

BOARD OF PILOT COMMISSIONERS OF BRAZORIA COUNTY PORTS

PUBLIC HEARING
June 28, 2017

PUBLIC HEARING before the Board of Pilot Commissioners of Brazoria County Ports was taken on the 28th day of June, 2017, from 1:07 p.m. to 7:47 p.m., before Stacey Whitley, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at Port Freeport, Administration Building, 1100 Cherry Street, Freeport, Texas.

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EXHIBITS

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1 (Exhibits A and B marked)
2 CHAIRMAN KRESTA: Okay. We'll reconvene in
3 open session to review and consider the following. Good
4 afternoon, ladies and gentlemen. It's 1:07. This pilot rate
5 increase request hearing is called to order. I ask for each
6 of the parties to make their appearances. The matters to be
7 heard at the Brazos Pilot Association request are three rate
8 increases. First, a request for 3 percent upward adjustment
9 in pilotage fees across the board for the next three years.
10 Second, a 200-dollar per vessel movement line item for the
11 purchase of two new pilot boats. Third, a 300-dollar per
12 vessel movement line item surcharge for the establishment and
13 maintenance of a dispatch service.
14 The procedures included as Exhibit H of the
15 pilot rules and procedures adopted by the Pilot Board June 8,
16 2017 will apply to this public hearing to ensure that all
17 participants will have a fair opportunity to present to the
18 Pilot Board their respective positions on the rate
19 application pending before the Pilot Board, along with the
20 supporting materials, testimony, and/or evidence and to
21 ensure that the rate hearing will proceed in an orderly and
22 expeditious manner consistent with due process, applicable
23 law and with a public interest.
24 I note that no objections have been filed to
25 the exhibits supplied by the parties. Is there anything else

1 prior to today; and, therefore, they are absolutely untimely.
2 CHAIRMAN KRESTA: Those were distributed
3 earlier, by the 21st.
4 MR. MOORE: They were not to us, sir.
5 CHAIRMAN KRESTA: These are supplementals, I
6 believe, you're talking about.
7 MR. MOORE: Right. I'm objecting to anything
8 supplemental that is dated after June 21st because pursuant
9 to the procedural rules adopted by the Board, Item 13, all
10 exhibits were to be exchanged by the parties on June 21st,
11 2017. Those particular attachments to that exhibit were not
12 exchanged or provided to us until this morning and we object
13 under Rule 13 and timeliness issues.
14 Do you want me to go through all of them or do
15 we want to --
16 MS. SAATHOFF: Can I make --
17 CHAIRMAN KRESTA: Phyllis, will you talk.
18 MS. SAATHOFF: I may be referencing the wrong
19 section. Five was the original exhibits that were submitted
20 by the objecting party -- Exhibit 5 is the original exhibits
21 that were presented by the objecting party, by Dole. The
22 additional information would be behind Tab 8.
23 MR. MOORE: Well, here's what I have -- I
24 don't have a copy -- wasn't provided a copy of your actual
25 bound documents. But I can tell you what Exhibit 5 to the

1 either party wishes to raise at this time?
2 MR. MOORE: We have certain objections,
3 Mr. Chairman, to the -- what will, as I understand it, be
4 proffered by the Port.
5 CHAIRMAN KRESTA: And, therefore, submit all
6 the exhibits into evidence that you have objections to.
7 MR. MOORE: Let's see. With regard to those
8 proffered by the Port, I will point out that we just received
9 these this morning.
10 CHAIRMAN KRESTA: Tell me who you are and tell
11 me who you represent.
12 MR. MOORE: Randy Moore on behalf applicant,
13 Brazos Pilots Association.
14 With regard to Exhibit B being proffered by
15 Port Freeport staff, which as I said earlier, the Brazos
16 Pilots Association just received this morning, I have
17 objections to certain attachments to Exhibit B-5, which is
18 entitled "Submissions of Dole Fresh Fruit." Attached to
19 Exhibit B-5 are some financial records. One appears to be
20 some financial records of operating revenues and operating
21 expenses of Port Freeport. The second appears to be some
22 recitation of income and expenses of Brazos Pilots
23 Association and projections regarding incoming expenses
24 regarding the pilot station and pilot boat. I object to
25 those because we were never provided with copies of those

1 binder that we received from the Port this morning contains
2 an E-mail which, I believe, is the original submission of
3 Sarah Marsh on behalf of Dole and some E-mail correspondence
4 with you as representative of the Port. And then attached to
5 that are Items 1, 2, 3, and 4, which is that financial
6 information which we've never received or seen until this
7 morning. I don't object to the E-mail. I object to the
8 attached items.
9 MS. SAATHOFF: Go ahead and hear his other
10 objections.
11 CHAIRMAN KRESTA: Hear the rest of them.
12 MR. MOORE: Yes, sir. With regard to
13 exhibit -- proffered Exhibit B-7, which consists of a letter
14 from Phyllis Saathoff, executive director/CEO of Port
15 Freeport, to -- I guess, this is amplifying information,
16 requested questions. The issue with regard to that request
17 for additional information is the fact that West Gulf
18 Maritime Association is an objecting party. Of course, their
19 legitimacy has not been determined as yet. But Port Freeport
20 is a member of West Gulf Maritime Association and to the
21 extent that any of the information contained within Exhibit 7
22 is an objection or could be characterized as an objection to
23 the application, Brazos Pilots Association would object.
24 Secondly, all information was to be exchanged
25 by June 21st. That would include Port Freeport and any

1 exhibits by Port Freeport. It's untimely because the letter
2 itself is dated June 23rd.

3 We also object to Item B-8, additional
4 information, Dole. That consists of a letter dated June 23,
5 2017 to a Mr. Jared Gale, Dole general counsel, from Phyllis
6 Saathoff as executive director/CEO of Port Freeport.
7 Attached to that is a document that is not on letterhead and
8 that is unsigned, unauthenticated and, therefore, constitutes
9 hearsay. And we also object to the letter from Ms. Saathoff
10 on June 23rd because it is untimely. And it is -- it's
11 prejudicial because it improperly solicits additional
12 evidence from Dole which had already, in a timely manner,
13 submitted its sole objection. And that is found at
14 submission -- or B-5, which contains their written objection
15 via E-mail and their witness list naming one witness, Sarah
16 Marsh.

17 With regard to proffered Exhibit B-9, that
18 consists of another letter from Phyllis Saathoff as executive
19 director/CEO of Port Freeport dated June 23, 2017 to Shareen
20 Larmond and Nathan Wesely of West Gulf Maritime Association
21 soliciting their input on the rate application. West Gulf
22 Maritime had also previously submitted a timely objection and
23 they have to stand on that objection. They attached a brief
24 in opposition and I believe some other exhibits including
25 Texas Port Strategic Mission Plan from the 85th legislative

1 West Gulf Maritime Association. And number two, the
2 information contained in Exhibit B-10 was not timely
3 submitted to Brazos Pilots Association. We received that
4 information yesterday, which was not by June 21st.

5 With regard to proffered Exhibit B-12, which I
6 am just seeing for the very first time today, it purports to
7 be a line item charge of some sort for establishing vessel
8 dispatch service. There is a notation on the list that there
9 is a Subsection A. I don't have a Subsection A. I only have
10 a two-page document. But I object to it as being untimely
11 and not exchanged on or before June 21st in accordance with
12 the provisions of the rules and procedures, specifically
13 Paragraph 13. Also, I'm unclear -- or it is unclear as to
14 who -- as to who provided this information and what the
15 information is for. And, therefore, it's objectionable. It
16 is hearsay at this point and it is unauthenticated. Quite
17 frankly, I can't tell whose exhibit it is, where it's from,
18 what it's supposed to do.

19 And finally, with regard to proffered
20 Exhibit B, we object to Exhibit 13, which is a redacted
21 response from the Port of Houston Authority to Phyllis
22 Saathoff, CEO of Port Freeport's public information request
23 dated June 14, 2016 because it is irrelevant and it is
24 useless as any numbers that might be used as a comparator in
25 some form or fashion in this proceeding, they've all been

1 session.

2 We object again that was not timely submitted.
3 It wasn't submitted in accordance with the requirements of
4 the procedural rules, specifically Rule 13, which required
5 that that be submitted as an exhibit by June 21st, 2017.

6 Secondly, we object to the solicitation of the
7 responses both to Exhibits B-8 and B-9 by Port Freeport
8 because the solicitation is untimely, number one, and number
9 two, we object to the extent that Port Freeport may have the
10 appearance of taking a position in this particular
11 application because we need to determine, quite frankly,
12 whether they, as a member of West Gulf Maritime Association,
13 are one of the members that West Gulf represents that it is
14 representing in connection with their objection to the
15 application. And it is clear that Port Freeport is a member
16 of West Gulf Maritime Association.

17 With regard to Exhibit B-10, we object to that
18 revenue analysis for the exact same reasons. We don't know
19 what Port Freeport's position is in this dispute or in this
20 rate application because they are a member of West Gulf
21 Maritime Association. Port Freeport is not a member of the
22 Pilot Board. And, quite frankly, we're unclear as to the
23 authority of Ms. Saathoff as the executive director for Port
24 Freeport or for Port Freeport to have any input with regard
25 to the rate application, given their standing as a member of

1 completely redacted. Therefore, it is of no benefit at all
2 to the Board, to the Association, or to anyone who may be
3 found to have a legitimate interest in lodging an objection
4 to the rate application.

5 And all of this is subject to the previous
6 objections that Brazos Pilots Association had filed in this
7 cause, including the objection to the -- any attempt to
8 delegate responsibility or authority to Judge Gayle. The
9 objection that was filed yesterday to all of the
10 correspondence from Port Freeport staff and specifically
11 those that I've mentioned that involve Ms. Saathoff on behalf
12 of Port Freeport simply because Ms. Saathoff has no vote,
13 Ms. Saathoff is not part of the Board of Pilot Commissioners
14 and it is improper for her to participate as a member or
15 quasi member of the board and to aid them in making any
16 decision because she's not an elected official. And it's an
17 improper delegation of private -- or private delegation of
18 authority. Lastly, it will be subject to an objection as to
19 standing that we'll be filing when this -- the evidence
20 actually commences.

21 CHAIRMAN KRESTA: I'll note that Mr. Moore has
22 filed objection to my delegation of authority to Judge Gayle
23 to rule on the objections. This objection -- and as
24 presiding officer, I'll receive all objections. Mr. Gayle,
25 I'll ask for your advice on some of this.

1 JUDGE GAYLE: On his objections?
2 CHAIRMAN KRESTA: Yes.
3 JUDGE GAYLE: Give me the exhibit numbers
4 again, Randy.
5 MR. MOORE: Yes, sir. Exhibit 5, there's a
6 subexhibit. I believe it is Subexhibit C, which is the
7 financial information. It is Exhibit 7 in toto, Exhibit 8 in
8 toto, Exhibit 9 in toto, Exhibit 10 in toto, Exhibit 12 in
9 toto, and Exhibit 13. And I'm sorry. I also circled
10 Exhibit 11-E, which is a pilot boat ownership analysis. We
11 object to that as well as being irrelevant to the application
12 and untimely.
13 JUDGE GAYLE: My recommendation is you
14 overrule them because we're going by a reasonable man
15 standard. Some of these were raised that they were not
16 timely. They were supplemental information, which couldn't
17 be submitted, specifically the E-mails were dated after the
18 deadline. So, there's no way they could have been timely
19 made.
20 Regarding the hearsay, all the exhibits here
21 are hearsay today. There's not -- this is not a court of
22 law. This is a procedure and under the reasonable man
23 standard, the determination for considering evidence is what
24 a reasonable person would consider to be credible and this
25 Board can consider the credibility of all of this information

1 and disregard any of it they choose if they think it's not
2 based on reliability or they can consider all of it and take
3 it to the bank the way they want. So, for those reasons, I
4 would go ahead and allow the documents to be admitted into
5 evidence and overrule the objection.
6 CHAIRMAN KRESTA: Okay. I am in receipt of
7 the pilots' objection and Freeport staff members in the pilot
8 rate hearing. I have reviewed the objection and asked Judge
9 Gayle to do it. And Judge Gayle has recommended we will
10 overrule it. I'll adopt Judge Gayle's recommendation.
11 MR. MOORE: And --
12 CHAIRMAN KRESTA: The next thing is we'll look
13 at --
14 MR. MOORE: One other -- Mr. Chairman.
15 CHAIRMAN KRESTA: I didn't ask you anything
16 else.
17 MR. MOORE: Earlier you did. You asked for
18 announcements of the parties and none of the parties have
19 been announced.
20 CHAIRMAN KRESTA: I was fixing to get to that.
21 If you're talking about Dole and MSC -- is that what you're
22 talking about?
23 MR. MOORE: No, sir. I'm just talking about
24 you had said at the beginning that you would ask all the
25 parties to announce who they are and who they represent and

1 what they're doing here.
2 CHAIRMAN KRESTA: Yes, when they come to the
3 podium.
4 MR. MOORE: Thank you, sir.
5 CHAIRMAN KRESTA: We'll speak one at a time.
6 Identify yourselves when you come to the podium when you need
7 to be presenting your case. Also, to address it, it's my
8 decision that both Dole and MSC possess a legitimate interest
9 as objecting parties and they may participate in this
10 hearing. I understand that WGMA has amended its submission
11 to note its intention to represent MSC at the hearing. I ask
12 Judge Gayle for his advice on whether WGMA possesses a
13 legitimate interest and should be permitted to participate as
14 an objecting party. Mr. Gayle, I would like your advice on
15 that one.
16 MR. CREW: Excuse me, Mr. Chairman, Members of
17 the Board, if I may be heard.
18 CHAIRMAN KRESTA: State your name, sir.
19 MR. CREW: My name is Paxton Crew. I'm here
20 on behalf of the Brazos Pilots.
21 CHAIRMAN KRESTA: Okay.
22 MR. CREW: I would like to address the
23 standing issue and I have a brief memorandum for the Board
24 and for the court reporter, Mr. Letourneau, and Judge Gayle
25 on this issue.

1 CHAIRMAN KRESTA: Which issue is this?
2 MR. CREW: This issue is on the standing of
3 the Dole, MSC, and WGMA.
4 CHAIRMAN KRESTA: Okay.
5 MR. CREW: There has been motions filed by
6 WGMA expressing that they have a legitimate interest in the
7 outcome of this case. One of the primary problems that we
8 have with WGMA's participation on association standing ground
9 is that there are a number of entities who are members of
10 WGMA who actually support this rate application. We don't
11 know who actually decides MSC participates. If they want --
12 if MSC wants WGMA to represent them and assist them, that's
13 fine so long as it is limited solely to their representation
14 to this Board that they only are acting on behalf of MSC and
15 not the whole gamut of every WGMA member, including Port
16 Freeport.
17 As Mr. Moore pointed out earlier, there is a
18 potential specter of a conflict of interest with the Port of
19 Freeport. If the Port of Freeport is a member of WGMA and
20 they've authorized WGMA to object in this case, then the
21 problem is they have two tenants, Dole and MSC. They have a
22 pecuniary interest in keeping those tenants happy. We all
23 know that. And so, insofar as this Board as a pilot board is
24 concerned, not as the port board but the pilot board, that
25 that creates a conflict of interest when this board's wearing

1 their pilot commissioner hat. So, we would like a
2 declaration that the Port of Freeport is not one of the
3 objecting parties and that MSC is really the only party that
4 has authorized WGMA to act on their behalf.
5 Secondarily, to echo what Mr. Moore stated,
6 the rules that were promulgated by this Board circulated for
7 everyone to consider, it's Exhibit H, Paragraph 13, says
8 quite clearly -- and this is a procedural rule that applies
9 to everybody -- the parties shall not be permitted to use
10 during the rate hearing any demonstrative materials that are
11 not timely filed. So, that also includes issues that go to
12 standing in this case. There has not been one exhibit
13 entered by any of these parties to show that they actually
14 pay pilotage in Brazoria County.
15 West Gulf represents a variety of shippers,
16 mostly stevedores up in the Port of Houston but shipping
17 entities, many of which do not even call on the Port of
18 Freeport. We've identified the ones that we think do,
19 including MSC. And MSC has stated that they think that this
20 is going to be a 27 percent increase. Again, if it's MSC and
21 they're found to have legitimacy, no problem. But we want it
22 narrowly tailored to WGMA's representation only extending to
23 that one member, not everyone else. Because they don't have
24 a legitimate interest unless they've shown some sort of
25 economic harm, that they're going to default if this Board

1 them are named, all of them had to write -- come before this
2 Court. So, my ruling would be that this panel can consider
3 only MSG's (sic) interest --
4 CHAIRMAN KRESTA: MSC.
5 JUDGE GAYLE: -- MSC's interest and that they
6 do have standing on themselves but not for the non-named
7 parties that they represent. And when this Board considers
8 this information, they can't consider any of the information
9 submitted by MSG (sic) that takes into account the
10 information going into their calculations from the other
11 parties.
12 In other words, use the reasonable man
13 standard. We've got a lot of hearsay here from MSG (sic)
14 saying that these other parties are opposed to this but we
15 don't have any of the other parties that have filed anything,
16 established anything they are opposed to this. This is a
17 procedure. It's not a trial. We're allowing a lot of
18 hearsay in. But this is hearsay where the other parties
19 can't be brought in to be cross-examined to see if they
20 really, in effect, did contest this.
21 So, MSG (sic), in my opinion, does have
22 standing themselves but not for representation of the other
23 parties. Does that make sense to you?
24 CHAIRMAN KRESTA: Yes, sir. So, the decision,
25 they do possess a legitimate interest and they may

1 approves the rate application. We haven't seen not one
2 exhibit on an economic analysis of what Dole, what MSC, or
3 Chiquita, Great White Fleet, is going to do with regards to
4 if this application is approved. If they're saying that
5 they're wanting to leave here and go somewhere else, I think
6 that it would be important to this Board and also in the
7 capacity of this port to know what they're basing that threat
8 on because this -- as the evidence is going to show today,
9 Freeport is still going to be the low-cost option for these
10 ships in the gulf coast, even if this rate is approved.
11 So, I think that that economic analysis in an
12 exhibit or witness that can testify to that should have been
13 proffered before June 21st. Without it they can't show that
14 they've been harmed. If they tried to do it in Court, Judge
15 Gayle, the same thing would happen. It's their burden to
16 prove standing. And they don't have the evidence to prove
17 that. And so, we would ask that they all be denied a
18 legitimate interest and be denied standing in this case.
19 Thank you for having heard me.
20 JUDGE GAYLE: Are you asking me?
21 CHAIRMAN KRESTA: Yes, sir.
22 JUDGE GAYLE: First of all, my recommendation
23 is that you find that they do have standing, MSG (sic) does
24 have standing. However, they purportedly represent a number
25 of entities that are objecting to the rate increase, none of

1 participate in this hearing?
2 JUDGE GAYLE: MSG (sic).
3 CHAIRMAN KRESTA: MSC.
4 JUDGE GAYLE: The legitimate interest decision
5 has to be determined by their filings by this Board, not by
6 me. That's a matter of law.
7 CHAIRMAN KRESTA: Yes, sir. I'm talking about
8 the WGMA, they're representing MSC.
9 JUDGE GAYLE: Right. They're representing
10 MSC.
11 CHAIRMAN KRESTA: Yes?
12 MS. SAATHOFF: Yes.
13 CHAIRMAN KRESTA: That's what --
14 JUDGE GAYLE: MSC has a legitimate interest --
15 they both have legitimate interest in this.
16 CHAIRMAN KRESTA: Yes, sir.
17 JUDGE GAYLE: But MSC only on its own behalf.
18 That's what I would recommend.
19 CHAIRMAN KRESTA: Yes.
20 MR. CREW: Judge Gayle, Mr. Chairman, Members
21 of the Board, we also would like a clarification on Port of
22 Freeport, if we may, only to erase the specter of a conflict
23 of interest. And that would be the other thing that we would
24 ask your determination on.
25 JUDGE GAYLE: My understanding of the statute

1 is that the Board has to wear two hats. They have the
2 commissioners for the board and they have to serve as -- as
3 this Pilot Board in making these rulings. So, I think they
4 do -- I think Port of Freeport is legitimately in this case.
5 MR. CREW: And, Your Honor, with all respect,
6 the issue is if they want -- this was a ruling of this Board,
7 is that if WGMA wanted to participate in this case, then they
8 had to file an objection. And so, wearing two hats, the
9 other entity that's got a commercial interest in the outcome
10 of this hearing to keep Dole and MSC satisfied, they had an
11 obligation to independently file an objection, to do all of
12 the evidentiary submissions just like any other objecting
13 party was. But if they -- if they've got conflict, it needs
14 to be brought out and it can't be backdoored through WGMA.
15 That's just not fair to anyone.
16 JUDGE GAYLE: I think WGMA specifically
17 specified that they were representing MSC. They didn't
18 specify the names of these other parties they were contending
19 to represent. They can't be considered to be in here.
20 But MSG (sic), I think, is because they've been represented
21 by MSG (sic) and they brought -- they can be brought in as
22 witnesses and be cross-examined. So, I think -- I think MSG
23 (sic), the third party that you're saying doesn't have
24 standing, has standing.
25 MR. CREW: Thank you.

1 MS. SAATHOFF: I think I can clarify.
2 JUDGE GAYLE: We're talking at a procedure --
3 I don't mean to take over this because he's supposed to ask
4 me for my advice. But my advice is that they be determined
5 to have standing but not to have provided any standing for
6 any of these unnamed parties and their information concerning
7 these unnamed parties can't be considered.
8 MR. CREW: Thank you, Your Honor.
9 MS. SAATHOFF: Mr. Chairman, can I just
10 clarify? The Port Freeport did not or has not requested WGMA
11 to represent Port Freeport in any way in this proceeding.
12 CHAIRMAN KRESTA: Thank you. Okay. It's my
13 decision that WGMA, they do possess a legitimate interest and
14 they may participate in this hearing.
15 MR. MOORE: Point of order, Mr. Chairman.
16 Just to clarify the record on behalf of BPA, if WGMA has
17 standing to represent MSC, then they don't get two bites at
18 the apple. In other words, MSC can't get up here and
19 cross-examine witnesses or produce evidence if WGMA is going
20 to do that on their behalf. I just want to make clear that
21 if WGMA is the representative for MSC, they're the only ones
22 that get to speak for MSC and there's no two -- improper two
23 bites at the apple. Otherwise, it would be redundant and
24 unfair.
25 CHAIRMAN KRESTA: The witness list for WGMA,

1 they provided it.
2 MR. MOORE: They did. Three people on it.
3 MS. SAATHOFF: One being --
4 CHAIRMAN KRESTA: And one being MSC.
5 MS. SAATHOFF: -- MSC.
6 MR. MOORE: Right. But if they're only
7 representing MSC, they've got no dog in the fight other than
8 MSC's dog. They don't have their own. So, they can't get
9 two bites at the apple is our position and we object to them
10 getting two bites at the apple.
11 CHAIRMAN KRESTA: So, getting two bites at the
12 apple, they represent MSC only and that's what we just got
13 through saying. So, that's the only thing we're talking
14 about; is that correct?
15 MR. MOORE: Correct. But if they have
16 standing as well on their own other than as only the
17 representative of MSC, then they get to just argue on behalf
18 of unspecified people. My objection is a little more pointed
19 than that. And that is, I understand that you've ruled that
20 WGMA can -- legitimately has an interest but only to speak on
21 behalf of MSC. And so, you can't have an MSC representative
22 speak and --
23 CHAIRMAN KRESTA: I understand the question.
24 Okay. I got it. Yes, please.
25 JUDGE GAYLE: I understand what you're saying.

1 You don't want their lawyer coming in and cross-examining
2 witnesses is what it amounts to or making a final argument?
3 MR. MOORE: Yes, sir.
4 JUDGE GAYLE: That's denied. You've got a
5 total of two hours collectively for all defendants. Y'all
6 can divide that however you want to. But no, we're -- my
7 recommendation is you don't prevent MSG's (sic) separate
8 lawyer -- the fact that they were filed by someone that
9 wasn't a lawyer doesn't mean they can't bring a separate
10 lawyer in to do their cross-examination. My recommendation
11 is deny it and allow them to have their own cross-examination
12 done by the witness.
13 CHAIRMAN KRESTA: Thank you. So noted.
14 MR. MOORE: I'm just saying --
15 CHAIRMAN KRESTA: I adopt Judge Gayle's
16 comments and recommendation. Moving on.
17 JUDGE GAYLE: Counsel wanted to be heard
18 there.
19 CHAIRMAN KRESTA: Yes, sir.
20 MR. WESELY: Nathan Wesely with West Gulf
21 Maritime Association. I would like to make a couple points.
22 We don't intend to take a second bite at the apple. I
23 realize they have a lot of lawyers here and they may take
24 three or four. We only plan to take one.
25 CHAIRMAN KRESTA: Thank you, sir.

1 MR. WESELY: Secondly, as a trade association,
2 our board has voted to oppose this and we -- we do represent
3 not just MSC but the -- but our members. And just like the
4 ABA may take a position that you as a lawyer may say I don't
5 like, that obviously can be true here where we have members
6 who have taken a position they're in favor of this. But our
7 board has taken the position that we as an association -- as
8 a trade association oppose this rate increase. I don't think
9 that in the end it's going to be material because simply put,
10 their rate application either fails or passes based on what
11 they submit.

12 CHAIRMAN KRESTA: Thank you.

13 JUDGE GAYLE: May I respond to that?

14 CHAIRMAN KRESTA: Yes, you may.

15 JUDGE GAYLE: Let me make one thing clear.

16 It's not going to have any ultimate effect on whatever is
17 decided by this Board because whatever they decide is going
18 to apply to all vessels and to everybody that comes into the
19 Port of Freeport. I agree with you on that. But you've not
20 named these people in the trade association and you've got a
21 lot of documentation saying they oppose this and we don't
22 have any way of knowing that they oppose this. So, the
23 simple solution is to name these people that you're
24 designating you represent in this case. And if you do that,
25 then my instruction to these -- or counsel's instruction to

1 I've asked Port Freeport CEO Phyllis to
2 compile some data relating to these matters for the Board's
3 consideration. And, Ms. Saathoff, may I ask that you or a
4 member of the staff provide information to the Board at this
5 time.

6 MS. SAATHOFF: Mr. Chairman, as you requested,
7 certain information was assembled for presentation,
8 consideration by the Pilot Board. I'm going to ask Mr. Jeff
9 Strader to come forward at this time and present this
10 information. Mr. Strader provides the financial consulting
11 services to Port Freeport.

12 MR. STRADER: Good afternoon.

13 CHAIRMAN KRESTA: Good afternoon.

14 MR. STRADER: Basically there were five areas
15 where Port Freeport staff was asked to either review or
16 evaluate, first of which being was a revenue recalculation of
17 the data provided by the pilots on June 18th, 2017 as part of
18 their submission. Basically what we did was we vetted that
19 data using the 2015 vessel data that was provided by the
20 pilot association along with their current tariff. And
21 basically then -- basically we specifically looked at the
22 draft and unit charges both in and out as well as a second
23 pilot if so required and then the educational fees. Those
24 fees were included in the calculation. Fees that were not
25 included or revenues that were not included would have

1 these panels on my recommendation would be that they can
2 consider them and all of the information provided on their
3 behalf in these documents. Otherwise, they can't. That's
4 what my recommendation is. That's all I have to say.

5 CHAIRMAN KRESTA: Thank you, sir. Do we
6 have -- any other parties have any other preliminary matters
7 before we continue?

8 None being said, we adopt Judge Gayle's
9 recommendation. And now we're going to Texas Transportation
10 Code, Section 68 requires the Board to consider seven matters
11 specifically: Characteristics of the vessel to be piloted;
12 costs to pilots and provide the required pilotage services;
13 the effect, including economic factors affecting the shipping
14 industry in the area, that the granting or refusal or
15 modification of application would have on Brazoria County
16 ports and the persons residing in the Board's jurisdiction;
17 an adequate and reasonable compensation for the pilots and a
18 fair return on equipment and vessels that pilots employ in
19 connection with pilot duties; the relationship between the
20 pilotage rates in Brazoria County and the rates applicable in
21 other ports of the state; the average number of hours spent
22 by a pilot performing pilot services on vessels, all pilot
23 services; and the average wages of masters of United States
24 flag vessels that navigate in the board's jurisdiction and
25 for which the pilotage rate is to be established.

1 included vessel shifting or any other type of ancillary
2 service that the Port simply would not have been aware of.

3 Further validation was performed of the
4 revenue model recalculation using eight specific examples.
5 And these were named vessels in the pilot's application. It
6 was an exhibit attached to it. I think it was Exhibit 5,
7 maybe something like that. Or there were vessel classes
8 examples. And basically we tested the model against those
9 specific vessels and found it to be very accurate within one
10 exception. And then basically once we did that calculation
11 and did the comparison, basically the Port's calculation came
12 about 7 percent under the pilot's estimations. And that can
13 be explained by the fact that we use 2015 vessel movements
14 and obviously there were some increases or possibly increases
15 in the 2016 data as well as, as I mentioned, the vessel
16 shifting and any other type of ancillary service that was
17 provided.

18 But, again, that gave us that basic framework
19 to actually then move into a forecast. And basically what
20 happened there was the Port went to the -- to the channel
21 users and asked for their forecasted vessel movements over
22 the 2017 through 2020 time frame. And then we applied those
23 rates and that model that was developed and vetted against
24 the material provided by the association and basically came
25 up with -- we tested it against both -- including the three

1 by three by three rate increase as well as a comparison
2 without that rate increase.

3 Without that rate increase, basically our
4 recalculation of those revenues produced a 3.8 million-dollar
5 favorable variance, meaning that our forecasted numbers were
6 \$3.8 million in total over what the pilots association
7 provided. If included three by three, you basically increase
8 that 3.8 million by an additional four point million. And,
9 again, that's just -- that's using the basic pilot tariff
10 along with the unit charge, draft charge, if a second pilot
11 is required, incorporating that into the model as well as the
12 education fee. And that would ultimately produce those --
13 that forecasted revenue projection. So, that's in there
14 included for your consideration.

15 Also, a basic CPI analysis was provided. We
16 looked at two series. We looked at the Houston, Galveston,
17 Brazoria, included all items and that four-year increase was
18 roughly 4.8 percent. Also included in your material is a
19 year-by-year increase. The second series was the U.S.
20 series -- U.S. city average, all consumers along with all
21 items and that rate for that four-year time frame came in a
22 little over 4 percent. That's just for a point of reference.

23 As I mentioned previously, as part of the
24 pilot submission there was included a port-to-port
25 comparison. And this was a comparison of those eight listed

1 vessels and they analyzed or compared them to Houston, Texas
2 City, Galveston, Corpus Christi, along with Sabine. And
3 basically what we were asked to do was look at those rates,
4 sort of verify the calculations and basically for Port
5 Freeport all those fees were found to be -- we were able to
6 reproduce those fees exactly again with one exception. And
7 that one exception appeared to be where a leg of the transit
8 was omitted. And then for the competing ports we were
9 within -- our delta was within 2 percent. So, again -- and
10 that could be a factor of terminal locations, where the
11 actual vessels were estimated to have called in one
12 calculation versus the other. So, again, we felt like that
13 was close enough and proved to be accurate.

14 The next part of that analysis was to look at
15 a -- sort of take those fees and allocate those over a
16 distance traveled. And the effect of that was to sort of
17 equalize those ports and bring them much more in range. And,
18 again, what you're doing there is you're looking at the
19 actual distance traveled from sea buoy to terminal. And
20 after doing that, Port Freeport was -- the rates were found
21 to be roughly in the mix but leaning toward the higher side
22 of analysis. Again, that's there for your consideration.

23 The fourth area that staff was asked to look
24 at was in the context of pilot boat ownership. And basically
25 this assumes that the Port actually purchases the boat, funds

1 the maintenance -- doesn't actually perform it but funds it,
2 and then leases the boat to the association on a bare boat
3 charge basis. Utilizing the Port's cost of capital, the --
4 and looking at the twenty thousand -- the 2017 forecasted
5 vessel call volumes, that works out to roughly \$120 per
6 vessel movement. So, again, that's there for your
7 consideration.

8 And then with respect to a -- there was a
9 payoff analysis performed. Assuming, again, in this
10 particular case that the pilot association and the rate of --
11 the rate is approved accordingly for them to basically debt
12 finance and own their boat directly, it's estimated based off
13 of, again, that 2017 forecasted volumes that the association
14 could pay off that boat during the tenth year of ownership.

15 And then the final area of analysis was with
16 respect to port dispatch services or -- yeah, dispatch
17 services if they were provided by the Port authority. And
18 basically the incremental cost of the Port authority would be
19 roughly \$255,000 in the initial year. The second year would
20 be 228,000. And then plus any type of periodic pay or
21 pricing adjustments. Basically, you know, the Port has a
22 fair amount of infrastructure already in place, which makes
23 this, you know, a little less expensive for the Port to take
24 it on. And then also the comm room is already manned five
25 days a week from the hours of 6:00 a.m. to 6:00 p.m. already.

1 And those costs are incurred by the Port and they -- they run
2 about \$80,000 a year, if I get my digits correct. And that's
3 about all I have prepared unless there's any questions.

4 CHAIRMAN KRESTA: Okay. Thank you. Phyllis,
5 anything?

6 MS. SAATHOFF: Yes. Mr. Chairman, I would
7 also speak to the document that is indicated as B-13, which
8 is the redacted financial reporting format of the Houston
9 Pilots Association. That was requested to understand what
10 other reporting formats are used by other pilots associations
11 as far as detail, footnotes, and so forth for a better
12 understanding of the information. So, that's the reason that
13 was provided again. That's all of the information that has
14 been submitted --

15 CHAIRMAN KRESTA: Okay.

16 MS. SAATHOFF: -- at the request of the board
17 by staff.

18 CHAIRMAN KRESTA: Thank you, Jeff. Proceeding
19 on, we'll go -- each side has two hours to present its case
20 unless the Board finds good cause to extend such time. We
21 will start with the pilots. You are free to use the time as
22 you see fit by making an opening presentation, calling
23 witnesses, offering exhibits, making closing argument. Each
24 witness is subject to cross-examination by the other side.
25 The pilots have the right to make the first opening statement

1 and last closing statement.
2 Who will be speaking for the pilots at this
3 time. Mr. Brown? And would you have everybody speaking for
4 the pilots take an oath by the court reporter to be sworn in.
5 And the pilots show three.
6 MR. BROWN: Mr. Chairman, my name is Jim
7 Brown. I'm one of the lawyers for the Brazos Pilots. Just
8 as a point of order before we start -- the Board starts
9 taking evidence, is the Board going to take affidavits of no
10 conflict and abstentions under the local government code or
11 has that been done already?
12 CHAIRMAN KRESTA: On the -- which -- on the --
13 which basis on the no conflicts?
14 MR. BROWN: The Texas local government code,
15 the Section 174, affidavits of no conflict or abstentions.
16 Is the Board going to take them?
17 CHAIRMAN KRESTA: Keith.
18 MR. LETOURNEAU: Mr. Chairman, yes, we will.
19 CHAIRMAN KRESTA: Thank you.
20 MR. BROWN: Is that going to be done before --
21 it has to be done before the proceeding starts taking
22 testimony, correct?
23 MR. LETOURNEAU: That's correct. So, we're
24 going to need to recess for a few minutes, Mr. Chairman.
25 CHAIRMAN KRESTA: Okay. At this time, I guess

1 **OPENING STATEMENT**
2 MR. CREW: I don't plan on giving any
3 testimony but I promise I'll be truthful.
4 CHAIRMAN KRESTA: You do have an option to
5 make an opening statement before you get started on your
6 presentation.
7 MR. CREW: Thank you, Mr. Chairman. I would
8 like to do that. I will be brief.
9 CHAIRMAN KRESTA: Mr. Letourneau, do you have
10 the time started?
11 MR. LETOURNEAU: I do, Mr. Chairman. I'm
12 starting right now.
13 CHAIRMAN KRESTA: Proceed.
14 MR. CREW: Thank you, Mr. Chairman, Members of
15 the Board. My name is Paxton Crew. Very proud to represent
16 the Brazos Pilots Association along with Mr. Randy Moore and
17 Mr. Jim Brown today. It's my pleasure to open this
18 presentation and tell you a little bit about why we're here
19 and why we're asking for this rate application to be
20 approved.
21 First of all, the thing I'm most excited about
22 is that the pilots are really a success story across the
23 nation. Because they are -- unlike some contentions that
24 people claim that they're having a dispute with their
25 customers. Really the customers in this case for the Brazos

1 we'll recess for a few minutes and take care of a matter of
2 business. Thank you.
3 *(Recess from 1:52 to 2:51)*
4 *(Exhibit C marked)*
5 CHAIRMAN KRESTA: Okay. This hearing is back
6 in session. And at this time, Mr. Brown, with your question
7 about the conflict of interest and the affidavit being filled
8 out -- Mr. Letourneau, will you answer that question for me,
9 please.
10 MR. LETOURNEAU: Mr. Chairman, Port staff has
11 reviewed its files and identified appropriate disclosure
12 affidavits on file for every one -- every one of the
13 commissioners except Mr. Hoss and Mr. Hoss has now executed
14 such a disclosure affidavit and we are identifying all of
15 these collectively as Exhibit C to this hearing.
16 CHAIRMAN KRESTA: Exhibit C has been entered
17 into the hearing. Okay. Now we'll go to pilots'
18 presentation. But we are going to take the oath and the
19 court reporter will give the oath and the pilots have three
20 of them signed up to do the presentation. And she would like
21 to do them one at a time. And the pilots' presentation at
22 this time. The time is 2:52.
23 MR. CREW: Thank you, Mr. Chairman. I'm ready
24 to receive an oath if I need to or take one.
25 *(Mr. Paxton Crew was sworn in)*

1 Pilots are the citizens of Brazoria County and state of
2 Texas. They're a regulated public service and this Board
3 regulates the tariffs that they enact and the actions that
4 they take and approves and recommends the pilot applications
5 that come into this port. And I wanted to thank you for your
6 public service here today. And I also wanted to thank you
7 for being fair and partial and giving the pilots a fair shake
8 in your responsibility as Pilot Board commissioners and
9 looking past whatever obligations you might have as port
10 commissioners.
11 One of the issues that's before the Port is
12 two of the users of the port, Dole and MSC, have objected to
13 the rate application for various things. I won't put words
14 in their mouth about what their objections are about or why
15 they're here other than I can characterize it very simply.
16 It appears to be primarily that they believe the pilots make
17 too much money and should absorb these capital expenditures
18 out of their own pocket. I don't think that's right. One of
19 the best things about the pilot services, that the port users
20 that come into Brazoria County and use this channel and to
21 use the resources of this county should be the ones to pay
22 for it. There's been a tremendous amount of infrastructure
23 and capital improvements that industry has put into this port
24 to allow it to grow. This is one of the fastest-growing
25 ports in the country. It's served by one of the smallest

1 pilot associations in the country. There's three pilots
2 right now. They're growing. They're taking on two more to
3 meet the demand that's coming with all the LNG improvements.
4 And we're going to hear about some of the support we have
5 from BP, Phillips, Dow. And these are all -- 80 percent, as
6 we estimate of the port, that are in favor of this
7 application.

8 What the application is going to do is it's
9 going to improve the pilot boats and you're going to hear
10 from Captain Blanton on that. And we're going to get new
11 pilot boats. They're going to be financed through a boat
12 fund that is not going to be revenue to the pilots. It's
13 going to be paid for in a revenue neutral way, no cost to
14 Brazoria County taxpayers. And it's going to ensure that the
15 pilot system in Brazoria County continues to be run safely
16 and efficiently. As part of the growth Port Freeport, large
17 gas tankers are going to be arriving here. That's going to
18 require the pilots to go further offshore, burn more fuel,
19 and to incur more expenses in order to go out and take those
20 ships in. They're going to need safer pilot boats.

21 I'll tell you that one of the pilot boats that
22 they currently have is a sister pilot boat to the
23 Galveston-Texas City pilot boat that sank about ten years
24 ago. A pilot was disembarking on that ship and on that --
25 from a ship onto the pilot boat and the pilot boat was caught

1 be very quick in our presentation but we're going to meet all
2 the statutory factors. Really what this rate is about is not
3 about making more money for the pilots. It's about helping
4 the port grow and giving the pilots what they need to make it
5 run efficiently and safely and at no cost to the taxpayers.
6 And so, we would ask in closing to listen to the evidence of
7 what we're going to put on and present to you in asking you
8 to approve our rate and to listen to what the objecting
9 parties, the evidence that they have to put forward on --
10 whether they're deciding to go somewhere else, we don't
11 believe that they are -- on what the real economic impact
12 will be to those objecting parties. Because at the end of
13 the day, we don't think that it really matters to them and --
14 on a big global level. Freeport will still be a low-cost
15 port for these users. They can't go to Houston or Corpus
16 Christi or Beaumont or Galveston-Texas City and deliver their
17 goods and it will be more expensive if they go to those
18 ports.

19 So, thank you for your consideration. At this
20 time, I'll turn it over to Mr. Brown and Captain Blanton.
21 Thank you.

22 CHAIRMAN KRESTA: State your name and who you
23 represent and take the oath, please, sir.

24 *(James Brown was sworn in)*

25 MR. BROWN: I don't intend to give any

1 underneath the ship and it rolled over and capsized. The
2 pilot operator was drowned and the pilot on board was trapped
3 in an air bubble for 30 minutes. It's a very dangerous
4 environment that these pilots work in. I wanted to bring
5 that to light because one of the same -- almost an identical
6 boat is here in service. And this is a very critical --
7 mission critical piece of equipment that the pilots need and
8 it needs to be funded so it can serve not just one or two
9 customers in the port but everyone that calls here,
10 petroleum, dry bulk. Everyone benefits from having a safe
11 pilot service because if one of these pilots goes down, that
12 could potentially impact the ability to efficiently move the
13 ships in the port. Put a strain on the pilots. So, they
14 really need these new pilot boats.

15 Secondarily, the pilots are also asking for
16 funds that industry pays for to run a dispatch service that
17 will be able to accommodate the demand. And this is similar
18 to what ports in Corpus Christi use with a dispatch system
19 that's run by the pilots. They have a harbor master in
20 Corpus Christi but the pilots run a dispatch service.
21 Houston pilots do the same. Galveston-Texas City pilots, and
22 Sabine pilots, they all charge a communication charge to pay
23 for a dispatch service. This is something that's in line
24 with all the other major petrochemical ports in Texas.

25 And so, in closing, I promise we're going to

1 testimony, but I'll be truthful. The Brazos Pilot
2 Association would like to call Captain Daniel Blanton as its
3 first witness.

4 **DANIEL BLANTON,**
5 having been first duly sworn, testified as follows:

6 **EXAMINATION**

7 Q. (BY MR. BROWN) Captain Blanton, I know you're born
8 and raised here. So, we don't need to go into that
9 background. I'm sure everyone knows of you personally. But
10 I would like to just briefly touch on your professional
11 background.

12 A. Yes, sir.

13 Q. After graduating high school here, where did you go
14 to school?

15 A. I graduated Angleton High School and then I went to
16 Texas A&M, graduated with a bachelor's degree in science and
17 marine transportation. I got a third mate's degree. I
18 started going to sea with a headhunter with foreign flag
19 VLCC, ULCCs, transitioned into lightering, and then got into
20 the offshore construction business. I got in with a company
21 called Cal Dive. And I worked with Cal Dive as third mate --
22 started as third mate -- from second mate, went back to third
23 mate, and then worked my way all the way up to master. And
24 when I stopped sailing with Helix, I was sailing as an
25 unlimited master. And I did all my continuing education for

1 my master's in Florida while I was going to sea.
2 Q. So, your current Coast Guard license is unlimited
3 master in the ocean?
4 A. Unlimited masters, yes.
5 Q. And when did you become a deputy pilot? When did
6 you come on the bar?
7 A. Six years ago.
8 Q. Okay. And we all have a good idea of what pilots
9 do on the boats. But can you tell us a little bit about what
10 you do as a pilot in the port shoreside?
11 A. So, in addition to my responsibilities of moving
12 the actual ships, I'm a business owner. I'm the president of
13 Brazos Pilots. Previously I've been the vice-president of
14 Brazos Pilots. My role is to facilitate the operations
15 within the organization itself from day-to-day operations but
16 I also have a large responsibility within the community. We
17 have a small industry working group, which we've helped to
18 get together and I have a leadership role in that. We're
19 trying -- we are members of the Lone Star Safety Committee.
20 We're in the process of developing a subcommittee that's
21 specific to Port Freeport. And I have a leadership role in
22 that. We also liaison with the MSU. Captain Audit, the new
23 captain of the port just came in. We give them tours. We
24 interact with Customs Border Patrol. All of our port tenants
25 have my cell phone number, and I interact with them on a

1 daily basis.
2 Q. These are shoreside activities that you do to
3 support the port and the port users. They're not in the
4 tariff. You don't get paid for them. It's just part of your
5 job?
6 A. A significant role of what I do is outside the
7 actual moving of the ships.
8 Q. And with regard to the port users, how do you see
9 the pilots' relationship with the port users? Describe that
10 relationship for me.
11 A. It's a -- it's a service industry, in my opinion.
12 We have a responsibility to ensure the safety and efficiency
13 of the port. Ultimately we're responsible to the governor
14 and to the citizens of Brazoria County to ensure that our --
15 you know, the commonality of interest on the waterway,
16 whether it be commercial or if it's the residential side, we
17 have a responsibility to protect the channel itself, Brazoria
18 County. But that said, we understand that this is a business
19 and we have to have good working relationships with all of
20 our partners in the industry. And we've showed this, you
21 know. I understand there's some disputes but we do try to
22 reach a consensus with the majority of our users so that we
23 can provide the best service so they can get, you know -- our
24 mission statement from me is that we want to provide a safe
25 and efficient pilot service.

1 Q. I would like to talk about the collective goals of
2 the users and the pilots as you see them. And I'm not down
3 here very often but I see a lot of activity going on. Looks
4 like growth activity. What is the collective goal as you see
5 it?
6 A. As I see it, you know, the economic factors from
7 the shale gas boom or whatever it is, there is a boom in the
8 petrochemical market. We are a petrochemical port. I've
9 spent a lot of time going out to our partners, Dow Chemical,
10 Conoco Phillips, BASF, Enterprise, even the Port and the port
11 tenants who are objecting, West Gulf Maritime. I can tell
12 you -- I can assure you that none of them can tell you that I
13 haven't been forthright in trying to understand what their
14 business needs are but there is getting to be a large
15 diversity between the interests that are in Port Freeport at
16 this time. You have some of the container ships that have
17 been here a long time. But there's significant capital
18 investment with LNG, with Dow's ethylene unit, with Conoco
19 Phillips' propane and butane unit that are coming online.
20 And those expectations of services have to be met. And we
21 went to these different entities and tried to understand how
22 the Brazos Pilots could better fulfill our roles and making
23 sure we provide a safe and efficient pilot services. So, we
24 went through. We looked at their -- what they plan to do in
25 the future and that's how I developed this plan to go forward

1 and try to make sure we're in a position that we can keep up
2 with the traffic.
3 Q. So, with regard to the rate application that's
4 pending here today, when did you start these discussions to
5 determine their needs and what they needed from you?
6 A. So, me specifically, I've been working on this for
7 the better part of three years. It goes back a little bit
8 further with us trying to develop or get a consensus on the
9 boats. The boat's critical path because the age of our
10 boats. But in addition to that, you know, when the growth
11 was obvious and the capital investments were starting to get
12 on the ground and we saw these projects were getting through
13 the first process, they were starting to come to fruition and
14 then there was going to be a tangible end result that I was
15 going to have to deal with. So, I went to the industry and I
16 said, "What do you guys need?" I went to Gene Theriot at
17 Dow, all the way up -- I met with -- in Helios Tower with the
18 BP executives. They flew all the gas shippers in from Asia,
19 from all over the world to meet with me so I can understand
20 what their expectations were. And then -- well, they asked
21 me what -- where are you at, Captain Blanton? This is what
22 we expect.
23 So, I recognize from our standpoint with the
24 number of ships that we're potentially talking about that
25 we're going to have to take more pilots on. Traditionally,

1 the Brazos Pilots lately have been a four-pilot organization.
2 But the mindset was -- is because of where the traffic was,
3 we would drop a pilot off and then we would have an election
4 and bring a pilot in. So, you would have three pilots for a
5 period. Me, without a rate increase but knowing that these
6 deadlines were coming to an end and these projects were
7 coming to a fruition, we knew that we had to bring extra
8 people on board. So, we took two deputies without any rate
9 increase in the optimism and trying to be good stewards to
10 make sure we have the people to train. A lot of these are
11 forward-looking ideas. I mean, it takes two years just to
12 train the pilot. Then you have the application process. The
13 boat itself is -- once you get the keel laid date, it's still
14 ten to 14 months out before that asset is realized and we can
15 use it. So, we have to be ahead of these guys. They're
16 starting to come online. And that's what we were trying to
17 capture, to make sure that we're ready to go.

18 Q. So, over these three years it sounds like you've
19 gone to all the port user people -- people that are
20 objecting, people that are supporting -- and you discussed
21 their needs to look forward to continue serving the growth of
22 the port and you've told them what your needs would be to
23 service that growth?

24 A. Correct. And, you know, it wasn't -- this is the
25 end result of a negotiation, the package that you see now.

1 This isn't a starting point. This is a lot of consensus, a
2 lot of give and take that has already gone in here.
3 Concessions have been made from both sides.

4 There's -- for example, some of the gas
5 carriers would like to insist -- and a large part of our
6 customer base -- we're hoping that we could put a deckhand on
7 our pilot boats, which is another cost. And we are not able
8 to capture that within this -- within this rate increase.
9 But, you know, what I've told them is we'll go ahead and take
10 the extra pilots now because that has the longer lead time to
11 get that guy trained up. Then once we get the boats, we get
12 the dispatch up, and if the boats -- if their ships or
13 projects come to fruition like they plan, then we'll have all
14 these ancillaries on with that revenue on that side. It's
15 not our intent to come back to the trough and add all these
16 extra items that have been asked for. So, we've tried to
17 find the middle ground for the bulk of our clients. And if
18 you look at the people who have given us the support letters,
19 it's the vast majority of the port users in Port Freeport.

20 Q. And I think -- and the support letters you filed
21 with the commission?

22 A. Correct.

23 Q. And the -- we -- I won't go through those now. But
24 with regard to the written we know -- you mentioned the
25 written support. What about verbal support? Are there other

1 users of the port that have indicated verbal support?

2 A. There are. BASF is to name one. We did go to BASF
3 and the failure to get a letter of support from them was a
4 failure to navigate their corporate structure. But the
5 operational -- Steve McCartney is the guy who runs their
6 facility down there. We reached out to a lot of other people
7 within the facility and Steve has said that he agrees with
8 all of our requests in principle.

9 Q. I note that they haven't filed an objection?

10 A. They did not file an objection and he said that.

11 Q. Now, you mentioned about 80 percent of the port
12 users, as you see it, have given you these letters of
13 support.

14 A. Written letters of support.

15 Q. How did you calculate the 80 percent? Is that
16 based on tonnage? Movements? How did you come to that
17 figure?

18 A. That's the number of ships we do. So, we just
19 looked at the total volume of ships that you do in a year.
20 Dow Chemical is by far the lion's share as it is now. And
21 it's a bit of a moving target but they're right at around 45,
22 50 percent of our business. The crude oil docks, Enterprise,
23 Jay Bany, the vice-president of Enterprise, he signed on for
24 the entirety of our rate request package. That's another 13
25 to 15 percent. Conoco Phillips, their numbers were a little

1 skewed for 2016 because their unit for all intent and purpose
2 was off line because they were doing the conversion for the
3 propane and ethylene. But they're trending ten ships a month
4 now. And we have a letter of support in toto of all of our
5 rate requests from Conoco Phillips. We went and -- and
6 that's above operations level. We had to go and get approval
7 from the refinery drives. I mean, some of these guys have
8 very, very, very, very large corporate structures and we put
9 a lot of time in and a lot of meetings in with our partners
10 to try to understand how we could best fulfill our role in
11 the Brazos Pilots.

12 Q. And with regard to the Port Freeport, had you
13 discussed the pilot boat fund plan with them?

14 A. Yeah.

15 Q. If so, when did you start doing that?

16 A. We initially started talking with Glenn Carlson but
17 that -- that was before me. That was another set. And then
18 he -- they requested that we delay on some of the heavy-ended
19 stuff until -- the market for the shipping industry was a
20 little more depressed at that point. And he said, please,
21 push it back a little bit further. Once -- then after Glenn
22 left, Jeff Strader was the CFO at that point and we developed
23 a lot more of the project then before we had to pull back
24 from the hearing. But Port Freeport with Jeff Strader when
25 he was interim CEO, I went through all this with Jeff as

1 well. I've reached out to MSC. I've reached out to Dole.
2 I've reached out to West Gulf Maritime. We've had meetings
3 at our office with Hoegh. And I've reached out to Phyllis.
4 And I've even reached out to commissioners. It was not my
5 intent to be underhanded. I wanted to be forthright. I
6 wanted everyone to see what we were trying to accomplish with
7 this rate increase so they can -- because I knew it was going
8 to be a big ask. But it's going to be value added. There
9 will be a return on your investment. And for the community
10 at large, your asset, Port Freeport will be a safer and more
11 efficient port if you enact this rate increase.

12 Q. Now, I think that some of the objectors are going
13 to say that, well, the rate application is really to put more
14 money in the pocket of the individual pilots at the end of
15 the day. And what is your response to that?

16 A. It's not true and our numbers show that. So, in
17 order to be transparent -- so, when we started to develop the
18 boat fee, we started to talk to the users to try to
19 understand and try to convey our message that we needed a new
20 boat. We talked to the banks. So, if you even back up a
21 little farther, the process started to identify a boat and
22 that's where I started. I went to -- I looked on the east
23 coast at Gladding-Hearn. I looked on the west coast. They
24 have a Kalvekia (phonetic) builder there. Me and -- my lead
25 boatman and I, we drove to Louisiana. We toured five

1 paperwork, we went to multiple banks. We looked at
2 Caterpillar finance. We looked at -- we went and asked in
3 industry. We looked at Moody's. We looked at Texas Gulf
4 Bank. And we ended up at Texas Dow Employee Credit Union.
5 And was willing to give us the loan at the best terms.

6 So, when -- what they did is they looked at
7 the assets that we had and once we identified the Metal Shark
8 boat that we wanted -- there's some discrepancy you can see
9 in the build and I'll clarify that real quick. They quoted,
10 I believe it's, \$2.25 million in the -- for the initial boat.
11 And then there's 2.5 million asked from the Brazos Pilots.
12 The way they do the boats is because it takes so long to
13 build them and we didn't -- we weren't able to actually lay a
14 keel date then -- they don't quote all the electronics and
15 equipment packages. Because if you imagine, you buy your
16 electronic equipment package and then it takes 12 months to
17 build the boats, you just bought year-old electronics. So,
18 they give you an allowance. So, as the boat is developed,
19 then you pick your equipment package so you're getting the
20 latest and greatest. So, that's why there's a little bit of
21 a discrepancy in that.

22 When it comes back to the loan, the loan is
23 held -- it's two loans. There's a construction loan for the
24 boat and a mortgage loan for the boat. The mortgage period
25 is principal -- interest only and then once the boat is

1 facilities there. Breaux Bay Craft, Bay Craft, Neuville,
2 Metal Shark. There's one other one we went to. So, we got a
3 lot of quotes. We toured a lot of facilities and I felt like
4 we ended up at the -- with the best product at the best
5 price.

6 In our discussions as well when I was trying
7 to relay this information, we were trying to look at other
8 ways that we could kind of offset the cost of these to the
9 users. And we kind of went down a rabbit hole to see if we
10 could put fire fighting equipment but in the long run, it was
11 decided that it would drive the Brazos Pilots off their
12 dedicated mission to provide pilot services and it wasn't a
13 viable option with the users and itself. But I conveyed --
14 when Chris Hogan was looking at where to go for a boat, you
15 know, they ended up at Metal Shark. I think it's a superior
16 piece of equipment and that's where we ended up. So, that
17 was just for the Metal Shark boat.

18 Q. Okay. Let's break down the rate application.
19 Let's get into some specifics here. We've got a boat fund,
20 we've got a dispatch line item fund, and then we've got the
21 3 percent rate increase.

22 A. Okay.

23 Q. With regard to the boat fund, I understand that
24 that is a fixed fund and it's eroding.

25 A. It is a fixed fund. So, we -- in our submission

1 developed -- delivered, then you pay the principal and the
2 interest. We're kind of in a time crunch for two
3 considerations on the boat, which is our critical path
4 driving factor.

5 Q. That was my next question, was that timing issue I
6 would like you to describe for the Board.

7 A. We have two pressing issues. One, we have a
8 36-year-old boat that is not fit for purpose. We -- it's --
9 to run it as far offshore and go as fast as we need to board
10 the bigger ships, it is no longer suited for this purpose.
11 We've already had one pilot killed on this boat. It is our
12 plan to retire that boat as soon as we can. Maybe --
13 depending on how this goes out but it's no longer fit for
14 purpose. So, that's one driving factor.

15 The other driving factor is the Tier 4
16 compliance. So, we have to have our keel laid before
17 September or we have to go to a Tier 4 compliant engine. So,
18 for the layperson, if you think of your tractors or your
19 trucks, if you have a diesel engine, the Tier 4 compliance
20 means you're going to have to have the DEF or the exhaust gas
21 return as opposed to if we get the keel laid before
22 September, then we can stay in the Tier 3 compliance. And
23 the cost offsets between the two compliance is significant.
24 If we can't get into the slot that we -- that we have now --
25 so, when we pulled out of the rate application last time in

1 November, we had a slot reserved. That slot was given to a
2 Corps of Engineers boat in New Orleans. So, I talked to
3 them -- Kurt and Metal Shark and they have a space for us
4 open now. But we need -- we still have to go back to the
5 bank -- if we get approval, if the funds are enacted, we
6 still have to go to the bank. We still have to finalize the
7 drawings and there's still a little bit of lead time before
8 that September deadline so you can get your keel laid. So,
9 that's another one of the big driving costs that we're trying
10 to conquer.

11 Q. With regard to the boat fund, which is a line item
12 in the rate application --

13 A. And it -- it's in escrow -- it's in an escrow. So,
14 all the funds -- it's zero -- zero of the moneys received on
15 the boat fund can go to a Brazos pilot for disbursement.
16 It's all held in an escrow account with the bank. We have to
17 show -- we have to give the bank the number of jobs that
18 we've done and then at the end of the day, they -- they'll do
19 a check and make sure all bills that were serviced for the
20 Brazos Pilots to move a ship go directly to the escrow
21 account. When the boats are paid for, then the account goes
22 away.

23 The reason there's two boats is we have a
24 17-year-old pilot boat which was the one -- the sister ship
25 to the one Paxton was talking about that killed the pilots in

1 which is 17 years old, has a 20-year hull will be 27 years
2 old. So, that's why we're going -- we're asking for the two
3 boats because we're going to retire the second boat at that
4 point.

5 Q. And these boats, are they mission critical to
6 servicing the continued growth of this port?

7 A. They're absolutely mission critical. We cannot do
8 our jobs without the pilot boats. We cannot do the job
9 safely.

10 Q. Let's move on to the next line item, which is the
11 dispatch station surcharge. Is the dispatch station that's
12 contemplated, is that mission critical to serve in this port
13 and its growing needs?

14 A. Correct. The dispatch system is mission critical.
15 And there's another driver for the dispatch system. And when
16 we went and talked to our customers about what -- the service
17 that is provided from Brazos Pilots and how can it improve
18 and how their business models can change with this kind of a
19 system and how they can get a return on investment. So,
20 if -- the Port Freeport is one-way traffic. In order to
21 maximize the profitability of the port, you have to maximize
22 throughput. If you have a system like this in place, you are
23 maximizing your efficiency. Currently -- and no other port
24 that I know of -- it is an unmanned pilot station.

25 So, if a ship comes in from their previous

1 Galveston. And then we have our 35-year-old boat, the single
2 engine four hundred -- the 45 -- the 40-foot boat.

3 Q. Well, with regard to the pilot boat fund concept
4 that's in the rate application, are there any other
5 competitor ports that Freeport competes with that had a
6 similar arrangement?

7 A. Correct. We're not inventing the wheel on how
8 these boats are funded. Currently Houston, Sabine, and
9 Matagorda have tariffs enacted right now to fund their pilot
10 boats in this way. And throughout the nation pilot boats are
11 funded in this way. And the reason that it's done this way
12 is because if you try to encompass this large of a capital
13 investment within the tariff, then that -- that riding fee
14 will stay within the tariff all the time. If -- for the sake
15 of transparency, which is good for the customers and it's
16 good for the bank, when you do it as a line item, the
17 customers can see where the money is actually going. It's
18 not going to a pilot. And when the fee -- we even talked to
19 industry about, well, would you like to do a rider that just
20 goes on at a little bit longer fee and they said no. They
21 wanted it to go away. The two boats in there are not
22 concurrent. It's consecutive. So, after we pay the first
23 boat off, you're looking at ten years -- ten to seven
24 depending on the numbers and Jeff verified that it looks like
25 we're going to pay that boat off in ten years. Our new boat,

1 destination, which could be anywhere in the world, they will
2 go to the anchorage and they will try to make contact with
3 the Port. If there is not a pilot physically moving a ship
4 at that point, then their radio call goes unanswered.
5 There's no one to give them any anchorage instructions.
6 There's no anchor management plan. There's no one to tell
7 them to heave anchor. There's no one to tell them when his
8 port will be -- or his dock may be available. So, it creates
9 huge inefficiencies and confusion at the very beginning of
10 the vessel's arrival to Port Freeport. And after that, it --
11 it just creates large inefficiencies between all the
12 different entities that we have to liaison with.

13 Coast Guard -- for Coast Guard escorts, our
14 escorts previously had just been the BASF ships and the LNG
15 ships. But they're only -- BASF is the only one that's
16 really been doing the Coast Guard escorts up until last year.
17 So, we were able to do it -- we had the ships daylight
18 restricted. But the Coast Guard station here in Freeport is
19 only search and rescue. So, to get the Coast Guard escort
20 people out, you have to -- they have to have a four-hour call
21 out that comes from Houston.

22 Q. So, you have to coordinate that?

23 A. We have to coordinate all of this. But we don't
24 have a four-hour call out. We only have a two-hour call out.
25 And if there's multiple ship traffic at that time, that

1 liaison has to be handled on the spot. And it's causing a
2 lot of confusion with the Coast Guard and currently it is one
3 of the big, significant problems that we're trying to sort
4 out with Conoco Phillips. And when LNG comes online, all of
5 them are going to be Coast Guard escorted vessels. It's only
6 going to propagate and then become a larger issue. When LNG
7 gets here -- we currently have two tugboats. When LNG gets
8 online, we're going to have six tugboats in the port. So,
9 we're going to have to coordinate all those movements. They
10 have a unique tug agreement with the LNG shippers that is not
11 like any other port that in -- if the tug -- one tug is
12 available and it's not moving an LNG ship, then it can be
13 used within the other port complex to move a ship. That is
14 huge for the Brazos Pilots. But those have to be manned or
15 managed in realtime by the people who know what they are
16 doing and that is us. There's only going to be small 15,
17 20-minute windows where you have huge potential to increase
18 the efficiency on the ship.

19 Q. What is the dispatch station going to do to your
20 ability to respond to these dynamics?

21 A. Currently we're doing this in a limited capacity
22 through our office manager who has a whole plate of other
23 responsibilities that she's doing now during business hours.
24 Our request is that we do it 24 hours a day, seven days a
25 week, nights and weekends. But I mean, it's going to

1 facilitate the processing of waivers which are becoming more
2 frequent. And the needs and requests of our customers is
3 becoming significantly more. The trend is larger and larger
4 ships and we -- the channel itself isn't improving. So,
5 the -- the information that we can get to have their ships
6 ready or where we're able to check the conflicts of interest
7 with ships going by other ships in 24-hour realtime service,
8 in order to process these nighttime waivers, in order to
9 coordinate with the Coast Guard to get them there, to get
10 these people to where we could do nighttime transits on some
11 of these vessels, it's --

12 Q. That's what you mean, this throughput is going to
13 help you maximize --

14 A. It's going to help throughput. And one of the
15 other mission statements that we put in there was that it
16 will be an emergency information disseminator in Port
17 Freeport, which currently does not exist. I can't
18 understand -- understate the importance of that. We're the
19 pilots. We are in a unique position that we're the line
20 managers on the channel. We know all of the docks. We know
21 all of the intricacies between the different ship types. We
22 know all the people in the interaction. We know all the
23 auxiliary supports that are available, whether it's tugs,
24 whether it's launch services, whether it's the Coast Guard.
25 We have all those contact informations. And getting the

1 accurate -- and information out that's timely is crucial.
2 And there's a big hole right now in that service that we know
3 we can fulfill.

4 Q. Okay. And let's talk about the structure of the
5 fund itself. The line item charge that goes into the
6 dispatch fund, is that used for anything else other than
7 supporting the dispatch station?

8 A. Negative. It is not intended to be a
9 revenue-generating mechanism for the pilots. It will be --
10 we're still trying to define the corporate structure but it
11 will be an entity within Brazos Pilots that is self-sustained
12 off of this fund. This will not go into a pilot disbursement
13 fee. We do not intend to generate any fees off of this. It
14 is solely to provide for this dispatch system.

15 Q. And both these funds, the boat fund and the
16 dispatch fund, they're going to be transparent, available to
17 the Board, to the public anytime anyone wants to look at it?

18 A. Correct. As with all of our books. And then
19 the -- go ahead.

20 Q. And with regard to -- I'm going to move on now to
21 the 3 percent rate and -- the 3 percent rate increase. Some
22 people are going to say, okay, well, that money is for you.
23 That's going in your pocket. Where is -- if the plan that
24 80 percent of the port users want to grow this port is put
25 into fruition, how is that 3 percent going to be spent?

1 A. It's three, three, three. And the reason we spread
2 it out is so that there's not such a big initial sticker
3 shock on it. The three, three, three -- so, if you look at
4 what we're trying to do, we're replacing a 40-foot, single
5 engine, naturally aspirated boat with a 65 -- 64-foot,
6 11 inches -- you have to keep below 65 because there's a
7 right whale law and the resale value affects it. So, I'm
8 going to use the term 65-foot boat with twin engines.

9 So, the operating cost from going from a
10 40-foot boat with a single engine to a 65-foot boat twin
11 engines is significant. There's consumption issues. There's
12 a whole new critical spares inventory we have to have. But
13 more importantly than that, the maintenance requirements on
14 the twin engines, it's going to be -- we think we're going to
15 stay with Cummins because in our older boat we have the
16 Cummins QSM 11s. We're going to probably go to the QSK 19s
17 is my initial thought right now just from a logistics
18 standpoint and vendors and everything like that. But the
19 replacement cost for the QSK 19 is about -- we have it pegged
20 at, if we do the work in-house with our guys, every 10,000
21 hours, which equates to about every five years, is half a
22 million dollars. So, that -- the three, three, three is
23 totally absorbed by the maintenance and operation costs of
24 the new boats.

25 Q. So, with regard to the boat fund, that money is

1 just for the purchase. It doesn't go towards maintenance and
2 repair of the boat?

3 A. The boat fund itself goes directly to the bank.
4 It's held in escrow. There is zero retention by the Brazos
5 Pilots. It is purely a pass-through shell and it's even
6 specified in the loan agreement with the bank that they get
7 all that money and once the principal, interest, origination
8 fees are paid on both boats, that fee goes away.

9 Q. And with regard to the engine overhauls every five
10 years for the two engines, that 500,000-dollar expense and
11 other maintenance and repair that you have to do, that's just
12 an expense that the association bears?

13 A. We bear that for all of the boats. That's -- in
14 our tariff there is no extra fund. Some ports have fuel
15 surcharges and other fees like that. All of those expenses
16 are bore within our tariff.

17 Q. And with regard to the -- jumping back to the
18 dispatch fund. Does that fund -- is that going to pay for
19 the entire dispatch system you envision or does the
20 association have to contribute something to maintain it?

21 A. The way we -- we tried to identify all the costs
22 and the plan was -- is to break the barrier of entry of which
23 we've had is the nucleus of customers that you have and try
24 to find a price point that you can get a system that you
25 could actually build upon. So, you would have a core which

1 over their retention. We have no control over the
2 compensation. They dispatch for plumbers, wreckers, doctors.
3 It is not an ideal system to run a port system of this size.
4 And it does not meet the expectations of the customers who
5 are putting billions of dollars and entrusting us with -- in
6 the case of some of the LNG ships, between the asset of the
7 ship and the cost of the cargo that they're carrying, you
8 could be well in the area of half a billion dollars. That's
9 the kind of responsibility that we have.

10 MR. BROWN: And commissioners, Captain Blanton
11 has done a good job explaining both these funds. But they
12 are in writing very detailed plans and it's Exhibit A-1.

13 A. It was our small business plan. I tried to be as
14 transparent as possible and put as much information out
15 there. And that's what I had to provide to the users that
16 wrote our letters of support. These -- the people who wrote
17 the letters of support are not neophytes in business. These
18 are marquee names. British Petroleum -- we have five gas
19 carriers that signed up to support our rate increase.
20 Freeport LNG, Conoco Phillips, Dow Chemical, Enterprise
21 Products. We went through our customer base. We showed them
22 all of this information. We went through it in depth. We
23 had several meetings. We tried to understand their needs.
24 We showed them what we can provide and they made a sound
25 decision. The vast majority, with the exception of the two

1 would consist of -- we've outlined the pay scales and
2 everything of five people and one manager. I went to the
3 Houston dispatch. I went and talked to Corpus. I went and
4 talked to Galveston. I tried to understand how they set up
5 their systems, how they differed from Port Freeport needs,
6 where they ran into the traps, where they ran into cost
7 overruns. I hired an HR consultant to come out. They did
8 demographic studies of our area, tried to pinpoint salaries.
9 A lot of the problems that some of the other dispatch
10 services were pointing out is that if you pay the low end
11 scale of the wage scale, there's very little upward mobility
12 within the dispatch system. So, you have a lot of turnover.
13 And the unemployment insurance costs were absolutely killing
14 them. So, we went out and we went and talked to some
15 specialists to try to target a price point that we could get
16 competent people that we could train that are dedicated to
17 our company and to our cause of providing safe dispatch
18 services within Port Freeport.

19 Currently what we're doing is we have -- in
20 the last five years, we've been through four dispatch
21 systems. We've been dropped or kicked out of four dispatch
22 systems. So, we use a call-out service. Tammy works during
23 the office hours. After hours and on weekends, we're
24 currently using a service, Fagan out of Victoria. These
25 people are not Brazos Pilot employees. We have no control

1 objecting parties, which constitutes 12 percent of the
2 traffic in Port Freeport.

3 Q. (BY MR. BROWN) Captain Blanton, I would like to
4 switch now and just briefly address some of the factors that
5 the Board is going to consider in the statute when they're
6 doing their deliberations. And a lot of them you've hit
7 already. But one of the factors I think, to me, is one of
8 the more important ones and that's the effect on Brazoria
9 County ports, Port Freeport, and the effect on the local
10 citizens of the county.

11 With regard to the health and the future of
12 this port, how do you see this rate application affecting
13 that?

14 A. The health and the future of the port is -- I mean,
15 if you nail it down right now, you look around, there are
16 cranes everywhere. There's people everywhere. It's growth.
17 The growth is already here. The capital has been spent. The
18 projects are on the ground. This is the infrastructure
19 keeping up with that growth. It is to ensure -- it's the
20 infrastructure to ensure that that growth can be sustained
21 and it can be implemented safely and efficiently. The
22 customer -- our customers in whole, the people of Brazoria
23 County, which I am a citizen, you know, our livelihoods
24 depend on the success of these companies. We -- they need to
25 be successful. And from a standpoint that, yes, you can

1 protect their livelihoods and make sure that their employers
2 are in a position to where they can operate as safe and
3 efficient as possible but there's also the national resource
4 of Port Freeport itself. It is not just a commercial entity
5 itself. There's residential uses as well and we understand
6 that. And this is going to help us protect and make sure our
7 waterway is safe and it's usable for everyone in all of its
8 ways you can use it, whether it's moving ships for commercial
9 profit or a guy taking his kid fishing. We have to protect
10 all those interests.

11 Q. As far as these sort of noneconomic, protecting the
12 waterways, the environment, the citizens, this is going to
13 have -- the rate application, if granted, will make it easier
14 for you to do that and benefit that end?

15 A. Port Freeport will be a safer and more efficient
16 port if the Pilot Board enacts what we've requested and our
17 users are requesting.

18 Q. With regard to the citizens of the county, the
19 people that may work in these few facilities, these growing
20 facilities, pilot fees are not paid by the citizens?

21 A. Negative. All of our -- all of our fees, all of
22 our revenues are generated from the tollers or the customers
23 as they come into port.

24 Q. Okay. I would like to shift and just briefly talk
25 about the comparisons. And we want to make sure that the

1 on there is because of the unique construction of those
2 vessels. They have reduced visibility and excessively high
3 wind loads and we're operating in an extremely narrow channel
4 in Port Freeport. But we're still the most cost competitive.

5 ER CAEN, that's an MSC ship. We hands down
6 beat all the other ports. Phillips 66 gas carrier, I
7 believe -- so, they have a mid class and then they have a
8 VLGC. One of them is about 500 feet by 106 and the other one
9 is 120 -- 120 foot beam by 750 feet. I can't tell by the
10 slide which ship that is, if it's a mid class or a VLGC but
11 we're still the most competitive port.

12 ATLAS VOYAGER is a crude oil ship. Those are
13 the ones that will go to Enterprise and Seaway. We're in the
14 bottom of the pack. BOW CARDINAL, that's a multi product
15 tanker going to Dow or sometimes Phillips 66. We are the
16 lowest cost provider. NORDIC LYNX is a smaller class
17 chemical ship. Lowest cost provider of any port. And the
18 LIBRAMONT, which is the mid class.

19 The Phillips 66 gas carrier at the top, that
20 is a VLGC. So, that's 750 by 120. The LIBRAMONT is a mid
21 class gas carrier. That one actually only trades at BASF in
22 the anhydrous ammonia trade. But the hull type is the same.
23 So, there is a butane and propane trade that trades in that
24 mid class.

25 Q. So, Captain Blanton, if I'm a shipowner, if I own

1 rate application, if granted, is still going to keep us a
2 low-cost alternative vis-a-vis our competitor ports.

3 MR. BROWN: Missy, could you bring up the
4 PowerPoint, please. I'm just going to go through two slides,
5 commissioners. If you could go just to the first bar graph.

6 Q. (BY MR. BROWN) Now, can you tell us what this
7 first bar graph is indicating and who got the figures and put
8 them in there?

9 A. As Jeff Strader explained -- and he verified our
10 numbers. We have nothing to hide. We are always and have
11 been the low-cost provider with an impeccable safety record.
12 So, what we did is when we went to all of our customers, we
13 tried to find a cross-section of ships that represented all
14 of our docks, all of the people and get a good gap from top
15 to bottom of the ships that represent -- that call on Port
16 Freeport. So, you have an LNG sample. That's the top.
17 That's going to be -- the red bar is what the Brazos Pilots
18 pay. And where it has two, that's actually what we pay to
19 have two pilots on there. So, don't get confused that the
20 line would be double. That's actually the cost with both of
21 our pilots on there. And it's almost -- it's right in the
22 pack, significantly cheaper, very competitive. Hoegh
23 Transporter, that's a car carrier. That's even with us
24 putting two pilots on there. We're still by far the cheapest
25 one with two pilots on there. The reason we put two pilots

1 any of these ships and I'm deciding where I want to go to get
2 a safe -- safe port with a good safety record and the most
3 inexpensive pilotage fee --

4 A. Port Freeport.

5 Q. -- Port Freeport is where I'm going?

6 A. We're the cheapest.

7 Q. This is 2016.

8 MR. BROWN: If we could look at the next
9 slide, please, Missy.

10 Q. (BY MR. BROWN) Now, the next slide is if the rate
11 application is granted, correct?

12 A. Correct. This is -- this is with all of the fees,
13 the boat fees, and the rate implemented fully through 2019.
14 So, this is our rate application after the three, three,
15 three is put in with all of the boat tariffs and the dispatch
16 tariff compared to the 2016 rates of our port competitors.

17 Q. So, this graph shows the 2019 rate if the rate
18 application is granted but it's still comparing it just to
19 the 2016 of the competitor ports?

20 A. Which have rate -- rate increases pending in some
21 of these ports. So, even though our plan has been fully
22 implemented, comparing it to 2016, once they get to 2019,
23 they'll even be more expensive in some cases. And we're
24 still the low cost -- even if you implemented the tariff
25 request that we requested, Port Freeport will be the cheapest

1 port to do business on the Texas Gulf coast.
2 MR. BROWN: Commissioners, that's also in
3 writing. I don't want to go through the pages because you've
4 already got the materials and that will also be in
5 Exhibit A-1, Pages 14 and 15.
6 Q. (BY MR. BROWN) There's another one of the factors
7 that the statute asked the Board to consider, the average
8 wages of masters and filing compensation. There's a report
9 in Exhibit 9 -- Exhibit A-9 from Captain George Quick. It's
10 a report on average master wage in the United States. And
11 when you include the fringe benefits, Captain Quick's opinion
12 is about \$318,000. And let me ask you. You sailed as a
13 master.
14 A. Correct.
15 Q. And when you sailed as master, what was the -- at
16 the end of your career, the salary you were making?
17 A. My base pay at master for Helix Energy Solutions
18 was \$225,000. In addition to that, every five years I got a
19 bonus for retention for management level, which was half of
20 my salary as a bonus. In addition to that, I was eligible
21 for performance and safety bonuses that were on my ship. I
22 was also eligible to participate in the employee stock
23 purchase plan. We had 401(k) and we had the option for a
24 health savings account in addition to health insurance. We
25 had the Blue Cross Blue Shield premium account.

1 Q. And your employer provided that?
2 A. All of that.
3 Q. And you had paid time off?
4 A. Correct.
5 Q. And you had sick days?
6 A. That was me working six months of the year. If I
7 got called out in addition to that, I would be paid on a day
8 rate. So, if I had to consult for project managements for
9 upcoming projects or if I had to -- sometimes they would
10 require me to come into the office and I could help them with
11 ISM audits or anything like that.
12 Q. Okay. And as a pilot, what fringe benefits do you
13 get from the association?
14 A. No fringe benefits.
15 Q. Who pays for your health insurance?
16 A. I pay for my health insurance.
17 Q. Who pays for your retirement plan?
18 A. I pay for my retirement plan.
19 Q. Do you get any sick days?
20 A. I get no sick days.
21 Q. If you're sick and can't work --
22 A. I do not get paid. Pilots only get paid when they
23 work.
24 Q. Now, with regard to the -- you have a Coast Guard
25 license, you're required to have that. You have to get a

1 yearly physical and submit it to the Coast Guard.
2 A. As a master mariner going to sea, you're required
3 to have a 719-K form filled out in a five-year period.
4 Q. That's a physical exam?
5 A. That's the physical examination conducted by a
6 doctor. And then you have to send that to the Maritime Power
7 House of West Virginia. And they have a board of surgeons
8 that review that file. As a pilot you're held under a -- a
9 greater bar. So, I have to do a two-year physical. Every
10 two years it's submitted to a review board. And annually I
11 have to take the -- a physical, the 719-K, to make sure I
12 have the endorsement for first class pilotage. And then I
13 have to be in a random drug screen program, which I have been
14 in since I was 18 years old.
15 Q. If a pilot, for whatever reason, fails a physical,
16 what happens?
17 A. If a pilot is unable -- or cannot maintain his
18 license, then he is not able to be dispatched and he's not
19 able to serve as a member of the Brazos Pilots and he would
20 be out.
21 Q. And there's -- I think the objectors are concerned
22 that pilots make too much money. So, we're just going to
23 talk about that. Okay?
24 A. All right.
25 Q. And as I understand it, you have monthly expenses

1 running the business. And the financial report has all those
2 figures and people can get out a calculator and figure all
3 this out. So, we won't spend too much time on it. Once all
4 the expenses are paid to run the business, there's money left
5 over?
6 A. Correct.
7 Q. What happens with that money that's left over?
8 A. So, all the bills come in, all the expenses are
9 paid and at the end of the month, we disburse all moneys left
10 between the Brazos Pilot members -- active members.
11 Q. Okay. And so, that's full branch pilots?
12 A. Full branch pilots. Right now the disbursement is
13 for three people.
14 Q. Deputy pilots do not participate. They don't get a
15 distribution?
16 A. Deputy pilots are employees of the Brazos Pilots
17 Association. So, they work under a salary.
18 Q. Okay. That's an expense?
19 A. They're an expense.
20 Q. So, right now we have whatever may be left -- what
21 if the port shut for a hurricane and there's no money that
22 month?
23 A. If there's no money, then we would have to draw
24 down from the operating cash reserves that we have. And if
25 we -- if the drought lasted longer than our operating cash

1 reserve, then the pilots show up and write checks out of
2 their checkbooks. We have to cover our expenses. It's our
3 business. We have to meet payroll. We have to meet
4 insurance. We have to meet our financial obligations.
5 Q. So, right now we've got three full pilots?
6 A. Three full pilots, two deputies.
7 Q. So, whatever is left over is split three ways?
8 A. Correct.
9 Q. And we have two deputies that are working and in
10 about a year they'll be full pilots?
11 A. I think it's 13 months left and then they'll be
12 full pilots. Then we'll have five guys.
13 Q. So, in 13 months we're going to have five full
14 pilots?
15 A. Correct.
16 Q. And whatever is left at the end of the month will
17 get split five ways?
18 A. Correct.
19 Q. And let's say -- in the last two, three years we've
20 had three branch pilots splitting it up, correct?
21 A. Correct.
22 Q. What was the average annual -- I know it can vary
23 every year because you never know how many jobs.
24 A. It was right at 500,000. Between four ninety and
25 five ten.

1 Q. And that's split --
2 A. Split three ways.
3 Q. -- three-way split. So, in a year, whatever is
4 left is going to be split five ways?
5 A. Correct.
6 Q. It's going to go down substantially?
7 A. Yeah. The 1.5 million-dollar pot split three ways
8 is five hundred. Split five ways, we go to three hundred.
9 Q. Okay.
10 A. But we're optimistic. We've talked to our partners
11 and we are hopeful that the ships will come. That's the bet
12 we made.
13 Q. And taking the five pilots, even though it -- I
14 guess it decreases the amount that the full pilot takes at
15 the end of the year. That's something you forecasted to meet
16 the growing demands of the port users?
17 A. When we negotiated with industry, that was one of
18 the biggest concerns they had. With a small group, if -- God
19 forbid something happened to me, any other business to absorb
20 a 33 percent loss in its workforce overnight is hard to --
21 hard to overcome. And to their credit, they recognize that
22 as a weakness of operating in Freeport with the Brazos
23 Pilots. And when we talked about how we could move forward
24 and meet their needs and responsibilities and what they could
25 do, you know, they forecasted what they were going to do and

1 they said, Captain Blanton, we see this as we're weak. You
2 need more pilots. You need more boats. We need the
3 dispatch. And that's -- that's the bargain that was struck
4 with 80 percent in writing of the users of Port Freeport.
5 Q. Let me ask you this, Captain Blanton. It seems
6 like you certainly did your homework in determining the port
7 users' needs and the growth that's forecast and it sounds
8 like the port users did their homework in asking you what you
9 need and telling you what they think you need. And how do
10 you see the pilots servicing the port users' continued growth
11 without this rate application?
12 A. It's going to be a significant burden. We're going
13 to have to re-evaluate the risk and how we do business.
14 We're going to have to absorb the influx of ships. We're
15 going to have to -- this is our solution. We went to
16 industry. There is no other plan on the table. This is the
17 plan that has been absorb -- been agreed upon by the majority
18 of the stakeholders here and definitely the majority of the
19 people who have invested the capital in Brazoria County.
20 Q. Okay. Captain Blanton, thank you.
21 A. The only other thing is, for my salary, when I was
22 a pilot -- I mean, when I was a captain and Captain Quick,
23 that's for six months of work. For the last years -- we work
24 two weeks on, one week off. When we go to a five-pilot
25 rotation, we're going to be 15 and 10. So, even our on task

1 time on the channel is significantly more than the six
2 months. That's even outside of the other duties and
3 responsibilities that I have as a pilot where I have to -- I
4 don't have to. I need to in order to fulfill my role to the
5 community is to attend all these other auxiliary functions
6 that a pilot does.
7 Q. You raised another point that I want to talk about
8 just for a second in comparing the master with the pilot.
9 Now, in the operation of a ship, which is more critical as
10 far as risk management, coming in and out of port or steaming
11 in open ocean?
12 A. The comparison between what a master does and his
13 responsibility to one vessel compared to a pilot who is --
14 so, even on the highest end, if you take an LNG carrier who
15 has a two hundred -- 200 million-dollar asset with
16 \$300 million of cargo, whatever it equates to, half a billion
17 dollars, the amount of resources that that guy has in order
18 to maintain that compared to the responsibility of a pilot
19 who's overseeing -- what is the value of all the assets put
20 in Port Freeport? \$50 billion and you're still having to
21 make multiple day-to-day mission critical decisions on -- our
22 average is about three ships a day. We're continually making
23 these decisions. And they -- they have explained to us how
24 much their ships cost, how much their cargoes are worth, how
25 much their infrastructure has cost them to put it in there,

1 how much it's going to cost if this channel gets shut down or
2 we damage a ship.
3 Q. So, a ship master may bring a ship in and out of
4 port two or three times a month?
5 A. He may bring a ship in two or three times a month.
6 Q. How often --
7 A. But he also does that with the assistance of a
8 pilot.
9 Q. How often upon average will you bring a ship in and
10 out of port?
11 A. We'll do three ships a day on average throughout
12 the year.
13 Q. Okay.
14 A. Some days are more. Some days are less.
15 MR. BROWN: Thank you, Captain Blanton. Pass
16 the witness, Mr. Chairman.
17 CHAIRMAN KRESTA: Thank you, sir. Does WGMA
18 lawyers and representatives have any cross-examination?
19 MR. WESELY: Yes, if I may.
20 EXAMINATION
21 Q. (BY MR. WESELY) I'm Nathan Wesely with West Gulf
22 Maritime Association. Captain Blanton, let me ask you a few
23 questions. You-all submitted a pretty comprehensive document
24 here. Did you help prepare this?
25 A. Which document are you talking about?

1 Q. The application itself.
2 A. Yes.
3 Q. And with respect to, for example, the financials,
4 did you prepare those financials?
5 A. Our CPA prepared the financials.
6 Q. Are those audited financials?
7 A. They are not audited.
8 Q. And who is your CPA?
9 A. Raleigh Bailes, Jr. Bailes, Bates & Associates.
10 He's -- they've been the CPA for the Brazos Pilots for
11 probably about 25 years.
12 Q. Is he going to testify today?
13 A. He's here today.
14 Q. Is he planning on testifying?
15 A. He's on the witness list, I believe.
16 Q. So, in terms of this chart that's up there. In
17 the -- I think you can probably see that from here. Does
18 this -- you prepared this document, the one that has the
19 comparison, Freeport versus competitor Texas ports?
20 A. Correct.
21 Q. Is that the same that's up there?
22 A. Well, it depends. There's two slides. One of them
23 is what our rates are currently and one of them are what the
24 rates will be with the full implementation in 2019. Then it
25 goes through -- like I said, we tried to take a sample of all

1 the different ports so they could understand and then we
2 looked at the port -- and Jeff Strader, he confirmed what --
3 the values that we were and they were accurate within
4 2 percent. There may be some moving parts because, say, like
5 Port Houston, they have different zones depending on where
6 the ship can travel. So, it's hard to do a true port-to-port
7 comparison because, you know, the old adage is if you've seen
8 one port, you've only seen one port. They all operate
9 differently. So, when you say you're comparing them port to
10 port, in Houston it may go to Zone A, B, or C, which would
11 generate a different fee. So -- but I'm not a lawyer. But
12 as the judge said, I guess, a reasonable man standard. We
13 tried to do the best we could to make sure the information
14 was accurate.
15 Q. So, I want to focus on that just for -- I'm not
16 necessarily quibbling about those numbers there. I'm just
17 trying to understand the numbers you have here.
18 A. Okay.
19 Q. The -- and what you're talking about is basically
20 3 percent plus on round trip another thousand dollars.
21 Because it's 200 in, plus 300 in, and the same out, right?
22 A. Correct.
23 Q. It's a thousand dollars round trip?
24 A. Correct.
25 Q. So, on your chart, does that include that thousand?

1 I guess my question is, this chart does not include that
2 thousand dollars?
3 A. It depends --
4 Q. I'll be glad to -- do you want me to hand that to
5 you?
6 A. In the packet itself -- and it may be on the back.
7 I don't know how you printed it. When we did the
8 cross-comparisons, all the rest of the ports have line
9 charges that aren't identified on this chart. So, if you had
10 the whole piece of paper or the whole packet, there's a whole
11 other page that shows all the line charge. For instance,
12 some of our port competitors have a 900-dollar boat charge.
13 We -- the only line charge that Brazos Pilots currently have
14 is the education fee, which amounts to about \$15. So, the --
15 there is no other surcharge. If you look at a lot of the
16 other ports -- and the statute lays out that they can charge
17 for communication systems. There are charges for
18 communications. Some people offset the fuel surcharges. So,
19 they'll have a fuel surcharge. Some ports have broken their
20 zones -- or their port up into zones and depending on where
21 they go in the zone there is a different charge.
22 To try to encompass all that into a graph --
23 the point of the graph was to be at a glance you could see
24 what you were -- what you were getting. And -- but none of
25 the -- none of the line charges for these or the other ports

1 are registered in here.
2 MR. MOORE: There's the additional fees.
3 A. There's the additional fees there.
4 Q. (BY MR. WESELY) So, is this on the prior page?
5 Flip back a page. Keep going.
6 A. Well, that's probably in --
7 Q. The original application?
8 A. It's in there. I don't know what section it's in.
9 Q. So, I guess my question -- my point would be is
10 when you're talking about it's just your proposed rates right
11 now, you're looking at the very first vessel of \$3,003 and
12 you're talking about going to 3,095 the next year, you're
13 actually talking about going 4,095 and 3,003; is that right?
14 A. Say it one more time.
15 Q. My point is in addition to what's here, you're
16 talking about adding another thousand dollars to round trip?
17 A. There is a trip charge, yes, a thousand dollars on
18 top of that, which is reflected in all the graphs.
19 Q. Okay. And then the -- and so, my point is simply
20 that that is a fairly substantial increase. You're going
21 from 3,000 in this particular case to over \$4,000 for that
22 ship?
23 A. Correct.
24 Q. And the smaller ships obviously are actually
25 bearing the brunt of it?

1 the ways you calculate your charge is a unit fee, right?
2 A. Correct.
3 Q. As part of the fee?
4 A. Correct.
5 Q. How is that calculated?
6 A. They take the ship's length and width and then
7 there's a coefficient that's multiplied and then there's a
8 draft fee and they add them together and it gets the pilot
9 fees.
10 Q. The draft fee is how deep the ship is in the water?
11 A. Correct.
12 Q. But so, the -- and the unit fee is not a standard
13 fee? In other words, that coefficient, it actually gets
14 larger as the ship gets larger; is that right?
15 A. Correct.
16 Q. So --
17 A. So, the bigger ships pay more of a fee than the
18 smaller ship.
19 Q. Quite a bit more?
20 A. Quite a bit more. They pay more of the pilot
21 burden than the smaller ships do.
22 Q. And as a practical matter -- I mean, I think in
23 this you indicated that the ships are getting larger and
24 larger.
25 A. Correct.

1 A. Well, you say that but that's been the problem in
2 Port Freeport. So, the Freeport LNG has, out of their
3 private money, dredged the entire entrance channel to
4 600 feet, which the small users get to take advantage of day
5 in and day out. Conoco Phillips, in order for us to get the
6 tractor tugs that we need, they pay a retainer on those fees.
7 In addition to all the vessels that use the tug fees, they
8 pay an additional fee. Everyone gets to benefit because the
9 people who are making the investment in this port and putting
10 their capital into these projects, they understand the value
11 that we have in Port Freeport. And the growth is going to be
12 shared by all.
13 Yes, if you take the smaller figure and then
14 add a line charge on there, it is a bigger percentage. But
15 if you add that same line charge on to a bigger ship, then
16 it's a smaller percentage. But that said, the fact that you
17 still have to drive that boat out there for a small ship and
18 a big ship or the fact that you still have to dispatch the
19 small ship and the big ship, why should the burden solely be
20 laid on the larger ships? That's why the trend is up there
21 like that. The cost to provide pilot services, it needs -- I
22 mean, you can ask BP.
23 Q. Well, actually you're the one testifying.
24 A. Okay.
25 Q. Let's talk about that for just a second. One of

1 Q. And so, as a practical matter on a per ship basis,
2 your fees are going up just simply by -- without changing
3 your fees at all?
4 A. Well, I mean, you can say that the fee -- the
5 revenue is going up, yes. But the responsibility is going up
6 as well because we've just added a fifth pilot. The more
7 that you tip the scale and the more ships that come to Port
8 Freeport, the more services that are going to be expected to
9 be provided. We've already explained that we took the fifth
10 pilot. If the ships increase even more, we may have to take
11 another pilot. We've already made a commitment to put
12 boatmen on there. We've made commitments that if the traffic
13 gets to a certain extent, we may end up having to double crew
14 our boats and run simultaneous boat operations. You know,
15 the longer the curve goes up on the ship count, you still
16 have to maximize that throughput.
17 Q. And right now -- and you've got -- in your
18 presentation you had a little example of Freeport's growth
19 and what that means, right? And you helped put this
20 together?
21 A. Yes.
22 Q. The part about right now you're approximately 4.5
23 movements a day. Do you remember this?
24 A. Show me what you're talking about. It depends
25 on --

1 MR. WESELY: Is that possible for you to pull
2 this up?
3 MS. BEVERS: What?
4 MR. WESELY: Their exhibits.
5 MR. MOORE: It's in the application. You're
6 reading from the application as opposed to the submission?
7 MR. WESELY: The submission is Exhibit 3?
8 MR. MOORE: Look at Exhibit 3. It's all
9 Exhibit A, I believe.
10 MR. WESELY: I think this is A.
11 CHAIRMAN KRESTA: Exhibit A. Do you have
12 Exhibit A?
13 MS. SAATHOFF: It's in the business plan.
14 THE WITNESS: It's in the business plan for
15 Fort Velasco?
16 MS. SAATHOFF: Exhibit 3.
17 THE WITNESS: Page 8 of 12.
18 MR. WESELY: Under Tab 1.
19 MR. BROWN: Tab 1.
20 Q. (BY MR. WESELY) Yeah. Page 3 of 12 under Tab 1.
21 A. I'm there.
22 Q. All right. You helped put that together?
23 A. Correct. Captain Burns and myself put that
24 together.
25 Q. I just want to be clear what we're talking about

1 here. We're talking about currently through your average of
2 4.5 moves per day.
3 A. Okay.
4 Q. Would that be accurate?
5 A. Yes. More or less, yes.
6 Q. And you're talking about potentially going down
7 here in five years to 5.2 to six movements per day?
8 A. Okay.
9 Q. Is that correct?
10 A. You know, it's forecasting. We've talked to our
11 customers and, you know, some of their estimates are high,
12 some of their estimates are low.
13 Q. I mean -- but my point is you feel these are good
14 numbers? This is where you see it going?
15 A. At the time that we produced this, this was the
16 best information that we have.
17 Q. And you don't have any reason to believe it's any
18 different now, do you?
19 A. Well, I mean, no, but -- so, the number for
20 Phillips 66, the low end of four, the high end of eight.
21 Currently the last four months they've been online, they're
22 trending at ten ships. So, I mean, for the most part, yes.
23 As best as I can be, it's accurate.
24 Q. And so, for example, on Freeport LNG, you're
25 talking somewhere between four and eight ships per month?

1 A. That's what they expect.
2 Q. And when you look -- if we go back to your charts,
3 those increased -- or if you go back to your finances, do you
4 increase the revenues based on those increased ship movements
5 or is it based on a steady state?
6 A. I mean, it -- well, no. We forecasted that they
7 would be there. I mean --
8 Q. I know. I understand what you just said. You did
9 forecast that they would be there. But in terms of what your
10 revenue is projected, is it included in that?
11 A. Yeah, as best as we could.
12 Q. Let me be real clear. The increased ships that
13 you're talking about here, is it included in your revenue or
14 did you simply take the revenue times 3 percent?
15 A. You have to ask my CPA. I don't understand the
16 question.
17 Q. All right. Hopefully he'll testify and we'll
18 figure that out. But if you look at what you're planning on
19 doing, would you agree that the LNG ship is approximately
20 \$15,000 in fees?
21 A. Yeah. It's fourteen, 15,000 in fees.
22 Q. And if you did six of those, that would be
23 approximately what?
24 A. Six times 14.
25 Q. Let's make it 15. That's a nice round number.

1 About \$90,000, right?
2 A. Correct.
3 Q. Per month? Or in other words, over a million
4 dollars in a year?
5 A. Correct.
6 Q. My point is, is that million dollars in what you're
7 projecting and what you're basing your request on?
8 A. Yes. Because we've talked to our customers. And
9 depending on where that number is, on the low end or the high
10 end, we could have to take extra pilots. If we have that
11 much traffic, we have already agreed that we'll put the
12 boatmen on. We've already agreed that if the traffic
13 demands, we may have to double crew our boats and run
14 simultaneous boat operations. If we have to expand our
15 operations to that extent, then we -- we'll have to look at
16 our whole business model. You can't just pin the revenue
17 with -- and say you're going to have all these gains in
18 moving the ship and not expect there to be an extra burden to
19 satisfy those ships.
20 Q. Certainly. And your current ship right now, you're
21 averaging, what, about \$4,000 per round trip? Would that be
22 about right?
23 A. I don't -- I don't know. I have to ask the CPA
24 what the average is for us. It depends on how many ships you
25 do for the month. Traffic is -- that's the thing. It's

1 month to month for the business. So, when the crude oil
2 starts moving significantly, it may be a little higher.
3 Crude oil falls off, you do smaller gas ships. We do it by
4 the total number in there. So, to just say, well, your
5 average, you have to -- we have not calculated how it --
6 how -- on an average basis for all the ships from a month to
7 month. It's just not something that we do. We look at it
8 the end of the year, this is the ships that we've done. This
9 is the revenue we had. These are the expenses we had. We
10 went to our partners and said, what do you need for services.
11 We've identified that we needed to take the extra pilots.
12 We've identified that we needed the boats. We've identified
13 that we needed the dispatch system. And that's what we've
14 tried to do.
15 Q. So, if you take your revenue from last year, which
16 was about what, three point what?
17 A. \$3 million.
18 Q. A little bit over \$3 million, right?
19 A. Yeah.
20 Q. And you have something like 1700 moves and divide
21 that by two. You get about \$4,000 per ship.
22 A. Sure.
23 Q. Would that be about right?
24 A. Yeah.
25 Q. And the point is is that the ships that you're

1 talking about here are significantly -- they're a game
2 changer for you. You're talking about a million dollars in
3 revenue just from the LNG?
4 A. We still have a crude oil base. There's still a
5 lot of crude oil ships.
6 Q. But my point is what you're adding on is
7 potentially -- if you just take the average between that of
8 six ships a month, one a week would basically give you
9 another million dollars in revenue?
10 A. With the added cost of extra pilots and extra
11 services that we've already requested. The LNG ships have
12 reviewed all of our policies. They've explained to -- we've
13 opened up our books to them. The LNG ships on a whole, every
14 single toller, every single LNG ship is on board and has
15 signed on to this. This is what they told us they expect
16 when they get here. They've made a huge capital investment
17 in the community and this is what they said, you will have
18 this done. And that includes not only the shippers but the
19 LNG terminal itself. Freeport LNG is one of the tollers.
20 So, that's five tollers. And Freeport LNG itself reviewed
21 all of our data. We opened up. We had multiple meetings
22 with LNG. We had multiple meetings with the tollers. We
23 drove up and did a two-hour presentation with an hour and a
24 half question and answer with executives from Osaka. They
25 flew in from all over Asia. We had a vice-president of BP in

1 the office. We had financially audited -- not audited. I
2 don't want to use that word. I use it as a layperson. They
3 went through all of our records. They looked at what we
4 need. And we did that with all of our customers. We went to
5 Dow. We went to Phillips. And that's why we have the
6 letters of support that we have from these people. Because
7 they looked at our numbers and they said this is the service
8 that we expect you to provide.
9 Q. And I want to be real clear. That extra million
10 dollars is not in your projections here, is it? It's not in
11 what you've projected and what you've provided to the Board?
12 A. The projections that we used -- I have to look and
13 see which one you're talking about.
14 Q. All right. Let's see if we can --
15 A. I'll defer to the CPA.
16 Q. Let's see how talented you are. See if you can
17 come up with that page. Because you did actually do a
18 projection on what you expect your revenue to be over the
19 next three years given this increase, correct?
20 A. You have to ask the CPA, but I believe we did.
21 Q. It would be in here?
22 A. It is.
23 Q. Okay. And, in fact, if we take just a minute, I
24 think I can find it. I think it would be somewhere around --
25 I believe you say this one is under what tab?

1 MR. BROWN: That would be two.
2 MR. WESELY: It will be under Tab 2. Can you
3 flip that?
4 Q. (BY MR. WESELY) Are you familiar with this
5 document?
6 A. Yes. I think this is the financial report provided
7 by our CPA.
8 Q. When you -- up at the very top, total pilotage
9 income, that's what your -- that's what you received from
10 your users?
11 A. Correct.
12 Q. And my point is very simple. You say, for example,
13 that you were going -- these increases that we just looked at
14 are not -- you are not taken into account in this; is that
15 correct?
16 A. I see. So, the LNG you're saying is not realized
17 in the projections.
18 Q. And what is realized in here is the thousand
19 dollars per round trip and the 3 percent; is that correct?
20 A. Yes.
21 Q. So, going last year -- so, basically if you said
22 3.1 million to the 3.6 million is the thousand dollars per
23 round trip plus the 3 percent?
24 A. Okay.
25 Q. But that's assuming the ships would stay the same,

1 correct?
2 A. I think they took the average from '13, '14, '15
3 for the ship count or I --
4 Q. My only point is that all of this -- you're exactly
5 right. There's been a lot of investment. There's been a lot
6 of investment by a lot of different companies including LNG
7 that will actually result in potentially a lot of additional
8 revenue that -- at a much higher rate than what you have now
9 because they're bigger ships, as you've said?
10 A. With a higher expectation of service. We've
11 already taken additional pilots and we've already proven that
12 if it dictates and the ships show up in the numbers that they
13 have that we'll take more pilots. But the trend at LN --
14 what happened last time is the facility was built and the
15 ships didn't show up. They -- so, we can't -- you have to --
16 you have to be able to sustain the economic viability of your
17 business while trying to ensure that we satisfy our
18 customers' needs without getting so overexposed on -- and
19 leveraged out on your expenses. That's -- that's what we try
20 to do.
21 Q. And if we look at this chart -- it's a little bit
22 difficult to see. You have a hard copy in front of you,
23 right?
24 A. Yes.
25 Q. Just so we understand what we're talking about here

1 on -- I realize some of these are not big numbers but you
2 have things like automobile expenses. Is that for the --
3 your -- who is that for?
4 A. For the pilots that drive back and forth.
5 Q. To the ship?
6 A. Yes.
7 Q. All right. So, your -- do you have a car
8 allowance?
9 A. I have a personal vehicle and there's a --
10 depending on how many ships I do, they -- there's a small car
11 allowance for that.
12 Q. And then you actually have a fairly large salaries
13 and wages here of 445,000. Does that include the deputies?
14 A. The deputies and all of our employees.
15 Q. And about how much of that 445,000 is the deputies?
16 A. They're at about two eightyish right now.
17 Q. Between both of them?
18 A. With both of them, yeah.
19 Q. And so, after they become branch pilots, do you
20 anticipate that number would go down?
21 A. That number would go down but they would become
22 full branch pilot and then the pot that the members were
23 splitting would be split by five. And then, like I said,
24 we've made the agreement with the port users when the ships
25 show up and if the revenue is there, it's -- was one of the

1 big requests to the concessions that we tried to meet with
2 them is because they were concerned -- most of the pilot
3 organizations up and down the coast have put a deckhand on
4 board. Currently we have three pilot boat operators: Jack,
5 Johnny, and Willie. And then -- so, they're the only other
6 person on the boat with the pilot. So, when the pilot at
7 night, in adverse wind has to go out and board a ship, we
8 exit the -- and several of the Board members have probably
9 gone on the better rides but they can get a little dangerous.
10 So, we have to exit the house of the pilot
11 boat, walk outside on the exterior of the boat, and then
12 board the pilot ladder. What the -- the model that a lot of
13 the shippers have requested is that they -- we hire a
14 deckhand that we can keep on board with us. That way if --
15 he can help the pilot with -- with the actual embarkation or
16 de -- or getting off the ladder or God forbid the man falls
17 in the water, he can help actually rescue the pilot. So,
18 that was the intent. So, what happened -- like when Captain
19 Hicks fell off, we only had George on the boat. So, Hicks
20 was in the water but George was trying to drive the boat in a
21 rough sea. And if there was a man on board that could have
22 helped pull him on board, that's the mindset of that. And
23 once the -- you know, their ships come online, we've agreed
24 to take on those extra costs.
25 Q. And are those extra costs in here?

1 A. They are not.
2 Q. So, I'm just, again, trying to understand this. We
3 go from about -- on the salaries and wages about four
4 forty-five for last year and the projection is by the time we
5 get out to 2019 up to 800 and some thousand. Do you know why
6 that is?
7 A. We'll have to ask the CPA. But the reason for the
8 big increase in the salaries right now is because the
9 deputies were brought on board and they're salary employees.
10 Once their training program is finished, they still have
11 another year and some change and then they'll come off of the
12 salary side and they'll move over.
13 Q. So --
14 A. The other fees -- that was what that was. Those
15 are the dispatch fees. That's why -- that's why that --
16 those fees are so -- they were realized in there. So, once
17 the dispatch fees come online, the five employees and plus
18 the manager, that's their fees in there. That's why --
19 that's what that is.
20 Q. So, if we look down here, there's a VHF dispatch
21 income estimate right at 500,000. That's included in that
22 number? That's what you're saying?
23 A. The VHF dispatch?
24 Q. Right. Down below.
25 A. Some of those are start-up costs for the Fort

1 Velasco signal station.

2 Q. So -- and I'm trying to, again, understand this.
3 You said that you had a -- last year or something like
4 500,000 or something like that. But if I take the 2.3 under
5 pilot fees, that's what's distributed to the pilots?

6 A. Where?

7 Q. The third line from the bottom there's a line that
8 says pilot fees.

9 A. I believe that's correct.

10 Q. So, that says 2.3 million, which would work out to
11 be a little bit more than 700,000.

12 A. That is not correct.

13 Q. I think that math is. But my question is, if
14 that's not the distribution of the pilots, what is that, the
15 pilot fees?

16 A. I believe that represented the payout for -- buyout
17 of Captain Gunning. We had a pilot retire. We had to use
18 those fees to pay him out. That's where the discrepancy is.
19 In accordance with the statute there -- I think it's 68.103
20 and 68.104 -- don't quote me on the exact numbers -- but it
21 outlines how we have to assess the value of our association.
22 We have to take the value of the boats, the assets on hand,
23 and the house. Those -- and the small operating funds that
24 we have. They do an evaluation of all those assets and then
25 divide it by the number of active shares in the Brazos Pilots

1 than 14 hours in a 24-hour period. So, we -- with us being a
2 small organization, we stay flexible with our partners to
3 ensure that we're within our safety guidelines, make sure the
4 bar is covered. And we can project some of that with Tammy.
5 She'll look and see how many ships we have scheduled. We can
6 kind of, you know, plan on how busy the day will be and then
7 we coordinate with the other pilots. We typically like to do
8 what's called an out and an in. So, we try to maximize the
9 throughput and efficiency. So, instead of running the boat
10 all the way offshore, we'll take a ship out, get on another
11 ship and bring it back in. That way it reduces the overall
12 at task time for the pilot but it still maintains an
13 efficient pilot service and that's the way we try to
14 coordinate our business.

15 Q. Since you brought it up, I was going to ask you
16 some questions about that. I apologize for jumping around.
17 You're two weeks on, two weeks off. And when --

18 A. Two weeks on, one week off.

19 Q. I'm sorry. One week off. I'm getting you confused
20 with other pilots. Two weeks on, one week off. But when
21 you're on, how do you decide who takes which ship?

22 A. It -- we baseball it. So, the -- he does a job and
23 then I'll do a job. And then we'll just look at what jobs
24 that they have. Dispatch, they -- depending on where the
25 ships are in the terminal, they'll order up -- a lot of the

1 Association. And then it actually states how we have to
2 disburse that. So, when a pilot goes out or with the death
3 of a pilot, within 30 days, we have to pay those funds in
4 full to the pilot for the -- for the assessed evaluation of
5 the assets. So, that's why some of the numbers are a little
6 skewed because we're in a little bit of an area of flux with
7 Captain Gunning retiring and then we have the two deputies.

8 Q. Do you know how much his pay was -- his payout was?

9 A. It was 350,000. Three fifty-five.

10 Q. All right. So, that would still leave about
11 2 million there. Again, I'm just trying to understand
12 where -- square this with the number that you said earlier
13 was five hundred. It sounds more like -- that's still close
14 to seven hundred if you divide that out.

15 A. Yeah. But it was four ways, not three ways.

16 Q. So, if we looked at it right now --

17 A. Right now we're dividing it three ways. But that
18 wasn't the case then. That was -- we had four pilots at that
19 point.

20 Q. And now obviously you have to work more than if you
21 had four pilots or if you have three pilots you --

22 A. We're doing two weeks on, one week off. And then
23 in addition to -- I'm on my off week now obviously. And so,
24 once they're online, the five-man rotation is going to be 15
25 and ten. We have work rest requirements. We don't work more

1 times -- some of the docks with the higher dock utilization
2 rate -- A-22 has a very, very high dock utilization rate.
3 So, there's usually a ship waiting on the bar. The dock
4 utilization rates at Phillips are going up quite a bit. So,
5 when they'll order, the pilot will board it, take the ship
6 all the way out to the sea buoy, board another ship, and
7 bring it back in. So that way you're not having to dispatch
8 a pilot to take a ship out and then calling another guy out
9 to take a boat ride all the way back out to board a ship and
10 bring it back in. We try to make sure that we use the
11 resource as efficiently as possible.

12 So, you know, that goes -- there's not as many
13 out and ins at Seaway, Enterprise. Their ships are a little
14 bigger and we typically don't do out and ins there. But
15 Phillips we do a lot of out and ins. And the port docks
16 we're getting a little busier. I know -- you know, sometimes
17 the Hoegh ships will backup and they have some daylight
18 constraints that we try to work with them on. There's
19 another big window that we need to maximum. You know, in the
20 morning you have the daylight windows. In the afternoons you
21 have the daylight windows and trying to figure out how you
22 deal with the daylight-restricted ships and the
23 not-daylight-restricted ships. So, that goes into how the
24 pilot order will go. And that's where we see the value added
25 on the dispatch service and lining up that to make sure we

1 are maximizing these windows.
2 You know, if you look back five years, the
3 size of the ships that Port Freeport had, we had the Chiquita
4 boats, the 600 by 66-foot beams. The Dole boats were
5 significantly smaller. The Tobana boats were significantly
6 smaller. We didn't have 750-foot car carriers with 134-foot
7 beams. The MSC ships are 750 by 106. We were never doing
8 ships that size before. So, that's a bit of a change in our
9 mindset that we're getting used to. And, you know, the
10 channel constraints are what the channel constraints are.
11 Everybody understands and tries to understand the nature of
12 Phillips bend, where the Phillips dock are. We try to have
13 and we try to maintain good communications between the port,
14 between the Phillips docks to where we can minimize those
15 channel congestion issues.

16 Brazos Harbor 3, we're trying to make sure
17 that we have the flexibility to move around because some of
18 these logistics issues that we're running into, if we move --
19 if we put a little bit more forethought into it, which we
20 know the dispatch can do, we can alleviate some of these
21 congestion issues and maximize the throughput on the docks
22 while doing it in a much safer manner.

23 Q. So, if I go out here to the July, '18 to June, '19,
24 what I'm seeing is a distribution of pilot fees about
25 1.9 million, correct, for five pilots?

1 A. Correct.
2 Q. And --
3 A. That will be five pilots.
4 Q. But that's without any increase in ships? I just
5 want to be clear. The numbers that we're talking about on
6 the income at the very top do not include the additional
7 ships that we've talked about when we talked about Freeport's
8 rapid growth?

9 A. The pilot fees at the top -- I mean, if you compare
10 it to 2017, you went from 3.1 to three point -- almost
11 3.8 million.

12 Q. Right.

13 A. 3.9. I have to ask what the fee -- what -- I'll
14 have to ask the CPA what figure he used to justify the
15 increases in those numbers.

16 Q. Clearly the 3.1 million doesn't include the
17 thousand-dollar round trip?

18 A. Correct.

19 Q. And that thousand-dollar round trip is going to
20 generate enough money to pay off the boat and to pay the
21 \$500,000 to run Velasco, correct?

22 A. Correct.

23 Q. So, approximately that thousand-dollar round trip
24 is going to generate something like \$700,000 is what the
25 projection is?

1 A. Depends on the number of ships you do. I mean,
2 yes.

3 Q. Based on last year's numbers --

4 A. The revenue generated for the boat, again, is not
5 going to be a disbursement to the Brazos Pilots. It's held
6 in an escrow account. That was a condition of the loan. We
7 supplied the loan information to the Board for everyone to
8 see. You have the mortgage for the construction period and
9 the actual mortgage for the boat after it was delivered. And
10 it outlines the assets that we had to put up for -- for
11 collateral to get the loans.

12 Q. That's in this expense, right?

13 A. Yes.

14 Q. My point is all of that is in here?

15 A. Yes.

16 Q. And so, what's left over is the -- almost
17 \$2 million of -- but without any additional, for example --
18 forget about all the other increases we're talking about.
19 It's not including the million dollars that would
20 potentially -- that would be generated by just six ships --

21 A. How do you separate the expenses and then add the
22 profit in there? We know that when these ships show up,
23 there's going to be more expenses. We've already agreed that
24 we were going to have to hire new boat operators. We've
25 already taken the fifth pilot in anticipation of these ships

1 coming.

2 Q. And that's in here?

3 A. We've already --

4 Q. That's in here, correct? That pilot is in here?

5 A. Correct. The pilot --

6 Q. The pilot is in here and the cost is in here but
7 the revenue is not? The million dollars for just the LNG
8 ships is not in here?

9 A. I'll have to defer to my CPA. I got -- I don't
10 know what basis he's going off of.

11 Q. And let's be real clear. We're talking about now
12 currently -- about five years from now we're talking about
13 something like going to five to six movements per day is what
14 you projected?

15 A. Depending on the number for -- and factoring in
16 what BASF is going to do. BASF is making a world-size
17 ammonia unit. They've indicated that they're going to reduce
18 the number of ships they're going to do. So, right now
19 they're trending at about four ships a month. They
20 anticipate going down to maybe one ship a month. And then in
21 addition to that, they're going to move the majority of their
22 products on barges. So, we've been told that it could be
23 potentially one barge a day transiting Port Freeport now that
24 we're going to have to deal with that congestion, which just
25 highlights the importance of the dispatch service to try to

1 manage that. We've gone out to the Dow Chemicals. We've
2 gone out to Kirby. We've talked to the port. We talked to
3 Jason Hull about trying to relocate that fleet somewhere out
4 of that Stafford Turning Basin because that's one of the big
5 congestion points. If you look at some of the other ports,
6 they actually have barge lanes and a vessel lane. So, the
7 ships, they'll transit within their lane but the barges,
8 they'll stay outside. And Port Freeport we don't have any of
9 that. We share the waterway. And at some points it bottles
10 down to 278 foot in a bend. That's the waterway that you
11 have to share with the ship and with the barge. And we're
12 going to have to manage that.

13 We've talked to Dow and they've been a very
14 good partner of ours and they're going to help us with the
15 fleet. We've established this working group. We're going to
16 get the subcommittee on the Lone Star Safety Committee and
17 then they have the brown water assets in there that we're
18 going to try to liaison and try to get -- we don't want to
19 come to the port users with a problem without a solution. I
20 don't think that's productive for anyone. So, that's kind of
21 our whole mindset on all of this is we want to get -- and
22 we're slowly moving that way. Everyone has described it as
23 growing pains and we're trying. We're trying to maintain
24 these relationships with everyone. But at the same time we
25 need to make sure we're doing it in a safe and efficient

1 manner.

2 Q. So, you're talking about going -- just to be real
3 clear, your projection is 4.5 movements per day now to
4 something like 5.2 to six. That is what your projection is?

5 A. Yes.

6 Q. You're talking about at the high end, six movements
7 per day where potentially you have 24/7 dispatch where you
8 have people there for 24 -- around the clock, right?

9 A. Correct.

10 Q. And so, assuming there's one call per movement --

11 A. That is incorrect. That is a bad statement. So,
12 if you look at -- and I said earlier --

13 Q. Let's talk --

14 A. In five years we've been through four dispatching
15 systems.

16 Q. How does the dispatch work? Let's talk about that
17 real quick. Who calls it in? The agent typically?

18 A. The agent will call in and order a ship. Then we
19 have to liaison with our line crews. We have to confirm the
20 tugs. We have to, in some cases, confirm with the Coast
21 Guard. We have to call multiple agents and let them know
22 that we have multiple orders. During fog season we get a
23 tremendous amount of call log. But it is absolutely a
24 fallacy to assume that it is only one call goes into the
25 association for one ship movement. Not to mention the fact

1 that we run a business on top of that and there's a lot of
2 calls from --

3 Q. Do you have the call log? Do you know how many
4 calls there are? You use a service, right?

5 A. Fagan has the numbers.

6 Q. You don't have those numbers?

7 A. Not memorized off the top of my head.

8 Q. You don't know --

9 A. It is significant.

10 Q. But you don't know what those numbers are? My
11 point is you're talking about spending a half a million
12 dollars a year to replace that and you can't tell us how many
13 calls you get. Is that what you're telling me?

14 A. It depends on the time -- time of the year it is.
15 But the call log is significant, enough to where you saturate
16 the call capacity of a business whose sole purpose is to
17 dispatch call systems.

18 Q. Okay.

19 A. We also deal with the waiver system. There is
20 several calls. And it's not just one agent making one call
21 to make an order of a ship. They have to -- we have a waiver
22 process because of the constraints of Port Freeport and the
23 basic operating procedures and the channel design criteria
24 that we have, we have to grant waivers to move several of
25 these ships. And those waivers require a significant amount

1 of oversight. We have to coordinate with the tugs. We have
2 to coordinate with the Coast Guard. We have weather
3 criteria. We have to coordinate with the line crew. There's
4 a lot of moving parts in Freeport that is -- that is
5 coordinated through the pilot offices.

6 Q. Does Fagan do that now?

7 A. Fagan calls the pilot and the pilot does it.

8 Q. Which pilot does it?

9 A. The pilot that's up.

10 Q. For example, you would do that?

11 A. I would call, yes. But there's also -- or they
12 divert a lot -- some of the calls get messages and they're
13 answered during business hours. Tammy -- Tammy answers a lot
14 of those. Or when I come in on Monday or Tuesday or whatever
15 it is, we go through and we review all of the E-mail
16 correspondences. They have a call log that documents who
17 called, when they called. All that -- all that -- the moving
18 parts or how the sausage is made to actually get a ship from
19 the sea buoy to the dock, it is not as simple as I'm going to
20 make one phone call and it happens. To have a premise -- and
21 we looked at that. That was the part -- when we brought in
22 people to study the demographics of our area, that's why we
23 had to set the price point on the dispatchers that we had
24 because you cannot have someone that's making a minimum wage
25 making these decisions on these -- with the financial impact

1 that it is. It's a considerable amount of knowledge. You
2 have to understand the basics of the ship. You have to
3 understand the basic arrangement of the port. There's a lot
4 of factors to consider.

5 We have -- we only have two tugboats in Port
6 Freeport now. A lot of these waiver ships we have to bring
7 in extra resources from Houston because we are a small port.
8 That takes up to 24 hours to get these vessels over there.
9 Those waivers take time. They have to be approved by a
10 pilot. The pilot has to review all the information with the
11 agent. Then it has to go to the Port Freeport. The Port
12 Freeport reviews the waiver, sends it back to the pilot, and
13 then -- and then it's approved. And then after that point,
14 then you can dispatch all the people and go move the ship.

15 Q. You talked about withdrawing an application last
16 year.

17 A. Correct.

18 Q. How does this application differ from that one?

19 A. In that application, we only had one pilot boat.
20 And then when we went and tried to negotiate with industry,
21 the price point was lower on the dispatch service. We --
22 when it went to the actuary and when it went to -- when we
23 hired the HR person who's trying to help us get our hands
24 around what it's going to take -- because you're essentially
25 more than doubling our employee base at the Freeport pilots.

1 We only have -- we have a part-time woman who helps answer
2 the phones with Tammy named Nell. We have Tammy and we have
3 the three boatmen. What we're proposing is to hire the five
4 dispatchers and a manager. Most of our experience with the
5 labor that we do have are the marine side. So, to try to
6 find and identify people who work in more of an office
7 environment and understand all the requirements that we're
8 going to have to get to make sure we satisfy the OSHA
9 compliance and all the different regulations that we had to
10 go through and get up to speed on to learn how to run the
11 business and figure out where we were exposed with the
12 list -- risk and liabilities, you know --

13 Q. My question is how is this application different
14 from this one. You said it's --

15 A. The fee -- the fee on the dispatch went from 250 to
16 300 and there's two boats as opposed to one.

17 Q. And just generally a ship comes -- an agent orders
18 a pilot. Who pays that fee? Who pays your pilotage fee?

19 A. It depends. Sometimes it's the agent. Sometimes
20 it will come directly from the company. Usually it's the
21 agent.

22 Q. And the agent acting on behalf of the ship?

23 A. Agent acting on behalf of the ship.

24 Q. Does Dow have any ships?

25 A. Dow operates -- they have 55 something ships. They

1 have -- they own the cargo. They bring all those vessels in.

2 Q. And is that -- those are the ships that you're
3 talking about that's 50 percent of your business?

4 A. Yeah. Dow has about 50 percent of the ships that
5 come to Port Freeport.

6 Q. That's not my question. Are those actually Dow
7 ships? Is Dow paying that money or is the ship?

8 A. I think -- well, I'll have to ask Dow. But, I
9 mean, I assume that those costs are being passed through to
10 Dow. That was the understanding I had from Dow. I know they
11 have arrangements on tugboats where, depending on their tug
12 usage, Dow gets that fee. But I don't know the charter
13 arrangements between all of their parties. But ultimately
14 Dow -- as the dock owner and the commodity owner and the
15 agent ultimately that cost will end up at Dow for sure.

16 Q. Do you understand what I mean when I say
17 "discretionary cargo"? Does that mean anything? Do you
18 understand what I mean?

19 A. No. I don't know what you mean.

20 Q. All right. So, companies like Freeport LNG and
21 Dow, they don't really have a choice. They have to go out
22 through this port, don't they?

23 A. They have a choice on where they build their
24 facilities.

25 Q. Once their facility is built.

1 A. Correct.

2 Q. Whereas, if you're bananas, you can go to any port.
3 If you're containers, you can go to any port as a
4 discretionary cargo. Does that make sense?

5 A. Correct.

6 Q. And have you heard any -- have you attended any
7 meetings where the commission -- the port commission, not
8 this commission, has talked about trying to attract that
9 business, for example, more autos or more containers?

10 A. Yes.

11 Q. And you understand that their costs to those
12 discretionary cargoes matters to them?

13 A. Yes. I mean, everyone will have to bear the cost
14 of the pilot services. We agree.

15 Q. And the more those are, the less likely it is that
16 that discretionary cargo comes here?

17 A. I don't believe so. I think our tariff shows that
18 we're still the cheapest port in town. So, if you're going
19 to do a cost comparison, if you're going to attract a
20 discretionary cargo provider, I think Port Freeport is the
21 greatest asset that we have in the Brazos Pilots. We have
22 the cheapest pilots that are here. And we have a phenomenal
23 safety record.

24 Q. So, is there -- are you saying that this port is
25 maxed out? There really is no more room for any more autos

1 to come in or there's no more room for any more containers to
2 come in?
3 A. They have to figure out their expansion. You have
4 to ask Phyllis. I know they plan on expanding.
5 MR. WESELY: Pass the witness.
6 CHAIRMAN KRESTA: At this time we'll take a
7 break for a minute. Let's take five, ten-minute break.
8 (Recess taken)
9 (Recess from 4:43 to 5:01)
10 CHAIRMAN KRESTA: Okay. We'll stand back to
11 order right now. And we left it with -- WGMA, I believe, was
12 cross-examining the Pilot Association. And at this time you
13 were through. Is that correct?
14 MR. WESELY: That's correct.
15 CHAIRMAN KRESTA: And now I need to ask if
16 Dole has any cross-examining of the witness.
17 MS. MARSH: I have questions about financials
18 but if the answer is still going to be you have to talk to
19 our CPA, I can just wait until that time.
20 CHAIRMAN KRESTA: That's up to you if you want
21 to ask him. However you want to do it.
22 MS. MARSH: I'm sure the answers will be the
23 same. So, that's fine.
24 CHAIRMAN KRESTA: You are excusing your part?
25 MS. MARSH: Yes.

1 EXAMINATION
2 MR. CREW: To save some time, Mr. Chairman,
3 Members of the Board, we've submitted Mr. Kornegay's
4 curriculum vitae, biography. It's Exhibit 12. Submitted
5 without objection and save a little time without us having to
6 go over.
7 Q. (BY MR. CREW) Mr. Kornegay, if you wouldn't mind
8 please introducing yourself to the Board.
9 A. Well, I'm Tom Kornegay. I worked at the Port of
10 Houston for about 37 years. Seventeen of that was as the
11 executive director. I basically helped develop the container
12 terminals at the port and a few of the other facilities in
13 that 37 years.
14 Q. And so, Mr. Kornegay, can you tell us some of the
15 other roles that you exercised as executive director for Port
16 of Houston and emphasize in particular your role in dealing
17 with Houston pilots and industry?
18 A. Right. Well, as the executive director, I also
19 served as secretary of the Pilot Board, which -- and I was
20 responsible for working with the pilots and the industry on
21 each rate increase that the pilots --
22 Q. How often would those rate increase applications
23 take place?
24 A. How often?
25 Q. Yeah. How often, if you can recall?

1 COMMISSIONER HOSS: Would you have her
2 identify herself for the record.
3 MS. MARSH: Sarah Marsh, Dole Fresh Fruit.
4 CHAIRMAN KRESTA: Thank you, John. And is
5 there anything else from MSC that needs to cross-examine?
6 MS. RUIZ: I'm in the same position as Dole.
7 CHAIRMAN KRESTA: Stand up and identify
8 yourself.
9 MS. RUIZ: Darlene Ruiz, Mediterranean
10 Shipping Company. I'm in the same position as Dole. So,
11 until Daniel can address it with the CPA, we won't know the
12 financials until that time.
13 CHAIRMAN KRESTA: Okay. Does applicant have
14 any more questions for the witness or anything?
15 MR. BROWN: No further questions. We would
16 like to call our next witness, Mr. Chairmain.
17 CHAIRMAN KRESTA: You would like to call your
18 next witness. Who would that be, sir?
19 MR. CREW: Mr. Chairman, Paxton Crew again.
20 We would like to call Thomas Kornegay.
21 THOMAS KORNEGAY,
22 having been first duly sworn, testified as follows:
23 THE REPORTER: Spell your last name for me,
24 please.
25 THE WITNESS: K-O-R-N-E-G-A-Y.

1 A. It depends. Sometimes they got a one-year rate
2 increase. Sometimes they got a three-year rate increase.
3 So, however long it lasted, we would take up the next one
4 after that.
5 Q. And so, Mr. Kornegay, one of the things that is at
6 stake in this hearing today is that the Brazos Pilots are
7 asking for a rate to subsidize capital improvements.
8 A. Right.
9 Q. And so, do you know if the Houston pilots
10 frequently ask for rate applications for capital
11 improvements?
12 A. Yes, sir, they have. As a matter of fact, they
13 started basically the capital improvement fund for buying new
14 boats quite some time ago and that's been sort of the way
15 they have done that for, I don't know, probably 15 or so
16 years. And it was something that actually industry was glad
17 to see so that they could actually -- as the presiding
18 officer said here, breaking it out helps industry be able to
19 watch what -- how that money is used and where it goes and
20 they certainly controlled it better.
21 Q. And, for instance, in Houston's case, many of those
22 boats were special purpose pilot boats that allowed the
23 pilots to more efficiently dispatch pilots from the pilot
24 barge -- the bar there, correct?
25 A. Yes. Yeah. Their situation is a bit different.

1 They actually have pilots that stay on the -- stay on the
2 boat, maybe even sleep on the boat overnight to bring the
3 ship back the next day or something. So, it's a little bit
4 different operation. But, you know, having the boat fund and
5 also having the dispatchers is part of being a much more
6 efficient operation and, you know, their -- the pilots
7 started their own dispatch thing quite a few years ago and
8 developed Harbor Lights, which probably a lot of people have
9 heard of.

10 Q. Right. And I want to touch on two of the things
11 that you brought up. The first is I know you talked -- we've
12 talked a lot about efficiency. And the two things that we're
13 looking for here today are not only boat fund but also the
14 dispatch fund.

15 A. Right.

16 Q. From the boat management aspect, how did that
17 affect industry in the Port of Houston?

18 A. Well, you have to have a good system where -- as
19 the pilot said earlier, you know, you have to be able to
20 manage those resources. Because we were always trying to
21 keep -- in our situation, we were trying to keep the number
22 of pilots down as opposed to going up and trying to make that
23 more efficient. You've got to have people that are managing
24 those resources every day.

25 Q. And from a dispatch point of view, the dispatch

1 system that was developed in the Port of Houston by the
2 pilots, how did that dispatch system help the Port of Houston
3 grow?

4 A. It was -- quite frankly, it was a mess before they
5 did that. I mean, we had -- we actually had situations where
6 we had two ships headed for the same dock at the same time.
7 And that was just crazy. So, the dispatch system that they
8 developed, the Harbor Lights system that they developed
9 helped get rid of that inefficiency and made the port much
10 more efficient.

11 Q. And so, from a port forecasting perspective, do you
12 think it's important that -- what the pilots are doing in
13 terms of the infrastructure development are critical to the
14 port's growth here?

15 A. Absolutely.

16 Q. Can you explain to us a little bit about how that
17 would benefit the port?

18 A. If you don't have the appropriate equipment, you
19 can't get the job done. And, you know, I was shocked to hear
20 that they had a boat that's 30 years old. That's just
21 unbelievable. You know, I think the Houston pilots replaced
22 their boats maybe twice while I was there in 17 years. So,
23 you know, having equipment that is reliable and efficient is
24 extremely important to the mission.

25 Q. Mr. Kornegay, I wanted to ask you something

1 about -- in your role and experience at the Port of Houston
2 whether you had an opportunity to ever evaluate what the
3 impact of a pilot tariff is on the port.

4 A. Yeah. As a matter of fact, there was a study done
5 while I was there that basically was -- it was actually done
6 to prove that the port charges would influence a carrier to
7 come or not. And what it actually proved was that the port
8 charges didn't make a difference, the pilot charges didn't
9 make a difference, and mostly the tug -- the line tender
10 charges didn't make a difference. But the tugs were probably
11 about fourth in that rank. But all the other charges beyond
12 that were the ones that really made a difference.

13 Q. And so, when you talk about those other charges,
14 you're talking about like stevedoring and cargo expenses,
15 transportation expenses, things like that?

16 A. Right.

17 Q. So, from a point of view on a carrier like the
18 objectors here, like Dole and MSC that are primarily dry bulk
19 carriers, some of these ships may call the Port of Houston as
20 well, city docks; is that right?

21 A. Right.

22 Q. And the pilot rates in Houston are dramatically
23 higher in Houston than they are in Port Freeport, correct?

24 A. I think the chart showed that.

25 Q. That's your experience as well, right?

1 A. Yeah.

2 Q. So, at least in terms of the decision from the port
3 to evaluate whether or not a pilot increase would impact
4 business, do you have an opinion on that?

5 A. It doesn't matter. I've never heard of anyone
6 leaving the port because the pilot charge was too high or
7 because the port charges were too high. I got complaints
8 about it all the time. But to my knowledge, nobody ever left
9 because of that.

10 Q. Do you think certainly they wouldn't leave Freeport
11 and go to Port of Houston, would they?

12 A. They shouldn't.

13 MR. CREW: I think that's all the questions I
14 have for you, Mr. Kornegay. I want to -- I appreciate the
15 board's time and I want to save some for them. I pass the
16 witness.

17 CHAIRMAN KRESTA: Cross-examine.

18 EXAMINATION

19 Q. (BY MR. WESELY) Mr. Kornegay, I think we've met
20 once or twice before.

21 A. I think we've worked on pilot stuff before.

22 Q. So, I can safely say that the state we're in now,
23 where \$500,000 for a pilot is considered normal is all your
24 fault; is that right? Put that on the record.

25 But seriously you've actually worked for other

1 pilot groups, too?
2 A. Yes.
3 Q. And so, one of the items that this commission needs
4 to look at is what other comparable pilots make?
5 A. Yep.
6 Q. And I think recently you worked for the Galtex
7 pilots?
8 A. Yeah.
9 Q. Do you know how much the Galtex pilots make?
10 A. No.
11 Q. Did you work in Corpus?
12 A. Corpus, no.
13 Q. So, as somebody who would know those things, are
14 you saying you don't know how much those pilots make?
15 A. No. Well, when I was working at the port, we tried
16 to keep up with that. I don't keep up with it anymore. So,
17 if you're asking me what they make now, I have no idea. If
18 you asked me back then how much did they make, how much the
19 Galtex pilot makes versus the Port of Houston, Galtex pilots
20 make less.
21 Q. Any idea the magnitude?
22 A. I would hate to say. I'm sworn to tell the truth
23 here. So, I really can't say.
24 Q. And as a practical matter, if that's one of the
25 things that this commission was charged with, that is

1 something that the pilots should bring forward to them, how
2 much pilots make in other ports; is that correct?
3 A. I don't think that was ever done by the pilots.
4 Q. I understand.
5 A. The Board --
6 Q. But let me be real clear --
7 THE REPORTER: One at a time. One at a time.
8 CHAIRMAN KRESTA: Answer the question. One
9 person talk at a time for the court reporter. Please sit
10 down, sir.
11 MR. CREW: I was going to make an objection.
12 CHAIRMAN KRESTA: That's okay. I said just a
13 minute. One at a time.
14 A. The Pilot Board -- I'm sorry.
15 CHAIRMAN KRESTA: One at a time. Go ahead,
16 sir.
17 A. The Pilot Board is charged with that
18 responsibility, not the pilots.
19 Q. (BY MR. WESELY) So -- and as you know, there is a
20 different statute in every port in Texas?
21 A. Yes.
22 Q. And the standard here is a little bit different
23 than it is in Houston? And I believe in Houston they do not
24 have the standard that -- the relationship between the
25 pilotage rates in Brazoria County and the rates applicable in

1 other parts of this state, I don't believe that's one of the
2 criteria in Houston, is it?
3 A. Say that again.
4 Q. So, with respect to the Brazoria County pilots --
5 A. Yeah.
6 Q. -- one of the criteria is a relationship between
7 the pilotage rates in Brazoria County ports and the rates
8 applicable in other ports of the state. There is -- there
9 isn't anything -- there is --
10 A. In Houston, yeah. Yeah. That's what I just said.
11 It's on the Pilot Board to figure out how the rate of the
12 Houston pilots compare to rates of other pilots. That was
13 one of their charges.
14 Q. Are you familiar with the documentation that was
15 submitted with respect to the rates --
16 A. This one?
17 Q. Yes.
18 A. I have not read it, no.
19 Q. So, none of the documentation in this case?
20 A. I have not helped or read -- helped them prepare or
21 read. I know -- I've been talking to some people about
22 what -- what some of the things are but I don't really know.
23 I haven't really read it, no.
24 MR. WESELY: I pass the witness.
25 CHAIRMAN KRESTA: Cross-examination back to

1 the applicant.
2 **FURTHER EXAMINATION**
3 Q. (BY MR. CREW) Mr. Kornegay, I just wanted to make
4 clear following up the questions you were asked by
5 Mr. Wesely. You've just been retained here to talk about
6 your experience at the Port of Houston. You understand that,
7 right?
8 A. Yep.
9 Q. And how pilot rates in the Port of Houston affected
10 the Port of Houston, correct?
11 A. Correct.
12 Q. You didn't help prepare any of our submissions or
13 PowerPoints or compilations or anything like that?
14 A. I did not.
15 MR. CREW: All right. Thank you,
16 Mr. Kornegay. We'll excuse the witness.
17 CHAIRMAN KRESTA: Any more cross-examination?
18 MS. RUIZ: I want to ask a question.
19 CHAIRMAN KRESTA: State your name.
20 MS. RUIZ: I'm Darlene Ruiz with MSC.
21 CHAIRMAN KRESTA: Go ahead.
22 MS. RUIZ: Tom and I are very familiar with
23 what had happened with the Houston pilots and the
24 negotiations we were involved in.
25 Q. (BY MS. RUIZ) And you would have to admit that the

1 district fought like hell to keep those costs from going into
2 incoming fees?
3 A. Yeah. A couple of the people in the industry
4 fought like hell.
5 Q. There were more than a couple. And once again,
6 Tom, you do agree that concessions were made by the Houston
7 Pilot in order for industry to even consider taking on the
8 fee of the pilot?
9 A. There was always a negotiation.
10 Q. And there were concessions made by the Houston
11 Pilot?
12 A. Yes. Yes. Just like the gentleman said earlier,
13 he's already made concessions. That was his testimony.
14 Q. And one question, when you report commissioner --
15 or director, I'm sorry -- if fees in the percentage of 40
16 percent were presented to your clients, are you able to tell
17 us that this would have prevented them from coming to you and
18 really bending your ear about the additional costs that
19 your -- the industry members, your clients, had to incur?
20 A. What I said was that I have never seen a steamship
21 line leave a port because port rates were increased or pilot
22 rates were increased.
23 Q. But you've never seen a 40 percent increase either?
24 A. I can't say whether I have or haven't. I've seen
25 some pretty big ones as Mr. Wesely --

1 Q. But you have never seen a 40 percent increase.
2 MS. RUIZ: Okay. Thank you.
3 THE WITNESS: You're welcome.
4 CHAIRMAN KRESTA: Anything else?
5 MR. CREW: Nothing further.
6 CHAIRMAN KRESTA: Nothing further? Thank you,
7 sir.
8 THE WITNESS: Thank you.
9 CHAIRMAN KRESTA: Appreciate it. Do we
10 have -- next witness, Applicant.
11 MR. MOORE: Randy Moore again on behalf of
12 BPA. We call Raleigh Bailes, Jr.
13 **RALEIGH BAILES, JR.,**
14 having been first duly sworn, testified as follows:
15 THE REPORTER: Spell your last name for me.
16 THE WITNESS: Bailes, B-A-I-L-E-S.
17 **EXAMINATION**
18 Q. (BY MR. MOORE) Mr. Bailes, are you a certified
19 public accountant?
20 A. I am.
21 Q. Who do you work for?
22 A. Our firm Bailes, Bates & Associates.
23 Q. Where are you located?
24 A. We're in Sugar Land, Texas.
25 Q. Your firm is the accountancy firm for the Brazos

1 Pilots Association?
2 A. It is. We've been their CPA firm for approximately
3 27 years. Me not that long. But yeah.
4 Q. How long have you been a practicing certified
5 public accountant?
6 A. I became a CPA in 2006.
7 Q. Since 2006 have you had the opportunity to work on
8 the books and financial records for Brazos Pilots
9 Association?
10 A. Yes, I have.
11 Q. Does your firm also prepare the income tax returns
12 for the association?
13 A. Yes, we have for 27 years.
14 Q. With regard to the financial report that was
15 submitted by Brazos Pilots Association as part of their rate
16 application and submission, what role, if any, did you play
17 in formulating that report?
18 A. We helped put together the slide that was on
19 earlier that showed 2016 information, expected or projected
20 2017, '18, '19, and '20 information.
21 Q. With regard to the figures -- and we're going to
22 pull that up in just a second. Let me ask you while she's
23 pulling that up --
24 MR. MOORE: And Commissioners, Mr. Bailes' CV
25 is part of the record and part of the submission of BPA. So,

1 I would direct you to that if you have any questions as to
2 his qualifications. In the interest of time, I'm not going
3 to go over all the other things that are on that CV.
4 Q. (BY MR. MOORE) One of the things I wanted to ask
5 you, there was a question asked earlier by counsel about
6 whether or not the association's financial records or the
7 financial information that was provided as part of this
8 application are audited. They're not audited, are they?
9 A. No, they are not.
10 Q. What's involved in providing an audited set of
11 books and records?
12 A. An audited set of financials is a very big deal in
13 the accounting world. About the only time it's legally
14 required is if you are a publicly -- public company, the SEC
15 requires you to have audited financial statements. Other
16 than that, it's generally only required, oftentimes that we
17 see, by banking institutions. If a company has a significant
18 loan with the bank, they might require an audit. Our firm,
19 we have somewhere very close, give or take, a thousand
20 clients. The last time we even had an audit was four years
21 ago. So, it's rare.
22 Q. So, in this particular instance, you could say that
23 the fact that the association hasn't had to have its books
24 and records audited is a good thing?
25 A. Absolutely. Audits are -- can be pretty expensive

1 and it does depend on the size of the company and the scope
2 of the engagement. With a company this size, you would
3 probably be looking at a fee between, give or take, thirty to
4 \$50,000. Larger public companies pay in the millions of
5 dollars.

6 Q. Okay. With regard to the numbers that comprise the
7 report that we've looked at several times today, specifically
8 when you look at the numbers for 2017 through -- 2016 through
9 2017, where did you get those numbers?

10 A. So, the 2016 calendar year numbers came straight
11 from the company's Quick Books. Those are -- those are true
12 and historical. The January through April, 2017 numbers also
13 came from the company's Quick Books. Also historical. And
14 from there we were asked to project forward. So, we took the
15 January through April, 2017 numbers, annualized those, as you
16 can see, first getting a monthly average and then turning
17 that into an annual amount. And then going forward applied,
18 as asked, a 3 percent increase for the next three years to
19 the revenues, a 7 percent increase to the expenses in '17 to
20 '18 and that's to reflect the expected increased costs of the
21 new boat. And then a -- we went with a 1.9 consumer price
22 index increase on the following two years.

23 Q. Why did you go with the 1.9 consumer price index
24 number?

25 A. We were asked to -- what would be a reasonable

1 expectation of increased expenses in the following years
2 after the initial boat expenses. And CPI seems to be a
3 pretty good estimate for that.

4 Q. So, you believe that the use of a 1.9 percent CPI
5 to extrapolate into the future is a good number to use for
6 future casting?

7 A. I do. I mean, no one knows what the future holds,
8 of course. But I believe it was something higher than that,
9 maybe 2.25, 2.26 for 2016. What -- we got our number 1.9 on
10 the 12 months ended May 31st. So, we went with it.

11 Q. All right. And do you have any reason whatsoever
12 to question any of the numbers that were provided to you by
13 the association to forecast these projections over the next
14 three years?

15 A. No. If I understand the -- do I trust the
16 numbers --

17 Q. Yes.

18 A. -- if that's what you're asking?

19 Q. Yes, sir.

20 A. I do. We've been doing their work for a long time.
21 They do reconcile their bank account. That's kind of like
22 when you balance your checkbook. You make sure the bank
23 balance ties to the book. They're doing that. Their
24 transactions are recorded and at that point it's just a
25 matter of allocation.

1 Q. And do you use the numbers that they provide you to
2 prepare their income tax returns?

3 A. Yes. Been doing that for a while.

4 Q. And a representative of the association signs that
5 tax return?

6 A. Yes. We do and they do. We sign as preparer.
7 They sign as owner.

8 Q. Let me ask you, in arriving at the projections, we
9 know that through April, 2017 those are actual numbers,
10 correct?

11 A. Correct.

12 Q. So, if we look at 2016, the total pilotage income
13 of 3,000,001 is exactly what the books show?

14 A. Yes.

15 Q. And we show that in 2016 there were approximately
16 the 2,000,322 to distribute, correct, in pilot fees?

17 A. Yes and no. I think that came up earlier.

18 Q. I was getting to the question that was asked by
19 counsel about that discrepancy. What's the reason for that?

20 A. So, that number is incorrect. The 2,000,322 there
21 includes Captain Gunning's buyout, which is just how they
22 recorded it in their Quick Book file when they bought him out
23 for -- I think it was \$355,000. That will be adjusted when
24 we prepare the 990, the tax return for 2016. We'll make that
25 adjustment and they'll subsequently make that in their books.

1 But you can essentially subtract 355,000 from that number.

2 Q. One of the other questions that I wanted to ask
3 you, if we look at the July, 2017 through June, 2018 figure
4 on the net income pilotage line --

5 A. Yes.

6 Q. -- and we look at that same number for July, 2018
7 through June, 2019 and July, 2019 through June, 2010 (sic),
8 we have these numbers showing net income and in parentheses
9 it says "loss of pilotage." I notice that in all three of
10 those years in that projection we have those parentheticals
11 around that number. What does that mean?

12 A. That means it's a loss -- cash flow loss. In
13 reality, that would not happen. The pilots would receive
14 less distributions.

15 Q. So, rather than take the loss, what it means is
16 that a pilot is not going to get the distribution that he may
17 have historically gotten because he's got to cover the
18 expense?

19 A. Right. Any loss reflected on this was just shown
20 to show the numbers. In reality, piloting fees would go
21 down.

22 Q. Okay. And income directly into a pilot's pocket
23 does what at the same time? Does it go down?

24 A. That's what I meant, yes. Same thing.

25 Q. Just wanted to make sure that we're talking about

1 losses. And these losses that you're projecting, these
2 projections include the rate application to three three three
3 being granted, correct?
4 A. Correct.
5 Q. So, even with the granting of the application in
6 toto with regard to the three three three, given the way the
7 numbers work out, is it true that the pilots are still
8 possibly going to have to come out of pocket to pay for some
9 of these things?
10 A. Yes. So, you can't see it on your screen there but
11 I have the full printout. It's on there if you scroll down.
12 The expected net outflow of approximately -- loss of \$359,000
13 on the first year of dispatch service, that's essentially
14 being covered by the pilots. They'll either have to bring
15 money to the table or reduce their -- their fees.
16 Q. Okay.
17 A. One way or the other it's covered.
18 Q. And with regard to counsel's questions earlier of
19 Captain Blanton -- of course, Captain Blanton said we were
20 going to have to ask you about this. His question dealt with
21 the projected possible increase in LNG ships and the number
22 of sailings of those LNG ships. I think he also talked about
23 potential reduction in BASF's ships. But with regard to that
24 projection, is there any sort of calculation -- or does this
25 calculation include a projected increase in either the number

1 included in these projections that include the 3 percent
2 increase if the tariff is accepted?
3 A. Yes.
4 Q. And then I wanted to ask you a couple questions,
5 sir.
6 MR. MOORE: If we can scroll down, Missy, to
7 that next one.
8 Q. (BY MR. MOORE) We carry forward -- if we look at
9 Fort Velasco and the projections for Fort Velasco, are we
10 carrying forward the projected losses on the previous page
11 and including them in the losses that look like they're going
12 to be significant if Fort Velasco pilot station -- signal
13 station comes on board?
14 A. Yes. Those are included down at the bottom there.
15 The first year has significant expense, especially as it
16 relates to dispatch service getting it up and running.
17 Q. Right.
18 A. And those are calculated.
19 Q. In order to get the dispatch service up and
20 running, as I understand it and what the numbers reflect, is
21 the pilots are going to have to remodel or reconfigure the
22 pilot station to put the equipment and the personnel to run
23 the dispatch system, correct?
24 A. Correct.
25 Q. And also within that number, we've got the fact

1 of ships or income as a result of larger ships or number of
2 ships?
3 A. I can't say for certain but I want to say yes and
4 no.
5 Q. Tell me -- tell me why it's yes and no.
6 A. Well, I'll tell you why it's no first. Because I
7 don't know -- I have not seen what the projected numbers are.
8 I've heard them discussed a little bit here today. But it's
9 yes in the sense that if you look at January through April,
10 2017 and a couple columns over where we annualize that, you
11 see revenues. If those numbers -- if those four months
12 averaged out for the rest of the year, revenues would go up
13 to 3,000,579 versus 3,000,144 last year, 2016. So, that's
14 about a 13.8, give or take, percent increase. And that's the
15 number we used to first annualize and then add the 3 percent
16 in revenue. So, it appears from what I can tell that there's
17 been an increase at least the first four months of the year
18 as compared to last year.
19 Q. So, using the increases that you've actually seen
20 from the real numbers as opposed to the projected numbers,
21 those were carried forward -- that 13.8 percent increase are
22 carried forward in your calculations, correct, for 2018, '19,
23 and '20?
24 A. That's right.
25 Q. All right. And so, those projected increases are

1 that -- if the line item for the dispatch service is
2 approved, it doesn't bring in all of the money immediately
3 necessary to buy the equipment or to hire the people or to do
4 the remodeling, does it?
5 A. No. It's paid as they work.
6 Q. Okay. And so, who do you understand is going to
7 foot the bill for that initial outlay?
8 A. It's going to be -- have to be funded by the pilots
9 association and the pilots.
10 Q. So, the pilots are going to have additional expense
11 of initially funding this and over the period of time that
12 the tariff is collected, sooner or later they may breakeven
13 or actually collect their costs back, right?
14 A. You would think and hope. We didn't project it out
15 far enough to show.
16 Q. We didn't project it far enough for you to even
17 show them breaking even, did we?
18 A. Correct.
19 Q. And if we also look at the projections for the
20 boat, is that a straight in and straight out calculation?
21 A. Yes. My understanding is the income comes in for
22 the boat and goes directly to pay for the boat. There is no
23 excess.
24 Q. Right. And with regard to both the Fort Velasco
25 dispatch station numbers and the projections for the boat,

1 there is no calculation or number for distribution of any of
2 those funds directly to any of the pilots, is there?
3 A. No. No. I mean, it's a loss. So, if anything,
4 the pilots will be ponying up money to pay for it.
5 Q. And you understand from the terms of the
6 application itself that those are passed through accounts
7 anyway so that there could be no assertion or allegation that
8 the pilots are merely asking for the signal station and the
9 boat to enrich themselves personally?
10 A. Correct.
11 MR. MOORE: That's all I have. I'll pass the
12 witness.
13 CHAIRMAN KRESTA: Thank you, sir.
14 **EXAMINATION**
15 Q. (BY MR. WESELY) If we go back to the previous
16 page. With respect to -- there was some discussion heard
17 about additional potential ships?
18 A. Yes.
19 Q. And so, do you have any idea whether those ships
20 are actually included in the first four months of this year?
21 A. I don't know but I would presume the answer is yes
22 because there's an increase of about 13 or 20 percent.
23 Q. So, in terms of like the LNG ships, do you know
24 whether they're bringing in LNG ships now?
25 A. I do not know.

1 that?
2 A. It was the Brazos Pilots Association. They said
3 assume that we get our 3 percent annual rate increase.
4 Q. Okay. So, nowhere is in the revenue any increase
5 in ship traffic whatsoever? It's simply a 3 percent
6 across-the-board increase?
7 A. Not necessarily true. The 2017 numbers do reflect
8 the 13.8 percent increase through April.
9 Q. They're projecting Freeport's rapid growth anywhere
10 from 15 to 29 percent increase in movements. Is that
11 reflected in '18, '19, out to '20 in the pilot fees that
12 would be collected?
13 A. 13.8 percent of it is.
14 Q. 13.8? You said you only did a 3 percent
15 across-the-board increase. If you look at -- there's a
16 hundred-thousand-dollar difference between '18 and '19. A
17 hundred thousand dollars in the revenue that would be
18 collected.
19 A. Right.
20 Q. But your ship traffic is going to increase 15 to
21 29 percent?
22 A. From what point?
23 Q. From 2017.
24 A. We've got, so far in 2017, 13.8, which is reflected
25 in --

1 Q. And then with respect to these increased costs,
2 these numbers include -- these numbers assume that there's
3 going to be five pilots; is that correct?
4 A. Well, yes and no. The -- currently -- because,
5 again, we used historical information. Right now I guess for
6 2016 it was four pilots. For 2017, first four months, it's
7 three pilots and two deputy pilots. And in 2016, I believe
8 those deputy pilots came on around June, July. I don't know
9 that for a fact. But that's my understanding.
10 Q. And my point is those projections, though, then --
11 so, if we look at this -- and, again, let's just pick '18 to
12 '19, any new LNG ships are not in there but you're still
13 looking at something -- a distribution of somewhere around
14 1.9 million for the five pilots. Let's just pick that middle
15 one.
16 A. Correct.
17 MR. WESELY: Pass the witness.
18 CHAIRMAN KRESTA: Any other cross-examination?
19 Anybody?
20 MS. MARSH: I have some questions. Sarah
21 Marsh with Dole.
22 **EXAMINATION**
23 Q. (BY MS. MARSH) Question, you stated you did a
24 3 percent across-the-board revenue increase. You said they
25 asked you to do that. Who specifically instructed you to do

1 Q. Going forward to '18 and '19 and out to '20, the
2 15 percent growth they're saying is coming and that's why we
3 need these boats and that's why we need this dispatch fee is
4 not being reflected in the income that they say they're going
5 to be collecting.
6 A. Correct. It's not reflected in the income or the
7 related expenses.
8 Q. Correct. It's not reflected?
9 A. Correct.
10 MS. MARSH: That's it.
11 CHAIRMAN KRESTA: Anything else on
12 cross-examination? Thank you, sir.
13 Anything else from that applicants on the next
14 witness? Do y'all have any?
15 MR. MOORE: No, sir. We have no further
16 questions of this witness. We rest. Brazos Pilots
17 Association rests at this point.
18 CHAIRMAN KRESTA: Any testimony the objection
19 people want to bring up?
20 MR. WESELY: Just trying to make sure there's
21 just one bite.
22 JUDGE GAYLE: Let me clear this up just a
23 second, if I may. There's not any -- there's not any witness
24 statements by any of the defendants on -- by any of the
25 objecting parties on file. So, he's calling for testimony.

1 I take it there's no testimony that you're going to present
2 but you're ready to make closing statement -- your opening
3 statements; is that correct? Actually we jumped the gun. I
4 misled him. The first thing should have been called for is
5 opening statements by any of the -- any of the objecting
6 parties, not testimony. So, I take it that's what we're
7 fixing to make, right?
8 MS. LARMOND: I'm doing an opening statement.
9 JUDGE GAYLE: You obviously don't have any
10 testimony because you haven't listed any witness list.
11 MS. LARMOND: We have a witness, and we did
12 present a witness list.
13 JUDGE GAYLE: Is it on the witness list?
14 MS. LARMOND: Yes.
15 JUDGE GAYLE: I didn't see it. I'm sorry.
16 So, you're ready to make an opening statement.
17 CHAIRMAN KRESTA: You can make an opening
18 statement and then call your witness.
19 MS. LARMOND: Correct.
20 CHAIRMAN KRESTA: Proceed on.
21 JUDGE GAYLE: That was my error because I
22 advised him wrong.
23 OPENING STATEMENT
24 MS. LARMOND: It's okay. Good afternoon -- or
25 evening at this point. My name is Shareen Larmond and I'm

1 will ensure safe and efficient pilotage service to the
2 maritime industry.
3 And I kept it short and brief. And I would
4 like to call our witness Darlene Ruiz with Mediterranean
5 Shipping and she will have a short statement she would like
6 to say.
7 CHAIRMAN KRESTA: Who's going to be the
8 witness?
9 MS. LARMOND: Darlene.
10 MS. RUIZ: I'm Darlene Ruiz with Mediterranean
11 Shipping Company. I have just a small statement to read to
12 you.
13 JUDGE GAYLE: Let me interrupt just a moment,
14 please, if you don't mind. You're fixing to make your
15 opening statement, right, or are you going to testify?
16 MS. LARMOND: She's testifying.
17 MS. RUIZ: I'm testifying.
18 CHAIRMAN KRESTA: That's --
19 JUDGE GAYLE: That's what he was asking me.
20 Part of the reason, Ms. Ruiz, is you may be cross-examined.
21 They'll need the podium.
22 MS. RUIZ: I'll read my statement to you at
23 this time. We firmly agree rates should provide sufficient
24 revenues commiserate with the Bureau of Labor Consumer Price
25 Index for the safe and professional pilotage shipping lines

1 with West Gulf Maritime Association. We've heard a lot about
2 our association. So, I won't go into that. Before I
3 begin -- can I get a time check?
4 The pilots have always had an important role
5 in maritime history. No one disputes that. The pilots
6 provide local up-to-date knowledge of the condition and
7 geography of our ports and we recognize this and recognize
8 that the pilots must do so in a safe and effective manner.
9 And we all know the reason we are here today is to discuss
10 the recent rate increase application filed by the Brazos
11 Pilots Association. And to go through that section, Section
12 68.002 of the Transportation Code gives us the definition of
13 what you're governed by to make your decision in regards to
14 the rate application. And we will present evidence -- or at
15 least the evidence will show that perhaps not all the rate
16 increase application is necessary and, in fact, other funding
17 mechanisms for the pilot boat and possible other alternatives
18 for the dispatch system should be explored. And that those
19 criteria that you are set to determine these factors by are
20 not represented.
21 It is my hope the Commission will further
22 evaluate aspects of this application and assure that the rate
23 increase asked for by the pilots are within the parameters of
24 Section 68 of the Transportation Code. We are hopeful today
25 that we can reach an amicable resolution and resolution that

1 expect. However, we are not in agreement with an
2 across-the-board increase of nearly twice the 2016 CPI of
3 1.6 percent and the additional proposed boat and dispatch
4 service -- surcharges, which equate to nearly a 40 percent
5 increase in our pilotage costs over the next three years.
6 In that regard, we believe that the Brazos
7 Pilot Association's proposed rate increase for the financing
8 of the new pilot boat and 24-hour dispatch is unreasonable.
9 We would prefer that the Board leave more room for additional
10 ideas involving the possible contribution of other
11 stakeholders, local, state, Federal entities self-funded from
12 revenue. We believe the Brazos Pilot can find alternative
13 means of funding for the construction of new pilot boats
14 without placing an undue burden on cargo carriers. I'm going
15 line by line according to the letter with the -- with your
16 seven requests.
17 Our vessels -- MSC currently operates five
18 container ships that call the Port of Freeport, Velasco
19 terminal on a weekly service. Our average LOA is 689 feet.
20 We do not require any daylight transit. We're pretty smooth
21 sailing and -- on the inbound and on the outbound. We
22 haven't experienced any problems in our transits. Our
23 average pilot time inbound is about an hour and 35 minutes
24 and our outbound transits average about one hour and 19
25 minutes.

1 The pilot directs and controls the movement of
2 commercial oceangoing vessels as assigned and determined by
3 applicable state laws. All pilot services ensures vessels
4 under their control comply with applicable international,
5 U.S. Federal, and state regulations pertaining to safe
6 navigation. I'm not going to comment on the cost. We were
7 not given details on that. So, I'm not going to comment on
8 that at this time.

9 As far as the public interest in maintaining
10 safe, efficient, and reliable pilot services, state pilotage
11 is a regional governmental effort to protect maritime
12 commerce as it transits into, within, and departure from port
13 and exists to protect the port and waterway infrastructure
14 from the consequences of a marine-related accident by
15 commercial oceangoing vessels by qualifying ship handling
16 experts to direct safe navigation. So, we are fully aware of
17 the safety.

18 The one thing that I never saw when it came to
19 safety issues, I never saw any type of report on any
20 incidents that occurred. So, as far as we're concerned,
21 safety -- the utmost safety was practiced. So, we have no
22 complaints about that. And as far as the maintenance of the
23 pilot boats, the assumption was always that the maintenance,
24 the repairs, the cost were always covered by the fees --

25 CHAIRMAN KRESTA: Speak into the mic. Just

1 move it to you.

2 MS. RUIZ: -- the pilot fees that were paid to
3 the pilots. We're not in the position -- MSC is not in the
4 position to answer the question about the pilotage rates
5 because we operate foreign flag vessels and we're not going
6 to comment on that.

7 As one of the major steamship lines reliably
8 calling Freeport, Texas, MSC's expenses for pilotage are up.
9 In the present economic situation, we believe that the
10 proposed increases are not justified and may deter MSC from
11 increasing our services and port calls to Freeport but not
12 once have we ever threatened to leave. Okay. We have --
13 cool heads will prevail in this situation. We've never once
14 threatened to leave. But we are going to review all of our
15 options.

16 The increases that we will agree to and would
17 prefer to agree to would be the current CPI and I believe --
18 currently it's -- currently from what I've read it's
19 1.6 percent. I heard 1.9 percent. And I also reviewed the
20 projection. Because the economy is improving, the CPI will
21 increase to 2 percent. So, we would like for the Board to
22 consider -- when considering any type of raise or fee
23 increase to consider the CPI. And thank you. That was my
24 statement.

25 CHAIRMAN KRESTA: Any questions for the

1 witness?

2 MS. LARMOND: Just a couple of questions. She
3 made my job very easy. So, she covered a lot of ground.

4 DARLENE RUIZ,
5 having been first duly sworn, testified as follows:
6 EXAMINATION

7 Q. (BY MS. LARMOND) But has your company ever decided
8 not to enter a port because the cost to do so?

9 A. The way we operate -- and I have a very good
10 company that I work for. But we do a lot of analysis. We
11 take a look at the whole picture. But if we're going to be
12 operating at a loss, we have to make some very serious
13 decisions. And I have to say yes to that answer. I won't
14 name the ports where this has occurred. But yes. If it
15 doesn't make any sense to operate in a port, we're not going
16 to be there.

17 Q. And do you only analyze stevedoring costs and the
18 cost of the cargo or all costs associated?

19 A. All costs. Tugs, pilotage, dockage, everything. I
20 mean, we analyze the whole picture.

21 Q. And has your company ever left a port -- not naming
22 names -- because of increased fees?

23 A. I would say in a long ago past. But I would have
24 to admit it was a foreign port. So, and, again, not naming
25 names, yeah. Serious decisions had to be made.

1 Q. Okay. And are you familiar with how the order is
2 placed for pilots?

3 A. I have a very good operations manager that I rely
4 on. I understand that -- and we have a very good agency who
5 takes care of that for us. They place their orders. I
6 believe during the daylight -- or daytime the pilot is manned
7 and there's somebody there to take the orders. And I believe
8 during the evenings they do leave messages with an answering
9 service and that information is passed on to a pilot.

10 Q. And do you see a benefit of the -- of having a 24/7
11 dispatch?

12 A. Not based on the volume of customers. I don't
13 see -- we haven't had any issues that I can recall. On our
14 reporting system, comments are made and if there are any
15 issues with -- with pilots, then, you know, we would see the
16 comment. But just from the preview that I've had and the
17 observations, we haven't had any issues with the current
18 system.

19 Q. Okay.

20 A. We would like for the pilots to consider the
21 recommendations that the Port has made. They have a
22 communication center, which is, I understand, open 24/7 and
23 that might be a good alternative instead.

24 Q. Okay. Thank you. And forgive me. I should have
25 established this in the beginning. But what is MSC's

1 affiliation with WGMA?

2 A. We are members, part of the carrier membership. I

3 happen to be on the board of directors. And I have to say

4 that I'm very happy that when I requested the assistance of

5 the WGMA that the directors voted unanimously to support that

6 decision for you to represent us.

7 MS. LARMOND: Okay. Thank you. I have no

8 further questions.

9 CHAIRMAN KRESTA: Any cross-examination?

10 EXAMINATION

11 Q. (BY MR. CREW) Hi, Ms. Ruiz. Thank you for being

12 here today. Paxton Crew. I would like to ask you a couple

13 of questions about something you said about the analysis that

14 MSC performs when it's making a decision on ports. Did you

15 do any analysis on how the pilot rates, if adopted, would

16 impact MSC here in the port?

17 A. Yes, we did. And we're --

18 Q. Excuse me. Let me ask you a question, if you don't

19 mind. Did you bring that with you today?

20 A. Yes, I did, as a matter of fact.

21 Q. What I'm going to ask you is did you think to make

22 it as an exhibit before the 21st, the deadline?

23 A. At the time we received the inquiry, it was -- in

24 fact, I believe we received the inquiry on Friday, if I'm not

25 mistaken. And I just had a little bit of time on Monday to

1 go through it and a little bit of time on Tuesday to put it

2 together. But no, it was not an exhibit, unfortunately.

3 Q. You knew about the deadline on the 21st, though,

4 right?

5 A. Yes, we did. Once again, I'm not sure where we

6 crossed wires here; but I did not get that information until

7 later.

8 Q. You didn't know about it until the Port asked you

9 for it; is that right?

10 A. That was passed on by my executive director.

11 Q. I would like to ask you a couple of questions about

12 MSC's operations here. How often do -- and let me ask you

13 this. The operation you have here is basically a vessel

14 sharing agreement with Chiquita; is that right?

15 A. That is correct.

16 Q. The Great White Fleet?

17 A. That is correct.

18 Q. So, are your vessels that call here, are they in a

19 charter basis with Chiquita or do they charter MSC's vessels

20 or MSC, do they charter Chiquita's vessels?

21 A. We have a few chartered vessels. They're all MSC

22 vessels and we also have vessels that we own calling

23 Freeport.

24 Q. How are the pilot fees apportioned between Chiquita

25 and MSC?

1 A. Again, based on volume for each member, they are --

2 they are apportioned based on volume.

3 Q. Has Chiquita been made aware of the proposed --

4 A. Let me just put it this way. MSC and Chiquita pay

5 a box frequent rate. So, that rate covers the operation that

6 is performed at the Port of Freeport. As far as the pilotage

7 goes -- and I'm just thinking back. I think, Michael, you'll

8 agree. Pilotage, dockage, tugs, the line are all paid by

9 MSC.

10 Q. And is any of that passed on in a sharing agreement

11 that Chiquita --

12 A. There really is no sharing agreement, per se. They

13 do come aboard our vessels. They do have cargo on board our

14 vessels.

15 Q. And so, they don't pay freight for that cargo?

16 A. They pay a box rate.

17 Q. And is that box rate, does that include some port

18 costs that you're talking about that you pay?

19 A. It includes everything.

20 Q. So, it does include it?

21 A. It should include that, yes.

22 Q. And so, Chiquita hasn't objected on the basis of

23 this --

24 A. No.

25 Q. Okay. Is there a certain time that MSC likes for

1 its vessels to arrive here in the Port of Freeport?

2 A. We have a pro forma.

3 Q. What time of day is that?

4 A. Fridays.

5 Q. And it's early in the morning, right?

6 A. Absolutely.

7 Q. And you like it to be here on a certain time so the

8 stevedoring gangs can get here and be ready to unload that

9 cargo, right?

10 A. We are on a tight schedule. So, yes, it's

11 preferable. Yes.

12 Q. Where are the stevedoring gangs coming from that

13 unload your ships?

14 A. Where are the stevedoring gangs coming from?

15 Q. Are they local here in Freeport?

16 A. They are the local ILA located here in Freeport,

17 yes.

18 Q. At least in terms of the service you've been

19 provided by the Brazos Pilots --

20 A. Yes.

21 Q. -- you order a ship, they bring it in on time so

22 you -- your time-sensitive cargo can be offloaded, right?

23 A. Absolutely.

24 Q. And do you have -- you understand how perhaps if

25 this port grows and the infrastructure isn't put in place,

1 that that could be impacted because we have too much traffic
2 in order to accommodate MSC's schedule?
3 A. Of course. We always take a lot of things into
4 consideration, yes. And we work according to the current
5 events that are occurring. Hopefully, you know, there's
6 enough communication to where we can go in and schedule our
7 vessels according to our needs. But we have a pro forma.
8 The pro forma is given to everybody, I think, about a week in
9 advance. So, we pretty much know when our vessels will
10 arrive and updates are given practically daily.
11 Q. Okay. And what I'm getting at is in terms of when
12 new traffic comes into place and affects that schedule, that
13 one-week pro forma, the importance of having a dispatch
14 system that's run by people who know the ports and know all
15 the other intricacies, there would be advantages to having a
16 dispatch system like that in Port Freeport, right?
17 A. When the time comes, yes, you have to consider
18 that, sure. Let's go ahead and take a look at that when the
19 time comes, when the volume is there, when the traffic is
20 there, yes.
21 Q. Is it -- is it MSC's position that it's better to
22 wait until the time arises or is it better to plan ahead?
23 For instance, in the cargo sector, you plan -- you've got the
24 biggest cargo ship in the world now, right?
25 A. Not quite. I think MOL comes on top of that, if

1 A. Right.
2 Q. But, I mean, as far as everybody agreeing on this
3 rate, is it MSC's position that they should get special
4 treatment over and above everyone else?
5 A. I think everyone should get special treatment. And
6 I don't believe and I find it hard to believe that everyone
7 would be willing to accept a 40 percent increase or even more
8 in some cases on their bottom line. So, for us, yes, it does
9 impact.
10 Q. And I don't know what your bottom line is because
11 we haven't seen it. It wasn't presented to us in evidence.
12 We don't know where this 40 percent number comes from in the
13 bottom line other than we know what the pilot charges are.
14 But you would agree that an increase in a small number would
15 result in a big percentage increase, right? Going from a
16 dollar to a dollar fifty is a 50 percent increase, right?
17 A. Sure.
18 Q. So, going from a thousand to a thousand one hundred
19 is also a 10 percent increase. We're talking about numbers.
20 So, I think, when you -- would you agree with me that saying
21 a 40 percent increase, that's not a very accurate
22 representation of what's going on?
23 A. I really feel after we've crunched our numbers --
24 and I'm sorry you don't have that information. I should have
25 it -- that is a very good rendering of what we've come up

1 I'm not mistaken. But almost, yes.
2 Q. So, you plan ahead. And so, that's really what the
3 Brazos Pilots are doing now. They're planning ahead.
4 A. Which is very good, yes. But plan according to
5 what is reasonable. And a 40 percent increase for MSC is not
6 a reasonable plan. So, we would like for the pilots to
7 consider other options and come back with something that
8 would be workable for everybody.
9 Q. Let me ask you that because we've heard testimony
10 about it. There's a lot of industry folks that are here
11 today. The great bulk of the people who pay quite a lot of
12 pilotage have agreed that this is a good proposal that the
13 Freeport pilots have presented. Is it really MSC's objection
14 that they don't want to have to pay the same thing that
15 everybody else is paying to contribute to the pilot
16 infrastructure?
17 A. We want to pay a fair share but not at a 40 percent
18 increase.
19 Q. Does MSC think they should get a discount?
20 A. I think if everybody were smart, they would want to
21 have a discount, yes.
22 Q. I'm asking -- I'm not asking about everybody else
23 because they can choose wherever they send their ships and
24 their cargo and they can choose what the most economic
25 sense -- makes sense to send them, right?

1 with. So, I don't know how else to argue that with you.
2 Q. I'm not going to badger you about it but we didn't
3 have your numbers because you didn't give them to us.
4 A. Right.
5 MR. CREW: I think I'll pass the witness.
6 CHAIRMAN KRESTA: Any other cross-examination?
7 MS. LARMOND: No. We pass.
8 CHAIRMAN KRESTA: Witness is excused.
9 Dole, will you have an opening statement? Did
10 you want to give it? You never did give it.
11 MS. MARSH: I would say it's more a general
12 statement. I don't know if you want to consider that my
13 opening statement or just take the chair.
14 CHAIRMAN KRESTA: You're going to give
15 testimony?
16 MS. MARSH: Yes.
17 CHAIRMAN KRESTA: That will be fine. It's
18 your turn.
19 SARAH MARSH,
20 having been first duly sworn, testified as follows:
21 MS. MARSH: Dole has been a tenant of the Port
22 of Freeport for 30 years. We're a dedicated weekly service
23 and in doing so, we're providing 90-plus weekly jobs directly
24 into Brazoria County. As our business grows and our
25 additional infrastructure and resources are needed to

1 operate, Dole supplies that capital expenditure as we
2 understand that is the cost of doing business. When we need
3 new ships or we need new containers, we don't force that cost
4 on to our customers. We plan, we allocate our own resources
5 to fund our own capital needs. Similarly, we should not be
6 forced to fund the capital expenditures of the Brazos Pilot
7 Association. Rather, they need to plan and allocate their
8 own resources towards their own infrastructure.

9 This rate change will increase our weekly
10 pilotage cost by 40 percent on Year 1. On Year 3, that rises
11 to 50 percent. These increases affect our bottom line as we
12 are a proprietary business. Dole has been singled out by the
13 Pilot Association as a minority stakeholder simply for the
14 fact we only have a weekly service. Therefore, as a minority
15 stakeholder, Dole should not be expected to pay the same
16 surcharges as significant and important users that the Brazos
17 Pilot Association has so clearly defined which companies hold
18 importance within the harbor channel. Dole does not feel
19 that the Brazos Pilot Association has justified the need for
20 these additional surcharges with the financial data that has
21 been provided. They continue to refer to the rapid growth in
22 Freeport as a factor for these additional infrastructure
23 needs. They're quoting a 15 to 29 percent increase; however,
24 on the financials provided, it's simply a 3 percent yearly
25 increase in the revenue they will be collecting.

1 Specifically looking at LNG alone in the
2 increases that they've projected, you're looking at anywhere
3 from 700 to 1.4 million just in pilotage fees for LNG.
4 Nowhere is that reflected on any of the financial documents
5 that they have provided. The pilots quoted, "Keeping Port
6 Freeport up and running is an expensive proposition, which
7 the Brazos Pilots gladly accept."

8 Per their 2016 financial report, their
9 operating expenses were 1.1 million. Pilotage fees received
10 were 3.1 million. That leaves 2 million in revenue to
11 disburse as needed. If one of those needs was a new vessel,
12 then the Association should have begun allocating a portion
13 of its revenue toward that capital investment that they
14 needed. They cannot simply pocket all of the revenue and
15 then force the stakeholders to cover that for them. That's
16 it.

17 CHAIRMAN KRESTA: Thank you. Any questions?

EXAMINATION

19 Q. (BY MR. CREW) Very briefly. Dole's position is
20 that really the existing revenue ought to be used to fund
21 capital infrastructure, fair?

22 A. Yes.

23 Q. Okay. You understand that the only way that the
24 pilots can raise revenue or increase revenue is by going to
25 this Board and asking the Board for an increase, right?

1 A. Not true.

2 Q. How else can they -- how else can the pilots make
3 or increase their revenue?

4 A. An increase in vessel traffic, which they're saying
5 is coming.

6 Q. That's true. But eventually -- you know vessel
7 traffic comes and goes. That's the nature of ships, right?

8 A. Uh-huh.

9 Q. So, if you're going to operate a pilot system that
10 serves not just Dole but everyone that calls on this port,
11 you have to expect that things are going to stay the same as
12 they are now. Maybe not what happens in the future, right?

13 A. Well, but if you go back and look at the letters of
14 support, all of these supporters had said, yes, we have an
15 increase in traffic coming, we need the infrastructure to do
16 it. So, you can't double dip and say I need these surcharges
17 because my traffic is going to increase and then not reflect
18 that increase in the revenue that you're going to be
19 collecting.

20 Q. But you've got to be fair here. They're also not
21 reflected in the increased expenses that they're going to be
22 incurring as well by going further offshore, more expense in
23 maintenance and fuel and lube.

24 A. It did increase their operating expenses.

25 Q. It does. But there may be more revenue but we

1 don't know for sure how much that's going to be. Those are
2 all estimates, right?

3 A. Uh-huh. But they're not accounting for that
4 estimate. That's what I'm saying. They're accounting for
5 the estimate of what they need but they're not accounting for
6 the estimate of what they're going to be collecting.

7 Q. And we don't know what they're going to collect.
8 Those are estimates, right?

9 A. Uh-huh. But it's nowhere reflected on any piece of
10 paper any estimate.

11 Q. Other than the 3 percent across-the-board increase?

12 A. Uh-huh.

13 Q. And for the thousand dollars that we're talking
14 about, that you're complaining about, the 40 percent, that's
15 not reflected on that either, is it? That's not revenue.
16 That's capital infrastructure.

17 A. Yes.

18 Q. So, are you saying that what you really want is for
19 the pilots to hope and beg and go out and buy this -- these
20 new pilot boats, go out and hire these dispatchers, put in a
21 dispatch station on the bet that the ships will come here?

22 A. They bought their last pilot boats, didn't they?

23 Q. Thirty-six years ago and 17 years ago.

24 A. They took a bet then.

25 Q. How often does Dole purchase their ships?

1 A. We just built three brand-new ships.
2 Q. How often does Dole experience engine failures when
3 they come into Port Freeport?
4 A. Port Freeport? Maybe -- I've been here four
5 years -- it's happened once.
6 Q. But it happens?
7 A. Uh-huh.
8 Q. And it's a maintenance issue, right? And when that
9 ship has to be at dry dock, you have to pay for it -- Dole
10 has to pay for it, right?
11 A. We do.
12 Q. When an old ship goes down, that cost Dole money,
13 right?
14 A. It does.
15 Q. When the pilot boat goes down here, you would agree
16 that could potentially cause an impact on service in Port
17 Freeport, right?
18 A. It could.
19 Q. And so, I guess the bottom line is it's just like
20 MSC. You expect that the pilots should just stay status quo,
21 hope there will be an increase in traffic that will offset
22 these expenses?
23 A. That's exactly what they're saying is going to
24 happen.
25 Q. Well, you don't know in the future and -- I hear --

1 sweeter with --
2 CHAIRMAN KRESTA: Hold on just a minute.
3 Point of order here. Let me catch up here, please, ma'am.
4 Take a break. Get some water.
5 MS. LARMOND: Yes, sir.
6 CHAIRMAN KRESTA: Would the objecting
7 companies -- parties -- thank y'all -- objecting parties,
8 y'all are open to make your closing statements now.
9 **CLOSING STATEMENT**
10 MS. LARMOND: Thank you for allowing us to
11 speak in support of our member today. Pilotage service is
12 essential to Port Freeport and throughout the maritime
13 industry. We are happy that the pilots are focused on safety
14 and providing the best possible service to vessels but at
15 what cost? I'm sure every business would love to be free of
16 operating cost but that's frankly not how businesses operate.
17 Businesses must take into consideration operating
18 expenditures and we hope that the Commission will explore
19 these requests and how they are funded. Please carefully
20 consider the evidence presented to you today and ask whether
21 there are more feasible alternatives to these requests. With
22 that, I close.
23 CHAIRMAN KRESTA: Thank you. Any more
24 statements from the objecting parties? Closing statements?
25 Being none, Pilots Association, closing

1 I hear what you're saying. But that's the -- that's what
2 Dole wants because Dole doesn't want to pay its fair share
3 just like all the other users, right?
4 A. I'm saying a 40 percent increase is not
5 sustainable.
6 Q. It's 40 percent increase. It pays for new pilot
7 boats, new dispatch services which benefit everybody. And
8 Dole doesn't want to pay for that?
9 A. I don't think it's justified, no.
10 Q. From Dole's perspective?
11 A. Correct.
12 MR. CREW: Thank you.
13 CHAIRMAN KRESTA: Any other questions?
14 Anybody? You may be excused.
15 At this point right now, the pilot -- do you
16 have a closing statement or did you do it with your opening
17 statement?
18 MR. MOORE: We have a closing statement.
19 CHAIRMAN KRESTA: You have no more witnesses?
20 MR. MOORE: We have no more witnesses, and we
21 have a closing statement.
22 MR. BROWN: In the rules, I believe, the
23 objectors go first in closing and we go last.
24 MR. LETOURNEAU: That's correct, Mr. Chairman.
25 MS. LARMOND: I'm going to be even shorter and

1 statement, please.
2 **CLOSING STATEMENT**
3 MR. BROWN: Thank you, Mr. Chairman. I've
4 been privileged to work for pilot groups all over the
5 country, all over Texas. And I sometimes get involved in
6 great proceedings like this and I get involved in really
7 every other aspect of pilotage and I've never seen a rate
8 application procedure with the written support that I've seen
9 in this one. It's unprecedented in my experience.
10 And I was also -- I was a merchant seaman
11 before I went to law school. I used to work on tankers. I
12 went to the same school as Captain Blanton did but a lot
13 earlier than he went. I used to come to Freeport. My ship
14 would come here. I sailed U.S.-flagged tankers. And like I
15 said, I haven't been here in a while and I can't believe the
16 growth that I'm seeing. The cranes, the trucks. I took a
17 walk this morning and it's amazing. It's really -- it's
18 growth. And industry wants to sustain that growth. Industry
19 forecasts -- and for three years Captain Blanton and the
20 pilots have been talking to all the port users, not just the
21 people who were here supporting this rate application. All
22 the port users. And growth, you just have to look around.
23 It's growth. And you have to sustain that growth, the port
24 prospers, everybody prospers, the citizens prosper. And the
25 sustaining growth, you can't play catch up as a port. As a

1 port I know you can't play catch up because if you're playing
2 catch up to meet your customer's needs, guess what? They're
3 already at the other port who already has that
4 infrastructure. You can't play catch up as a port. You've
5 got to get ready now. And your forecast -- and anything can
6 happen. But the port users that are in favor of this rate
7 application, they're very sophisticated and they forecast,
8 too, and they don't take risks. They do the best they can in
9 forecasting. And we know what their forecasting is and we
10 know that they're serious. We see the investment. And the
11 pilots are serious about being ready to sustain that growth.

12 And talk about the cost of pilotage. I think
13 we should look at value. What's the value that the
14 shipowners get from these pilots? Okay. These pilots on a
15 daily basis, they move the largest man-made moving objects on
16 the face of the earth. No one else does that. They do it
17 every day in a narrow channel that's winding, has no turning
18 basins. Not just here. It's an amazing feat anywhere. So,
19 what's the value to that? What's the value to the people
20 that invest a lot of money in these ships? New Jones Act
21 tank was \$750 million. LNG ships, hundreds of millions of
22 dollars. What is the value to that shipowner with regard to
23 the pilot service they get when that pilot brings that ship
24 in from the sea buoy to the dock, that 300 million-dollar
25 asset, and then brings it back from the dock out to sea

1 without a scratch? What's the value of that and the record
2 that this port has safetywise?

3 What's the value to this port and all the
4 stakeholders in the port never being closed because of a
5 spill, because of an incident? What's the value of the
6 service these pilots give all of us to the citizens that
7 aren't interested in ships. The citizens of the county but
8 they're interested in growth and they're interested in that
9 growth being sustained so the economy gets better. And
10 they're interested in their children being able to play on
11 the beaches without having to worry about exposure and
12 sheltering in place and things that we've seen.

13 And if you look at just -- just spill costs,
14 just cleanup costs, the SUMMER WIND, big collision in
15 Houston, the cleanup cost, just the cleanup, \$91 million.
16 The Exxon VALDEZ, everyone is familiar with that,
17 4 billion-dollar cleanup cost. The COSCO BUSAN,
18 215 million-dollar cleanup. The EAGLE OTOME in Port Arthur,
19 that collision and spill was \$36 million and the initial
20 estimates by the Coast Guard, \$1.2 million a day to clean it
21 up. That's just cleanup. That's not all the port closures
22 and the rippling effect.

23 MR. WESELY: If he's going to testify, do I
24 get to cross? He's testifying here. None of this was in any
25 evidence.

1 CHAIRMAN KRESTA: He's testifying and --
2 MR. WESELY: It's a closing, not testimony.
3 CHAIRMAN KRESTA: This is a closing statement.
4 MR. WESELY: Exactly.
5 CHAIRMAN KRESTA: Sustained.
6 MR. BROWN: Your Honor, looking at the
7 testimony, board members, the port comparisons what it cost
8 for various type of ships to come here compared to what it
9 cost that shipowner to go to the competitor ports with a
10 low-cost alternative now and projected out, we're still a
11 low-cost alternative. There was a 2 percent variance. The
12 port's information that was requested, more or less those
13 numbers are good. We see a 2 percent variance but that's not
14 a lot to worry about. I think under the reasonable man
15 standard it's clear when we look at the comparisons that with
16 the rate application we remain the low-cost alternative.
17 That's the information that port staff has provided.

18 A shipowner -- a shipowner never even
19 considers what an individual pilot takes on at the end of the
20 day. That's not a consideration. Shipowner may look at what
21 my ship cost to go with Port A versus Port B. But a
22 shipowner -- Mr. Kornegay's testimony and I believe Ms. Ruiz
23 from MSC, I think she said they've never threatened to leave
24 a port because of pilot fees.

25 In the pie chart of vessel operation costs,

1 the port cost is so small, as Mr. Kornegay said, in as many
2 years he operated in Houston, he never heard of a shipowner
3 leaving the port because of pilot fees or port costs. And he
4 said they always threatened to. They always threatened to.
5 And in MSC's objection in this proceeding, they said that
6 these proposed increases may deter MSC from increasing our
7 services and port calls of Freeport.

8 Exhibit A-8 to our submission is the objection
9 of MSC to the 2013 rate increase request by the Houston
10 pilots. And, again, there's the threat, "continued increases
11 to pilotage cost will jeopardize our future ability to
12 maintain these volumes." People always complain but when --
13 they're business people. When they look at their business
14 model, they look at their overall cost. The pilot fees are
15 not a consideration. And if they are in this case, the
16 comparables show that we're still the low-cost alternative.

17 And I believe Ms. Ruiz also asked, can we
18 leave more room for input. Can we slow things down? Captain
19 Blanton has been trying to get input for three years and the
20 clock is ticking. He's -- and he didn't just meet with
21 support. He met with everybody. And I find it's always when
22 it's pushed to a rate hearing and the Pilot Board has to get
23 involved, then everyone comes up with suggestions. But in
24 three years where are these real suggestions? The people
25 that had actual suggestions, they found out what their needs

1 are. They talked to the pilots about their needs and
2 sustaining that and they do have ideas. They do have ideas
3 to support the growth of the port.

4 And I would like to queue up our PowerPoint.
5 It's very short and run through it. And with that, I think
6 I've completed my closing statement.

7 This is where we sit, at least according to
8 the Corps of Engineers in volume. We're an important port.
9 We're a big port and we want to grow that. We want these
10 numbers to get better.

11 Next slide, please. Our competitor ports,
12 they have dedicated 24-hour dispatch. They have up-to-date
13 modern pilot boats. Three of our competitor ports have them
14 through boat fees like the one that's proposed in this rate
15 application proceeding.

16 Next slide, please. These are the comps,
17 which port staff has verified, 2 percentage variance. Right
18 now we're the low-cost alternative. And in 2019 if this
19 Board approves rate application, we're still the low-cost
20 alternative. And this doesn't even show the increases that
21 our competitors will have between 2016 and 2019. These are
22 still 2016 rates for our competitors. They're just going to
23 go up. Their tariffs -- the multi year tariffs have that set
24 already.

25 Next slide, please. This is -- there was some

1 tripling but there's no evidence -- there's no -- no
2 spreadsheets were given to you. And let me tell you, people
3 own and operate ships. They've got a spreadsheet for how
4 much work gloves cost in a year. And if pilotage fees were
5 so much of a burden, you would have an analysis and a
6 spreadsheet. We just -- pilots make too much money. Prices
7 are going up.

8 Next slide, please. Next slide. I think the
9 port users, the people that are going to help this port grow,
10 and Port Freeport obviously helps the port grow, they're in
11 overwhelming support of this rate application. And I would
12 just close by saying we can't play catchup. We've got to do
13 the best forecasting we can, which the supporters have done,
14 which the pilots have done and you've got the plan for the
15 future. Thank you very much.

16 CHAIRMAN KRESTA: Okay. Pursuant to Texas
17 Government Code, Section 68.066 the Pilot Board may require
18 additional information it considers necessary to determine a
19 proper pilotage rate. In that light, I have the following
20 additional questions for the pilots. And I would like to ask
21 some of these questions and see if they can shed some light
22 on a few issues here. And with that being said, I'm going to
23 ask the board members, after I get through, to have -- if
24 they have any questions.

25 Was there ever a balance sheet given to the

1 discussion about this. These are the safety fee,
2 communication fee line items already in other port's tariffs.
3 And you remember Captain Blanton was asked about that. And
4 you can see our education fee is by far the lowest.

5 Next slide, please. These are -- like I said,
6 I've never seen it. These are the support letters. Dow.

7 Next slide, please. I'm going to include Enterprise
8 Products, Freeport LNG, all the stakeholders in Freeport
9 Exporters. There's five of them that signed that. Phillips
10 66. And you forecast -- the pilots have to forecast for the
11 total throughput of this port, right? That's what -- and
12 they have to -- they can't forecast, well, these people don't
13 have a lot of throughput. So, we'll just cut our resources
14 and take a risk of not being able to satisfy the needs of
15 everyone using the port. You've got to keep that throughput
16 going.

17 Next slide, please. These are just the
18 comparisons. Getting back to -- no one is picking. No one
19 is picking on the little guy or the people that don't have as
20 many vessel calls. Pilots have to serve the whole port. The
21 pilots have to keep this port moving and that obviously
22 includes the most frequent visitors. We don't want to turn
23 any business away.

24 Next slide, please. Next slide. And we had a
25 lot of -- our costs are going up. It's doubling and it's

1 Pilot Board under Section 68.066 for December 31, '16 through
2 April 30, 2017, a balance sheet?

3 CAPTAIN BLANTON: I believe there was one
4 included in the application.

5 CHAIRMAN KRESTA: I don't see it. I don't
6 have it.

7 MR. MOORE: If you need one, Mr. Chairman, I
8 have a copy of the balance sheet as of April 30, 2017 and as
9 of December 31, 2016. Is that what you're asking for?

10 CHAIRMAN KRESTA: Yes, sir.

11 MR. MOORE: Let me hand that up to you. I'm
12 sorry I don't have copies for everybody.

13 CHAIRMAN KRESTA: That will be fine. We'll
14 put it as an exhibit.

15 MR. LETOURNEAU: Mr. Chairman, that will be
16 Exhibit No. D. Exhibit D will be the balance sheet as of
17 April 30, 2017 and Exhibit E will be the balance sheet
18 effective as of December 31, 2016.

19 (Exhibit D and E marked)

20 CHAIRMAN KRESTA: Does the Association develop
21 any annual operating budget? Did y'all develop an operating
22 budget as was shown to us; is that right?

23 CAPTAIN BLANTON: Yes.

24 CHAIRMAN KRESTA: And this is all approved by
25 the Association?

1 CAPTAIN BLANTON: Correct. In our annual
2 meeting, we set our budget. We elect officers. There's a
3 couple of points of fact that we cover in our initial annual
4 meeting.
5 CHAIRMAN KRESTA: Okay. Does the Association
6 maintain a cash reserve of funds; and if so, is that part of
7 the budget and where is it showing in the financial records
8 per Section 68.099?
9 CAPTAIN BLANTON: We have a small operating
10 fund that -- we have an account at Texas Gulf Bank and then
11 we have -- it's split with a Merrill Lynch account. There's
12 also the education fund that we have at Texas Gulf Bank
13 that's split with a Merrill fund that -- we got prior
14 approval from the Board to have an interest-bearing account
15 on that. And that's the one that's audited -- not audited.
16 That's reviewed by the Board whenever we did it a couple
17 months ago. And then the only other account that the Brazos
18 Pilot has, which is zero right now, is the share account that
19 we're required to have by statute. It's got, I think, \$300
20 in it right now from when Captain Gunning was paid off. So,
21 we have to keep that account in compliance with statute. If
22 a guy leaves, we have 30 days to pay him. So, we have to
23 maintain an account.
24 But we have an operating account that has
25 basically -- it is reflected and it's just our -- however, we

1 just clear our expenses as we go month to month. But all the
2 other fees are disbursed to the pilots. There are no other
3 accounts outside of those. There's nothing retained. I
4 think the number is right around \$200,000 for the operating
5 account. That's Merrill Lynch and Texas Gulf Bank. And
6 that's what we do to pay for -- we cover our fuel out of
7 that. We pay all of our payroll out of that. All of our
8 operating expenses month to month goes out of that account.
9 But there are no other accounts with Brazos Pilots
10 Association.
11 CHAIRMAN KRESTA: Does the Association
12 contribute to the employee retirement plans?
13 CAPTAIN BLANTON: We contribute to our
14 employees' retirement plans, yes. The individual pilots, no.
15 There is no retirement plan. The pilots contribute to their
16 own retirement plan.
17 CHAIRMAN KRESTA: So, the Association doesn't
18 contribute?
19 CAPTAIN BLANTON: No. After the pilot gets
20 his disbursement, then the individual pilot pays for his own
21 SEP. We have SEP accounts, self employed pensions. We're
22 independent contractors.
23 CHAIRMAN KRESTA: Okay.
24 CAPTAIN BLANTON: That's not a function of the
25 Brazos Pilots. That's up to the individual pilots.

1 CHAIRMAN KRESTA: Are the -- no contributions
2 any which way to retirement accounts, right?
3 CAPTAIN BLANTON: No.
4 CHAIRMAN KRESTA: Or branch pilots?
5 MS. SAATHOFF: Employee branch pilots.
6 CHAIRMAN KRESTA: Employees.
7 CAPTAIN BLANTON: The employees we do. The
8 pilots themselves we do not. The pilots are -- they're
9 self-funded pensions. Is -- do you understand what I'm
10 saying?
11 CHAIRMAN KRESTA: Yes. Does anybody want a
12 clarification on that?
13 COMMISSIONER HOSS: Yeah. What about the
14 deputy pilots?
15 CAPTAIN BLANTON: They don't have any SEP
16 contributions. They just have a salary and we -- they
17 have -- that's it. No.
18 COMMISSIONER HOSS: No contribution?
19 MS. SAATHOFF: Just to make sure it was
20 clarified.
21 CAPTAIN BLANTON: No. They --
22 CHAIRMAN KRESTA: I guess the next one might
23 be the same. Does the deputy pilot receive the same share
24 proceeds as the branch pilot?
25 CAPTAIN BLANTON: Negative. The only ones

1 that are eligible for a distribution is a full pilot. The
2 deputy branch pilot with deputy certificate are employees of
3 the Brazos Pilots. So, they're not eligible for share until
4 they have gone through their full two-year training process,
5 they've been cleared, and then we would recommend them to the
6 Board to be given a branch pilot certificate. And then they
7 would have to file their application with the governor and
8 then at that point they would -- they would become a branch
9 pilot and then they would be eligible for a distribution.
10 CHAIRMAN KRESTA: At what time are the pilot
11 fees distributed, monthly or when?
12 CAPTAIN BLANTON: Monthly.
13 CHAIRMAN KRESTA: That was Section 68.100.
14 How are the shares of the Brazos Pilot Association valued?
15 CAPTAIN BLANTON: I think it's 68.103 tells
16 you what they're -- how they're valued and 68.104, I think,
17 it tells you how they're disbursed. It's just a crude
18 assessment. So, in our annual meeting the -- we take a
19 snapshot of our assets, that includes that capital account
20 for the -- our operating budget, the value of our pilot
21 station, and the value of our boats. And then however many
22 shares are outstanding for Brazos Pilots, that number is
23 divided and that's the individual share price.
24 CHAIRMAN KRESTA: Okay.
25 CAPTAIN BLANTON: And then when -- I'll let

1 you lead.
2 CHAIRMAN KRESTA: After Captain Gunning was
3 bought out, how much did pilot share increase? From a four
4 to a three or what?
5 CAPTAIN BLANTON: So, the Brazos Pilot bought
6 Captain Gunning's share and his share is still outstanding.
7 So, an individual doesn't own the share. The share is held
8 by the Association.
9 CHAIRMAN KRESTA: Held by the Association?
10 CAPTAIN BLANTON: Correct.
11 CHAIRMAN KRESTA: How much is a share worth?
12 CAPTAIN BLANTON: The same assessment value.
13 We won't -- we won't re-evaluate the -- we only redo it every
14 year or unless there's a need. If a pilot goes out or a
15 pilot comes in, then you have to do --
16 CHAIRMAN KRESTA: So, it had value the day you
17 bought him out but you don't know what the value is today?
18 CAPTAIN BLANTON: It's three fifty-five but it
19 hasn't changed.
20 CHAIRMAN KRESTA: That's what I was asking.
21 CAPTAIN BLANTON: We didn't re-evaluate it
22 because there's no qualifying event that would require us to
23 go through a re-evaluation.
24 CHAIRMAN KRESTA: Okay. The vessel count
25 movement dated for 2016, we have that, right?

1 some of the ships. So, trying to nail down how many ships or
2 who's going to go first or what size ships or when it's
3 really going to run up, I mean, it's above my pay grade, to
4 tell you the truth. We've been told our drop-dead date is
5 March of '18 we must be ready. We've been told that --
6 CHAIRMAN KRESTA: That's fair enough. That's
7 fair enough. If that's what you've been told, that's all you
8 can go by.
9 CAPTAIN BLANTON: There you go.
10 MR. MOORE: Mr. Chairman, with regard to your
11 question about vessel movements --
12 CHAIRMAN KRESTA: Yes, sir.
13 MR. MOORE: -- Exhibit F, we've got the total
14 actual vessel movements for 2013, '14, '15, and '16 if you
15 need it. And they're included in the calculation of the
16 financial data that we've provided as well but this will show
17 you exact numbers.
18 (Exhibit F marked)
19 CHAIRMAN KRESTA: Okay. Thank you. We did
20 the count for vessel movements, right, for '17, '18, '19,
21 '20? Do we have that? Did y'all give that?
22 MR. MOORE: That's in the forecast.
23 CAPTAIN BLANTON: It's forecasted.
24 CHAIRMAN KRESTA: It's in the forecast, right?
25 MR. MOORE: Yes, sir.

1 CAPTAIN BLANTON: I believe you do.
2 CHAIRMAN KRESTA: Separately provide the LNG
3 vessel count estimates along with the vessel start dates. Do
4 you have that?
5 CAPTAIN BLANTON: So, they're tracking ahead.
6 They're still trying to figure out what train is going to
7 come online first, whether BP is going to go first. What
8 we've been told is that we have to be ready to go on March of
9 '18. So -- but there's a -- a ramp up. So, they have to do
10 commissioning cargoes. So, the commissioning cargoes aren't
11 part -- and I'm really speaking above my pay grade, if you
12 would, because it's someone else's business. So, they have
13 commissioning cargoes. Those commissioning cargoes can be
14 bought by the train operators. So, the -- there's five
15 carriers who comprise all of the gas cargoes that are going
16 to go through the three trains that were permitted through
17 the FERC process.
18 So, in order to commission -- like they built
19 another tower and they have commissioning cargo, just like
20 start-ups at any plant you would expect. Those commissioning
21 cargoes can have first right of refusal by one of the gas
22 carriers. But how long that start-up operation takes is
23 still to be debated. We've also been told that there's
24 questions on the order that the trains will be online and
25 which customers will come in. So, they're still building

1 CHAIRMAN KRESTA: It appears that the
2 requested 3 percent rate was not incorporated into the second
3 half of 2017. Why not?
4 CAPTAIN BLANTON: It was.
5 CHAIRMAN KRESTA: It was?
6 CAPTAIN BLANTON: Yes, sir.
7 MR. MOORE: Yes, sir.
8 CHAIRMAN KRESTA: Okay. For '18, '19, and
9 '20, it appears that the rate increase was simply applied to
10 the 2017 estimated revenues without regards to any change of
11 vessel counts; is this correct?
12 MR. MOORE: No, sir.
13 CAPTAIN BLANTON: No, sir. There was a
14 13.8 percent increase --
15 CHAIRMAN KRESTA: Is that what you were
16 talking about earlier?
17 CAPTAIN BLANTON: -- amortized out across the
18 board, yes.
19 CHAIRMAN KRESTA: The supply report shows a
20 268,000-dollar loss for 2016. I believe those are covered in
21 your statement with the buyout. Assuming that one-twelfth of
22 the budget is kept for month reserve and the remaining funds
23 are disbursed according to Section 68.00 -- 68.099, then how
24 can there be a dispersion of more funds than were taken in?
25 And do we run a business -- I guess I'm going back to your

1 saying you run a business. How can your balance sheet let
2 you run a business every year at a loss?
3 CAPTAIN BLANTON: It's not a loss. It's a
4 loss just to show it.
5 CHAIRMAN KRESTA: It's a loss to show it.
6 It's the financial statement. To me, I'm kind of
7 simpleminded just like you are, too.
8 CAPTAIN BLANTON: Easy to explain. So, I am
9 not a salaried employee. I am a business owner. So, after
10 all the expenses are paid, then I get what's left over. But
11 for the purpose of how they laid it out so you could see the
12 costs, the -- there is a loss in there. But it won't be a
13 loss for the company. It will just be a smaller share at the
14 end of the day. Does that make sense?
15 CHAIRMAN KRESTA: Yes. Paperwork should show
16 that because you should always show a zero balance. But you
17 take less money out is what you just said.
18 CAPTAIN BLANTON: I'm a simple man like you.
19 CHAIRMAN KRESTA: Me, too. So, when the
20 accountant wants to tell you you're going to go for a loss,
21 you shouldn't be taking that kind of money out. That's a
22 statement. Standard man. Standard business. Right?
23 CAPTAIN BLANTON: Okay.
24 CHAIRMAN KRESTA: Seven, estimated financial
25 records presented indicated annual loss -- I got that one

1 just now. Are there any other sources of either operating or
2 nonoperating revenues?
3 CAPTAIN BLANTON: No.
4 CHAIRMAN KRESTA: Okay. How about please
5 provide detailed explanation of the costs associated with
6 209 percent increase in marketing and public relations
7 expense in '16 and '17? Is that --
8 CAPTAIN BLANTON: The marketing budget is --
9 it was \$10,000, I think, for the whole year. So, a
10 290 percent increase --
11 CHAIRMAN KRESTA: 209.
12 CAPTAIN BLANTON: -- is a small number. We're
13 talking about the funds for buying a hat, breakfast tacos,
14 and take a child fishing. Out of a 3 million-dollar budget,
15 a 10,000-dollar marketing account -- I mean, it -- the
16 percentage is disproportionate to the dollar amount. Does
17 that satisfy your answer?
18 CHAIRMAN KRESTA: Anybody need clarification
19 on that? Anybody? I believe you --
20 CAPTAIN BLANTON: I will talk to the boys
21 about the breakfast tacos.
22 CHAIRMAN KRESTA: Okay. Does the Association
23 own any vehicles? If so, do y'all provide descriptions or do
24 y'all just have a vehicle account?
25 CAPTAIN BLANTON: We don't own vehicles. The

1 Association does not own a vehicle. The pilots drive their
2 personal vehicles.
3 CHAIRMAN KRESTA: There's an increase in the
4 expenses for the Associate with the boat -- boat fuel and
5 lubricants. Is that just -- 36 percent increase, what
6 happened there?
7 CAPTAIN BLANTON: We --
8 MR. MOORE: Mr. Chairman, I have the backup
9 for that and the detail if you want to look at it.
10 CHAIRMAN KRESTA: Yeah.
11 MR. LETOURNEAU: Mark that as Exhibit G.
12 *(Exhibit G marked)*
13 CAPTAIN BLANTON: There's little bit higher
14 cost on it because we're training deputies right now. And
15 so, typically a pilot would go do the trip. So, a deputy
16 doesn't always want to go -- go all the way out to the end if
17 there's another ship coming in. So, in order for him to get
18 some higher training, he may jump early just so -- because we
19 have more people than is typical on the bar right now. The
20 boats are running around a little bit more. But, you know,
21 the costs are mostly just reflected on the price of fuel and
22 lube more than anything. There is a small increase in our
23 running time because we're trying to get the guys exposed as
24 much as humanly possible.
25 CHAIRMAN KRESTA: All right. There was an

1 increase on the education expense and how the funds were
2 expended in the past year. It shows -- I've got a figure
3 here, looking at 6,211 percent. Does the Association suspect
4 these elevated levels to remain in place indefinitely?
5 CAPTAIN BLANTON: So, the way it works is that
6 the Brazos Pilots subscribe to the APA's guidance on
7 training. So, that means in a five-year period, we go to a
8 bridge resource management, four pilots, BRMP and an
9 advantage ship handling course. That's every five years we
10 have to conduct this training. We also out of the education
11 fee, which is audited by our PPU, the personal pilot units --
12 as you know, the pilots carry -- they're not laptops. I
13 switched everyone over to iPads because they're a little bit
14 easier. But bringing the new two deputies on, we had to buy
15 them PPUs and we've started the training. But it's not
16 sustainable on that large of a percentage scale. We have a
17 schedule that we have to meet and when the pilots go on those
18 five-year rotation, it just happened to stack up right here.
19 We are going to sustain the spending pattern that's there in
20 the sense that we are going to continue the training that we
21 do. We are going to continue to get the PPUs but it was just
22 a function of the schedule why it fell like it did.
23 CHAIRMAN KRESTA: All right.
24 CAPTAIN BLANTON: And you get a report every
25 year on the education fee and that's -- the education is

1 outside of pilot dispersions. That's a line item.
2 CHAIRMAN KRESTA: Yes. And your boat
3 financing company.

4 CAPTAIN BLANTON: TDECU. There's two
5 mortgages in there, if you would. There's a boat
6 construction loan and then there's the boat principal and the
7 mortgage. So, the construction, they gave us 12 months to
8 build the boat. And the builder -- provided we could get
9 into the slot that we're shooting for, we should be good to
10 go. And then we'll roll over into the mortgage.

11 How we got to the \$3 million for the second
12 boat, just to clarify. So, we went to industry and we said
13 that, look, our 17-year-old boat that's got a 20-year hull,
14 in ten years once we pay this first boat off, is going to be
15 at its retirement age. So, when we first started talking to
16 the guys, they said, well, do we want to put a permanent fee
17 in with a lower? And they said, well, we don't want to put a
18 permanent fee in. It never goes away. We want something
19 that once the boat is paid for, it goes away. So, we did
20 that. And then we said we want to designate, you know, for
21 the second boat the fee in there. Well, we don't want you to
22 go out and buy an 8 million-dollar pilot boat. We need to
23 designate what that second boat is going to be.

24 So, we plan on replacing the second boat with
25 like and kind. We're not going to go out and buy a 75-foot

1 I know you won't buy a seven or 8 million-dollar boat. And
2 that's how that came to be.

3 CHAIRMAN KRESTA: All right. Being that the
4 pilot line item and essentially -- it sounds so perpetual.
5 But like zero to 11 -- in ten years it's going to be 11 years
6 because in ten years, you will be wanting a second mortgage.
7 And the first one is going to be 21 years old. And today you
8 were saying you've got 32 -- 17-year-old boat that needs to
9 be replaced. Is this going to be a perpetual deal when ten
10 years comes here, all of a sudden, okay, we've got to get the
11 second boat and then -- and Year 21 the boat is 21 years old,
12 we've got to replace. I think I heard testimony today saying
13 the boats -- usually replace them at 15 years. And then this
14 thing is -- is it perpetual?

15 CAPTAIN BLANTON: I mean, the boats get older.
16 It's a fungible account. So --

17 CHAIRMAN KRESTA: It's what now?

18 CAPTAIN BLANTON: Fungible. So, the boat
19 expectancy from the builder is about 20 years. Like I said,
20 we ran about 17 years with one and 36 on the other one. We
21 feel -- I mean, obviously we're going to have to get more
22 boats in the future. But at this point, you know, with
23 the -- with the investment that's here and the amount of
24 forecasting that you can legitimately do, we designated it
25 for two boats. And then after these two are done, then we'll

1 boat or 120-foot mega yacht. We're going to try and stay in
2 that 65-foot footprint. It works very, very well with our
3 organization. The reason we got to the -- so, I didn't
4 designate the second builder in the mortgage because I wanted
5 to be able to put it out for RFQ and make sure that we get
6 the customers and clients -- I didn't want to get locked into
7 a particular boat builder. And in ten years someone else may
8 come along, technology is -- I wanted to give us the
9 flexibility but I needed to put a price point in there.

10 So, I went to the boat builders and said all
11 right, so, if we're going to build something fairly in line
12 with what we're asking for now, the \$2.5 million, how can I
13 forecast that ten years out? And they said, well, the way we
14 do it with boats and heavy equipment is 3 percent per year.
15 So, in ten years, 3 percent on a 2.5, that's how you get the
16 \$500,000. That's how we got the 3 million-dollar estimate
17 for the second boat. And that was through a lot of
18 negotiation with the guys, that they wanted to see that
19 transparency. They wanted to see the longevity and how we
20 were going to do this in the future and that's how we nailed
21 that price point. Because I didn't want to designate too
22 much on we're going to use this institution and we're going
23 to use this boat builder because I wanted to keep the
24 flexibility. But we had to pick a price point that they
25 could swallow because they came back to me with, well, how do

1 go back to industry and see where we are as a port and then
2 we'll look at what we're going to have to do at that point.
3 But for, you know -- for clarity and sight and path forward,
4 you know, looking forward 20 years is about as far forward as
5 you want to start looking, in my humble opinion.

6 CHAIRMAN KRESTA: Next question is how long do
7 you foresee the boat fees to be in place?

8 CAPTAIN BLANTON: So, the boat fee is held in
9 an escrow account with the bank. So, depending on the
10 traffic, hopefully it will -- on the short side, maybe 14.
11 On the high said, maybe 20. I would think it's probably
12 going to be closer to 14. Phyllis, what do you think?

13 MS. SAATHOFF: I'm sitting here going wait.
14 Let me --

15 CAPTAIN BLANTON: It's finite. It goes away
16 when the boat is paid for, depending on how many ships. The
17 more ships you move, the faster it goes away. We've also --
18 I'm guessing that it's going to be on the 14 to 20 years.

19 MS. SAATHOFF: Am I right that if you're
20 forecasting over -- let's say you just are forecasting a
21 thousand vessels a year, that's 2,000 moves, that will
22 generate 400,000.

23 CAPTAIN BLANTON: We get about 50 ships a
24 year.

25 MS. SAATHOFF: Can I -- is it okay that I ask

1 this question -- have this conversation before I --
2 JUDGE GAYLE: It's up to your chairman.
3 CHAIRMAN KRESTA: Yes, ma'am, you can.
4 MS. SAATHOFF: That was a question that wasn't
5 clear. Does a shift generate the line item charge or is it
6 just vessel calls into the harbor?
7 CAPTAIN BLANTON: It's the ships as well. And
8 we talked about it. You know, the person who has the most
9 ships was Dow. But at the end of the day, you're talking
10 about 50 ships a year. So, for the fees that you generate on
11 the ships, it's about -- I think it's \$9800 a year is what
12 you're talking about for the ship fees.
13 MS. SAATHOFF: Is this one of those items
14 that just -- I'm not really aware.
15 CAPTAIN BLANTON: Correct. It was brought to
16 our attention but the number in the aggregate was small.
17 Yes.
18 MS. SAATHOFF: So, I guess, my -- that's not
19 looking at interest. But I was trying to say if you had a
20 thousand ships call and including shifts as well, then it
21 would generate \$400,000 in revenue that would be put in the
22 escrow to give you a sense.
23 CHAIRMAN KRESTA: All right. Everybody get
24 clear on that one?
25 MS. SAATHOFF: I think one of your

1 projections, it looks like it's closer to 1100 vessels.
2 That's what I think I saw.
3 CAPTAIN BLANTON: It's how far you want to
4 look into your crystal ball.
5 MS. SAATHOFF: Right.
6 CHAIRMAN KRESTA: There's so much projection
7 being made here tonight.
8 CAPTAIN BLANTON: We did our due diligence to
9 make it as clear as possible to everybody.
10 CHAIRMAN KRESTA: I'm just trying to get a
11 closure on how long this is going to happen.
12 CAPTAIN BLANTON: My guess is 14 to 20 is what
13 the numbers guy tells me. That's what the banks are
14 estimating.
15 CHAIRMAN KRESTA: Okay. And when did y'all
16 start -- when did the Association begin planning the purchase
17 of a pilot boat?
18 CAPTAIN BLANTON: So, we talked to Glenn --
19 with Glenn when Glenn was here and then after he left, Jeff
20 was here. I had extensive talks with Jeff and his office.
21 We met with yourselves and anybody that would listen. So,
22 it's been a long haul. There's been a lot of meetings.
23 There's been a lot of people who have had input on this.
24 I've been in more board rooms than I care to go back in
25 again. We tried to be as transparent and open as possible,

1 even with West Gulf Maritime. I think they'll tell you, it
2 was never our intention to hoodwink anybody. And we want to
3 show where the money is going. We want to understand our
4 partners' needs. And I think, you know, the vast majority of
5 the stakeholders have given us written support, which is
6 rare. I mean, that's quite a task to ask some of these
7 corporate structures to produce a document in support of a
8 request like this. So, it's been -- the tires have been
9 kicked more times than I care to think about anymore.
10 CHAIRMAN KRESTA: Okay. Thank you. With that
11 being said from me, I'm going to ask the members of the board
12 if they have any questions that they would like to pose to
13 the pilots.
14 COMMISSIONER SINGHANIA: Mr. Chairman, I have
15 a question, if I may.
16 CHAIRMAN KRESTA: Yes, sir.
17 COMMISSIONER SINGHANIA: I'm not much of a
18 waterfront man. I want to let you know that part first. But
19 you talked about Captain Gunning's buyout and you divided
20 that into four equal shares and that was specifically
21 \$355,000 that you paid to buy him out; is that right?
22 CAPTAIN BLANTON: Yes.
23 COMMISSIONER SINGHANIA: Now, if the Pilot
24 Association is an enterprise, which it is, I guess, and you
25 value it at a value of 1.4 or whatever million dollars, then

1 buying him out the value of the enterprise did not change,
2 only the remaining partners got their interest higher. So,
3 instead of 355,000 --
4 CAPTAIN BLANTON: The fourth share is held by
5 the Association. So, it didn't change anything.
6 COMMISSIONER SINGHANIA: Yeah. But your value
7 went up, whoever the three left. And so, if you go and --
8 why should the user be paying for that? That's my question.
9 CAPTAIN BLANTON: It's not correct how it's
10 divided by that. And then -- so, that share is being held by
11 the Association. And, in fact, once the two deputies come
12 in, that value is going to be split by five.
13 COMMISSIONER SINGHANIA: So, they will be
14 paying in to buy their shares?
15 CAPTAIN BLANTON: They'll buy a share. That's
16 how the statute is written. So, they have to buy the share
17 value of the company because they're an independent
18 contractor. It's a beast of the statute. So, that's -- it
19 is what it is. It's laid out in 68 on how the evaluation is
20 accounted for, when it has to be paid, when it has to be
21 bought in, and it designates everything that you have to do.
22 It's not -- there's no -- there's no leeway in what we can do
23 with it.
24 COMMISSIONER SINGHANIA: I'll let that thing
25 go because, as I said, I'm not a -- much on that. I'm going

1 to have you or Phyllis sometime explain that to me
2 afterwards.
3 MS. SAATHOFF: Maybe this will help. Can I
4 ask you a question? You mentioned there was \$355 left in the
5 share account I think you referred to.
6 CAPTAIN BLANTON: We just didn't want to close
7 the whole Merrill Lynch account out.
8 MS. SAATHOFF: That's fine. But if y'all
9 bought shares -- if y'all all bought shares, y'all still have
10 shares you bought in, where -- what account are those funds
11 in? I guess that's the -- I think that's what the Board is
12 looking for, that there should be enough for four.
13 CAPTAIN BLANTON: There's only one share
14 that's held in there. All the rest -- we only hold one
15 share.
16 MS. SAATHOFF: Just hold one share?
17 CAPTAIN BLANTON: We just hold one share
18 because we have to pay it within 30 days. That's kind of a
19 contingency. We would hope that multiple people weren't in a
20 car crash and we lost multiple guys. Then in 30 days the
21 pilots would have to go to their personal bank accounts and
22 fund those shares.
23 MS. SAATHOFF: That's the question. So, if
24 Captain Teeter were to decide that he doesn't want to work
25 this hard --

1 reflect on the cash flow or has it been reflected in your
2 projections?
3 CAPTAIN BLANTON: They're still employees.
4 COMMISSIONER SINGHANIA: Right now they are.
5 But when they become branch pilots or next level or whatever
6 that is, they have to buy the shares?
7 CAPTAIN BLANTON: It's an equity fund.
8 MS. SAATHOFF: It will -- that will be a
9 balance sheet transaction, then. It will be cash and equity
10 in the balance sheet, if I'm understanding correctly. And
11 will it be -- will it be the 355,000?
12 CAPTAIN BLANTON: It will be divided by five.
13 It will be divided by five at that point because you're
14 actually creating a new share of Brazos Pilot. So, the value
15 of my share will be diluted with the more pilots you bring
16 on.
17 COMMISSIONER SINGHANIA: That's going above my
18 pay grade.
19 COMMISSIONER PIRTLE: Can I ask -- along the
20 same lines I have a comment on this. And my understanding is
21 when -- it's on. When Captain Blanton retired, his shares --
22 his share had to be paid out, too, and then when Captain
23 Gunning -- and so, that's depreciated, I guess, the funds
24 that are existing in BPA quite a bit. And then I know you
25 say -- not to mention any names but somebody might be wanting

1 CAPTAIN BLANTON: Yes.
2 MS. SAATHOFF: -- today, he would --
3 CAPTAIN BLANTON: I would have to write him a
4 check.
5 MS. SAATHOFF: I think that's the missing
6 piece.
7 CAPTAIN BLANTON: When the deputies come in,
8 they'll repopulate that account. So, right now --
9 MS. SAATHOFF: That's how the one --
10 CAPTAIN BLANTON: -- he's not going anywhere.
11 MS. SAATHOFF: We hadn't seen the balance
12 sheet and we hadn't had the opportunity. That's the reason,
13 I think, some of the commissioners had those questions
14 because it wasn't clear how all of that works.
15 CAPTAIN BLANTON: Did I explain it well
16 enough? Is it clear now?
17 COMMISSIONER SINGHANIA: I have a follow-up
18 question on that. When you have this new pilots who join the
19 Association as a full-fledged member or --
20 CAPTAIN BLANTON: They'll be branch pilots.
21 COMMISSIONER SINGHANIA: -- branch pilots and
22 become executive pilots like you afterwards.
23 CAPTAIN BLANTON: There's no executive pilots.
24 COMMISSIONER SINGHANIA: So, when they are
25 buying the shares, the money that they have to put in will

1 to leave before long.
2 CAPTAIN BLANTON: No. So, I mean, at the end
3 of the day, it's a nature of the statute. So, it is what it
4 is. He has one share. He has a stock certificate that says
5 James Teeter and he'll hand it over and I'll have to buy it
6 and I've got 30 days to pay him.
7 CHAIRMAN KRESTA: Any other questions?
8 Mr. Hoss?
9 COMMISSIONER HOSS: I've got a few.
10 COMMISSIONER SANTOS: No, I don't.
11 COMMISSIONER HOSS: I've got a couple. I'll
12 try not to be redundant because a lot of them were answered.
13 Thank you. And you've already answered a dozen or so of my
14 questions. If you can go back to historically before your
15 time -- before your time.
16 CAPTAIN BLANTON: All right.
17 COMMISSIONER HOSS: Current pilot boat,
18 17-year-old pilot boat.
19 CAPTAIN BLANTON: Correct.
20 COMMISSIONER HOSS: -- how was it paid for?
21 CAPTAIN BLANTON: So, the commission -- the
22 pilots went to the Pilot Board at that time and to the
23 community at large and were saying we need this new pilot
24 boat. Traffic was down at that time. So, they agreed on
25 with Pete and those guys that they would actually drop pilots

1 off at the bar. So, they -- they went down to two pilots.
2 And then back then that boat was only \$750,000. And then
3 they ran into all kinds of problems to try to get those loans
4 personally. So, they ended up putting their personal houses
5 up as collateral to buy the Association the boats. The
6 problem with that model is -- and the reason we're trying to
7 do it this way now is those -- me as a member or him as a
8 member could move in and out of the organization at any
9 point. To have my personal house as a collateral for an
10 association resource, it wasn't viable and the bank hated it.
11 It was one of the biggest reasons we were unable to get
12 loans.

13 When we started to talk and look around at
14 Houston and talk to the port users really was when -- so, I
15 went to Texas Gulf Bank. I went to Moody's. I looked at --
16 we were even thinking about switching to Caterpillar from
17 Cummins. I wanted to stay in -- we'll still talk about that.
18 But Cat has financing that they can use. So, we went to
19 several lenders and that's how we ended up on this line
20 charge that's held in the escrow account because the
21 Association on its own could now procure the loan, which
22 under the other model we couldn't do. I mean, the boats are
23 too expensive now.

24 COMMISSIONER HOSS: How is it that it's
25 determined that a pilot boat should be replaced every 20

1 years?

2 CAPTAIN BLANTON: The manufacturers
3 recommended 20 years.

4 COMMISSIONER HOSS: Okay. So, the
5 manufacturer does that. Are your pilot boats insured?

6 CAPTAIN BLANTON: Yes. Great American Charter
7 is our insurance company.

8 COMMISSIONER HOSS: What's the current fair
9 market value of the pilot boat?

10 CAPTAIN BLANTON: I think they're at hundred
11 grand maybe for the old boat and maybe two --

12 COMMISSIONER HOSS: It's a guess. This is a
13 guess.

14 CAPTAIN BLANTON: I would say the -- depends
15 on where you are on the engine cycle. At this point, the
16 boats are so old, the engines are the more valuable option in
17 the boat.

18 COMMISSIONER HOSS: Who would be a -- who
19 would be a type of customer -- who would buy that boat?

20 CAPTAIN BLANTON: Well, I mean, they would
21 probably be in the TERPs program or -- I don't know -- maybe
22 someone in Alaska.

23 COMMISSIONER HOSS: I'm going that -- I'm
24 assuming you're going to sell it or dispose of it or will it
25 be scrapped when you -- when you get around to getting a new

1 boat?

2 CAPTAIN BLANTON: Obviously we don't want to
3 keep the boat but the problem is the boats were used as
4 collateral for the loan. So, whatever we do with that boat,
5 the bank is going to have to okay it. We don't --

6 COMMISSIONER HOSS: I think Mr. Teeter is
7 going to make a contribution to this.

8 MR. TEETER: He's right.

9 CAPTAIN BLANTON: We're going to look at
10 trying to sell it. We're going to offload it. We don't want
11 the expense. We're going to have to store it and maintain
12 it. So, we're going to try to get rid of the boat. But
13 those fees -- any fees -- we've already talked about that
14 with the bank. Any fee that we would get for selling the
15 boat or if we got in the TERPs program, it would go into the
16 loan because the bank is using it as collateral. So, we
17 can't -- you can't just sell the boat and pocket the money,
18 if that's what you're getting at.

19 COMMISSIONER HOSS: Obviously that sounds like
20 a good, sound business practice to me. But I couldn't assume
21 it. I had to hear you say that.

22 CAPTAIN BLANTON: It's in the mortgage.

23 COMMISSIONER HOSS: Fair enough.

24 CAPTAIN BLANTON: They have it as collateral.

25 COMMISSIONER HOSS: All right. Is there a

1 current mortgage on the boats?

2 CAPTAIN BLANTON: No. We own both boats.

3 COMMISSIONER HOSS: All right. And this you
4 might have to go to your CPA back there for this one. But
5 what's the normal depreciation period associated with a pilot
6 boat?

7 CAPTAIN BLANTON: Ten years.

8 COMMISSIONER HOSS: Ten years. Any
9 accelerated models or fancy things like that or is it a
10 straight ten-year depreciation?

11 MR. BAILES: It's a straight ten-year. It's
12 going to be approximately 250,000 Year 1, four hundred fifty
13 Year 2.

14 COMMISSIONER HOSS: I'll accept the straight
15 line as a straight answer. Thank you.

16 CAPTAIN BLANTON: Do I look like a fancy model
17 guy?

18 COMMISSIONER HOSS: You can defer to your
19 friend back there. It's okay. The -- your engines every
20 year -- every four years or so -- I think we've all
21 considered that we're going to be replacing engines. Is that
22 five years?

23 CAPTAIN BLANTON: About 10,000 hours depending
24 on run time. That's what it is.

25 COMMISSIONER HOSS: Those are just expensed

1 out or you capitalized those or what? CPA can answer this.
2 CAPTAIN BLANTON: If you look at our -- the
3 chart that we had up there, we actually have a 7 percent --
4 what is the word I'm looking for -- expense on the --
5 COMMISSIONER HOSS: It wasn't broken out. So,
6 that's why I'm asking.
7 CAPTAIN BLANTON: It was at the bottom. There
8 was 7 percent each year and that's for the maintenance on the
9 boats. So, I mean -- so, you're talking about changing a
10 40-foot boat with a single naturally aspirated engine with a
11 complete overhaul price tag of about a hundred thousand
12 dollars.
13 COMMISSIONER HOSS: It's pretty expensive.
14 It's very expensive. That's why I'm asking.
15 CAPTAIN BLANTON: So, now -- I mean, you know,
16 we can quote it out with Williams Diesel but we have good
17 people that have done these things for us in the past. So,
18 in-house we talked to Jack, we talked to the boat builder, we
19 talked to our Cummins guys and we think we can do it for
20 about half a million dollars every five, four years, every
21 10,000 hours.
22 COMMISSIONER HOSS: Half a million dollars
23 every five years?
24 CAPTAIN BLANTON: For the new boats.
25 COMMISSIONER HOSS: For the new boats?

1 you don't want a raise? Is that what I heard?
2 CAPTAIN BLANTON: That's what we're saying. I
3 mean, the whole purpose -- this is --
4 COMMISSIONER HOSS: Okay.
5 CAPTAIN BLANTON: We negotiated with industry
6 and it was an infrastructure project. That's what this whole
7 thing is about. And concessions were made. We talked to
8 them. We took the fifth pilot, which, I mean, you saw,
9 dilutes our share value. But it's forward looking. It takes
10 two years to train these guys.
11 COMMISSIONER HOSS: You mentioned your
12 critical stores and all that you have to acquire for the new
13 boats. Do you maintain that for the current boats?
14 CAPTAIN BLANTON: Yeah.
15 COMMISSIONER HOSS: Is that in your budget?
16 MR. TEETER: It's in our garage.
17 CAPTAIN BLANTON: It's in our garage.
18 COMMISSIONER HOSS: Is there a copy of your
19 2016, 2017 budget available? That's two years, not one.
20 CAPTAIN BLANTON: I think they already gave it
21 to them.
22 COMMISSIONER HOSS: Was the budget in that --
23 included in that document?
24 MR. MOORE: Balance sheet.
25 COMMISSIONER HOSS: Don't have a budget?

1 CAPTAIN BLANTON: There's two engines.
2 COMMISSIONER HOSS: To replace both engines it
3 will cost you a half a million dollars?
4 CAPTAIN BLANTON: To repower the QSM 19 or QSK
5 19, yeah.
6 COMMISSIONER HOSS: Okay.
7 CAPTAIN BLANTON: So, that was the 7 percent
8 that you see in there is we have to break that -- that's too
9 big of a hit for us to take all in one year. So, we have to
10 break it out over a five-year period. And that doesn't
11 include -- that's where the three three three comes in.
12 COMMISSIONER HOSS: You're setting money aside
13 every year for that is the plan?
14 CAPTAIN BLANTON: The three three three is
15 specifically for that. That's why it's zero net pilot
16 increase. Because, I mean, if you look at the consumption
17 and then the critical spares inventory that we have to
18 develop for these engines, the cost -- the consumption cost
19 is significantly more obviously but the repower cost every
20 five years is what's going to kill us. That's why we have to
21 have the three three three. If we don't get the boats,
22 there's no reason to give us the three three three. The
23 boats and the three three three are tied together for the
24 engines.
25 COMMISSIONER HOSS: You didn't just say that

1 MR. MOORE: The budget is what we adopted each
2 year and --
3 CAPTAIN BLANTON: The budget is I think -- is
4 that 1.1 or something like that. I don't -- I'll have to --
5 COMMISSIONER HOSS: Getting close to the end.
6 Go ahead.
7 COMMISSIONER PIRTLE: Just quick while you're
8 on that, are you going to be able to stay with the Tier 3
9 engines or --
10 CAPTAIN BLANTON: If -- we got to move quick.
11 So, September is the drop-dead date. If I don't have a keel
12 laid in September, then this whole thing is for nothing.
13 Because we're going to have to go back to the drawing board
14 and repower the whole boat.
15 COMMISSIONER PIRTLE: When you repower --
16 CAPTAIN BLANTON: If it's keel laid, then
17 that's it. You stay at the Tier 3 compliant engine.
18 COMMISSIONER PIRTLE: You'll end up with one
19 boat that's a Tier 3 and one that's a Tier 4?
20 CAPTAIN BLANTON: Correct.
21 COMMISSIONER HOSS: Is the current one a Tier
22 3 or Tier 2?
23 CAPTAIN BLANTON: I don't know. It's 17 years
24 old.
25 COMMISSIONER HOSS: When you put new engines

1 in it five years or so ago or however many years --
2 CAPTAIN BLANTON: I would say Tier 3. They're
3 QSM -- QSK -- QSM 11s. The Cummins QSM 11s.
4 COMMISSIONER HOSS: I'll just go with it's not
5 that important. Okay. A couple of last items. Bear with
6 me. Are your -- when you bill out your ship for your
7 services, are the deputy branch pilots billed at a different
8 rate than the branch pilots?
9 CAPTAIN BLANTON: No, they're not.
10 COMMISSIONER HOSS: One rate?
11 CAPTAIN BLANTON: One rate. And that's set --
12 we can't charge -- by law you can't charge a different rate
13 because the tariff is the tariff. I can't charge more and I
14 can't charge less. It's against the law. Anybody that
15 provides a pilot service must provide the service -- the fee
16 that is set by the Board.
17 COMMISSIONER HOSS: Okay.
18 CAPTAIN BLANTON: That's the whole -- the
19 whole root of why we're here.
20 COMMISSIONER HOSS: You alluded to earlier
21 that you filed -- BPA files a tax return every year; is that
22 correct?
23 CAPTAIN BLANTON: Correct.
24 COMMISSIONER HOSS: And you said in some
25 testimony earlier today that your last audit was four years

1 ago. Why were you audited?
2 CAPTAIN BLANTON: I don't think we were. The
3 last audit in his office was four years ago. He has a
4 thousand clients in the Bailes, Bates & Associates.
5 MR. BAILES: The last time our firm even did
6 an audit was four years.
7 COMMISSIONER HOSS: You did -- it was not like
8 an IRS audit, then. You did an internal audit.
9 MR. BAILES: It was a financial audit. It was
10 not for them. It was for another client.
11 COMMISSIONER HOSS: Mr. Chairman, I'm
12 exhausted.
13 CHAIRMAN KRESTA: Rudy? I'm going to ask one
14 question. You talk about this Tier 3, the TERP and all this.
15 Have y'all applied for the TERP?
16 CAPTAIN BLANTON: We don't have -- we haven't
17 been given --
18 CHAIRMAN KRESTA: You got a September deadline
19 and everything. Have you applied and been accepted. I asked
20 you two questions.
21 CAPTAIN BLANTON: We have not.
22 CHAIRMAN KRESTA: Have you applied?
23 CAPTAIN BLANTON: No, we have not.
24 CHAIRMAN KRESTA: How can you use a TERP
25 issue? I'm trying to understand that one.

1 CAPTAIN BLANTON: If -- so, since we're a
2 government entity, we have preference over nongovernmental
3 entities. So, we have a 37-year-old boat that we don't want
4 to keep on our premises. I mean, it's an expense. So,
5 when -- if the Board sees fit to grant this -- and, you know,
6 I have to get with the bank, get the loan, solidify the
7 drawings, get the keel laid. 12 to 14 months later the boat
8 comes back to me. We do our customer acceptance test. We're
9 out running the boat. It's working good. We're happy. And
10 then I'm going to apply for a TERP grant for the old boat if
11 the bank even will let it go. I'm sure they're going to say
12 that, yeah, go ahead and do it. We'll turn that money over
13 to the bank because they have it as collateral. But we -- we
14 can't -- you got -- it's the way the dominoes are lining up.
15 We can't apply for it now because we don't even know if we
16 can get rid of the boat. I mean, you've got to figure out
17 where the cart and where the horse is at some point.
18 CHAIRMAN KRESTA: That's what I asked you, if
19 you did or didn't.
20 CAPTAIN BLANTON: We have not.
21 CHAIRMAN KRESTA: Anybody else? I want to ask
22 one thing on this here -- this page right here. Missy, pull
23 the chart up showing the cost for port and pilotage fees.
24 You can use theirs or ours is fine. But I want to get to
25 this one right here in this book right here. I don't have a

1 page on it, Missy. I'm sorry. 10.3. Pilotage rate
2 adjustment. Just helping you out.
3 MS. SAATHOFF: We're trying. We're getting
4 there.
5 CHAIRMAN KRESTA: I was going to go by the
6 chart that y'all pulled up that we had -- I would like to
7 pull it up. And y'all said the -- we don't have that. But
8 it's the -- going by -- in this Exhibit 8 of their PowerPoint
9 where they were listing the pilots, y'all were listing the
10 cost per port, how much it cost.
11 CAPTAIN BLANTON: Correct.
12 CHAIRMAN KRESTA: That's there, too. I'm
13 taking that reference -- it's done with -- that reference was
14 supplied by y'all.
15 CAPTAIN BLANTON: I don't think this was
16 provided by us.
17 CHAIRMAN KRESTA: This is broke down in a
18 different way. That's what I'm getting to. And this whole
19 conversation we've been talking about and everybody has been
20 talking about we're the cheapest port, we're the cheapest
21 one. This was done on a per-mile basis. And I want to know
22 from the pilots, as this exhibit that we show, is this a
23 correct fee? It's done by per mile. When you compare to
24 Houston, you compare to Beaumont, you compare to other ports
25 and everything else, there's so much -- there's so much per

1 pilot to go get the boat and bring the boat back.
2 CAPTAIN BLANTON: Right.
3 CHAIRMAN KRESTA: Okay. And in your graph it
4 showed how much they collect.
5 CAPTAIN BLANTON: Okay.
6 CHAIRMAN KRESTA: This is the same thing but
7 it's done by miles.
8 CAPTAIN BLANTON: Okay.
9 CHAIRMAN KRESTA: So, when you want to look at
10 the per mile on the Port Freeport -- that's pilotage charge.
11 Let's just take the top one to Libramont. I want to clarify
12 for everybody to see. Freeport is \$400 a mile. Houston is
13 186 a mile.
14 CAPTAIN BLANTON: Right.
15 CHAIRMAN KRESTA: And I want to understand
16 when you get the -- you get down to Atlas Voyager, it's
17 \$2,146 a mile versus Houston. I'm using Houston because the
18 pilot, Mr. Kornegay, was here and he was talking about
19 Houston. I'm just going to use him. It's \$378 a mile.
20 CAPTAIN BLANTON: Okay.
21 CHAIRMAN KRESTA: That being said, when you
22 look at these figures per mile, we stand pretty -- the Pilot
23 Association -- the Pilot Association stands pretty high in
24 the ranking per mile?
25 CAPTAIN BLANTON: You don't pay per mile. You

1 or off the ladder. I mean, if you take the comparison
2 between Houston and Freeport -- say, for instance, when a
3 Freeport pilot retires, Captain Gunning, he had 34,000
4 transits on Port Freeport. When a Houston pilot retires,
5 he's had about 12,000 transits. You cannot compare one port
6 to the other. The amount of risk that a Brazos pilot has to
7 take personally, we multi -- he'll do one ship a day. We can
8 do three ships a day. We can do more than that. That's that
9 much more exposure we have going on and off those ladders --
10 THE REPORTER: Hold on. One at a time,
11 please.
12 CHAIRMAN KRESTA: I'm not trying to argue the
13 point. Just settle down a little bit is all. That's all.
14 I'm just saying in comparison I want to ask you if this is
15 true and look at by mile. That's all I'm asking.
16 CAPTAIN BLANTON: For another reference, we
17 have more turns than Houston. So, if we broke it up by how
18 many turns we had to go through, what value does that give
19 you? It doesn't tell you anything.
20 CHAIRMAN KRESTA: I'm just saying --
21 CAPTAIN BLANTON: Would you concede that a
22 turn is more difficult to go through than a straight line?
23 So, if you say, well, I have more turns in the port than they
24 have to go through, a mile basis has no bearing on the
25 tariff. You're paying to get it to the dock and out.

1 pay --
2 CHAIRMAN KRESTA: You pay a separate fee but
3 you divide it out by mile is how I got these numbers is what
4 I'm saying. Because -- I mean, Houston is like a 55-mile
5 channel. Okay. This one here is how many miles? 7.5?
6 CAPTAIN BLANTON: Yes. But, I mean, you can't
7 compare Port of Houston to --
8 CHAIRMAN KRESTA: I'm taking it back to what
9 you looked at in your PowerPoint how much the fee was and
10 being the cheapest.
11 CAPTAIN BLANTON: Okay. So, we are the
12 cheapest? You agree we're cheaper than Houston?
13 CHAIRMAN KRESTA: Not when you say they're at
14 55 miles it takes them to get there. I'm going by the mile
15 and broke it down.
16 CAPTAIN BLANTON: But tariffs don't work that
17 way. You pay for the trip. But the tariff doesn't work that
18 way. You pay for the trip.
19 CHAIRMAN KRESTA: You pay for the trip.
20 CAPTAIN BLANTON: There's a lot of factors you
21 can consider. What you're paying for is the safe transit of
22 your vessel to the dock. The most dangerous time a ship has
23 in its entire life is when it's operating in a narrow port
24 and it's approaching the dock, leaving the dock. The most
25 dangerous time for a pilot is when he's getting on the ladder

1 CHAIRMAN KRESTA: Fair enough. Anybody else?
2 You mentioned the Texas Dow Employee Credit Union proposal.
3 Are you referring to the one that was obtained in 2016, the
4 same one, for financing the pilot boat?
5 CAPTAIN BLANTON: It's the same -- the same
6 lending institute and everything, yeah.
7 CHAIRMAN KRESTA: Phyllis, go ahead and --
8 CAPTAIN BLANTON: Art is still the same loan
9 agent and everything, yeah.
10 MS. SAATHOFF: Okay. You just referred to --
11 I just wasn't sure if it was still the same information.
12 CAPTAIN BLANTON: Same thing. Same deal.
13 MS. SAATHOFF: That's all. Just
14 clarification. Talking about -- may I?
15 CHAIRMAN KRESTA: Yes, ma'am. Go ahead.
16 MS. SAATHOFF: Because I think this will help
17 clarify a couple questions that I heard. Will there be -- if
18 you're collecting part of your 3 percent increases for
19 collecting funds for your periodic overhaul of your engines
20 every five years --
21 CAPTAIN BLANTON: And the consumption and the
22 consumables. I mean, when you're going from one engine in a
23 40-foot boat to two bigger engines in a 65-foot boat, your
24 consumables, your consumptions, and your maintenance costs
25 are going to be significantly greater. We feel that we've

1 captured all of those increases in consumption, consumable,
2 and the maintenance cost with that three three three
3 projection.
4 MS. SAATHOFF: I think I understand. I just
5 wanted to know will there -- will it be reflected -- will
6 there be an escrow or something that -- you said that's a
7 periodic every five years and you're -- you're including it
8 in a fee. So, you'll have that available. So, will there be
9 like an escrow fund that would be reflected in your balance
10 sheet?
11 CAPTAIN BLANTON: No. The escrow account is
12 just for the purchasing of the pilot boat. The three three
13 three goes into our general tariff. It's not going to be,
14 per se, set aside. I mean, we've -- we forecasted the costs
15 but that -- that's the fee that we pay all of our employees
16 out of. That's -- it doesn't itemize out that way. Because
17 it doesn't -- it's not a line item charge. It's on the main
18 tariff that comes in. So, whereas you have an education fee
19 that's a line charge or the boat fee that's a line charge or
20 the dispatch fee that's a line charge, the unit and the draft
21 tariff comes in in one number and then it's -- that's our
22 operating expense.
23 MS. SAATHOFF: And let me explain why I asked
24 the question because they're trying to understand the
25 distribution at the end of every month. And if you are

1 distributing those funds at the end of the month, where does
2 the -- you're going to have a spike at Year 5 then. Do you
3 take just a lesser distribution then because you had a
4 500,000-dollar engine overhaul?
5 CAPTAIN BLANTON: Correct.
6 MS. SAATHOFF: Is that the way it's done,
7 instead of the Association having a way to set aside and
8 holding the funds? That was the question. I want to make
9 sure it's transparent how this is working.
10 CAPTAIN BLANTON: We try to forecast costs --
11 large capital costs like that as best we can with engines.
12 And, you know, you don't want to just absolutely deplete your
13 operating expenses that you have to pay your employees. I
14 mean, if a hurricane came and then it just caught us off
15 guard where we just depleted our operating expense to
16 overhaul the boats, then the pilots might have to show up
17 with checkbooks and cover all the bills. So, we try to
18 manage our operating accounts that we can take into account
19 capital expenditures like that.
20 MS. SAATHOFF: That's the answer. So, yes,
21 you will leave some funds there in your operating account so
22 that you're in position to do the overhaul when the time
23 comes?
24 CAPTAIN BLANTON: Yes.
25 MS. SAATHOFF: That's the question.

1 CAPTAIN BLANTON: I don't know how else you
2 can run a business.
3 MS. SAATHOFF: Okay.
4 CAPTAIN BLANTON: That's our intent.
5 MS. SAATHOFF: That was just to clarify the
6 way that you explained it. And then when you do your
7 overhauls -- this is probably the accountant question. But
8 because it is such a large capital expenditure, do you
9 depreciate it over the next five years or do you take full
10 expense in one year?
11 MR. BAILES: I'm sorry. What was the
12 question?
13 MS. SAATHOFF: Yes. The large -- the engine
14 overhauls that are a large expenditure, are those capitalized
15 and amortized over the five-year period since they're
16 required about every five years? Is that how that's handled
17 in their books?
18 MR. BAILES: Yes.
19 MS. SAATHOFF: All right. And then -- there's
20 one more question, I think. And counsel, I don't know if
21 this is appropriate to ask. But counsel has advised that a
22 fee -- the Port Freeport's counsel has advised that a fee for
23 a capital asset is not allowed under Federal law. Have I
24 said that correctly? And I just wanted to make sure we could
25 hear their position.

1 MR. LETOURNEAU: There is a Federal statute.
2 It's 33 USC 5(b) and that statute imposes a limitation in
3 terms of fees that can be assessed for services relating to
4 the use of navigable waters of the United States. It doesn't
5 say anything about -- doesn't authorize the expenditure for
6 the acquisition of a capital asset. And so, there is --
7 there is authority that stands for the proposition that a
8 service charge for the use of a pilot boat for its
9 depreciation, for its -- its valuable use, consumables, that
10 would be appropriate. However, there -- there's also an
11 argument that such a fee for a capital expenditure would not
12 be permissible because it is -- it exceeds that which is
13 permitted under the statute.
14 The position that pilot associations have
15 taken is that pilots -- pilot fees are exclusively within the
16 province of the states to regulate. There is another
17 argument that -- the interstate commerce clause as construed
18 through a variety of cases as well as promulgation of this
19 statute is not necessarily inconsistent with that. But you
20 have to -- you have to recognize that there's a balancing
21 between state interests and Federal interests and the state
22 interest would allow the assessment of pilotage fees. The
23 Federal interest would not allow anything more than an
24 assessment of reasonable fees. And so, the question
25 fundamentally is can you use a fee to acquire a capital

1 asset? And so, I think the statute on its face says, no, you
2 can't do that. But there is authority under state pilotage
3 case law that suggests that pilotage is within the exclusive
4 province of the states to regulate. So, it's not entirely
5 clear but there is authority that suggests that a -- the
6 acquisition of a capital asset could be violative of that
7 Federal law.

8 CAPTAIN BLANTON: We're not the first ones to
9 do this and multiple pilot boats over multiple decades from
10 multiple Texas state ports have financed their boats through
11 this manner.

12 MR. TEETER: The nation.

13 CAPTAIN BLANTON: The nation. I'll defer to
14 our lawyer.

15 MS. SAATHOFF: I just want to have a
16 conversation.

17 MR. MOORE: The conversation -- I've answered
18 the question. I sent you a letter that is part of your
19 package back on July 6th. Counsel sort of ignores the fact
20 that there's not a single case that would support his
21 argument that 33 USC 5(b) is applicable. There's not a case
22 that says 33 USC 5(b) applies to pilotage. And there's not a
23 case that says anything close to what he said there's an
24 argument for. But what there are are a myriad of cases,
25 including some U.S. Supreme Court cases and the Lighthouse

1 which is a United States Supreme Court case that says all of
2 these different ideas, commerce clause, tonnage clause do not
3 apply to pilots or the provision of pilotage. I can hand it
4 to you. I've even got it highlighted for you if you would
5 like to read it.

6 MS. SAATHOFF: The Board may want to have
7 that. I don't know if that's --

8 CHAIRMAN KRESTA: Yes, I do. We would like to
9 put it as an exhibit, please.

10 MR. MOORE: And I would point out that if it
11 were illegal --

12 MR. LETOURNEAU: That will be Exhibit H.
13 *(Exhibit H marked)*

14 MR. MOORE: If it were illegal, I don't think
15 you would find all of the ports across the country financing
16 pilot boats this way. And I think Houston probably pays a
17 lot more for their counsel than my guys do and they financed
18 their last two boats this way. Although, I'm trying to get
19 even with some of the fees that the Houston pilots do.

20 There's also a later case, if we get into it.
21 Like I said, I've already provided you with the law and my
22 brief on that issue. But there are some other more recent
23 cases out of the Fifth Circuit that hold exactly the same
24 thing; that the tonnage statutes, tonnage clauses, and the
25 commerce clauses give way to the state's control of pilotage.

1 Act that dates back to 1789 where Congress specifically gave
2 to the states the power to regulate pilotage. In fact, there
3 is a specific code section, Federal law on that. I've cited
4 it in the letter that I sent to you, Phyllis. It's 46 USC,
5 Section 8501(a). And it's clearly dispositive because it
6 says specifically that the regulation of pilotage is reserved
7 to the states and only the states can do that. These new
8 acts that were mentioned by counsel are general provisions
9 and a general constitutional idea such as the converse clause
10 or the tonnage statutes. They are not going to trump
11 Congress' specific statute.

12 And I looked -- we pulled, I guess, even
13 counsel for W -- who are they -- WGMA, they have to admit
14 that there's no case law that would say that those,
15 especially Section 33 USC 5(b), in any way trumps the state's
16 rights and those provisions that are in the Federal code as
17 well as the case law that says pilotage is a service that is
18 provided directly to the vessel. It is not part of the
19 capital improvement idea. It is a fee that is charged for a
20 service to a vessel. It is a direct service. Anytime you
21 have a direct service, neither the commerce clause nor the
22 tonnage statutes are implicated.

23 We've set it all out. We've given you the
24 law. I'm happy to provide you with the case that WGMA
25 provided you, Clyde Mallory Lines versus State of Alabama,

1 So, you get to decide what pilotage is going to be, what the
2 rules are going to be, and what the fees are going to be.
3 And quite frankly, under that same scenario is how you get to
4 charge some of your wharfage fees and things because if he's
5 right, you're barred from charging your fees. So, you know
6 already he's not.

7 MR. WESELY: If I may --

8 CHAIRMAN KRESTA: I guess it's been some of
9 the Board's concern, too, if we assign this tariff -- the
10 port commissioners sign the tariff and heaven forbid you do
11 it -- if the Pilot Association was -- reneged on the loan,
12 who's liable?

13 MR. MOORE: The boat. The boat.

14 CHAIRMAN KRESTA: Who's --

15 MR. MOORE: The boat is liable. We've got two
16 boats up as collateral and we have the boat that we're buying
17 as collateral. If the pilots renege, the bank goes and takes
18 the boats to pay off the loan. Now, if there's a
19 deficiency --

20 CHAIRMAN KRESTA: A boat can't be liable.
21 Somebody has got to sign for it.

22 MR. MOORE: The people that are signing for it
23 where you have collateral, the secured lender has to go after
24 the collateral first. And he goes after the collateral and
25 he applies the price that he receives or the fair market

1 value of the collateral toward the outstanding debt. If it's
2 not enough to pay the outstanding debt -- and in this
3 particular instance it's going to be because of the other two
4 older boats that are also collateral -- then there's a
5 deficiency that could be obtained. I don't know what the
6 terms or whether they involve a guaranty but in that
7 particular instance, they can go after the individual pilots.
8 They can also attempt to take some of the general assets of
9 the Association if their loan documents allowed them to do
10 that. But in this particular instance, the bank is actually
11 pretty smart because if you look at it and you look at the
12 values, they're oversecured. I wasn't asked to negotiate
13 that loan. If I had been, they wouldn't be oversecured.
14 CHAIRMAN KRESTA: I want to ask --
15 CAPTAIN BLANTON: It's impossible for the
16 pilots to renege because the fees go directly to the bank to
17 be held in an escrow account. We can't hold the fees.
18 MR. MOORE: And I'm assuming you're asking if
19 there's not enough to pay.
20 CHAIRMAN KRESTA: Don't get paid. They've got
21 to send the money.
22 MR. MOORE: The money goes directly to the
23 bank. So, the bank is holding it. But the only way that
24 there's a default is if --
25 CHAIRMAN KRESTA: I'm just missing that. How

1 does it go directly into the bank?
2 CAPTAIN BLANTON: It's a condition of the
3 loan.
4 MR. MOORE: The money is in an escrow account.
5 CHAIRMAN KRESTA: I understand. So, when the
6 ship's owner makes out the check for --
7 CAPTAIN BLANTON: He pays the Brazos Pilots
8 and the Brazos Pilots immediately pays --
9 CHAIRMAN KRESTA: You have to pay.
10 MR. MOORE: Yes.
11 CHAIRMAN KRESTA: You collect it but you've
12 got to pay the bank?
13 CAPTAIN BLANTON: Correct.
14 CHAIRMAN KRESTA: That's it. Y'all were
15 saying it's going straight and I was saying wait a minute.
16 You still got one step here missing.
17 MR. MOORE: That's right. You are correct.
18 CHAIRMAN KRESTA: That's it. That's all I'm
19 asking.
20 MR. MOORE: Yes, sir.
21 MR. CREW: That would be a pretty foolish move
22 not to pay them.
23 CHAIRMAN KRESTA: Well, you know, you got to
24 ask.
25 MR. MOORE: I did want to say one other thing

1 just in response to the issue about state control of pilotage
2 and pilotage rates. Even if you assumed as a basis for your
3 argument that 33 USC 5(b) were in some way applicable, we
4 would meet that requirement anyway with this tariff and with
5 the line item charges because the charges are being used
6 solely for the providing of the service to the vessels
7 entering and leaving the port or using pilots to enter and
8 leave the port. Certainly the improvements would enhance the
9 safety and efficiency of interstate and foreign commerce and
10 the proposed fee wouldn't impose more than a small burden on
11 interstate or foreign commerce. And that's the test under
12 Section 5(b). You would meet it anyway. It's a circular
13 argument even though it doesn't apply.
14 CHAIRMAN KRESTA: Let's go to recess for about
15 five minutes, please.
16 (Recess from 7:34 to 7:47)
17 CHAIRMAN KRESTA: Okay. Due to the lateness
18 of the hour -- and everybody has done a wonderful job today
19 and we had a lot of collaboration -- we will continue this
20 hearing on the 10th of July at 2:00 p.m. and commence
21 deliberations at that time. So, these parties are excused
22 and thank you for your attendance today. We stand in recess
23 until that day, 7-10-17 at 2:00 p.m. Thank y'all.
24 (Proceedings recessed at 7:47 p.m.)
25

1 STATE OF TEXAS
2 COUNTY OF BRAZORIA
3
4 **REPORTER'S CERTIFICATE**
5 **PUBLIC HEARING**
6 June 28, 2017
7
8 I, the undersigned Certified Shorthand Reporter in and
9 for the State of Texas, certify that the facts stated in the
10 foregoing pages are true and correct.
11 I further certify that I am neither attorney or counsel
12 for, related to, nor employed by any parties to the action in
13 which this testimony is taken and, further, that I am not a
14 relative or employee of any counsel employed by the parties
15 hereto or financially interested in the action.
16 SUBSCRIBED AND SWORN TO under my hand and seal of office
17 on this the _____ day of _____, _____.
18
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