

**BEFORE THE  
LOUISIANA PILOTAGE FEE COMMISSION**

**RIVER PORT PILOTS FOR THE PORT  
OF NEW ORLEANS, DULY  
ORGANIZED AS THE CRESCENT  
RIVER PORT PILOTS'  
ASSOCIATION, INC., EX PARTE**

**DOCKET NO. P20-001**

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*In Re: Request for Increase in Approved Pilot Complement; Increased Funding for Necessary Additional Manpower; Upward Adjustment of Estimated Average Annual Pilot Compensation; and Related Relief Pursuant to La. R.S. 34:1122.*

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**REQUEST FOR ACTION ON BEHALF OF THE  
CRESCENT RIVER PORT PILOTS' ASSOCIATION, INC.**

Petitioners, the river port pilots as identified in La. R.S. § 34:991, et seq. ("Pilots"), duly organized into the Crescent River Port Pilots' Association, Inc., on behalf of and as agent for its present and future shareholders, each of whom is a river port pilot (hereinafter, "Pilot") commissioned as such by the State of Louisiana pursuant to La. R.S. § 34:991, et seq. ("CRPPA"), respectfully requests that the Louisiana Pilotage Fee Commission ("LPFC") take the following actions, as will be further described herein and supported by the Direct Testimony of CRPPA witnesses Captain E. Michael Bopp and Mr. Mark L. Nelson, CPA, as well as the expert reports of Mr. Brent Dibner, Dr. Martin Moore-Ede, Dr. Shmuel Yahalom, and Concentric Energy Advisors:

1. Authorize an increase in the Pilot complement from 122 to 150 Pilots, to be included in rates as the Pilots are commissioned;
2. Authorize an increase in the annual tariff rates and fees addressed herein to recover all costs and expenses required to fund the approved and increased Pilot complement, including increased compensation per Pilot, in parity with other state ship pilotage groups in other United States ports;
3. Authorize an upward adjustment in the estimated average annual compensation per Pilot to \$697,000, consistent with the standards specified in La. R.S. § 34:1122;

4. Authorize a permanent, annual cost of living adjustment (“COLA”) based on the three-year rolling average of the Consumer Price Index (“CPI”) for the three most recently available calendar years for the South region of the United States to CRPPA’s estimated average annual compensation; and
5. That all other decisions and orders of the Commission applicable to CRPPA, including LPFC Order P07-001, remain in full force and effect.

## **I. NOTICE**

Pursuant to Section 12403 of the LPFC's Rules of Practice and Procedure, and La. R.S. § 34:1122(D)(1), public notice of this Request for Action has been made through publication of a Public Notice of Request for Action in "The Advocate" in the form attached hereto as "Exhibit A".

## **II. BACKGROUND**

The Mississippi River port system from Plaquemines to Baton Rouge, commonly referred to as the Lower Mississippi River, is one of the world's busiest waterways. As a result, it is also one of the most traversed water routes in the Western Hemisphere. The Lower Mississippi River's proximity to the American heartland via a 14,500-mile inland waterway system, six Class One railroads, and the interstate highway system, provide for the movement of various types of cargo, including steel, rubber, coffee, containers, and manufactured goods. A key step in any of these movements though, is navigation of the Lower Mississippi River.

Since 1908, CRPPA's Pilots have safely and efficiently piloted<sup>1</sup> vessels up and down the approximately 105 miles of the Lower Mississippi River between Pilottown and New Orleans.<sup>2</sup> This service area stretches from the Head of Passes at mile 0.0, to mile 104.7, encompassing approximately 105 statute miles of the Mississippi River and additional inland waterways including the Industrial, Intra-Coastal, and Harvey Canals which are typically narrow, shallow draft, and involve transits of numerous locks and bridges. CRPPA's service route is the second longest river pilot service route in the United States. The route is longer than that of the Port of

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<sup>1</sup> River pilots are those persons whose duty it is to safely "pilot seagoing vessels within the state of Louisiana, on navigable streams, canals, channels, rivers and boundary waters." *See* La. R.S. § 34:1073 (2019). A pilot is responsible for commanding the safe navigation of piloted vessels.

<sup>2</sup> A "CRPPA Pilot" is an individual who is licensed by the Board of River Port Pilot Commissioners for the Port of New Orleans and who is a shareholder of the CRPPA.

Shanghai, the Panama Canal, and the original Suez Canal. The service area also encompasses multiple ports which are among the largest in the United States, including the greater Port of New Orleans (“Port NOLA”).

Navigating this service area is not an easy task. The route is consistently rated as one of the most difficult and treacherous water routes in North America due to its relatively narrow, yet inconsistent channel with shifting passages, sandbars, and downriver currents. CRPPA Pilots must be aware of the local currents, winds, tides, shoals, aids-to-navigation, landmarks, weather conditions, and river traffic density, to safely pilot vessels. CRPPA Pilots are charged with protecting not only those traveling the route, but also the vessels’ cargo and the Louisiana environment, and therefore play a crucial role in the economic success of not only Louisiana, but also countless industries in the region.

CRPPA Pilots’ responsibilities are further complicated by the sheer volume of ships and materials that pass through their service area on a daily basis. In 2019 alone, CRPPA Pilots transported 910,426,739 tons of cargo. Due to the central location of CRPPA’s service area, the Pilots must navigate all vessels destined for any of Louisiana’s four largest ports – Port NOLA, the Plaquemines Port, the Port of South Louisiana, and the Port of Greater Baton Rouge – for at least some distance. In 2014, there were 414,961 vessels transits for these four ports, combined. In total, 31 percent of all waterborne commerce in the United States passes through the Lower Mississippi River, including 57 percent of all coal and 53 percent of all food and farm products.<sup>3</sup>

To ensure safe passage through this treacherous waterway, all large vessel movements are conducted by CRPPA Pilots, who are not only experienced Pilots, but also have comprehensive training and supervised experience navigating the Lower Mississippi River. As a result, CRPPA

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<sup>3</sup> Stephen R. Barnes, Et Al., Economic Impact of the Port of New Orleans (Aug. 13, 2018).

Pilots have unique knowledge and skills which allow them to navigate vessels on-demand and around the clock safely and efficiently. Due to the nature of the maritime shipping business, vessel movements are irregularly timed and largely unpredictable, meaning CRPPA Pilots must be available around the clock, for 365 days a year to service both incoming and sea-bound vessels.

CRPPA Pilot services are also critical to the economic flow of one of the busiest commercial waterways in the world. A significant portion of the vessel traffic is transporting environmentally, highly-sensitive materials including liquified natural gas, crude oil, refined product, and chemical cargo. Any loss of these products resulting from a vessel collision or grounding would cause serious environmental damage, pose serious health risks to Louisiana citizens, and have a devastating effect on both the local and national economies.

### **III. BASIS FOR PROPOSED ACTION**

The LPFC was created by the Louisiana Legislature to establish reasonable and just rates and fees charged by state-commissioned river pilots servicing both the Mississippi and Calcasieu rivers. Specifically, pilotage fees and rates shall provide for “all ordinary and necessary operating and administrative costs and expenses,” which includes, *but is not limited to*, pilot station expenses, pilot transportation expenses, expenses of maintaining necessary employees (*e.g.*, operating materials, consumables and services, pensions, hospitalization, disability compensation, and required continuing education), insurance expenses, professional 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> In setting such rates and fees, the LPFC may consider several factors, including, but not limited to, the size of the vessels piloted, the difficulty of safely navigating the route, the public interest in maintaining safe, efficient, and reliable pilotage services, and “[a]ny

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<sup>4</sup> See La. R.S. § 34:1122(B)(1) (2019).

other factor relevant to the determination of reasonable and just fees and rates, including those factors previously considered and determined by the Louisiana Supreme Court, and the national average pilotage cost per mile for state regulated pilots operating in United States ports.”<sup>5</sup>

In its decisions, the Louisiana Supreme Court has recognized the importance of both pilots and the services they provide. In *Hendrix v. Louisiana Public Service Commission*, the Court acknowledged that pilots are responsible for “the safety of the vessel, its passengers, crew and cargo,” and that a “pilot’s work is dangerous.”<sup>6</sup> The Louisiana Supreme Court stated that pilots’ rates should be set so that pilots receive a personal income that reflects their “skills, training, experience and the conditions under which their work must be performed.”<sup>7</sup> The Court continued that pilots should receive a personal income that is “sufficient to attract and hold in service [pilots] with a high degree of skill and a deep sense of their important responsibility.”<sup>8</sup>

The Louisiana Supreme Court has also recognized that when considering annual compensation for Pilot services, parity between the New Orleans Baton Rouge Steamship Pilots Association (“NOBRA”) pilots’ and CRPPA Pilots’ compensation is appropriate, due to the similarity of the work performed by these two pilotage associations.<sup>9</sup> In *Hayden v. Louisiana Public Service Commission*, the Court examined a challenge to the Louisiana Public Service Commission’s<sup>10</sup> (the “LPSC”) determination that fees for pilotage services for these two groups should be set such that there is parity in their pilots’ pay.<sup>11</sup> The LPSC had determined that “the working conditions of the NOBRA [pilots] and [CRPPA Pilots] were sufficiently similar that

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<sup>5</sup> See La. R.S. § 34:1122(C)(1) (2019).

<sup>6</sup> 262 La. 420, 437 (La. 1972).

<sup>7</sup> *Id.* at 438.

<sup>8</sup> *Id.*

<sup>9</sup> See *Hayden v. La. Pub. Serv. Comm’n*, 512 So.2d 370, 374-75 (La. 1987).

<sup>10</sup> At the time, pilotage on the Mississippi River was regulated by the Louisiana Public Service Commission. The LPFC had not yet been created.

<sup>11</sup> *Hayden*, 512 So.2d at 371.

‘relatively little difference in compensation, if any, can be justified.’”<sup>12</sup> The Louisiana Supreme Court agreed, stating that it considered it logical to “compare Mississippi River pilots to each other as much as is feasible in determining a fair compensation for the services they provide.”<sup>13</sup> Ultimately, the Court denied the challenge and agreed with the LPSC’s determination that parity between NOBRA pilots’ and CRPPA Pilots’ compensation is appropriate due to the “similarity in the working conditions” of these two organizations.<sup>14</sup>

CRPPA, as agent for those Pilots whom are its shareholders, last received authorization for additional Pilots in 2015, pursuant to the LPFC’s Consolidated Order in Docket Nos. P15-002 and P15-003. The consolidated order authorized CRPPA to have up to 122 Pilots, which is still CRPPA’s maximum authorized Pilot complement.

The primary reason behind CRPPA’s request for an increased Pilot complement is to improve the availability of safe service, not only for its Pilots, but also for all stakeholders on the Mississippi River, all cargo transported on the river, and the local environment. Furthermore, CRPPA’s request for an increased Pilot complement will also help to ensure the uninterrupted flow of cargo transported on the Mississippi River. The navigation of large, high-environmental-risk vessels through CRPPA’s service territory requires Pilots who are not only skilled and experienced, but also alert and attentive. Having Pilots that are constantly alert, attentive, and unimpaired by fatigue, is a challenge due to the industry demand for round-the-clock, irregular, and unpredictably-timed vessel movements.

Since CRPPA was approved to have a Pilot complement of 122 Pilots, its workload has increased tremendously, largely driven by the rapid growth of commerce regionally and within

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<sup>12</sup> *Id.* at 373.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 374.

CRPPA's service territory. For example, between 2013 and 2019, there was approximately a 19% increase in the total cargo tonnage moved by CRPPA Pilots (767,105,808 in 2013 to 910,426,739 in 2019). CRPPA's timely and efficient pilotage services have been a driving factor behind this growth, which creates a direct financial benefit to both cargo interests and other stakeholders operating on the Mississippi River and beyond.

The current shipping volume is now significantly above the shipping volume utilized to establish CRPPA's currently funded allowance of 122 Pilots. For instance, at the end of the 2019 calendar year, CRPPA had 121 active Pilots and had completed 16,151 billable turns.<sup>15</sup> In comparison, NOBRA's 2019 annual report stated that its 119 pilots had completed 13,001 billable turns in 2019 – 3,150 less than CRPPA's Pilots completed. Therefore, the average CRPPA Pilot completed approximately 133.5 billable turns in 2019, while the average NOBRA pilot completed approximately 109.25 billable turns in 2019. Increasing CRPPA's Pilot complement to 150 Pilots would allow CRPPA to better assure the availability of adequately rested Pilots. This would allow CRPPA to provide safer service to its customers, as CRPPA moves toward the safer and more appropriate number of turns per pilot currently achieved by NOBRA. Furthermore, Louisiana Revised Statute § 34:1122 mandates that Louisiana pilotage organizations be adequately staffed and funded to protect the "public interest in maintaining safe, efficient, and reliable pilotage service."

Pilots on the Lower Mississippi River handle immense vessels containing not only some of the most valuable, but also some of the most dangerous and environmentally toxic cargoes in foreign commerce. For example, Port NOLA alone supports \$29.8 billion worth of economic

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<sup>15</sup> The trend in billable turns has been upward. The average number of turns completed by CRPPA Pilots since 2017 is approximately 4.15% higher than the 2016 low of 16,059 billable ship turns.



output in the United States.<sup>16</sup> Much of this value came from transporting dangerous and environmentally toxic cargoes, such as liquified natural gas, crude oil, refined product, and various chemicals. As a result, Pilots must maintain a high level of situational awareness and alertness while piloting vessels. In addition to working on one of the most treacherous and congested waterways in the world, this work is performed while enduring a sporadic sleep-wake cycle that disrupts the circadian rhythm and creates a toll on the Pilot in the form of physical stress and mental fatigue. It is essential that a well-rested and alert Pilot conducts the navigation of any vessel transiting the Mississippi River. Any accident could be costly not only in terms of lives, but also in terms of regional and national economic impacts, should commerce on the Mississippi River be restricted for any period of time. It has been estimated that were an accident to occur which halted Mississippi River traffic, approximately \$275 million in economic activity would be stopped, daily.<sup>17</sup>

Over the past thirty (30) years, several studies have identified human factors as a major cause of marine accidents, with some studies indicating that as much as ninety-six percent (96%) of all marine casualties are caused, at least in part, by human error. The source of these errors is often pilot fatigue, which is a physiological state that can result in an impairment of mental and physical function manifested by a cluster of debilitating symptoms, including excessive sleepiness, reduced physical and mental performance ability, depressed mood, and loss of motivation. In recognition of the importance of rest in battling pilot fatigue, CRPPA commissioned a study to determine how many Pilots are necessary to prevent pilot fatigue, while also preparing for increased future shipping activity on the Lower Mississippi River.

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<sup>16</sup> Exhibit SY-1 at page 17.

<sup>17</sup> See Exhibit SY-1 at page 17.

The report was created by Dr. Martin Moore-Ede, M.D., Ph.D., of Circadian Expert Services, Inc. For the past thirty (30) years, Dr. Moore-Ede has been an internationally-recognized leader in the field of human circadian alertness and sleep physiology, human performance impairment, and the applications of this science to management practices which reduce the risks, costs, and liabilities of employees in extended hours operations, where employees are required to work outside of conventional daytime hours. Dr. Moore-Ede's report determined that CRPPA's current, maximum-allowable Pilot complement needs to be increased so that CRPPA may comply with its legal mandate to provide safe, efficient, and reliable pilotage services.

The report examined seven (7) years of historical data of CRPPA-piloted vessel movements from 2013 to 2019. It found that there has been a progressive increase in the risk of Pilot fatigue and a widening deficit of the number of Pilots below the optimal Pilot complement required to safely service the fluctuating amount of vessel traffic within CRPPA's service area. Dr. Moore-Ede determined that the minimum CRPPA Pilot complement necessary to reduce the risk of pilot fatigue to acceptable levels, while still maintaining operational efficiency, is 150 Pilots (147 active Pilots and three (3) administrative Pilots) – twenty-eight (28) more Pilots than CRPPA is currently authorized to have commissioned.<sup>18</sup>

This figure was determined by using the Circadian Alertness Simulator ("CAS"), which is a scientifically-validated transportation operator fatigue risk model developed and used by Dr. Moore-Ede and Circadian over the past 25 years. The CAS accounts for factors such as off-duty time between assignments, service hours per vessel movement assignments, time of day/night of assignments, irregularity of assignments over consecutive days and other factors proven by extensive research literature to influence human fatigue levels, and accident, injury, and human

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<sup>18</sup> Actually commissioning any individual as a Pilot is a power granted to the State/Governor.

error risk. After accounting for these factors, the CAS calculates a Fatigue Risk Score (“Fatigue Score”) for each individual (0 low, 100 high) which is highly correlated with the risk of errors, incidents, accidents, and injuries in 24/7 operations. Incident analysis across multiple diverse transportation and industrial 24/7 operations shows the risk of incident, accidents, and injuries remains at baseline levels up to a Fatigue Score of 56, and then above 56, the risk climbs exponentially with increasing Fatigue Scores. After accounting for these factors, and using the 2013-2019 data on CRPPA-piloted vessel movements, the CAS determined that a minimum Pilot complement of 150 total Pilots is required to assure that a Fatigue Score limit of 56 is not exceeded, with a 99.9% probability.<sup>19</sup> Dr. Moore-Ede’s reasoning and conclusions are further described in detail in his expert report, attached to this filing as Exhibit ME-1. Therefore, CRPPA respectfully requests an increase in rates and fees to account for a Pilot complement of up to 150 Pilots, to comply with current operational and fatigue requirements, and to prepare for increased future shipping activity.<sup>20</sup> CRPPA proposes that its rates be increased as Pilots are actually commissioned, so that shippers do not have to pay fees for Pilots yet to be commissioned.

CRPPA also requests that its tariff rates and fees addressed herein be subject to a temporary floor funding for 135 Pilots, once such a Pilot complement is achieved. Once CRPPA achieves a Pilot complement of 135, if CRPPA’s Pilot complement ever drops below 135 Pilots thereafter, CRPPA requests that its tariff rates and fees be allowed to provide funding for 135 Pilots for a two-year period after the Pilot complement drops below this threshold. CRPPA does not anticipate

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<sup>19</sup> Even with a complement of 150 Pilots, an occasional minor excursion above a Fatigue Score of 56 may occur approximately one to two times a year. This is unlikely to present a significant risk as the exponential increase in incident risk climbs slowly above the base line risk level. However, any practices that unevenly distribute vessel assignments across the Pilot complement may increase the probability of excursions above a Fatigue Score of 56.

<sup>20</sup> CRPPA has seen a decrease in its 2020 vessel movements to date due to the ongoing COVID-19 pandemic. However, CRPPA expects that vessel movements will return to their pre-COVID-19 levels. Therefore, CRPPA maintains that using the 2013-2019 data on vessel movements to determine its necessary Pilot complement is just and reasonable, and will allow CRPPA to prepare for future increased shipping activity.

the Pilot complement dropping below 135 Pilots after such a complement is achieved, but CRPPA also recognizes that training and commissioning new Pilots is a time-consuming process. CRPPA will use the two-year grace period to complete this process. CRPPA would make every effort to have new Pilots commissioned in a timely manner to again achieve a Pilot complement of 135 Pilots, and will work toward a total complement of 150 Pilots to maximize safety and efficiency.

While Lower Mississippi River traffic may fluctuate from year-to-year, traffic is generally trending upwards. During the two-year period while new Pilots were being trained, CRPPA's remaining Pilots would need to perform more billable turns to satisfy the demand for their services, and should be compensated for their increased workload. However, CRPPA recognizes that it ultimately has a responsibility to train qualified individuals and have them commissioned as new Pilots in a timely manner to meet demand. Therefore, if CRPPA cannot re-achieve a Pilot complement of 135 Pilots within the two-year period, CRPPA proposes that its tariff rates and fees fund only the actual Pilot complement at any given time, as CRPPA works toward a Pilot complement of 135 Pilots.

As further described in the expert reports of Mr. Brent Dibner and Dr. Shmuel Yahalom, CRPPA is also seeking an increase in its current estimated average annual compensation per Pilot from an actual amount of \$526,958<sup>21</sup> for 2019 to \$697,000. Such an increase complies with the statutory mandate that state-commissioned Pilots receive compensation comparable to other state-

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<sup>21</sup> CRPPA Pilots actually earn net compensation of approximately \$552,448 per Pilot, but must pay an average of \$25,490 from this amount for health insurance coverage, since CRPPA does not directly pay for the Pilots' health insurance. However, other pilotage associations in both Louisiana and the western Gulf of Mexico pay for their pilots' health insurance, such that health insurance expenses are not included in the associations' reported net income per pilot. Therefore, to allow for a more accurate comparison of pilot compensation among pilotage associations, the average health insurance premium cost per Pilot has been removed from CRPPA's reported net income per Pilot.

commissioned pilotage groups in United States ports, and would put CRPPA Pilots' compensation in line with NOBRA pilots' compensation, as contemplated by the *Hayden* Court.<sup>22</sup>

Three pilotage groups currently operate on the Lower Mississippi River: CRPPA, NOBRA, and the Associated Branch Pilots (the "Bar Pilots"). The Louisiana Supreme Court in *Hayden* stated that it was "logical to compare Mississippi River pilots to each other as much as is feasible in determining a fair compensation for the services they provide."<sup>23</sup> CRPPA Pilots are currently the lowest compensated of these three Mississippi River pilotage groups. The average CRPPA Pilot currently earns a net income of \$526,958 annually, while the average NOBRA pilot earns \$696,399 annually, and the average Bar Pilot makes \$548,369 annually. Therefore, the average CRPPA Pilot makes approximately \$74,548 less than the average Lower Mississippi River pilot. CRPPA's compensation should be raised to achieve parity with the other pilotage groups operating on the Lower Mississippi River, as was contemplated by the Louisiana Supreme Court in *Hayden*.<sup>24</sup>

CRPPA Pilots are also among the lowest compensated pilots in the entire western Gulf of Mexico, despite the fact that pilots in other ports throughout the United States often state that the Mississippi River is a more difficult route to navigate.<sup>25</sup> Upon examining pilot compensation of seven different pilot groups operating in comparable ports in the region on a weighted average basis, the average non-CRPPA pilot working in the western Gulf of Mexico has an annual net income of approximately \$650,037. This means that when examining pilots' earnings across the

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<sup>22</sup> See 512 So.2d at 374-75 (holding that the Louisiana Public Service Commission acted reasonably when it set pilotage rates to establish "parity of annual compensation between NOBRA and [CRPPA Pilots]," since "the working conditions of the NOBRA and [CRPPA Pilots are] sufficiently similar that 'relatively little difference in compensation, if any, can be justified.'").

<sup>23</sup> *Id.* at 373.

<sup>24</sup> *Id.* at 373-74.

<sup>25</sup> See, e.g., *id.* at 374-75 (stating that pilots from the ports of Tampa Bay, FL and Gulfport, MS "acknowledged that piloting vessels on the Mississippi River was much more difficult than [piloting vessels in] his respective port.").

entire region, not just those working on the Lower Mississippi River, the average CRPPA Pilot still earns approximately \$123,079 less than his or her peers working in the region. This figure also demonstrates the reasonableness of NOBRA pilots' compensation, as NOBRA's average compensation is reasonably consistent with other comparable pilot groups in the western Gulf of Mexico.

These figures demonstrate that CRPPA Pilots are undercompensated when compared to their peers working both on the Lower Mississippi River, and in the western Gulf of Mexico as a whole. An increase in the current estimated average annual compensation for CRPPA's Pilots is both appropriate by law, and necessary to retain and recruit talented Pilots. CRPPA is proposing that its average annual estimated compensation per Pilot be increased to \$697,000. Such an increase in compensation would allow CRPPA's Pilots to achieve compensation parity with NOBRA's pilots, as has been previously contemplated by the Louisiana Supreme Court, all while servicing more vessels, performing more vessel movements, and doing so at a lower cost per mile than NOBRA.<sup>26</sup>

The *Hayden* Court also considered that the rate-setting order "proportionately compensated [CRPPA Pilots] for the additional [work] performed by them in its calculation to establish parity" between CRPPA and NOBRA pilots.<sup>27</sup> The *Hayden* Court recognized that "a turn is a unit of measure of pilotage service performed."<sup>28</sup> Ultimately, the *Hayden* Court determined that it was not an "unreasonable approach" to "proportionately compensate[]" CRPPA Pilots for the additional work they perform in comparison to NOBRA pilots.<sup>29</sup>

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 374.

<sup>28</sup> *Id.* at 374 n.6.

<sup>29</sup> *Id.* at 374.

In 2019, NOBRA reported that its 119 pilots earned an average net income of approximately \$696,399 per pilot. NOBRA's 2019 annual report also stated that its 119 pilots had completed 13,001 billable turns that year, meaning that the average NOBRA pilot completed approximately 109.25 billable turns. In comparison, the average CRPPA Pilot completed approximately 133.5 billable turns in 2019. Despite the fact that the average CRPPA Pilot completed approximately twenty-four (24) more billable turns than the average NOBRA pilot, the average CRPPA Pilot earned approximately \$169,441 less than the average NOBRA pilot – a 24% difference. If CRPPA Pilots were compensated at the same rate per billable turn completed as NOBRA pilots, CRPPA Pilots would each earn an average annual income of approximately \$850,977. Although CRPPA is not requesting that CRPPA Pilots' average annual income be increased to \$850,977, CRPPA maintains that this exercise shows that compensation parity with NOBRA's pilots is just and reasonable.

Because CRPPA's Pilots perform more billable turns on average than NOBRA's pilots, it is appropriate for CRPPA's Pilots to be "proportionately compensated" for performing this additional work, as the *Hayden* Court recognized.<sup>30</sup> As CRPPA works toward increasing the Pilot complement to 150 Pilots, the difference in work load between CRPPA and NOBRA will decrease. Thus, CRPPA is not requesting that its estimated average annual compensation per Pilot be increased above \$697,000. CRPPA's requested increase in annual estimated compensation would align with the Louisiana Supreme Court's recognition in *Hayden* that "the working conditions of the NOBRA and [CRPPA Pilots are] sufficiently similar [such] that 'relatively little difference in compensation, if any, can be justified.'"<sup>31</sup>

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<sup>30</sup> *See id.*

<sup>31</sup> *Id.* at 373. In considering the "working conditions" of the pilotage groups, the Louisiana Public Service Commission had examined the "average number of turns per pilot" as part of its analysis. *See id.* at 374 n.7.

Furthermore, NOBRA pilots' compensation is reasonable when compared to the weighted average compensation of pilots working in the western Gulf of Mexico. On a weighted average basis, the average non-CRPPA pilot working on the western Gulf of Mexico earns approximately \$650,037 each year, and some western Gulf of Mexico pilots make as much as \$778,051 each year.<sup>32</sup> The average NOBRA pilot earns an annual compensation of \$696,399. NOBRA pilots' pay is reasonable when compared to peer pilot groups in its region. Based upon the foregoing, both NOBRA pilots' average compensation and CRPPA's requested estimated compensation level compares favorably to the average net incomes of pilots working in the western Gulf of Mexico as a whole. CRPPA maintains that due to both the volume of its pilotage services rendered and the Pilots' productivity, CRPPA's requested estimated compensation level should be granted.

As demonstrated in Concentric Energy Advisors' ("Concentric") sworn report, should the LPFC grant CRPPA's request for increased compensation, CRPPA's tariff will still result in a cost per mile comparable to CRPPA's relevant peer pilotage organizations.<sup>33</sup> Each pilotage group in the Concentric report provides services to a variety of vessels within their respective service territories, and the pilot groups' tariffs vary based on the vessel being navigated. Pilot tariffs are complex, multi-component pricing mechanisms. The pilot tariff structures differ between pilot organizations and reflect both local circumstances and pricing philosophy. Differences in tariff design and pricing elements make direct tariff comparison between pilot organizations difficult. Therefore, Concentric's report uses a typical bill approach, which compares the pilot fees charged by each pilot association based upon its posted tariffs for specific vessel types and under the most

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<sup>32</sup> This weighted average figure does not include CRPPA Pilots' compensation, but takes into account the seven pilotage organizations in CRPPA's peer group.

<sup>33</sup> The Concentric report considered a number of different factors when determining CRPPA's peer group, including geography, labor practices, port size, operational workload, and industries served. Ultimately, Concentric determined that CRPPA's peer group for comparing tariffs should include NOBRA, Houston Pilots, Sabine River Pilots, Aransas-Corpus Christi Pilots, Lake Charles Pilots, and Galveston-Texas City Pilots.



basic conditions considered appropriate. Concentric then divided the resulting total tariffs by the average mileage traveled for each vessel type for each pilotage association, thereby yielding an average pilot charge per mile. Concentric concluded that CRPPA's per-mile tariff fees range from 22.8% to 78.5% lower than the per-mile tariff fees of the other pilot associations in CRPPA's peer group. Moreover, CRPPA's cost per-mile is, on average, only 29.8% of the highest per-mile charge for the analyzed vessel types.<sup>34</sup> Therefore, an increase to CRPPA's service tariffs would be appropriate, especially when compared to the service tariffs of CRPPA's peer groups.

As explained in the expert report of Dr. Shmuel Yahalom, CRPPA is also seeking a permanent, annual COLA to its estimated average annual compensation. A COLA is a simple, monetary correction to a tariff due to inflation, which deteriorates the value of currency over time. A COLA is commonly pegged to a general index, such as the Consumer Price Index (sometimes referred to as "CPI"), and increases the underlying wage or salary so that its real value remains the same by keeping pace with, but not running ahead of, inflation. COLA mechanisms are also beneficial to pilots, industry members, and the LPFC, since such mechanisms (i) prevent the annual erosion of pilot estimated compensation, (ii) help to eliminate rate "spiking" upon the conclusion of a rate case, (iii) result in administrative efficiencies by dynamically adjusting estimated compensation levels thereby lessening the need for full rate cases, and (iv) lower both tariffs and pilot incomes in deflationary periods, thereby reducing industry expenses in poor economic times.

State pilots' operations and tariffs are a regulated industry. Pilotage tariffs are regulated and approved by a regulatory body; here, the LPFC. The erosion of the value of currency by inflation, as measured by CPI, is across the board. All facets of the economy are affected equally, including pilotage tariffs. To neutralize the negative effect of inflation on tariffs, tariffs should be

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<sup>34</sup> For example, if the highest per-mile charge for "Vessel A" in the western Gulf of Mexico was \$100 per-mile, then CRPPA's charge would be \$29.80 per mile, on average.

adjusted for inflation via a COLA mechanism and, therefore, brought back to par with the pre-inflation tariff purchasing power.

A permanent COLA mechanism would only adjust CRPPA's tariff to correct for the negative effects of inflation. A permanent COLA mechanism would not address increased performance, hardship, risks, technological changes, or any other issues, which would be addressed in other proceedings before the LPFC. Rather, a COLA mechanism would only keep the annual tariff rates and fees addressed herein at a constant purchasing power equal to the prior year's rate, and would not provide new or additional benefits to CRPPA and the Pilots. Indeed, a COLA mechanism could actually lower both tariffs and Pilot incomes in deflationary periods, thereby reducing industry expenses in poor economic times.

CRPPA had a COLA mechanism in effect; however, its COLA mechanism expired on December 31, 2019. CRPPA now respectfully requests that its COLA mechanism be permanently implemented. Doing so would allow CRPPA to avoid frequent and expensive proceedings before the LPFC, allow for a dynamic adjustment of CRPPA Pilots' estimated compensation, and would eliminate inflation's erosion of this figure over time. Given that CRPPA's requested estimated compensation reflects the value of its services, it should be automatically corrected for inflation annually and become a permanent, annual part of CRPPA's rate setting, as is further described in Dr. Yahalom's expert report. Therefore, CRPPA is requesting that a permanent COLA mechanism be applied to the new estimated income per Pilot for the previous calendar year, such that CRPPA's rates and fees are adjusted annually by applying the three (3) year rolling average of the CPI for the South region for the three (3) most recently available calendar years, beginning on January 1, 2021, and on each September 1 thereafter.<sup>35</sup>

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<sup>35</sup> The United States Bureau of Labor Statistics defines the South region of the United States as Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina,

Third-parties have previously argued that CRPPA Pilots are earning above CRPPA's on-file, estimated compensation as determined in its last rate proceeding, thereby making a rate adjustment for additional Pilots unnecessary. Pilotage tariffs provide pilots with the *opportunity* to earn the approved estimated compensation, or earn an amount exceeding the estimated compensation should the actual amount of work outstrip the estimates used in setting the tariff. By the same logic, pilots may well earn less than their estimated compensation pursuant to the same just and reasonable rates and tariffs if traffic declines. Here, CRPPA's estimated compensation in its last rate case was set assuming a certain level of demand for CRPPA's services and a certain level of job complexity. However, regardless of the volume of pilotage services provided, all vessels are charged the prescribed rates established by the LPFC.

CRPPA's current estimated compensation level was determined at a time when both traffic on the Lower Mississippi River and the demand for CRPPA's services were significantly lower, based on the scope of work that existed at the time. Since CRPPA's last rate proceeding, there has been a significant increase in CRPPA Pilots' activity, which generally reflects the economic environment, since Pilot activity ebbs and flows with trade and waterborne commerce. Consequently, CRPPA's average actual compensation has risen over the years, based on an increased amount of work. Likewise, the various industries that use CRPPA's services have also had increased incomes due to both the region's economic development, and the services rendered by CRPPA Pilots. Because CRPPA's rates were fairly set in the last rate case, based on the then-likely scope of work, it is entirely reasonable that the Pilots are achieving more compensation for more work. As CRPPA's workload continues to outpace the assumed workload in its last rate case, and as additional Pilots are commissioned, rates should be adjusted to allow for the

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Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia. See <https://www.bls.gov/cpi/regional-resources.htm>.

continuation of CRPPA's current levels of compensation per Pilot. If traffic on the river declines, CRPPA's actual compensation would likewise decrease proportionally as a result of providing less service. The mere fact that CRPPA Pilots are currently exceeding the estimated compensation determined in the last rate proceeding, which was based on a lower estimation of the demand for CRPPA's services (based on real, historical data available to the LPFC at the time), should not bar CRPPA Pilots from earning more income for completing more work.

The Louisiana Supreme Court has recognized that the primary purpose of the ratemaking process "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 . . . giving due regard to the length, draft and tonnage of the vessels to be piloted, the difficulty and inconvenience of the particular service and the skill required to render it, [and] the supply and demand for pilotage services."<sup>36</sup> Because ratemaking is a forward-looking exercise, tariffs calculated by ratemaking bodies are by necessity based on a certain amount of modeling and estimation.<sup>37</sup>

The underlying rationale for the need and appropriateness of these proposed adjustments in authorized Pilots and the annual tariff rates and fees addressed herein is presented in the pre-filed testimony and expert reports of the following: (i) Captain E. Michael Bopp, President of CRPPA; (ii) Mr. Mark L. Nelson, CPA, Chief Financial Officer of CRPPA; (iii) Mr. Brent Dibner of Dibner Maritime Associates; (iv) Dr. Martin Moore-Ede, M.D., Ph.D., of Circadian Expert Services; (v) Dr. Shmuel Yahalom, Ph.D., of SY&CG Port & Maritime Consultants; and (vi) Concentric Energy Advisors. The pre-filed testimony of Captain Bopp and Mr. Nelson, as well as

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<sup>36</sup> *Giallanza v. Gardner*, 412 So.2d 1369, 1373 (La. 1982).

<sup>37</sup> *See id.* (recognizing that "a rate order establishing a pilot fee schedule" should take into account "the pilots' estimated revenues, expenses, investments and average earnings for future years.").

the expert reports of Mr. Dibner, Dr. Moore-Ede, Dr. Yahalom, and Concentric Energy Advisors, are attached hereto as part of CRPPA's case-in-chief.

Captain E. Michael Bopp's testimony gives a general overview of CRPPA's requests in this proceeding and provides the underlying basis and support for those requests. Mr. Mark Nelson's testimony provides a summary of CRPPA's financial information and metrics that support CRPPA's requests in this proceeding. Mr. Nelson also provides proposed new tariffs implementing CRPPA's requests herein.

Mr. Brent Dibner has over 25 years of experience consulting the global maritime industry, and has examined pilot compensation in a variety of ports and locales. Mr. Dibner's report examines pilot group operations throughout the western Gulf of Mexico and the compensation levels of those same groups. Mr. Dibner's report shows that, despite the central role that CRPPA Pilots play in the health, safety, and success of so many, on average they are the lowest compensated pilots working on the Lower Mississippi River, and among the lowest compensated pilots working in the entire western Gulf of Mexico. Mr. Dibner's report concludes by supporting CRPPA's request for increased compensation.

Dr. Martin Moore-Ede, M.D., Ph.D., has over 30 years of experience and is an internationally-recognized leader in the fields of human alertness and sleep physiology, and how to apply this science to management practices which reduce the risks, costs, and liabilities of employees in extended hours operations. Dr. Moore-Ede's report analyzes the number of fully-qualified marine Pilots required to meet the around-the-clock demand for CRPPA's services without creating an unacceptable risk of pilot fatigue or service failure. Dr. Moore-Ede and his team of specialists used seven (7) years of historical data of CRPPA vessel movements and a scientifically-validated transportation operation fatigue risk model to determine the minimum Pilot

complement necessary to reduce the risk of pilot fatigue to acceptable levels in current CRPPA operations, while still maintaining operational efficiency. Ultimately, Dr. Moore-Ede's report determines that 150 Pilots is the minimum Pilot complement necessary to serve the fluctuating vessel traffic in CRPPA's service area without incurring significant fatigue risk.

Dr. Shmuel Yahalom earned his Ph.D. in economics and specializes in the economics and finance of ports and terminals, maritime transportation, and ocean shipping. Dr. Yahalom's report is divided into two parts – Part I discusses the importance of pilotage on the Mississippi River and specifically the value added by CRPPA and the Pilots, while Part II discusses and supports CRPPA's request for a permanent COLA mechanism. Dr. Yahalom's report conducts an economic analysis to determine the impact of a wide variety of issues on CRPPA's workload and compensation. Dr. Yahalom's report concludes that CRPPA's request for increased compensation in this rate case is reasonable, and that CRPPA's request for a permanent COLA mechanism is both fair to CRPPA and beneficial to the LPFC and the industries CRPPA serves.

Lastly, Concentric Energy Advisors is a consulting and advisory firm which has expertise in tariff design and rate setting. Concentric prepared a study quantifying and comparing CRPPA's cost per mile for pilotage services to its peer pilot associations. Concentric's report compares the rates and fees charged by each relevant pilot association based upon their posted tariffs for specific vessel types and under the most basic conditions considered appropriate. Concentric then divided the resulting total tariffs by the average mileage traveled for each vessel type for each association, thereby yielding an average pilot charge per mile. Concentric's report shows that CRPPA's average charge per mile ranges from 22.8% to 78.5% lower than the average of the other pilot associations in the peer group. Moreover, CRPPA's cost per-mile is, on average, only 29.8% of the highest per-mile charge for the analyzed vessel types. Therefore, CRPPA's requested increase

in the annual tariff rates and fees addressed herein is appropriate and would be fair to the industries that CRPPA serves.

#### **IV. CONCLUSION**

CRPPA Pilots are responsible for the safe navigation of billions of dollars' worth of goods in vessels that continue to increase in size, thereby increasing CRPPA Pilots' job difficulty. Furthermore, CRPPA Pilots are charged with protecting those traveling the route, the Louisiana environment, and the economy. Therefore, CRPPA Pilots play a crucial role in the economic success of not only the State, but also countless industries, both regionally and nationally. The reliability and availability of safe and efficient Pilot service is paramount in establishing and maintaining the reputation of the Mississippi River port complex as a viable place to invest and do business in international trade.

Given the importance of CRPPA Pilots' daily duties, it is critical that each Pilot is well-rested and alert so that each may safely and successfully complete their tasks. Currently, CRPPA is understaffed. CRPPA, as an agent for those Pilots whom are its shareholders, last received authorization for additional Pilots in 2015, when its maximum funded Pilot complement was authorized to be 122 Pilots. However, expert analysis has shown that CRPPA needs a Pilot complement of 150 funded Pilots to safely handle its workload. Therefore, CRPPA is requesting that it be authorized to have a Pilot complement of up to 150 Pilots to meet current operational and fatigue requirements.

CRPPA is also requesting authority to increase the annual tariff rates and fees addressed herein to fund the approved and increased Pilot complement, including fair average annual compensation per Pilot. Currently, CRPPA's per-mile tariff fees range from 22.8% to 78.5% lower than those of the other pilot associations in CRPPA's peer group. Moreover, CRPPA's cost per-

mile is, on average, only 29.8% of the highest per-mile charge for the analyzed vessel types. An increase to CRPPA's service tariffs would be appropriate, especially when compared to the tariffs of CRPPA's peer associations. Because the current annual tariff rates and fees addressed herein are so much lower than CRPPA's peers in the region, an increase in the annual tariff rates and fees addressed herein should not come as a shock to its ratepayers, and will merely put the rates in line with CRPPA's peers' rates relative to the services provided.

CRPPA requests that its tariff rates and fees addressed herein be subject to a temporary floor funding 135 Pilots, once such a Pilot complement is achieved. If CRPPA's Pilot complement drops below 135 Pilots, CRPPA requests that its tariff rates and fees be authorized to fund 135 Pilots for a two-year period after its Pilot complement drops below this threshold. Should CRPPA be unable to re-achieve a Pilot complement of 135 Pilots within this two-year period, CRPPA proposes that its tariff rates and fees addressed herein fund only CRPPA's actual Pilot complement at any given time.

CRPPA also seeks an increase in its current estimated average annual compensation per Pilot from an actual amount of \$526,958 for 2019 to \$697,000. Such an increase would comply with Louisiana's statutory mandate that state-commissioned pilots receive compensation comparable to other state-commissioned pilotage groups in United States ports, and would also put CRPPA Pilots' compensation in line with the compensation of other pilotage groups operating on the Lower Mississippi River – most importantly, NOBRA.<sup>38</sup> CRPPA Pilots are currently under-compensated when compared to their peers working both on the Lower Mississippi River, and in the western Gulf of Mexico, generally. The average CRPPA Pilot makes approximately \$74,548 less than the average Lower Mississippi River pilot, and approximately \$90,190 less than the

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<sup>38</sup> See *Hayden*, 512 So.2d at 374.



average pilot working in the western Gulf of Mexico. Granting CRPPA's requested compensation would eliminate the compensation gap, while also allowing CRPPA Pilots to achieve compensation parity with NOBRA pilots (currently earning approximately \$696,399 per pilot), which the Louisiana Supreme Court has held is proper due to the "similarity in the working conditions" of these two organizations.<sup>39</sup>

Lastly, CRPPA is requesting that a permanent, annual COLA mechanism be applied to its estimated average annual compensation to counteract the impacts of inflation. Implementing such a mechanism would benefit not only CRPPA and the Pilots, but also industry members and the LPFC, since such a mechanism would prevent the annual erosion of pilot estimated compensation, and result in administrative efficiencies by dynamically adjusting estimated compensation levels, thereby lessening the need for full rate cases. Importantly, a permanent COLA mechanism would only keep the annual tariff rates and fees addressed herein at a constant purchasing power equal to the prior year's rate, and would not provide new or additional benefits to CRPPA and the Pilots. CRPPA previously had a COLA mechanism in effect, but it expired on December 31, 2019. CRPPA now respectfully requests that a permanent COLA mechanism be implemented.

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<sup>39</sup> *Hayden*, 512 So.2d at 374.

## **V. PRAYER**

For all of the above reasons, as supported by the pre-filed testimony submitted herewith, Petitioner, the Crescent River Port Pilots' Association, Inc., respectfully prays that the LPFC:

1. Authorize an increase in the Pilot complement from 122 to 150 Pilots, to be included in rates as the Pilots are commissioned;
2. Authorize an increase in the annual tariff rates and fees addressed herein to recover all costs and expenses required to fund the approved and increased Pilot complement, including increased compensation per Pilot, in parity with other state ship pilotage groups in other United States ports;
3. Authorize an upward adjustment in the estimated average annual compensation per Pilot to \$697,000, consistent with the standards specified in La. R.S. § 34:1122;
4. Authorize a permanent, annual cost of living adjustment ("COLA") based on the three-year rolling average of the Consumer Price Index ("CPI") for the three most recently available calendar years for the South region of the United States to CRPPA's estimated average annual compensation; and
5. That all other decisions and orders of the Commission applicable to CRPPA, including LPFC Order P07-001, remain in full force and effect.

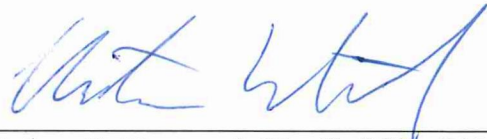
## **VI. DESIGNATION OF A CONTACT PERSON**

In compliance with Section 12302 F.1. of the LPFC's Rules of Practice and Procedure, Petitioner designates the following contact person in conjunction with the filing of this Request for Action:

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Respectfully Submitted,

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