruiting and retaining qualified personnel. The central question here, according to Dr. Newman, is whether the fair annual compensation component of the revenue requirement is

consistent with the “prevailing compensation principle,” and the way to answer the question is to examine earnings levels in unregulated markets.

Dr. Newman testified that he had examined the compensation for a Ship Pilot, serving United States Naval Stations as a Civil Service employee. He confirmed the figures for this position previously provided by Mr. Poyer: annual earning for a Ship Pilot - \$154,511; annual earnings for a Chief Ship Pilot, who supervises other pilots - \$163,781. Dr. Newman testified that the Department of Defense established these compensation levels following a full wage survey.

Dr. Newman also examined the compensation of Senior Pilots at the Port of Los Angeles, who are members of the City Civil Service. Based upon the information he retrieved, Dr. Newman testified that annual base pay for Senior Pilots at the Port of Los Angeles is \$163,845. Including average overtime pay, the average annual income for a Senior Pilot is \$195,000. Dr. Newman testified that, for comparison purposes, these figures would need to be adjusted to reflect the lower cost of living in Lake Charles as compared to Los Angeles.

Dr. Newman also reported on compensation levels for a Louisiana Civil Service position - Marine Master 3 – whose function is to operate and pilot state owned ferry vessels carrying vehicles and passengers across the Mississippi River and the Calcasieu Channel. The minimum qualification for this job is a United States Coast Guard master license. The maximum of the pay scale for that position, as determined by Dr. Newman, is \$60,154.

Dr. Newman’s examination of selected high-skill occupations provided the following estimated median earnings for 2002 in the following professions:

- airline pilots, copilots and flight engineers \$116,819
- commercial pilots \$45,595
- air traffic controllers \$86,893
- all physicians \$177,915
- surgeons \$266,872
- internal medicine \$155,675
- pediatrics \$140,108

Dr. Newman noted that the annual compensation amount being requested by the Pilots exceeds all of these figures by significant amounts.

Dr. Newman noted that airline pilots are among the highest paid professions in the United States and that their earnings depend upon factors such as the type, size, and maximum speed of the plane, as

well as the number of hours and miles flown. He further comments that airline pilots, by law, cannot fly more than 100 hours per month or more than 1000 hours per year. According to Dr. Newman's information, most airline pilots fly an average of 75 hours a month and work an additional 75 hours a month performing non-flying duties. Most spend a considerable amount of time away from home, due to layovers. They also experience the mental stress arising from their responsibility for the safety of their passengers.

Dr. Newman also examined the maximum annual income of airline pilots flying the largest aircraft in the fleet for major airlines in the United States. For example, the largest aircraft in American Airline's fleet is the Boeing 777, with a seating capacity of between 224 and 245 passengers, a cruising altitude of 37,000 and a typical cruising speed of 555 miles per hour. The results are as follows:

- American \$211,572
- Continental \$200,532
- Delta \$263,400
- Northwest \$220,008
- United \$306,228
- Airborne Express \$171,780
- FedEx \$205,068
- UPS \$207,480

Dr. Newman notes that captains of the cargo jets earn less than captains of the passenger jets. He also notes that the average maximum pay for captains flying the largest aircraft is \$223,259, based on an average of 942 hours of work a year. Again, Dr. Newman points out that the annual compensation being requested by the Pilots exceeds even the highest paid pilot in this most highly paid group of airline pilots – by \$60,000.

The earnings of captains of vessels in Louisiana are much lower, according to Dr. Newman's analysis. He examined the average annual earnings for the captain of Anchor Handling Towing Supply (AHTS) vessels, special purpose OSVs (used for well stimulation, frac projects, remotely operated vehicles, inspections, seismic vessels, and diving support vessels), and platform supply vessels and provided the following results:

- Captain, Anchor Handling Towing Supply Vessel \$87,600
- Captain, Special Purpose OSV \$78,000
- Captain, Platform Supply Vessel \$76,800

Finally, Dr. Newman considered potential occupational risks, acknowledging that jobs which expose personnel to a higher risk of injury or death will have to pay more, in a competitive market, in order to attract personnel away from safer jobs. Dr. Newman notes that the Pilots have contended that they are exposed to significant dangers on the job. However, according to Dr. Newman, higher earnings are justified only if there is evidence that the risk of injury or death is significantly higher than in jobs that would otherwise pay the same. Utilizing U.S. Bureau of Labor Statistics information for 2000, Dr. Newman reported that the incidence rate for workers in water transportation is 6.9 – or approximately 7 injuries per 100 full-time workers per year - compared to 5.8 for all of private industry, while the incidence rate for air transportation is 13.4, about 94% higher than water transportation. The Pilots provided no rebuttal of Dr. Newman’s testimony on this subject and no data on actual injury rates for the Lake Charles Pilots.

Dr. Newman’s ultimate conclusion is that the compensation proposed by the Pilots in this proceeding - \$368,368, exclusive of benefits - is significantly higher than is necessary to ensure safe, efficient, and reliable pilotage services – as it is substantially in excess of the market value of the Pilots’ services. Dr. Newman suggests that fair annual compensation for the Pilots is \$154,511 (exclusive of benefits), which is the per annum compensation of a Ship Pilot at U. S. Naval Stations, established through a comprehensive wage survey conducted by the U. S. Department of Defense. Dr. Newman further states that he could find no published data that provides a benchmark for determining the value of fringe benefits for ship pilots. Without that specific data, he recommends that fringe benefits be capped at 27% of total earnings, explaining that 27% is the average figure for fringe benefits for all occupations in the United States.

Recognizing the importance of maintaining highly skilled and experienced pilots on the Calcasieu Ship Channel and having considered the testimony and evidence of all parties, we conclude that Dr. Newman’s recommended annual compensation for the Lake Charles Pilots is well supported, reasonable, and fair. The responsibilities, skills, and risks which accompany the work performed by the Lake Charles Pilots are very similar to the responsibilities, skills, and risks assumed by the pilots employed at U.S. Naval Stations, with the exception that the pilots at the Naval Stations deal with even riskier cargo and even greater potential catastrophes. While we find that the Pilots perform a vital public service requiring

significant skill, experience, and commitment, we do not find, based upon a comparison to other highly skilled professions, that the work of a Lake Charles Pilot is more onerous, hazardous, or time consuming than other similar occupations. Accordingly, we have determined that annual compensation should be set at \$154,511, exclusive of benefits, for a total of **\$2,008,643** (for thirteen pilots). As discussed earlier, we will not cap benefits at this time as proposed by Dr. Newman, but will, instead, institute a rule-making proceeding for the purpose of studying this issue.

**(5) Determination of the Pilots' revenue requirement by adding together what we have determined to be the recoverable costs and expenses and what we have determined to be fair annual compensation**

We conclude that the Lake Charles Pilots' revenue requirement is \$4,449,403, as follows:

• Recoverable Costs and Expenses	\$2,440,760
• Fair Annual Compensation	\$2,008,643
<b>Total Revenue Requirement</b>	<b>\$4,449,403</b>

**(6) Construction of a tariff designed to produce the revenue requirement**

The next step is to construct a tariff which can reasonably be expected to generate the established revenue requirement, based upon test year information. Both the Pilots and the intervenors have prepared tariffs purportedly designed to generate the revenue each proposed in this proceeding. However, since the revenue requirement we have established does not comport completely with either proposal, neither proposed tariff will suffice without revision.

Both the Pilots and the intervenors have also proposed changes in the structure of the tariff. The Pilots propose a structure different from their previous tariffs. While previous tariffs calculated charges for pilotage services based upon (1) draft in feet and (2) deadweight tonnage of the vessel, the Pilots' proposed tariff structure calculates charges based upon (1) draft in feet and (2) units – a formula which multiplies length of the vessel by its width and then divides by 100. The longer and wider the vessel, the more the vessel would pay in pilotage rates.

The Pilots proposal is also different from previous tariffs in that it provides for compulsory pilotage on the outer bar. The Pilots propose a per-statute mile rate on the outer bar of \$38.92 (as opposed to the \$125 per statute mile charged after the LPSC ordered that pilotage on the bar was unregulated). Their proposed tariff structure provides for the recovery of all costs and expenses from the rates charged on the inner bar – pursuant to the draft and unit formula.

The LPSC Staff has voiced no objection to the Pilots' proposed tariff structure.

The intervenors' proposed tariff structure utilizes the draft and unit formula proposed by the Pilots but combines it with a "time" factor – thereby establishing an hourly rate to be charged to pilot users. The hourly rates are applicable for pilotage on any or all of the Calcasieu Channel. The intervenors contend that pilotage service is essentially the same, whether it is being provided on the inner or outer bar, and that there is no justification for imposing differing fees on the two sections of the Channel. The intervenors' proposal continues the Pilots' methodology of dividing vessels into three categories based upon calculated units and keeps the Pilots' proposed fees for other pilot services. However, the intervenors have excluded, in their proposed tariff, fees for items which the intervenors do not believe to be pilotage services – such as Port Safety Communications Fees and Transportation Fees.

The Pilots have provided no support for applying different charges to the inner and outer bars, no support for making pilotage on the outer bar mandatory, and no significant rebuttal to the intervenors' proposal. Captain Miller's testimony, that he is unaware of any tariff for state commissioned pilots which utilizes a time factor in calculating rates, offers no serious rationale for his apparent position that utilizing a time factor is inappropriate.

We find that the intervenors' proposals regarding the tariff framework, including the use of a "time" element in calculating rates, are rational and reasonable and designed to fairly distribute rates and fees among the vessel users. We also note that La. R.S. 34:1122 specifically provides that piloting time may be considered a relevant factor in establishing pilotage rates. David Moore, a CPA who we have accepted as an expert in accounting, constructed the intervenors' proposed tariff utilizing very specific data from the test year. Accordingly, we find it appropriate to request that he revise the intervenors' proposed tariff to provide for the revenue requirement we have established for the Lake Charles Pilots and that he file the revised tariff with the Commission and serve a copy on all parties, within fifteen days of the issuance of this Order.

***Other Issues:***

**(1) The Pilots' request for the establishment of a surcharge for capital improvements**

The Pilots have requested the establishment of a surcharge for capital improvements: a new pilot boat; renovation and repair of the pilot station; and replacement of the existing pilot station dock with a new dock and steel bulkhead. Captain Miller testified that one of the Pilots' two pilot boats is over thirty years old and that maintenance on the boat has become expensive. The Pilots propose the purchase of a 75-foot pilot boat at a price of \$2,700,000. Captain Miller also testified that the Pilots would like to make improvements to the pilot station on Monkey Island, including a new roof, new windows, new ceiling

light fixtures and fans, a remodeled kitchen, repainting of the interior, replacement of door steps, and installment of a new VHF radio/computer work station – at a cost of \$47,750. Finally, the Pilots wish to replace the current pilot station dock with a steel bulkhead dock with fendering and a cement walkway on the outside of the bulkhead – at a cost of \$528,400. To pay for these improvements, the Pilots propose a surcharge, to be included in their tariff, designed to recover \$439,286 annually.

The LPSC Staff opposes the establishment of a surcharge in this proceeding and, instead, suggests that the proposed surcharge should be the subject of a separate proceeding. The Staff contends that insufficient data has been presented in this proceeding from which a decision can be made, and notes that under cross examination, the Pilots expressed no opposition to the establishment of a separate proceeding to consider this issue.

The intervenors also oppose the establishment of a surcharge in this proceeding and have provided testimony specifically challenging the proposed pilot boat as unnecessary and extravagant and the other proposed improvements as unjustified and undocumented.

We agree with the Staff and the intervenors that the Pilots have not provided sufficient documentation for the proposed improvements and no documentation of how the Pilots arrived at their estimates of costs related to the improvements. Accordingly, we deny the request for the establishment of a surcharge for capital improvements.

**(2) The Pilots’ request for the establishment of an annual automatic tariff rate adjustment (ATRAM)**

The Pilots seek the Commission’s approval of an annual automatic tariff rate adjustment (ATRAM). The Pilots have provided little support for the proposed ATRAM, other than that an ATRAM has been approved in the Mississippi River pilot rate cases and the Lake Charles Pilots would like to have such a procedure in place. The Pilots have submitted a proposed ATRAM methodology, but provided no testimony concerning the methodology or its application.

The intervenors, through the testimony of CPA David Moore, oppose the establishment of an ATRAM as proposed by the Pilots. Mr. Moore testified that he has conducted an analysis of the ATRAM methodology and found it to be contrary to public policy, due to flaws, inaccuracies, and inconsistencies. He contends that the ATRAM fails to incorporate sufficient detail and safeguards to ensure that fair and reasonable pilotage fees are the end result, and instead, appears to focus on providing the pilots with recovery of all expenditures and compensation historically incurred – thereby reading out of La. R.S. 34:1122 the words “ordinary and necessary.” Mr. Moore suggests that sound policy and fiscal

management dictate that there be an annual accounting and review, but opines that an ATRAM is not an adequate substitute for such an annual accounting and review.

The LPSC Staff supports either the establishment of an ATRAM or an annual true-up mechanism, as is being suggested by the intervenors, but has provided no specific support for either alternative or the Pilots' proposed methodology.

We conclude that the Pilots have not provided sufficient justification for the establishment of the ATRAM methodology they have proposed and that the intervenors have raised noteworthy questions concerning the effectiveness of the ATRAM. However, as we agree with all parties that an annual accounting and review is appropriate, we further conclude that a rule-making proceeding should be instituted to study the issue of annual accounting.

### **(3) The Pilots' request for approval of a fourteenth Pilot**

The Pilots currently have a roster of thirteen Pilots. They propose the addition of a fourteenth Pilot within eighteen months of implementation of a new tariff to bring their annual average bridge time hours in line with what they believe to be average annual bridge hours for Mississippi River pilots. Captain Miller testified that the Pilots wish to bring their average annual bridge hours down to 796.

The Staff does not oppose this request, opining that a previous order issued in this proceeding granted the approval of a fourteenth pilot.

The intervenors oppose the addition of a fourteenth pilot. As previously discussed, Scott Poyer, who functioned as the Coast Guard's expert on pilot regulation, testified that pilots on the Great Lakes/St. Lawrence Seaway work double the number of hours the Lake Charles Pilots worked during the test year, in only nine months – since the waterway is closed during the coldest part of the winter. The intervenors further contend that the work schedule utilized by the Pilots, in which only half of the Pilots work at a time – two weeks on and two weeks off – is inefficient. Mr. Poyer testified that ten pilots would be more than enough to handle the vessel traffic if the Pilots utilized a “straight rotation,” in which each pilot except those on a month's vacation would work five days on-call and then be off call for two days. Under that scenario, Mr. Poyer opines, each pilot would be available 46 weeks (5-day week) during the year to work 40 hours per week.

We find that the Pilots have failed to support their request for a fourteenth pilot. They have provided no evidence to support any need or requirement that they reduce pilot bridge hours to the level Captain Miller suggests – 796 – and no evidence to support their contention that other state pilots work fewer hours than the Lake Charles Pilots. Captain Miller's belief that other pilots work fewer hours, as he



related to the improvements. Accordingly, we deny the request for the establishment of a surcharge for capital improvements.

- (4) The Pilots have established no justification for the addition of a fourteenth Lake Charles Pilot at this time.
- (5) The Pilots have not provided sufficient justification for the establishment of the ATRAM methodology they have proposed for annual adjustment of their revenue requirement. However, as we agree with all parties that an annual accounting and review is appropriate, we direct that a rule-making proceeding be instituted to study the issue of annual accounting and establish appropriate procedures for the annual review of pilotage rates.
- (6) We further direct that rule-making proceedings be instituted for the purpose of addressing the following additional issues for which guidance is needed:
  - The nature and amount of fringe benefits which should be recovered through pilotage rates;
  - The establishment of a Uniform System of Accounting with regard to pilotage; and
  - Ramifications of the designation of state pilots as “public officials.

It is so ORDERED.

BY ORDER OF THE COMMISSION

BATON ROUGE, LOUISIANA

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***DISTRICT I***  
CHAIRMAN JACK “JAY” A.BLOSSMAN

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***DISTRICT III***  
VICE CHAIRMAN IRMA MUSE DIXON

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***DISTRICT IV***  
COMMISSIONER C. DALE SITTIG

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***DISTRICT II***  
COMMISSIONER JAMES M. FIELD

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LAWRENCE C. ST. BLANC  
SECRETARY

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***DISTRICT V***  
COMMISSIONER FOSTER L. CAMPBELL