

June 30, 2008

Mr. Larry McNutt, Jr., Administrator
Louisiana Pilotage Fee Commission
Two United Plaza, Ste. 2
Baton Rouge, Louisiana 70809

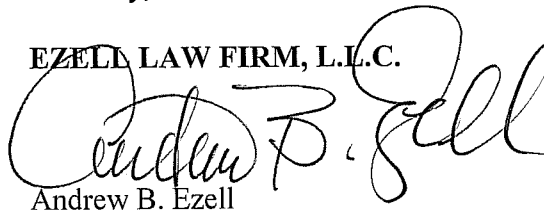
*Re: Docket No. P06-004
In the Matter of the Lake Charles Pilots, Inc., Duly Incorporated as the Associated
Branch Pilots of the Port of Lake Charles, Request for Increase in Pilotage Fees;
In Re: Lake Charles Pilots request for an increase in fees pursuant to La. Revised
Statutes 34:1122 (LPSC Docket No. T-23792)*

Dear Mr. McNutt:

Please find attached the Proposed Order in the Lake Charles Pilot matter, Docket No. P06-004. By copy, all counsel of record have received this draft for comment. After review by counsel, we would request a follow up email approving the draft as written, or suggesting revisions. As you know, the Order goes into effect on July 1, 2008, so we would appreciate expeditious review of this draft by all so that execution by the Commissioners can be closely concurrent with implementation.

Sincerely,

EZELL LAW FIRM, L.L.C.



Andrew B. Ezell

ABE:
Enclosure

**BEFORE THE
LOUISIANA PILOTAGE FEE COMMISSION**

ORDER NO. P06-004

**IN THE MATTER OF THE ASSOCIATED BRANCH PILOTS FOR THE PORT
OF LAKE CHARLES, DULY INCORPORATED AS LAKE CHARLES
PILOTS, INC., REQUEST FOR INCREASE IN PILOTAGE FEES
(ON REMAND TO THE PILOTAGE FEE COMMISSION)**

Re: ConocoPhillips Company, Citgo Petroleum Corporation and Port Aggregates, Inc., ex parte. In Re: Request for action on behalf of ConocoPhillips company, Citgo Petroleum Corporation and Port Aggregates, Inc. for consideration and implementation of fee recommendations made by Administrative Law Judge in Louisiana Public Service Commission Docket No. T-23792.

Re: Lake Charles Pilots request for increase in fees pursuant to La. Revised Statutes 34:1122 (LPSC Docket No. T-23792)

BACKGROUND:

On September 17, 1998, Lake Charles Pilots, Inc. (the “Lake Charles Pilots” or “Pilots”) filed an application with the Louisiana Public Service Commission (“LPSC”) for an increase in tariff rates and fees. ConocoPhillips Company and CITGO Petroleum Corporation (hereinafter referred to respectively as “ConocoPhillips” and “CITGO”) timely intervened. The LPSC assigned the matter to the contested docket as Docket No. T-23792, and it was tried before an Administrative Law Judge (“ALJ”). The resulting order of the LPSC limiting implementation of a tariff to the “inner bar” was ultimately appealed to the Louisiana Supreme Court on the issue of state authority to regulate pilotage in federal waters beyond the three-mile limit (the “outer bar”). Upon review, the Supreme Court determined that the State of Louisiana was endowed with the authority to regulate the outer bar and remanded the matter to the LPSC for the determination of a tariff covering both the inner and the outer bars.

In accordance with the remand, the LPSC re-opened the proceeding. On September 20, 2002, the Pilots filed a new tariff proposal based on more recent test year data and including

proposed rates and fees for the inner and outer bars. The matter was again assigned to the ALJ. Pursuant to state statute, and upon application by the Pilots, the LPSC implemented the proposed new tariff effective March 7, 2003, subject to an approved escrow mechanism for the protection of users of pilotage service.

Following discovery and another evidentiary hearing in August 2003, the ALJ issued a Final Recommendation which was submitted for consideration by the LPSC at an open meeting in October 2003. At that meeting, the LPSC decided not to consider the ALJ's Final Recommendation until conducting an *en banc* hearing of testimony from a pilot expert witness, and reviewing requested pilot invoices from various ports servicing vessels transporting crude and refined products of CITGO and ConocoPhillips. CITGO and ConocoPhillips appealed the LPSC order, arguing that the LPSC had abused its authority by proposing to take additional evidence, rather than simply relying on the findings of the ALJ. Ultimately, the Louisiana Supreme Court declared that the recently created Louisiana Pilotage Fee Commission ("PFC" or "Commission") had divested the Louisiana Public Service Commission of its prior authority to set pilotage fees. Pursuant to that determination, in a decision dated March 2, 2005, the Supreme Court again remanded the matter; however, this time it was sent to the Commission to recommence the process of receiving evidence and determining a final tariff.

The PFC conducted its first meeting in August, 2005. It executed its first official action on tariff matters in April 2006. Thereafter, on September 26, 2006, a Request for Action on Behalf of ConocoPhillips Company, CITGO Petroleum Corporation, and Port Aggregates, Inc. for Consideration and Implementation of Fee Recommendations by Administrative Law Judge ("Request for Action") was filed of record with the PFC. Specifically, the Request for Action

sought implementation of the Final Recommendation and Draft Order (“Final Recommendation”) issued by the ALJ in the prior proceeding before the LPSC.

Upon receipt of the Request for Action, this docket was opened. Interventions were filed in the matter by the Lake Charles Pilots, Cameron LNG, L.L.C. and BG LNG Services, L.L.C. In addition, the Lake Charles Harbor and Terminal District (the “Port of Lake Charles”), the Associated Branch Pilots for the Port of New Orleans (the “Bar Pilots”) and the Maritime Commerce Corporation of Louisiana timely intervened as “interested parties.”

At an open meeting on November 16, 2006, the PFC referred the Request for Action to a Hearing Master later appointed by the Commission. On May 24, 2007, the Hearing Master convened a status conference and established a procedural schedule which, among other things, provided for the filing of amended requests for action by the Pilots and those parties aligned with the users of pilotage services (“Industry”), the conduct of written and oral discovery, the filing of pre-filed testimony and expert reports and the setting of an evidentiary hearing on the merits to be conducted over an eight (8) day period from May 12, 2008 through May 21, 2008.

Soon after the status conference of May 24, 2007, the participants commenced extensive discovery proceedings that transpired over the course of many months. There were several contradictory hearings and determinations by the Hearing Master regarding the nature and scope of discovery. To develop additional insight into pilotage and the issues in dispute, and as part of the discovery process, the Hearing Master also transited both the inner and outer bars of the Calcasieu River and Waterway on tanker vessels.

On May 5, 2008, the Hearing Master was notified by counsel that settlement negotiations were ongoing and that significant progress had been made in resolving most of the material disputed issues. Recognizing that the trial was imminent, and with a view toward expediting any

potential resolution of remaining issues in dispute, an informal status conference was scheduled for May 7, 2008. At the status conference, the Hearing Master was briefed on the basic terms of a settlement of all issues reached between the Pilots and certain of the Industry participants, and the remaining contingencies to arriving at a complete settlement. Among other things, the negotiated settlement provided for a reduction in recovery to the Pilots in the amount of \$350,000 less than the original amount requested by the Pilots.

On May 9, 2008, three (3) days before trial was to commence, the Hearing Master scheduled a Settlement Conference. At the Conference, counsel for the parties confirmed complete agreement of the terms of the settlement proposed on May 7, subject to the inclusion of a provision in the Hearing Master's Report recommending that the Commission conduct an independent audit of the annual financial statements of the Pilots, as filed with the Commission. All participants assented to this condition.

Settlement of all disputed issues having been achieved, on May 14, 2008, all intervening participants to this proceeding submitted a Joint Motion for Approval of Stipulated Settlement containing the terms specified below.

STIPULATED SETTLEMENT AGREEMENT:

As a result of the good faith negotiations, the following terms of settlement were agreed to by all participants:

1. Ordinary and Necessary Operating and Administrative Fees and Expenses

The provisions of the new tariff will provide total annual revenue to the Lake Charles Pilots in the amount of \$10,600,456 to fund all ordinary and necessary operating and administrative costs and expenses of pilotage, including fair average annual compensation for sixteen (16) pilots.

2. Capital Improvement Expenditures

The Capital Improvement Surcharge shall continue indefinitely, but shall be adjusted to provide the Lake Charles Pilots with funding for capital expenditures in the total amount of \$5,200,000 for the purchase of a special purpose-built pilot boat with an approximate cost of \$3,200,000, construction of a new pilot station with an approximate cost of \$1,600,000, and construction of a new dock with an approximate cost of \$400,000. The proceeds, after tax, from the sale of a marginally useful pilot boat named the M/V Calcasieu Pilot sale would be applied to the proposed capital expenditures and to the reduction of the Capital Improvement Surcharge. All proceeds from the Capital Improvement Surcharge and sale of capital assets would be kept in a separate, segregated bank account and said funds would be used only for the acquisition of capital assets.

3. Escrow Account

The funds on deposit in the escrow account at the time of implementation will be distributed to the Pilots, net of taxes, and directly applied to the capital expenditure requests of the Pilots.

4. Annual Cost of Living Adjustment

The Pilots will receive an annual cost-of-living adjustment (“COLA”) to the ordinary and necessary operating and administrative expenses in the tariff, except for pilot compensation, which will be adjusted by fifty (50%) percent of the COLA applied to the other costs and expenses of pilotage. Applied to both compensation and expenses, the annual adjustment shall be calculated at seventy-three (73%) percent of the Consumer Price Index – All Urban Consumers – South Urban Area, as published for the last month of the preceding calendar year.

5. Transparency

The Pilots are required to file with the PFC complete and unaudited compiled financial statements on an annual basis in the same form as the 2007 financial statements submitted in this proceeding, with the filings to be completed by the Pilots on or before June 30th of each year. Moreover, the Pilots agreed to the request by ConocoPhillips that the PFC conduct an independent annual audit of the financial statements filed by the Pilots.

On May 15, 2008, pursuant to Rule 53 of the Rules of Practice and Procedure of the Commission, the Hearing Master conducted a hearing on the Settlement Stipulation. Counsel for all parties were present as were some representatives of the parties.

The parties offered, filed and introduced into evidence the following:

- 1) Proposed Settlement Stipulation;
- 2) Affidavit of Captain Michael G. Miller;
- 3) Affidavit of Mr. Stephen Carleton;
- 4) Affidavit of Mr. Willie Tempton, Jr.;
- 5) Exhibit A to the Proposed Settlement Stipulation (underlying financial data provided by the Lake Charles Pilots);
- 6) Exhibit B to the Proposed Stipulated Settlement Agreement (draft of the proposed tariff); and
- 7) Joint Motion for Approval of the Stipulated Settlement.

After the necessary documentary evidence was entered into the record, the Pilots called Captain Miller as the sole witness at the hearing. Captain Miller confirmed that the terms of the settlement were incorporated into the proposed tariff and that the proposed tariff would provide an overall cost savings to Industry of approximately five (5%) to six (6%) percent. He further testified that the level of rates and fees provided by the proposed tariff were sufficient to satisfy all of the ordinary and necessary operating and administrative expenses to maintain safe, efficient and reliable pilotage in the Calcasieu River and Waterway.

There was no opposition to Captain Miller's testimony.

HEARING MASTER REPORT:

In issuing his report, the Hearing Master relied upon the Commission's exclusive authority to establish reasonable and just pilotage fees and rates pursuant to La. R.S. 34:1121 (A) and 34:1122 (A).

Having considered the testimony and the extensive documentary evidence submitted at the hearing of the Proposed Settlement Stipulation, the Hearing Master determined that the participants' negotiated agreement on the terms as set forth in the Proposed Settlement Stipulation was in the best interest of both the Lake Charles Pilots and Industry, and served the public interest and welfare. The Hearing Master further found that the increased transparency in the fees and expenses of the Pilots as required in the settlement would significantly benefit the public, as well as positively impact the business relationship between the Lake Charles Pilots and the commercial users of their services.

Based on these findings, the Hearing Master recommended that the Commission accept the Proposed Settlement Stipulation reached by the parties and that the proposed tariff submitted therewith be implemented effective June 1, 2008, or as soon thereafter as practicable.

ORDER OF THE PILOTAGE FEE COMMISSION

At the Commission's Special Meeting on June 26, 2008, after considering the record of the proceeding, the Report of the Hearing Master, the discussion of the issues by Commission members and the comments of counsel and the public, on Motion of Commissioner Allen J. Gibbs, Seconded by Commissioner John Hyatt, and adopted by a vote of seven (7) for and three (3) against, the Commission voted to amend the Proposed Settlement Stipulation to modify the provisions set forth in Section 5 (*Transparency*) of the Proposed Settlement Stipulation to require the Lake Charles Pilots to file with the PFC complete audited financial statements on an annual basis (*rather than unaudited compiled financial statements, subject to independent audit by the Commission*).

Upon further consideration of the record of the proceeding, the Report of the Hearing Master, the discussion of the issues by Commission members and the comments of counsel and

the public, on Motion of Commissioner Allen J. Gibbs, Seconded by Commissioner Michael Lorino, and adopted by a vote of eight (8) for and two (2) against, the Commission voted to:

- 1) Approve the Proposed Settlement Stipulation as amended by the Commission;
- 2) Pursuant to the amended Proposed Settlement Stipulation and the recommendations of the Hearing Master, authorize the implementation of the proposed tariff effective July 1, 2008; and
- 3) Pursuant to Rule 61 of the Rules of Practice and Procedure, make the effective date of the Order July 1, 2008.

IT IS SO ORDERED

**BY ORDER OF THE LOUISIANA PILOTAGE FEE COMMISSION
BATON ROUGE, LOUISIANA
EFFECTIVE JULY 1, 2008**

CHAIRPERSON
COMMISSIONER ALFRED S. LIPPMAN

VICE CHAIRPERSON
COMMISSIONER WILLIAM H KRUTZER, III

COMMISSIONER WILLIAM O. WATSON

COMMISSIONER ALLEN J. GIBBS

COMMISSIONER MICHAEL R. LORINO, JR.

COMMISSIONER MICHAEL G. MILLER

COMMISSIONER WILLIAM S. APP, JR.

COMMISSIONER JOHN T. HYATT

Against

COMMISSIONER GREGORY M. BOWSER

Against

COMMISSIONER RONALD L. FOSTER

LAWRENCE E. McNUTT, JR.
ADMINISTRATOR