COPY

BOARD OF PILOT COMMISSIONERS FOR THE BAYS OF

SAN FRANCISCO, SAN PABLO AND SUISUN

STATE OF CALIFORNIA

IN RE: PETITION OF THE SAN)
FRANCISCO BAR PILOTS FOR)
INCREASED PILOTAGE RATES)
)
)
)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

THURSDAY, APRIL 2, 2015

VOLUME II

Reported By: SUSAN M. OHANESIAN, CSR No.: 13528

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Dave Connolly, Vice President
5 Captain Joseph Long
Captain John Schneider
6 Captain George Livingstone
Jennifer Schmid
7 Ben De Alba, Ex Officio Member, California State
Transportation Agency
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SAN FRANCISCO BAR PILOTS
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12 Raymond Paetzold, Counsel

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21 The proceedings were held at the Milton

22 Marks Conference Center located at 455 Golden Gate

23 avenue, San Francisco, California, on Thursday, April 2,

24 2015, at 9:30 a.m., before Susan M. Ohanesian, Certified

25 Shorthand Reporter, in and for the State of California.

1 INDEX OF PROCEEDINGS

2 Page

3 Opening Remarks by Mr. Eagan 260
Opening Remarks by Mr. Connolly 264
4 Vote on Rate Change Proposal 312

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
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1 INDEX OF EXHIBITS

2 EXHIBIT DESCRIPTION MARKED

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4 (None marked.)

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1 P R O C E E D I N G S

2 PRESIDENT JOHNSTON: Good morning, ladies and
3 gentlemen. Welcome to the continuation of the Board
4 hearing before the Board of Pilot Commissioners, the
5 bays of San Pablo and Suisun. San Francisco pilots
6 filed a petition seeking an increase in charges for
7 their services. The Pacific Merchants Shipping
8 Association's response to the petition opposes the rate
9 increase.
10 We are now at the point where the Board of
11 Pilot Commissioners will have deliberations on the
12 presentations made by the pilots and PMSA of yesterday.
13 I'll ask for roll call, please.
14 MS. DOLCINI: President Johnston?
15 PRESIDENT JOHNSTON: Present.
16 MS. DOLCINI: Vice President Connolly?
17 VICE PRESIDENT CONNOLLY: Present.
18 MS. DOLCINI: Commissioner Long?
19 COMMISSIONER LONG: Present.
20 MS. DOLCINI: Commissioner Schneider?
21 COMMISSIONER SCHNEIDER: Here.
22 MS. DOLCINI: Commissioner Schmid?
23 COMMISSIONER SCHMID: Here.
24 MS. DOLCINI: Commissioner Livingstone?
25 COMMISSIONER LIVINGSTONE: Here.

1 MS. DOLCINI: Representing the Secretary of the
2 California State Transportation Agency, Ben DeAlba.
3 PRESIDENT JOHNSTON: Thank you very much. I will
4 now ask the Vice President, Mr. Connolly, to open
5 deliberations.
6 VICE PRESIDENT CONNOLLY: Thank you.
7 PRESIDENT JOHNSTON: Chief Counsel wanted to make
8 a comment.
9 BOARD COUNSEL EAGAN: I just want to set the scene
10 here, then we can proceed. The record is now closed and
11 we're in the deliberations phase. There are a number of
12 possible outcomes of this proceeding. Again, the Board
13 will be recommending to the legislature one possible
14 outcome is the recommendation to approve the rate
15 increases that are requested in the petition of the San
16 Francisco Bar Pilots. The second option is to simply
17 decline to recommend those increases, and the third
18 option is there may be alternative rate adjustments that
19 the Board deems appropriate to recommend to the
20 legislature.
21 Just background, both in 2002 and 2011 the
22 Board itself came up with its own recommendations
23 following completion of the hearing, so that is an
24 option.
25 In terms of how you proceed, we are not

1 subject here to rules of orders. We don't need a
2 pending motion to commence discussion. That would be
3 one way to do it, but when we come to the first vote the
4 first vote should be on whether to recommend to the
5 legislature that the request to -- rate increase request
6 made by the San Francisco Bar Pilots, whether that
7 should be recommended. If that's the recommendation, it
8 should be recommended to the legislature. It would
9 require at least four votes, then we're probably done
10 here.
11 If, on the other hand, that motion to make
12 that recommendation fails, that's either the end of the
13 proceeding or the Commission, should it choose, should
14 then proceed to consider other alternatives to the rate
15 increases.
16 I should explain that next in order -- once
17 a determination is reached here today next is
18 preparation of formal findings of fact and
19 recommendations to the legislature that will be done by
20 staff. And those formal findings and recommendations, a
21 draft of those will be submitted to the Board and
22 submitted at the meeting which is scheduled for next
23 Friday, April 10th, at the Board offices.
24 It would be most helpful to staff if in the
25 course of your discussions here today each of the

1 commissioners could indicate their views about what is
2 important, what their premising their position on,
3 whatever that may turn out to be. That will aid staff
4 in preparing findings. Of course, those will be only
5 draft findings. If we haven't hit the mark in the
6 draft, that can be the findings and recommendations can
7 be adjusted, the language can be adjusted at the hearing
8 on April 10th.
9 So again, it would be of assistance to us if
10 you would speak up and articulate what your reasoning
11 is. I think it might be helpful now before we commence
12 deliberations to articulate what the request of the San
13 Francisco Bar Pilots is.
14 As the Commission knows, there are two
15 provisions in the Harbor navigation Code that provide
16 for pilotage rates. One is Section 1190, which pertains
17 to bar pilotage. Bar pilotage involves ships being
18 piloted across the San Francisco Bar, which lies outside
19 the Golden Gate Bar Pilotage.
20 The total charge of a particular vessel is a
21 function of two variables: The draft of the vessel, the
22 deepest draft of the vessel, so much per foot or
23 fraction of a foot. The next critical variable in terms
24 of the fee charge is the capacity of the vessel
25 expressed in gross registered tons. The figure has been

1 come up with. So that is what goes into the bar pilot.
2 Then Section 1191 of the code provides rates
3 for ship movements in the Bay and on the rivers,
4 so-called bay moves and river moves. There are a few
5 special charges in there. If you want your compass
6 adjusted by a pilot, there's a fee for that. Or if you
7 want engine trials performed on your vessel, there's a
8 fee for that. The principle distinction between the bar
9 pilotage fees and the fees under 1191 is that the bay
10 river moves are flat fee charges.
11 There are a few charges in the 1191 charges
12 that can vary depending on one, the length of the
13 vessel. Anything up to 600 feet is a flat fee that's
14 prescribed in the rates. But in 25-foot incriminates
15 over 600 feet there's a percentage increase in the flat
16 fees.
17 Confirm with counsel for San Francisco Bar
18 Pilots if they are not proposing any change in that
19 percentage incremental cost. The only thing they're
20 focusing on is request for an increase is the Bay trades
21 on the bay river boats.
22 Again, to recap, across the board both with
23 regard to bar pilotage and the bay and river moves and
24 special services charges they're proposing, as I
25 understand it, for 2016 a five-percent increase, and for

1 2017 a five-percent increase. And then for 2018 a
2 four-percent increase and for 2019 a four-percent
3 increase in those rates under both 1190 and 1191.
4 So again, just one more time. In terms of
5 the format, when we get to that point the first vote
6 should be a motion. The motion would be -- I could
7 restate this when we get to that point. The motion
8 should be to recommend the approval of the rate
9 adjustments proposed by the San Francisco Bar Pilots as
10 set forth in their petition. That would be the first
11 vote, then we'll proceed from there.
12 PRESIDENT JOHNSTON: Thank you, Mr. Counsel. Any
13 questions by the members to Counsel? I'll ask the Vice
14 President, Mr. Connolly, to open with deliberations.
15 VICE PRESIDENT CONNOLLY: Thank you,
16 Mr. President.
17 Good morning everyone. President asked me
18 to start us off with a kind of framework maybe to aid us
19 in our deliberation. I'll do that. But before I do
20 that, I want to thank both sides again for their
21 comprehensive briefs and testimony. I found it to be
22 very enlightening.
23 And I appreciate all the work that went into
24 it. And I think that much of it will be retained for --
25 at least by me as an education about how we got to where

1 we are and all the factors involved. There was an awful
2 lot of information presented. I'm glad we had last
3 night to sleep on it because it helps settle it down a
4 little bit.
5 A couple things I want to point out before I
6 dig into it. These were mentioned in the presentations,
7 but I think they're worthy of repetition. That is that
8 in the 236(F) factors, the 11 factors that we're
9 supposed to consider, before the regulation goes on to
10 list those factors and how to think about them, it says,
11 "Factors that are to be considered by the Board in
12 preparing legislation on pilotage rates include but are
13 not limited to the following," it goes through those 11
14 factors.
15 I want to go through those factors quickly.
16 And some of them I'll combine together to give you my
17 reaction to those factors. But I think it is important
18 to remember that our consideration is not limited to
19 those factors. And I'll probably expand on that a
20 little bit later.
21 And then finally that 236(F) section N
22 paragraph 12 where it says, "The weight to be given to
23 each of the factors enumerated in this subsection may
24 vary depending on prevailing circumstances and shall be
25 left to the sound discretion of the Board."

1 So really, what we're doing here is weighing
2 these factors. And let me say that I agree with the
3 PMSA's contention that the standard to convince us is
4 the preponderance of the evidence, and that is the
5 burden of the moving parties to do that. And also, that
6 the Board must consider all of the evidence presented.
7 We can't cherry pick, we can't not consider any of that
8 evidence presented. But we can weigh it. In fact,
9 that's our job, our sole jurisdiction, our sole
10 territory. That's what we're doing here, we're weighing
11 the 11 factors towards a division.
12 So I'll go briefly through those things,
13 give you what I feel are the weights at the end. And
14 I'll do it roughly to allow for more deliberation.
15 Number one, cost of providing pilot
16 services. It was agreed by both sides that costs will
17 rise. And is argued by the PMSA that built in increases
18 to the rate formula will more than cover these costs. I
19 understand that. It was graphically shown, and I
20 appreciate that point. That trend may be supported by
21 the historical data.
22 But I think what's important, for me anyway,
23 is that it is not known. It is a projection, and
24 projections by their very nature contain varying degrees
25 of uncertainty. The stipulation projected cost with a

1 high degree of confidence, but their offset by revenue
2 is by its nature unknown, at least uncertain.
3 Therefore, I think that there should be some weight
4 given to the cost, but more to what is known than what
5 is not known. So I'll leave that there.
6 The second one, the net return sufficiency
7 to attract and hold pilots. I want to come back to
8 that. I want to finish with that. There's a lot of
9 discussion with that term "attract and hold". I want to
10 address that a little bit, but I want to do it in the
11 context.
12 Other items, I found in the third item the
13 CLI cost of living consideration compelling. I think it
14 was 20 percent since 2006, 30 percent since 2002. I
15 think there should be some weight given to that.
16 Rates for comparable services which is the
17 fourth item, and income for comparable services the
18 fifth item I'll consider together. I think we found in
19 the hearing that there was a lack of transparency on
20 rates around the country which made for difficult
21 comparisons. It makes this a little less certain of an
22 area for us to focus on.
23 I also note that the testimony about ocean
24 station pilotage grounds puts this group in a rarified
25 air. There are only three pilotage stations that

1 actually the hold station in the open ocean. And you
2 can argue, too, that New York is really not comparable
3 because of the difference in sea conditions and weather,
4 so I think that erodes the ability to accurately make
5 comparisons. So I'm not sure that we should give too
6 much weight to those two factors.
7 I'd also say that the comparison of LA, Long
8 Beach is inappropriate given the difference in
9 weatherproofing and port complexity and current among
10 many other things. I also think that we heard from both
11 sides that methods of determining rates in other ports
12 was not all that relevant here, so I don't think it
13 should be given any weight.
14 Now, with regard to number seven, economic
15 factors effecting local shipping I think it is very
16 important to consider this. But I think that we heard
17 that in 2011 finding that there was no apparent, no
18 significant affect, no significant expected effect from
19 that rate increase, at least that was the finding of the
20 Board back then. I think that's important content that
21 I think we have to consider now.
22 I think that container cargo has a more
23 fungible definition. It is more likely to be diverted.
24 And yet we've seen an increase in GRT, despite decrease
25 in shipments. So it doesn't appear to me that this,

1 despite slow downs, that there is all that much cargo
2 being diverted.
3 I recognize the concerns about -- the
4 competitive concerns. I think they're very important
5 for us to consider, but GRT seems to be telling a
6 different story. Certainly both sides have agreed that
7 it is uncertain about the competitive pressures in the
8 future. I should note that while container cargo
9 appears to me to be very much divertable, tanker cargo
10 is not so much. I think that's something to consider.
11 Refineries are either not being built or
12 being closed very often. We hear about that, and I
13 don't think that the pipeline or rail car options that
14 are available to refiners are that great here in the Bay
15 Area. I think they're there but I don't think they're
16 anywhere near what tanker cargoes are. So I think the
17 likelihood in terms of economic factors, you know, to
18 local shipping is -- that's likely to continue, even in
19 the face of the rate increase.
20 I also wanted to note, the linkage study the
21 PMSA provided, done for the Port of Oakland where it was
22 very clear that cargo that could have come to Oakland
23 left to Long Beach in the order of 17 percent. That is
24 significant to consider, but I think there are some
25 issues around that study that make it even -- it could

1 be less. There could be other reasons why that cargo is
2 going to Los Angeles, and I assume that's mostly growers
3 in the Valley.
4 And the other reasons for that is not
5 directly necessarily related to port cost, pilotage cost
6 here. Anyway, I think economic factors, local economic
7 factors are very important to consider and should be
8 worthy of a heavy weight. I just don't see that it is
9 going to be affected that much. I don't see it having
10 that much of an impact.
11 Number of pilots available is the ninth
12 question that was a factor. I want to note the WSPA
13 testimony, and I'll retain that concept that income
14 could be adjusted, net return could be adjusted based on
15 the number of pilots. I think that's significant. But
16 I don't think it is an option now, given all of the MRP
17 rest exceptions that we've been seeing over the months.
18 It is clear that 60 pilots are necessary now.
19 Next, I want to talk about risk to pilots;
20 the 10th factor. I agree with PMSA's assertion if we're
21 going to consider risks then we have to -- I think this
22 is in the regulation -- then we have to consider those
23 risks that are different than when we last considered
24 those risks at the last rate hearing, and that's
25 significant.

1 Now, I'm not sure if that's under a rate
2 hearing or a rate increase. Maybe somebody could tell
3 me what that is, either the last rate hearing, 2011 or
4 the last rate increase 2006. But in any case, I don't
5 think it really matters and I'll tell you why. The last
6 rate increase was 2006. The Cosco Busan was 2007, and
7 that was a sea change for the bar pilots, for this Board
8 and for the California legislature.
9 I think we can argue, as perhaps Captain
10 Wainwright did in his testimony, that for the people in
11 the Bay Area it was a sea change, sea change of
12 understanding about the risks around pilotage. And that
13 is more than a significant development. It is a
14 monumental new understanding of risk. And that's a
15 consideration that I think we need to give a very heavy
16 weight to.
17 Now, the reason why I don't think it matters
18 whether it is an actual increase or a hearing as a
19 change in difference is because more has happened since
20 the Cosco Busan. And I think it was 2011, and that
21 report just came out recently.
22 And that comes in the context of our safety
23 discussion that was already underway. But it, too,
24 represents a sea change, sorry to overuse that phrase.
25 But it is an entirely different consideration now.

1 We are in piloting Safety Committee
2 grappling with continuous pilotage onboard underway
3 which would be the first time that has ever happened
4 beyond the professional development program and the
5 trainee program. That is something that is, I think,
6 worthy of a very heavy weight. But I think there's more
7 when it comes to the risks to pilots.
8 Captain McIsaac's testimony about Captain
9 Curtis' time in prison is to me compelling, especially
10 against the backdrop of what I consider a worldwide
11 criminalization of mariners. We've seen that around the
12 world recently. What other transportation job will
13 under-performance get you time in jail? I realize that
14 any kind of willful impairment should be punished
15 heavily and prevented. But to be prevented for doing
16 your job even improperly introduces a new level of risk.
17 And that is new. That is entirely now. That's a risk
18 to career and to income and to health.
19 And speaking health, another new layer of
20 risk is the fitness standard, which was as mentioned by
21 Captain Wainwright, as income uncertainty to both the
22 near and the long term. I could go on about risk
23 relative to other ports, but I dealt with that a little
24 bit before. I think this is a far riskier port than
25 most just in terms of physical risks to pilots.

1 And so finally I think there are new risks
2 in the ultra large container vessels. I think it was
3 reported at that first public comment in 2011 and have
4 steadily increased and projected to increase. So if
5 there are new risks associated with the ULCVs then risks
6 are increasing, new risks.
7 We heard compelling testimony from Captain
8 McCloy about what may not be new problems, but problems
9 that are on a new order of magnitude that really make
10 them new. Those are problems with visibility, windage,
11 sail area, shipping, the hydro diagnostics around the
12 ship handling, air draft and other problems. So I think
13 that the risks to pilots deserves very serious
14 consideration by this Board.
15 Now, finally, let me move to number 11, the
16 navigational safety equipment concept. It didn't really
17 come out in testimony, but it occurs to me that this
18 factor has added to the workload of pilots and pilot
19 support activities, and more and more non-piloting type
20 of activity which of course then strains the pilotage
21 core.
22 And so I think that is a significant change
23 deserving some weight. An example of other types of
24 non-piloting activity that is things like the fatigue
25 study. It is also clear that tech is developing and the

1 monitoring and maintaining of that development is
2 absolutely necessary and absolutely time consuming. We
3 also saw that there were costs associated with this that
4 are not yet offset by at least a surcharge. So I think
5 those tech changes are significant and deserve some kind
6 of weighting.
7 Finally, let me go back to the attract and
8 hold. Is net return income to pilots sufficient to
9 attract and hold qualified pilots. And I'd like to
10 start there with the statute, not the regulation.
11 That's in section 1203, all the way at the end of the
12 ratemaking part of the statute where it says in 1203(B),
13 "A net return to the pilot sufficient to attract and
14 hold persons capable of performing this service with
15 safety to the public and protection to the property and
16 persons using the service."
17 So right there in the ratemaking part of the
18 statute it connects safety with income. A net return to
19 the pilots sufficient to its record hold persons capable
20 of performing this service with safety to the public.
21 We heard a lot about attracting and hold
22 yesterday but not in that context, really. Not in the
23 full context of the law. And I think that's very, very
24 important. The context that we heard most of the time
25 was labor market forces attract and hold pilots relative

1 to other labor options, I guess. And I agree, that's an
2 essential part of the reading of that line. But again,
3 here in the ratemaking section of the code, there's a
4 direct connection between net return and public safety.
5 So I'll suggest -- and this has been my
6 focus on this Board's public safety, so I may be
7 overdoing it. But I'll suggest there's a complex
8 relationship between net return and safety that includes
9 a lot more than labor market forces. For example, the
10 value of the net returns helps incentivize existing
11 pilots to the highest standard of professionalism. It
12 is not merely a decision on whether to stay or go, but
13 it is kind of the character and professional qualities
14 of mariners who cannot only pilot ships safely, but use
15 the best available means to improve safety.
16 What that means in the broader sense, a net
17 return to hold that kind of pilot is like the pilots who
18 are considering the latest in maritime sale of the best
19 practices. That's what's going on in the Pilot Safety
20 Committee where pilots are grappling with how to
21 implement some of these really different ideas to
22 improve the public safety.
23 Like the one I mentioned earlier, continuous
24 evaluation onboard underway after you're out of the
25 training period, training programs. I don't think

1 that's too far off the denotative language of the
2 statutes which says persons capable performing this
3 service with safety to the public. Safety to the public
4 is built in under net return under the law.
5 So these are entirely new concepts that the
6 pilots and the Board are grappling with, and I think
7 that deserves recognition. And how is such recognition
8 typically made? Highly skilled professional who
9 mitigates enormous risk with ever developing talent.
10 Well, I think we're pointed to by the law that says net
11 return is part of that recognition.
12 And so with that, I'll finish and say that
13 mindful of the instruction by counsel, I think the SFBP
14 has met its burden of proof, and accordingly I move
15 adoption of the petition for a rate increase as proposed
16 for recommendation to the legislature, Mr. President.
17 PRESIDENT JOHNSTON: Thank you. There was a
18 motion on the floor. Do I hear a second?
19 COMMISSIONER LONG: Second.
20 PRESIDENT JOHNSTON: Vice President Connolly made
21 the motion, Mr. Captain Long seconded it. Now open for
22 discussion. Anyone want to discuss the motion?
23 COMMISSIONER SCHNEIDER: Yes. In regards to -- I
24 think we're all in agreement Dave made an excellent
25 point. The customers are being provided with excellent

1 service. No doubt this is very complex pilotage ground,
2 no doubt there. But the issue that I have is the way
3 the navigation upgrade in equipment -- I think
4 industry-wise and customer-wise that everybody is
5 supportive of having the best possible technology that's
6 available out there and willing to pay for it. But I
7 think the structure of how it is paid should be through
8 surcharge instead of across the board hike to make up
9 for expenses.
10 The other issue that is really secondary
11 looking at this right now is that the Board really is
12 not complete. And I mean we don't have a dry cargo
13 industry member on the Board. I'm the only member of
14 industry, and our two industries are vastly different.
15 As everybody made the point that refineries
16 and oil tankers, we can't pick up and move. It is a
17 totally different trade, it is different than a dry
18 cargo in every way possible. And I just think it would
19 be good if we had a perspective, a voting member that
20 had the representative of, you know, one of the biggest
21 commercial groups that there is.
22 PRESIDENT JOHNSTON: Captain Long?
23 COMMISSIONER LONG: John, on the surcharge issue
24 you raised, I guess I'll raise a question with Board
25 Counsel, if you will. Is the creation of a surcharge

1 something the Board can address in this setting?

2 BOARD COUNSEL EAGAN: I believe so. There was

3 considerable testimony about the new technology and its

4 costs to the bar pilots to acquire that technology. So

5 there is certain evidence in the record if the will were

6 there among the commissioners to adopt the surcharge

7 regarding navigation technology. Of course, it was

8 created a couple years ago and has since expired by its

9 terms. But there was in the statute a navigation

10 technology surcharge.

11 And the Board is not confined to the

12 proposal made by the 2011. We had proposals by both

13 PMSA and by the San Francisco Bar Pilots. Neither was

14 adopted, neither proposal was. And the Board took what

15 might be characterized as a middle path. So even though

16 there's no surcharge proposed in the request of the San

17 Francisco Bar Pilots, I think that's within the scope of

18 what the Board can do if it chose to.

19 COMMISSIONER LONG: Would we do that while we're

20 sitting here today, or would we initiate the process and

21 then work on the details, I guess, at subsequent

22 meetings with industry, or what would that look like?

23 BOARD COUNSEL EAGAN: Well, if your question is if

24 we need to have further hearings, I don't think that's

25 necessary. I think all parties that go into these

1 hearings given the history of the rate hearings
2 something may come out of it. That's not in accordance
3 with what any of the parties recommended. As long as
4 there's a basis in the evidentiary record for whatever
5 proposal comes out, I think that makes it legitimate.
6 Now, in terms of whether the Board members
7 would be prepared during deliberations to craft some
8 kind of navigational surcharge, that's really more an
9 issue, I guess, for the Commission, whether or not they
10 think they're ready. That is, of course, if there seems
11 to be some momentum behind, but the Commission doesn't
12 think it is quite ready.
13 Today legislature will be to possibly
14 continue this hearing until early next week to allow
15 time to illuminate on that and to come up with something
16 that might be workable. Again, our goal at least is to
17 get to next Friday the 10th with the decision in hand,
18 be prepared to adopt findings and recommendations.
19 So with regard to whether the Board could do
20 that, I think that the answer is yes. With regard to
21 when, that's really up to the Board to decide whether it
22 is prepared to go that route today.
23 COMMISSIONER LONG: Okay. I'll elaborate a little
24 bit on my -- my second here was primarily to get this
25 into the discussion phase. The idea of doing a

1 surcharge for the NavTech seems like a good route to go
2 to me, but there's a lot of details. I'm not prepared
3 to figure out what that's going to be because of the
4 number of moving parts associated with that creating
5 such a thing.
6 And maybe we should do that at a subsequent
7 meeting and move forward today with an alternate
8 proposal of some sort leaving the NavTech surcharge for
9 sometime in between now and the 10th.
10 PRESIDENT JOHNSTON: We do have a NavTech
11 committee. Maybe it should be addressed by them.
12 BOARD COUNSEL EAGAN: I'm not suggesting this, but
13 just in terms of options one possibility is simply to
14 have an -- at some point in the future -- a rate hearing
15 petition that simply focused on a suggestion or request
16 that navigation surcharge be adopted. That would
17 certainly focus the attention of all concerned parties
18 on that particular issue. It might elicit information
19 in addition to what we've got in the record as a result
20 of the hearing, this more general increase proposal,
21 though it is not necessarily something that has to be
22 decided as part of this rate hearing.
23 PRESIDENT JOHNSTON: I would agree with Counsel.
24 Captain Long, would you agree with that?
25 COMMISSIONER LONG: That we don't have to resolve

1 it as part of this hearing right here.

2 PRESIDENT JOHNSTON: That's correct.

3 COMMISSIONER LONG: I'm still processing that, but

4 I will agree with that.

5 PRESIDENT JOHNSTON: We could put that on the next

6 Board meeting agenda if you want to do that.

7 BOARD COUNSEL EAGAN: Again, just to clarify, the

8 Board itself can suggest a rate hearing. It is not a

9 situation where it has to look to some third party, the

10 Board pilots or PMSA to make a proposal. But the

11 mechanics of doing that involves some procedural hoops

12 that are probably a little more complex than simply

13 putting it on an agenda. But it is certainly for the

14 Board to process.

15 PRESIDENT JOHNSTON: Correct me if I'm wrong, but

16 it would be to the NavTech Committee that would, in

17 turn, make a recommendation to the Board. That's a

18 normal procedure to do it.

19 COMMISSIONER LONG: Rate hearing procedure as

20 Dennis said, or would it just be done --

21 PRESIDENT JOHNSTON: That's what the Committee

22 would recommend. I go to Executive Director.

23 BOARD COUNSEL EAGAN: Opinions of both of us here

24 are kind of forming, improvising here a little bit. But

25 I believe that since it is a rate adjustment hearing,

1 this Board cannot adopt itself any kind of rate increase
2 in a surcharge I think would come within that category.
3 So I'm thinking that if the Board were to
4 dispose for the rate increase, the formal action to take
5 would be a recommendation to the legislature with the
6 request or recommendation of legislature to adopt the
7 navigational surcharge. Of course, the one that expired
8 by its own terms was the product of a legislation. It
9 wasn't something that the Board itself had passed.
10 PRESIDENT JOHNSTON: Any comments by the
11 commissioners?
12 COMMISSIONER SCHMID: Good morning. First of all,
13 I want to thank Commissioner Connolly for the overview
14 of the presentations yesterday. It was very well done.
15 Is this specifically commenting on the navigation
16 surcharge, or just an overall discussion?
17 PRESIDENT JOHNSTON: We're talking -- this is on
18 the motion before the Board.
19 COMMISSIONER SCHMID: First of all, I would just
20 start off with my recommendation that the lesser fee
21 increase instead of what was recommended, two percent
22 fee increase over the time period recommended.
23 And just going into a little background. I
24 do believe that they're based on various charts and
25 graphs provided by specially Captain McIsaac and PMSA, I

1 believe there will be a continued growth from what in
2 GRT over the next few years. I do think that there will
3 be a stoppage in the not too distant future for the Bay
4 in any case because of draft, because of air draft as
5 well. There is going to be a stoppage in the near
6 future for the Bay of GRT.
7 But for the foreseeable future I think there
8 will be a continued growth. I think the expenses will
9 continue to remain at 33 percent where they've been.
10 The outcome I think will be pilot income remaining about
11 where it is at, barring any unforeseen factors. As well
12 as -- I believe the 2014 factors were based on the 58
13 pilots or 58.7 pilots. So if we had a full number of 60
14 pilots, that number would go down.
15 I think that the NavTech surcharge should be
16 discussed as well. I think that's important not only
17 for the pilots in general, but for safety for the
18 vessels. I think that's an incredibly important thing
19 to consider. I don't think cost of living increase is
20 given its due. I think there's a lot of discussion
21 about expenses on par, but not so much cost of living.
22 Thank should be factored in.
23 As far as what happened with the IOWU and
24 PMA dispute, I think that was more of a snapshot in
25 time, I'll call that. I think that remains to be seen,

1 the effects on the port will have to wait until the end
2 of the year or early 2016 to see the effects of that.
3 As of now, I see things remaining relatively
4 on par as far as net income, net revenue. But I was
5 moved by the videos shown, especially the Oakland inner
6 harbor turning basin and the clearance allowed now with
7 1,200 foot vessel and a 1,400 foot turning basin. That
8 was absolutely amazing. It is credible to think of the
9 stress involved in that 45 minute, one-hour period of
10 time. I don't think people outside the maritime
11 community can really grasp what that means. And one
12 false move, engine failure, mistake of a tug, can really
13 have catastrophic effects, even at that speed.
14 In addition, the amount of media coverage on
15 pilot mistakes, I agree with Commissioner Connolly, it
16 is almost like they're waiting for the next false move.
17 So that adds a lot of stress to the job. So for that
18 reason and the attracting and hold, that all goes
19 together. I do believe that there should be some rate
20 increase, but not necessarily the five percent request.
21 I believe that it should be less, more like two percent.
22 PRESIDENT JOHNSTON: Thank you, Commissioner.
23 Captain Long.
24 COMMISSIONER LONG: It sounds like what we're
25 talking about here is an alternative proposal of some

1 sort. I guess my question is, that motion second on the
2 proposal as is, do we need to address that first prior
3 to crafting some sort of alternative proposal? My sense
4 is yes.
5 BOARD COUNSEL EAGAN: You certainly should address
6 that first, because if the motion were to pass.
7 COMMISSIONER LONG: Yes.
8 BOARD COUNSEL EAGAN: Unless you want to add onto
9 the request of the San Francisco Bar Pilots, that's
10 probably the end of the deliberation. As to when you
11 get into the details of the alternative, I think it
12 probably makes more sense to see whether there are four
13 votes there for adoption of the recommendation that
14 approves of the request to the SFBP. And unless and
15 until that vote occurrence and the votes to adopt
16 approved, that you're dealing with a hypothetical
17 situation.
18 I guess I would suggest that if the
19 Commission is ready, when it has sufficient discussion
20 on the motion that's pending, then vote on that. And
21 then if that fails, that motion, then proceed to the
22 alternatives.
23 PRESIDENT JOHNSTON: All right. I agree with
24 Counsel. Is there any further discussion on the motion
25 on the floor?

1 COMMISSIONER LONG: Yes, I'd like to jump in. So
2 like I said, it was, my second was primarily to get into
3 the discussion phase. And I'll add my two cents to the
4 discussion here, then we can move on.
5 I think both the petition and the opposition
6 bring up some good points here. I've read them both
7 three or four times. I don't know that the opposition's
8 basis per move basis sits well with me, per move basis
9 analysis of costs, revenue per move, net income per move
10 basis sits well with me. Nor does an analogy to a
11 realtor which is not even a safety sensitive occupation.
12 SFBP does not earn revenue on a per move
13 basis, does not incur cost on a per move basis, and
14 pilots do not earn income on a per move basis. The
15 state legislature has set up a rate structure in which
16 the pilots collect fees based on GRT and the 1191 blue
17 card charges.
18 And I'd like to go a little bit into my
19 analysis of the per move thing. In my mind it's a
20 little bit like taking the occupation of a ship captain
21 or a tugboat captain and looking into that person's
22 earnings and breaking it down per income per watch
23 stood. Or, if someone like a firefighter who is
24 standing by earns an income for the time they spend in
25 that capacity, but then backing up and saying the

1 evidence that that person earned X number of dollars per
2 emergency responded to.
3 Pilots don't live on ships, but they are
4 similarly captured by their work. Time between
5 assignments is spent in preparation for other
6 assignments, managing rest and not knowing what the next
7 assignment is. There are, as we are learning as we dip
8 into the fatigue issue -- physiological and long term
9 health costs associated with that situation. In the
10 end, in my mind a lot of what's in the opposition on the
11 per move basis doesn't really help us do our job.
12 And the job that we have before us, I'll
13 point everybody to Page 2 of the opposition in the
14 binder here. I'd like to read that, the second
15 paragraph on Page 2. It addresses the standard of
16 review, what the Board is being held to here.
17 "In considering whether a change in the
18 rates is warranted by the evidence the Board must apply
19 a standard review such that the party proposing a rate
20 adjustment shall have the burden of proving by a
21 preponderance of the evidence that a change in the rates
22 is justified."
23 Now, I believe the party proposing a change
24 in pilotage rates has met that obligation set forth in
25 the section 236 of the regulations.

1 In my assessment of the 11 factors that
2 we're required to address, the majority of those factors
3 are supportive of the conclusion of some change in the
4 rate. I'll go into those factors more if anyone wants
5 me to. Me too. For now I'll just say that those
6 factors militate in favor of a rate increase of some
7 sort.
8 But there's one factor that I have a little
9 bit of concern about, and I'll speak to that briefly
10 here on Page 2 of PMSA's opposition. It is a reference
11 to the California Freight Mobility Plan promulgated by
12 the California State Transportation Agency, of which
13 this Board is a component agency.
14 This is a rate hearing factor number seven,
15 economic factors affecting local shipping. And I think
16 we need to weigh this, give this a little bit more
17 weight in our analysis here, particularly the part about
18 maintaining some degree of competitiveness with other
19 ports.
20 Even though LA, Long Beach is not a
21 comparable port, the rates charged LA, Long Beach
22 compared to Oakland are different. Providing services
23 in such a small area is likely a reason behind that
24 difference in cost, as well as a key distinction
25 regarding the level of oversight that is present in this

1 port, and to a lesser degree in that port. I'm
2 referring to this Board and the role that it plays.
3 So I believe a rate adjustment is
4 appropriate, but not in the amount requested by SFBP's
5 petition. I would endorse crafting an alternative
6 proposal to that end and my vote will reflect that.
7 That's all I have, and my vote will reflect
8 that.
9 PRESIDENT JOHNSTON: So we have a motion. A
10 second? Any further discussion?
11 VICE PRESIDENT CONNOLLY: Yes. Thank you,
12 Mr. President. I just wanted to amend my remarks. I
13 was talking about risks to pilots. I was talking at the
14 end about physical risks, and I really probably
15 shouldn't have. Those risks, I think they're important
16 to always keep in mind, but I don't think they've
17 changed since the last rate hearing. So I want that to
18 be noted. Thank you.
19 PRESIDENT JOHNSTON: Thank you. I'll just make a
20 comment that I take very seriously the sentence that
21 PMSA said, preponderance of the evidence standard in
22 reaching, probably indicating a rate change must
23 persuade you by the evidence presented. And I think
24 this is basically the crux of how I'm going to vote.
25 Counsel, do you want to read the motion as

1 it should be presented?

2 BOARD COUNSEL EAGAN: Okay. And Commissioner

3 Connolly can correct me if I get this wrong. But I have

4 it down as a motion to recommend approval to the

5 legislature of the rate adjustments proposed by the San

6 Francisco Bar Pilots as set forth in its petition of

7 February 23, 2015.

8 PRESIDENT JOHNSTON: Mr. Connolly, you agree?

9 VICE PRESIDENT CONNOLLY: Yes, I agree.

10 PRESIDENT JOHNSTON: This will be a vote by voice.

11 Roll call.

12 MS. DOLCINI: President Johnston?

13 PRESIDENT JOHNSTON: Yes.

14 MS. DOLCINI: Vice President Connolly?

15 VICE PRESIDENT CONNOLLY: Yes.

16 MS. DOLCINI: Commissioner Long?

17 COMMISSIONER LONG: No.

18 MS. DOLCINI: Commissioner Schneider?

19 COMMISSIONER SCHNEIDER: No.

20 MS. DOLCINI: Commissioner Schmid?

21 COMMISSIONER SCHMID: No.

22 MS. DOLCINI: Commissioner Livingstone?

23 COMMISSIONER LIVINGSTONE: No.

24 MS. DOLCINI: Four noes, two yeses.

25 PRESIDENT JOHNSTON: The motion does not pass.

1 BOARD COUNSEL EAGAN: Just as a reminder, when we
2 get to next Friday adoption of formal findings, only the
3 commissioners will be voting on whether the findings on
4 this particular vote represent its views will be those
5 which were in the no category.
6 PRESIDENT JOHNSTON: Thank you. Again, we open
7 the discussion to the Board members. Are there any
8 other further motions?
9 COMMISSIONER LIVINGSTONE: Me thinks I'm amongst
10 my betters today. I've been compelled to consider from
11 the standpoint that we're a Board of the State to answer
12 the questions from what I think it is best for the
13 State. I do want to say that I entirely concur with the
14 Vice President's comments, along with Commissioner
15 Schneider.
16 And I just had to say that, and I think that
17 the opposition gave compelling arguments for me to
18 reconsider how much adjustment we should have. However,
19 I would agree an adjustment is necessary. So I'd like
20 to open discussion for alternatives.
21 PRESIDENT JOHNSTON: Okay. Captain Long?
22 COMMISSIONER LONG: So the issues raised by the
23 California Freight Mobility Plan in the petition it
24 directs the State are as follows. It says, the State
25 must marginalize costs to increase competitiveness and

1 support the State's economic growth. So in the spirit
2 of that, I would propose an alternate rate adjustment,
3 rate increase for the San Francisco Bar Pilots,
4 basically in the same format as the first motion but in
5 a reduced percentage basis.
6 And instead of what we're looking at right
7 now which is basically a 5, 5, 4, 4, everybody know what
8 I mean by that? Four years, 2016 five-percent increase,
9 2017 five-percent increase, 2018 four-percent increase,
10 2019 four percent increase. Bearing in mind that if
11 that were granted, some of the NavTech acquisition costs
12 would be funded from that increase.
13 And taking that out, I propose the Board
14 recommend approval of the rate adjustment set forth in
15 the SFBP petition with the following other adjustments:
16 Four percent in 2016, four percent 2017, three percent
17 in 2018, three percent in 2019. Is that adequately
18 captured?
19 BOARD COUNSEL EAGAN: Yes.
20 PRESIDENT JOHNSTON: Is that a motion, Captain?
21 COMMISSIONER LONG: That's a motion.
22 PRESIDENT JOHNSTON: Okay. Do I hear a motion?
23 CAPTAIN LIVINGSTONE: Second.
24 PRESIDENT JOHNSTON: Seconded by Captain
25 Livingstone.

1 COMMISSIONER SCHNEIDER: Just with the change
2 here, I think it would be good if we took a moment and
3 look at the industry agreed upon earnings, other agreed
4 upon projections, look at it in two ways. Look at that
5 time in flat GRT, take a look at it with the average
6 growth, I don't know, since the recession over the last
7 3 or 4 years. And look at both, how it would effect
8 revenue and pilot NavTech, you know. And of course
9 taking into consideration the agreed upon expense
10 growth, to kind of put the whole different numbers into
11 more perspective. I think that would really be helpful
12 if that's something that we can sit and do.
13 PRESIDENT JOHNSTON: Do we have the capability of
14 doing that right now?
15 COMMISSIONER SCHNEIDER: Well, I think so. We
16 have all the graphs, we have the records of the GRT, we
17 have the agreed upon expense increases. I think we
18 could probably take a quick look at that, see what the
19 effect would be if we took the 2014 GRT up a few years,
20 reference that out, and take the trend out a few years
21 and look at the comparison, you know, see how it fits
22 out.
23 Because, I mean, the premise of the hearing
24 was to cover expenses, but I'll have to say that Vice
25 President Connolly's presentation that safety does

1 deserve regard is compelling as well, and that we need
2 to sit down and see what this Commission wants, the
3 proposal, how to look at in both expenses as well as
4 regard for safety or pilot income.
5 PRESIDENT JOHNSTON: I would like to suggest,
6 Mr. Schneider, how about we take a 10-minute break or
7 15-minute break while you and Captain Long do that
8 analysis, get back to the Board.
9 Okay, it's 10:35. Let's take about a
10 15-minute break, come back at say 10:50 then you can
11 give us a synopsis. And we will recess for 15 minutes.
12 (Off the record.)
13 PRESIDENT JOHNSTON: The hearing is now back in
14 session. Chief counsel wants to make a statement.
15 BOARD COUNSEL EAGAN: There was an earlier
16 discussion about the option including a navigational
17 technology surcharge in a recommendation might be made
18 to the legislature. Commissioner Long suggested that
19 fixing that amount of the surcharge might make it
20 impractical to reach a decision today or in the
21 short-term, and I countered that with a suggestion that
22 maybe we could proceed by way of a separate rate hearing
23 petition.
24 But it turns out there's a third option
25 which if the Board was inclined to go that way would be

1 rather easily adopted today by the Board if that works
2 for the Board's intent. Subsection F of 1190 has
3 expired by its own terms but it reads as follows:
4 "There shall be a movement fee as is
5 necessary and authorized by the Board to recover a
6 pilot's costs for the purchase, lease or maintenance of
7 navigation software, hardware and ancillary equipment
8 purchased after the current date, November 5, 2008 and
9 before January 1st, 2011. The software, equipment and
10 technology covered by this subdivision shall be used
11 strictly and exclusively to aid pilot and pilotage
12 grounds. The moving fee authorized by this subdivision
13 shall be identified by this navigation fee surcharge on
14 the pilot's invoices and separately accounted for in the
15 accounting required by section 1136."
16 Then it says, "The Board shall review and
17 adjust as necessary the navigation technology surcharge
18 at least quarterly. This subdivision shall become
19 inoperative on January 1st, 2011."
20 If the Board wishes to, it could alter some
21 of these dates. For instance, it can say authorize
22 itself, the Board, or rather request a legislature to
23 authorize the Board to adopt a surcharge for equipment
24 purchased after January 1st, 2015. Then it could
25 provide at the end here that this subdivision shall

1 become inoperative on January 1st, 2020, which would
2 cover the four-year period we're concerned with in the
3 rate adjustment proposal. So that's a more streamlined
4 option if the Board wanted to go that way. I just
5 wanted to make that clear to the Board.
6 PRESIDENT JOHNSTON: Any questions for counsel?
7 Okay. Back to Captain Long.
8 COMMISSIONER LONG: So where are we at? We have a
9 motion, but do we have a second? We're in discussion?
10 PRESIDENT JOHNSTON: That's correct, yes. For
11 clarification, reiterate the motion as you wanted it
12 represented now.
13 COMMISSIONER LONG: Well, I don't propose a change
14 to the motion at this time.
15 PRESIDENT JOHNSTON: We're going to propose a rate
16 adjustment?
17 COMMISSIONER LONG: I did.
18 PRESIDENT JOHNSTON: I thought you wanted to
19 change it.
20 BOARD COUNSEL EAGAN: As I have it, it was adopted
21 four-year structure but rather than five percent,
22 five percent, four percent, four percent in 2016 through
23 2019. It would be four percent, four percent,
24 three percent, three percent, slightly less. Then we
25 recessed because Commissioner Schneider expressed

1 interest in plugging in some of the numbers for, I
2 guess, the income figure. You would get income, is that
3 what we're shooting for?
4 COMMISSIONER SCHNEIDER: Yes. Assuming the agreed
5 upon expenses and the growth of the proposed rate
6 increase and with the effect would be overall, you know,
7 revenue and expenses.
8 BOARD COUNSEL EAGAN: With two assumptions. One,
9 a flat GRT and a GRT trending along an increase line.
10 COMMISSIONER SCHNEIDER: Right. We've done the
11 flat calculation, and right now we're trying to figure
12 out what number to use for the GRT to apply.
13 COMMISSIONER LONG: Right. And this point goes
14 back in my mind to the evidence that's in the petition,
15 the opposition as well as what we heard in testimony
16 yesterday. And I have not seen or heard enough evidence
17 to convince me that there's going to be substantial
18 growth in GRT over the next four years. In fact,
19 obviously it is all projections and predictions.
20 But my sense is to the contrary, that we're
21 somewhere near a plateau, and an assumption of a
22 projection based on historical trends is probably not
23 going to continue on the same slope.
24 COMMISSIONER SCHNEIDER: That's fine. If you
25 could just allow me to take a look at it so I can get

1 this kind of straight in my head, and I guess I'll share
2 it with everyone else once we get the calculations.
3 Can I have a few more minutes?
4 PRESIDENT JOHNSTON: Yes.
5 COMMISSIONER SCHNEIDER: Thank you.
6 COMMISSIONER LIVINGSTONE: Question for counsel.
7 Sir, could you clarify just so I can get my head around
8 this. We're talking about two separate things. Can you
9 tell us how that's going to work, meaning if there's a
10 NavTech and what can we clarify that in general
11 without -- not pinning you down to numbers, but we're
12 talking about two separate things that we're going to be
13 moving into one proposal?
14 BOARD COUNSEL EAGAN: Well, where the Board goes
15 with this is of course up to the Board. A number of
16 options, one the Board conceivably could focus on, a
17 NavTech surcharge that would be the only recommendation
18 it would make to the legislature. Or it could combine a
19 NavTech surcharge with some figures for adjustment
20 overall in the rates on a percentage basis.
21 And adoption of the NavTech surcharge might
22 have an impact on what the -- if there were a
23 two-pronged approach to this. If the Board were to
24 adopt a NavTech surcharge, that could result in a
25 surcharge in any percentage increase that was authorized

1 by the Board. So I can see some interrelationship. But
2 again, how this is crafted is not a legal question, it
3 is up to what the Board thinks. It is up to you.
4 PRESIDENT JOHNSTON: Does that answer your
5 question?
6 COMMISSIONER LIVINGSTONE: Yes.
7 (Off the record.)
8 COMMISSIONER SCHNEIDER: All right, Mr. President.
9 Sorry for my slowness, but it is important. Thank you
10 for your understanding, Mr. President. It helps me
11 understand that just batting around numbers to really
12 take a look at everything and make it clear in my head
13 how things are going to pan out with the current motion
14 on the table, the 433.
15 PRESIDENT JOHNSTON: Understood.
16 COMMISSIONER SCHNEIDER: I guess everyone is
17 waiting to hear what we came up with. I got it here in
18 my pad. I don't know if there's a better way to share
19 it other than to explain the process and explain the
20 results and give the results.
21 So basically what we did was went on the
22 assumption that there's no growth in GRT for the years
23 of 2016 to 2019. We took the revenue from 2014 and used
24 that as our baseline, the basis that there's no growth.
25 We took the four, four, three, three numbers and applied

1 that to the 2014-gross revenue. We took the agreed upon
2 expenses, the updated ones and subtracted that from the
3 growth, the agreed upon expenses. We subtracted that
4 from the 2014 total revenue with the four, four, three,
5 three applied.
6 So anyway, the basics, you got to get down
7 to one number that you can kind of compare to the other.
8 So what we came up with was average net income per pilot
9 based on 60 pilots.
10 PRESIDENT JOHNSTON: Okay.
11 COMMISSIONER SCHNEIDER: So for 2016 applying the
12 four percent -- we took a look at that two different
13 ways. I mean, basically Joe gave me the number saying
14 that based on the purchase of all the PPUs plus the
15 replacement of the units roughly the affect on pilot per
16 year is $6,700.
17 So I took a look at it one way before
18 subtracting the $6,700 and after, so you can probably
19 subtract our $6,700 because right now I believe the
20 proposal on the motion is the four, four, three, three
21 with NavTech being a pilot expense.
22 So anyway, for 2016 that's without all these
23 numbers, this is flat no growth basis 2014 GRT, without
24 the $6,700 subtracted per pilot on the NavTech. The
25 projected average net income for 2016 would be $463,

1 2017 is $484, 2018 is $498, 2019 is $512.

2 So, the second thing I did was went back and

3 took a look at the information on GRT as a basis to

4 determine a growth factor, looked between 2010, 2014.

5 The total growth between those years was about

6 13 percent. So what I did was divide that four and came

7 up with three-and-a-half. Then I came up with a

8 50 percent safety factor to that.

9 So I took the average growth of the last few

10 years per year and divided that by two, halved it,

11 essentially. So the number would be fair. And will it

12 continue on as it has for the next four years, I don't

13 know. That's why I thought for me it made more sense to

14 put things in perspective. I used 1.6, so half the

15 average growth per year.

16 So I went back to the same formula, took the

17 numbers that we came up with, the revenue numbers with

18 the four, four, three, three basis and applied 1.6

19 percent per year essentially to the total revenue that

20 we calculated on previous calculations.

21 So, again, just so we can have something we

22 can compare, divided it by 60 to come up with the

23 average net income on the basis of 1.5 growth of GRT per

24 year.

25 These numbers, too, with the 1.5 percent per

1 year applied to it does not include the $6,700 that
2 would be the cost, effect on the income per pilot.
3 So I 2016 came up with -- round it up to a
4 decimal point, but I guess that doesn't really matter.
5 $473, in 2017 $494, in 2018 $509, and 2019 $524.
6 COMMISSIONER LONG: That's without the NavTech?
7 COMMISSIONER SCHNEIDER: That's without the $6,700
8 NavTech.
9 COMMISSIONER LONG: Okay.
10 COMMISSIONER SCHNEIDER: You would have to apply
11 that to come up with the average income.
12 COMMISSIONER LONG: Can I just jump in here?
13 Jennifer, can you show me your Exhibit 41, because I
14 didn't have that in my binder. I wanted to address what
15 you mention about Exhibit 41.
16 COMMISSIONER SCHMID: Exhibit 40.
17 COMMISSIONER LONG: This one has the per move
18 base, even though reduction in fees between 2011 and
19 2012 it reflected a year-to-year growth in that
20 category. So it seems to be a little bit of an anomaly
21 there. We worked off of this and worked off the GRT
22 graph that's in Exhibit B of the Bar Pilots' Petition,
23 B1. So we saw a little bit of an anomaly there, back
24 out of this and just use raw GRT for the projection that
25 John just gave.

1 BOARD COUNSEL EAGAN: May I ask just one question?
2 I may be the slowest guy in the room, but the $6,700, is
3 that a per pilot figure?
4 COMMISSIONER SCHNEIDER: Yes.
5 BOARD COUNSEL EAGAN: That represents the cost per
6 navigating the pilot technology.
7 PRESIDENT JOHNSTON: Per year?
8 COMMISSIONER SCHNEIDER: Yes, per year.
9 COMMISSIONER LONG: Is there any more discussion?
10 PRESIDENT JOHNSTON: Mr. DeAlba?
11 EX OFFICIO MEMBER DEALBA: If it is the will of
12 the Board to include expenses in NavTech with this rate
13 increase. I would suggest perhaps it is prudent to
14 include some sort of clause to hold the pilots
15 accountable for purchasing that equipment and set
16 something, sort of a timeline or timeframe for when this
17 purchase is to be made as well as showing verification
18 that it has been bought.
19 COMMISSIONER LONG: That may be a reason to
20 include in a surcharge rather than built in the rate.
21 With that in mind, the NavTech surcharge issue, I'll
22 amend the motion and recognize there's some potential
23 for some degree of both.
24 I don't think Jon and I agree on the 1.6
25 percent. But in the spirit of cooperation, I'll

1 acknowledge that there's potential for some growth. If
2 we acknowledge that there's potential for growth and we
3 extract the NavTech cost and it is installed them into a
4 surcharge, I would amend the motion to three, three,
5 two, two subject to Board crafting a surcharge for the
6 NavTech expenses.
7 BOARD COUNSEL EAGAN: We needed concurrence of a
8 second on that.
9 EX OFFICIO MEMBER DEALBA: I'm sorry, can you
10 repeat the last portion of the NavTech?
11 COMMISSIONER LONG: The last part of the NavTech
12 would be to push that into a surcharge to address the
13 accountability issue that you perceive.
14 EX OFFICIO MEMBER DEALBA: Okay.
15 PRESIDENT JOHNSTON: Do you agree?
16 EX OFFICIO MEMBER DEALBA: Yes. Which may or may
17 not be discussed here at this meeting, the NavTech
18 surcharge?
19 BOARD COUNSEL EAGAN: Well, it would be the
20 authorization actually a recommendation to the
21 legislature for authorization of the Board to adopt a
22 NavTech surcharge. So the recommendation if one were to
23 be -- if the NavTech surcharge were to be included in
24 the recommendation would be included in the general rate
25 increase not set here by the Board, but should be acted

1 upon that proposal by the Board. That's the Board's
2 desire.
3 And then at some later time if the
4 legislature concurred, enact the legislation NavTech
5 surcharge then the Board in it's own timeframe could
6 adopt it.
7 PRESIDENT JOHNSTON: I ask for my own
8 clarification. If you would, Captain Long, reiterate
9 the motion with the amendments.
10 COMMISSIONER LONG: Give me a minute. I want to
11 make sure I get this right. So the motion would be to
12 recommend approval of the rate adjustment set forth in
13 the SFBP petition subject to the following changes, in
14 2016 substituting three for five, in 2017 substituting
15 three for five, in 2018, substituting two for four, in
16 2019 substituting two for four.
17 And that the Board pursue the necessary
18 steps to create a NavTech surcharge for the pilots to
19 recover the costs of the lease or purchase of PPU
20 equipment as well as E-pilot navigation gear.
21 VICE PRESIDENT CONNOLLY: I'll second the motion.
22 BOARD COUNSEL EAGAN: Excuse me, what was the
23 first? You mentioned two things. On the NavTech you
24 mentioned two things.
25 COMMISSIONER LONG: Specifically, the lease or

1 purchase of upgraded PPU software and the lease or
2 purchase of new E-pilot gear for handling ULCVs.
3 PRESIDENT JOHNSTON: And the motion was seconded
4 by Mr. Connolly. Open for discussion.
5 VICE PRESIDENT CONNOLLY: On discussion, thanks
6 for doing that math. I missed some of it. Your average
7 net return in the 2016 without the GRT, what was that
8 number?
9 COMMISSIONER SCHNEIDER: Yes. The four, four,
10 three, three basis, $463,000.
11 VICE PRESIDENT CONNOLLY: Then it was $498, $512,
12 is that right?
13 COMMISSIONER SCHNEIDER: Yes. $463, $484 and
14 $498, $592.
15 VICE PRESIDENT CONNOLLY: I see you scribbling.
16 I wonder if you're doing a new calculation.
17 COMMISSIONER SCHNEIDER: I guess crudely you could
18 take one percent out. It does not take into account the
19 compounding factor, but it would be pretty close.
20 PRESIDENT JOHNSTON: Mr. Connolly, okay?
21 VICE PRESIDENT CONNOLLY: Yes. I think I'm in
22 favor, obviously in favor of the amended motion. I
23 think that it is an average net return that, you know,
24 uncertain as it is is still sufficient to attract and
25 hold in the context of my own remarks, addressing some

1 of the safety issues. So I favor the motion.

2 PRESIDENT JOHNSTON: Any other discussion?

3 BOARD COUNSEL EAGAN: I wasn't too clear, just the

4 mechanics. Your language was on the surcharge was

5 something to the affect that the Board pursue. I'm

6 wondering if we should be a little bit more precise

7 about that and recommend to the legislation that they

8 authorize the Board to adopt the surcharge, maybe

9 incorporate dates that I had thrown out earlier, just a

10 hypothetical fashion because pursuing is -- you can't

11 pursue it if it doesn't have the authorization.

12 PRESIDENT JOHNSTON: Adopt.

13 BOARD COUNSEL EAGAN: You can't adopt it if it

14 doesn't have the authorization. What the Board is doing

15 is recommending to the legislature. And part of this

16 recommendation should be, I understand the motion

17 recommendation to the legislation that it authorize a

18 navigational technology surcharge along the lines, you

19 know, for the purposes outlined by Commissioner Long.

20 But what we want here is for the Board to be

21 able to do this down the road. And to do that it has to

22 have the authorization.

23 We also might want to suggest, we don't have

24 to suggest it here, but a beginning and ending date for

25 that. Earlier I threw out possible beginning date of

1 equipment purchased after 1, January, 2015, with a
2 termination date of January 1, 2020, which would be
3 after the four-year period we've been talking about. So
4 we could go could be a little more precise about what
5 we're recommending to the legislature.
6 COMMISSIONER LONG: Would you care to take a swing
7 at my motion in the spirit of what you suggested?
8 BOARD COUNSEL EAGAN: Yes. Leave the first part
9 in place where the condition was we recommend adoption
10 of the San Francisco Bar pilots alleging however the
11 amount of increases in 2016 through 2019 in the proposal
12 to three percent, three percent, two percent,
13 two percent.
14 The Board also recommends to the legislature
15 adoption of an authorization to the Board to adopt a
16 navigational surcharge for the lease or purchase of
17 upgraded PPU, personal pilot unit soft and new E-pilot
18 gear equipment for ultra large container vessels. The
19 surcharge would apply to purchase of such equipment and
20 software made after January 1, 2015. And the provision
21 authorizing adoption of this surcharge would become
22 inoperative on January 1st, 2020.
23 Just for clarification, you only mentioned
24 new software for the PPUs. Did you mean to include new
25 equipment as well, new hardware?

1 COMMISSIONER LONG: Yes.

2 BOARD COUNSEL EAGAN: Okay.

3 COMMISSIONER LONG: As proposed by the petition.

4 BOARD COUNSEL EAGAN: Did everyone understand

5 that? Any clarification needed? If it is, we can fine

6 tune next Friday. But I think that captures the motion.

7 PRESIDENT JOHNSTON: Any further discussion on the

8 motion?

9 VICE PRESIDENT CONNOLLY: Yes, one final thing. I

10 wanted to note for the record by the action of this

11 Board there has been a marginalization of costs to

12 maintain the competitiveness and economic growth. That

13 action is, you know, the amounted motion beginning with

14 five percent and going to three in the first two years,

15 and four percent going to two in the second two years.

16 When you break it down to per pilot, it is a

17 relatively understandable number, and it is not all that

18 dramatic. But we have to remember that the actual

19 savings there is times 60 over a period of time. And I

20 think that was a considerable action, considerable

21 recognition of the importance of marginalization of the

22 costs of economic competition of the economic growth and

23 the competitiveness of the ports. So let the record

24 reflect that.

25 PRESIDENT JOHNSTON: Thank you, Mr. Connolly. Any

1 further discussion? Ms. Schmid.

2 COMMISSIONER SCHMID: Yes, thank you for doing

3 that second set of calculations of growth of GRT over

4 the next four years. I do believe there will be some

5 continued growth not zeroing out. There's no indication

6 of that quite yet, maybe after the four-year period but

7 that's not up for the discussion.

8 So in the next four years I think there will

9 be some you growth. I am, based on my previously stated

10 reasons, involving that. And I think the cost of living

11 increase should be factored in, pilot liability, attract

12 and hold. I'm tending toward my previously stated two

13 percent a year over the next four years.

14 However, I might agree to the three, three,

15 two, two without the navigation surcharge included. I

16 think it should encompass the navigation costs in the

17 three, three, two, two.

18 PRESIDENT JOHNSTON: Thank you. Any further

19 comments?

20 COMMISSIONER LONG: Can I take a quick minute to

21 respond to that?

22 PRESIDENT JOHNSTON: Yes.

23 COMMISSIONER LONG: I'm not going to take a lot of

24 time. I won't dwell on this too long, but I would like

25 to highlight that the drop in percent of each year does

1 acknowledge some concession towards growth. And the
2 NavTech surcharge it seems for reason of accountability
3 issues raised by Mr. DeAlba that we ought to continue
4 down that path and not put that into the rate and then
5 wonder what happens.
6 And then the third thing I'll mention is
7 that these numbers we've come up with. Assume that the
8 cost increase along the projection line that they're
9 stipulated to between the two parties do not allow for
10 catastrophic expenses such as engine failure,
11 substantial repairs to Pier 9 which Captain McIsaac
12 evidenced to yesterday, which may occur within the
13 lifetime of this rate window. So there is some risk, I
14 guess that's the word would I use for it, that this
15 could go much differently than the calculations
16 indicate.
17 PRESIDENT JOHNSTON: Thank you. Ms. Schmid?
18 COMMISSIONER SCHMID: This might be for counsel,
19 but is there no way to add in the NavTech wordage
20 without having the surcharge, having the pilots
21 accountable to purchase the equipment with the three,
22 three, two, two increase without a separate surcharge?
23 BOARD COUNSEL EAGAN: Well, I guess you could kind
24 of figure out what the wording would be.
25 COMMISSIONER SCHMID: I take it that's not been

1 done in the past.

2 BOARD COUNSEL EAGAN: Not that I am aware of. You

3 could simply state that. But the question would be, who

4 would enforce it, how would you implement that?

5 Possibly some responsibility given to the Board. It

6 gets a little complex I guess. But it requires some

7 wording that would have to be carefully considered and

8 thought through. It is more complicated than just

9 adding a surcharge. I understand the concern.

10 COMMISSIONER SCHMID: Thank you.

11 PRESIDENT JOHNSTON: Any other discussion? Ready

12 to vote on the motion on a roll call? Okay.

13 MS. DOLCINI: President Johnson?

14 PRESIDENT JOHNSTON: Aye.

15 MS. DOLCINI: Vice President Connolly?

16 VICE PRESIDENT CONNOLLY: Yes.

17 MS. DOLCINI: Commissioner Long?

18 COMMISSIONER LONG: Yes.

19 MS. DOLCINI: Commissioner Livingstone?

20 COMMISSIONER LIVINGSTONE: Yes.

21 MS. DOLCINI: Commissioner Schmid?

22 COMMISSIONER SCHMID: Yes.

23 MS. DOLCINI: Commissioner Schneider?

24 COMMISSIONER SCHNEIDER: Yes.

25 MS. DOLCINI: Six yeses.

1 PRESIDENT JOHNSTON: Vote has passed unanimously.
2 Thank you all very much for your consciousness and
3 questions. I hope we have satisfied the powers. Any
4 further discussion or comments the Board wishes to make?
5 Maybe now I'll ask for a motion to adjourn.
6 Mr. Connolly, yes?
7 VICE PRESIDENT CONNOLLY: Maybe we could hear a
8 little bit more about the process from here on. We meet
9 Friday; is that right?
10 BOARD COUNSEL EAGAN: We have already noticed a
11 meeting at 660 Davis Street at 9:30 a.m. April 10th, and
12 the sole item will be the review, consideration and
13 adoption by the Board of findings and recommendations
14 growing out of the rate hearing. Staff will now draft
15 those findings and recommendation and get them into the
16 handout of Board members as soon as we can prior to the
17 meeting next Friday.
18 Again, those are just a draft. They may not
19 adequately capture in the eyes of every member of the
20 Board what was done here today or more importantly the
21 reasons for it. At the meeting, the staff will expect
22 those commissioners who have some reservations about
23 what the draft says to let us know so we can make
24 corrections.
25 After the adoption of formal findings which

1 required by the statute, findings and recommendations of
2 what the Board submits to the legislature we, the staff,
3 will pull together all the various elements of the
4 record, the evidence as well as what we have called in
5 the past on evidentiary materials, all the notices of
6 hearings, prehearing order, all that material and draft
7 cover letters to the house of the legislature. Our
8 deadline for doing that is June 17th.
9 As I recall, it is unlikely that that will
10 be done within a week or so partly because I'm going to
11 be gone for a while, about a month at least. In the
12 past I've been very much involved in putting those
13 documents together. The likelihood is those documents
14 will be submitted in late May to the legislature
15 probably three weeks to the deadline.
16 As I recall, in 2011 that was about the
17 timeframe staff was able to pull everything together and
18 submit it to the legislature. That was the timeline.
19 Does that answer the question?
20 VICE PRESIDENT CONNOLLY: Yes. That's good. Just
21 one more clarification. The draft recommendation will
22 be, depending on your ability to put together, will be
23 available to the commissioners before the meeting or at
24 the meeting?
25 BOARD COUNSEL EAGAN: Before.

1 VICE PRESIDENT CONNOLLY: Okay, thank you.

2 BOARD COUNSEL EAGAN: It will, of course, be

3 available at the meeting for members of the public to

4 look at.

5 PRESIDENT JOHNSTON: Any questions? Looking for a

6 motion of adjournment.

7 COMMISSIONER LIVINGSTONE: I motion.

8 VICE PRESIDENT CONNOLLY: Second.

9 PRESIDENT JOHNSTON: Second by Mr. Connolly. All

10 those in favor?

11 ALL: I.

12 PRESIDENT JOHNSTON: Hearing has adjourned.

13 -o0o-

14 (Whereupon the proceedings concluded at 11:54 a.m.)

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1 State of California

2 County of San Francisco

3

4 I, SUSAN M. OHANESIAN, License No. 13528, Certified

5 Shorthand Reporter of the State of California, do hereby

6 certify:

7 That the said proceeding was under my direction

8 transcribed with the use of audio capabilities and

9 computer-assisted transcription, and that the foregoing

10 transcript constitutes a true and correct record of the

11 proceedings which then and there took place.

12 I am a disinterested person to the said action.

13

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16

17 ---------- Susan M. Ohanesian

18 SUSAN M. OHANESIAN, CSR

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