DEPARTMENT OF HOMELAND SECURITY
UNITED STATES COAST GUARD

+ + + + +

GREAT LAKES PILOTAGE

+ + + + +

PUBLIC MEETING

+ + + + +

Detroit Metro Airport Marriott
30559 Flynn Drive
Romulus, Michigan 48174

+ + + + +

Thursday, September 17, 2015

TODD HAVILAND
Department of Homeland Security
U.S. Coast Guard

DAVID J. DEAN
Department of Homeland Security
U.S. Coast Guard

RICHARD W. WALTER
Department of Homeland Security
U.S. Coast Guard

SHARON HAGEMAN
Department of Homeland Security
U.S. Coast Guard

Also Present:

Robert Lemire

John Swartout

George Quick

Mark K. Ruge

Dan Gallagher

John Boyce

John Loftus

Mark LaValley

Stuart Theis

Paul LaMarre

Jean-Francois Belzile

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

(1:07 p.m.)

MR. HAVILAND: I'd like to thank everyone for taking time out of their busy schedules to come participate in today's public meeting. My name's Todd Haviland. I carry out the duties and responsibilities of the Director of Great Lakes Pilotage for the U.S. Coast Guard.

Today what we're going to do is, Dave Dean's going to come up and give you a presentation on the changes that occurred from -- primarily with the methodology that we're proposing in the 2016 notice of proposed rulemaking of the pilotage rates on the Great Lakes. When Dave's done with his presentation, we'll open it up to the members here or the people here in attendance. If you want to provide comments, feel free. If you have questions or clarification and Rich says we can answer them, then we will.

So, with that, I'll ask everyone to please go around and introduce yourselves.

MR. DEAN: I'm Dave Dean. I work on the rates for the Great Lakes Pilotage Program.

MS. HAGEMAN: Hi. I'm Sharon Hageman. I'm the economist on the Great Lakes rate study.

MR. QUICK: George Quick, vice president, Masters, Mates & Pilots.

MR. GALLAGHER: Dan Gallagher, president, District 2 Pilots.

MR. BOYCE: John Boyce, president, District 1 Pilots.

MR. LAVALLEY: Mark LaValley, District 2 Pilots.

MR. SWARTOUT: John Swartout, District 3 Pilots president.

MR. RUGE: Mark Ruge, K&L Gates, counsel for pilots.

MR. BELZILE: Jean-Francois Belzile, director of marine operation, Shipping Federation of Canada.

MR. LEMIRE: Robert Lemire, Great Lakes Pilotage Authority of Canada.

MR. THEIS: Stuart Theis, U.S. Great

Lakes Shipping Association.

MR. LOFTUS: John Loftus, director, Detroit/Wayne County Port Authority.

MR. LAMARRE: Paul LaMarre, Port of Monroe and American Great Lakes Ports Association.

MR. WALTER: Rich Walter, Coast Guard lawyer for the ruling.

MR. HAVILAND: Ma'am, is there anything you need for us to do?

COURT REPORTER: When we start public comments, if you folks could come up to the mic here and just state your name again, just for the record. Thanks.

MR. HAVILAND: And what we'll do is when the transcripts are prepared, we'll post them on the docket for everyone to review. But with that I'll hand it over to Dave.

MR. DEAN: All right. Good afternoon, everyone. We've prepared just a brief presentation with an overview of the changes to the methodology that we've proposed for 2016.

I'll go through them quickly and then, as Todd mentioned, we'll open it up to your comments or questions at that point.

This is just some basic general information about who we are and what we do and what guides us. 46 USC Chapter 93 and 46 CFR 404, 401, is the statute and the regulations, and our proposed changes are specifically to the CFR, the government methodology.

Two basic main goals of the 2016 rule that we put out was to, one, change the methodology that we've been using for the last twenty years or so to establish rates for pilotage on the Great Lakes, and also at the same time establish the 2016 rates using that new methodology.

The proposed rates using our newly-proposed methodology are estimated to increase costs about 6 1/2 million dollars, which is roughly a 50 percent increase compared to 2015. The primary cost drivers are the increased number of pilots and also the increased pilot compensation. In addition, we are also proposing a surcharge which will fund the training of six applicant pilots, which will continue to add to the pilot strength for the Great Lakes. And the other key changes that we're proposing, a permanent change point at Iroquois Lock to improve safety in accordance with some recommendations we received from the National Transportation Safety Board.

General overview: We'll talk briefly about the regulatory history, some of the reasons for changing how the current rate is broken down, and then at the end we'll look at the economic analysis.

Very briefly, if everyone hasn't gotten a handout of the slides, there's some additional copies in the back if you'd like to take any of this with you. We can also provide electronic copies later if anyone would like software copies.

Basically, the current methodology, before the newly proposed stuff, ran from about

1996 until -- through 2015. After 2006, Congress placed the date requirement that every year by March 1st we would establish pilotage rates, and since that point we've used a combination of the Appendix C and the Appendix A methodology. We stopped using the Appendix C about 2011, because it produced erroneous rates. Since 2012 we've been using strictly the Appendix A methodology.

This is a breakdown, and I don't want to go into too many details. This is the old Appendix A methodology that we had in place before our newly proposed methodology. The challenges that we had with that methodology we've placed up here. Essentially the reliance on past projections to establish future projections made it difficult to get the rate to reflect what was actually happening. Also, the inflation wasn't necessarily properly accounted for. It tied pilot compensation to current union contracts on the lakes, a whole host of other reasons. The Appendix C methodology refers to the investment base, and there's generally a large number of -- a lot of work and a lot of paperwork, and a lot of it didn't necessarily seem to be necessary or have a definitive outcome on the final rates we proposed.

This is our new methodology, simplified for up here. Basically it's broken down to a similar number of steps, but we believe it's hopefully more simple. Essentially it starts with the operating expenses of the pilot association for continuing the annual audits of revenues and operating expenses, and we're adjusting operating expenses for inflation. We're looking at the number of pilots, multiplying by the target pilot compensation in establishing the rates, and then finally taking the total expenses, which combines the operating expenses and target pilot compensation, and applying a return on investment to that total value, and that gives us the total projected revenue that we expect the pilot associations to need to operate for the coming year.

To get our hourly charges, we take

that projected revenue and we divide it by historic traffic data. Specifically for this rate, we looked at 2010 to 2013 and averaged out the data from what we call the Great Lakes Pilotage Management System, which is also known as the Klein System, that we share with the Canadians to get the bridge hour data, and that establishes an hourly pilot charge for each area.

MR. HAVILAND: Just mind if I add a few things?

MR. DEAN: Sure.

MR. HAVILAND: I just want to talk through -- the operating expenses, that really doesn't change. We'll still determine what's necessary and reasonable. So if it's a necessary expense to provide pilotage service, we'll then test it to see if that charge is reasonable. What changes with the inflation is instead of one year's worth of inflation, what we've done is we've looked at -- for this rule we've got data from 2013, so we know what inflation is for 2013 and 2014, and then we went to the IRS website and they projected what inflation should be for 2015. So that allows us to give you guys -- to make you guys whole, or at least the pilots whole on what their operating expenses are.

Will you go back to the --

MR. DEAN: Oh, sure, sure.

MR. HAVILAND: The big change with the number of pilots. We want to make sure that we either minimize, if not eliminate, the delays that we've seen in the system due to pilotage, and one of the shortcomings that we saw was that we were just looking at, you know, once the pilot got on board the vessel, you know, how many hours should a pilot be on a vessel in order to staff. Well, we had the bridge hour study, and the bridge hour study showed us that a lot more goes into providing pilotage service than just a pilot, you know, getting off the pilot boat, getting on board a ship and then disembarking.

So the number of pilots we're looking at is using that seasonal work standard, and then we're saying, you know, since traffic is not linear, and we understand that each year we have these peaks and valleys, or really the peaks at the opening and closing of the season, and due to a lack of aids to navigation and then throughout the year the ships seem to come in clumps, we want to make sure that the U.S. pilots are staffed to deal with those historic peaks.

And then the target pilot compensation, we looked at a number of standards and we thought the best benchmark was the Canadian Great Lakes Pilotage Authority and those pilots that are doing the exact same job on the exact same ships during the exact same time of year. But we're specifically asking with that two things. You know, was the 10 percent differential appropriate, and we'd like to see comment on, is $355,000 a year appropriate for the pilots to have for target compensation.

The total expenses, I'm not sure we've ever looked at this in the past, but that's just adding the operating expenses with the inflation, plus the number of pilots times their compensation, and then we're going to apply that to the Moody's AAA Bond that we use to apply to the investment base. So we think that this is sufficient money, or we're proposing that this is sufficient money to allow the pilots to invest in infrastructure, put money aside for the lean years, and earn a decent profit for the money that they have at risk, with the idea that this will all bring enhanced reliability and efficiency to keep the traffic moving and, you know, eliminate and/or reduce these delays.

And then we'll take historic traffic data. The only data we have is from the Klein system. That was started in 2009. We've also asked if there's any data or any source that anyone may have that could provide us greater fidelity on what this historic demand has been, because we understand that if we over-project the traffic, it decreases the revenues, and that has, you know, caused some challenges that we'd like to eliminate, which has led to, you know, lots of delays and a hard time retaining and recruiting pilots, which seems to be, you know, cyclical. And if we can break that cycle, we can provide the service the industry wants and we can provide working conditions the pilots need for retention and recruitment.

MR. DEAN: This is just a step-by-step highlight of the things that Todd just discussed, kind of the changes for each of the different steps of the currently proposed methodology we use as a reference.

MR. HAVILAND: Will you talk a little bit about Step 3 and the difference we have with what we project and what we see as far as the --

MR. DEAN: Sure. So our staffing model anticipates that we need 50 pilots to meet what we set up as the average peak demand on the Great Lakes, and that's based on the end-of-the-season peaks that Todd was discussing. In reality, we don't think it's feasible for us to get to that level of staffing, given where we currently are as far as number of pilots. So our proposal to get there, and what we have proposed as a projection in the 2016 rate, is that we'll have 42 fully registered pilots in 2016, and that's assuming that some of the applicants can become registered by that time and become seated as registered pilots, with the idea being that we'll continue to fund the applicant surcharge as we build towards the ultimate goal of 50 pilots, but realizing that we can't get there just in one year.

And that ultimate staffing model of 50 pilots, we believe, will work to minimize delays and also get us towards a goal of providing ten days off per month during the non-peak periods, which we think will also help with recruitment and retention of pilots.

These are some of the other steps that Todd just discussed. It highlights our proposed target pilot compensation, as well as the fact that we're soliciting comment on the pilots' proposed compensation level in our dockets. And again, the reference to Moody's AAA Bonds and our projected revenue of roughly 6 1/2 million dollars greater than the 2015 projected revenue.

For the historic traffic piece that Todd was discussing, we had essentially set up -- our plan was to use a five-year period. We ended up using 2010 through 2013 because of the impacts that we thought would artificially skew the average by looking at 2009 right after the Great Recession, or in 2014, we felt the ice conditions and the traffic spike that followed didn't necessarily track with the four years that line up in the middle there, 2010 to 2013. And again, as Todd mentions, if -- we're also open to public comment about other methodologies, ideas or sources for historic traffic numbers.

And then a final step is our training surcharge. We estimate the training costs of a new applicant pilot to be approximately $150,000. We've proposed a surcharge for each pilotage district to train two pilot applicants, working towards increasing the pilot strength. So you'll see part of the rates include $300,000 per district, a total of $900,000 for the training surcharge.

This is the regulatory analysis which basically is the economic analysis of our proposed rule. The total cost to shippers at $7.1 million is a combination of our estimated cost for the rule making, as well as the $900,000 surcharge. That's where the $7.1 million comes from. And there are some changes to the collection of information activity as well that we're proposing with this rule.

And this is just a summary slide that shows the additional costs we're projecting for this rule making. It's broken down by each district, and it has the surcharge and the total costs and then the total, $7.1 million again.

That's the conclusion of our brief presentation on the overview of the 2016 proposed rule. At this time we'd like to open it up to your questions, and we'd be happy to answer anything that we can, or if you have specific comments you'd like to make, we invite you to do so. Thank you.

MR. WALTER: Rich Walter, Coast Guard. Just make sure that everyone understands this isn't your only opportunity to comment. You can send us written comments. Our comment period closes, what, 60 days from publication --

MR. THEIS: November 9th.

MR. WALTER: So -- excuse me?

MR. THEIS: November 9th.

MR. WALTER: November 9th. Right. So anything you don't say here today, or if you have colleagues who want to say something to us, go ahead and send them to the office, and the address information is in the NPRM.

MR. LOFTUS: You want us to go up to the microphone or --

MR. DEAN: Yes. If you have comments, if you could make them in the microphone so we can capture it for the record, that would be great.

MR. LOFTUS: Good afternoon. John Loftus, executive director of the Detroit/Wayne

County Port Authority. These comments also will reflect -- and my colleague Paul LaMarre will probably add to this, comments from the American Great Lake Ports Association. So the Port of Detroit and our membership within the Great Lake Ports Association is concerned by the level of the increase that we're talking about today. Our entire association is committed to expanding the operation of shipping within the Great Lakes, jobs at the docks, as well as on board the vessels, and when we consider the level of the rate increase and the methodology that you are supposed to be using about reliability, efficiency and safety, we kind of question how you came to that in terms of the efficiency issue.

The rate increase is quite dramatic. We understand there is an interest in adding additional pilots so we eliminate delays, but are there other means of accomplishing those same goals? Is such an incredible rate increase absolutely necessary to add this number of pilots? What impact have you given to the potential loss of business at portside at our terminals? I mean, it's one thing to establish an objective -- or have an objective, but if it chases business away, it does no service to anybody. And I guess the other issue is, on the efficiency side, are there other means of accommodating or accomplishing either (a) savings? Is there a way to bring the pilotage districts into -- under one operation, similar to the way that the Canadians do it? Are there other means of accomplishing these same goals that maybe have not been considered as part of this process?

There will be additional comments coming in from our association. Thank you for providing the opportunity to speak today.

MR. LAMARRE: Paul LaMarre with the Port of Monroe and also one of the officers of the American Great Lakes Ports Association. To mirror John's comments, the association is extremely troubled by this increase when we are trying to create sustainability within the system and promote new opportunities and new traffic. We're already struggling to be competitive with our coastal counterparts on the rate structure that must exist in order to attract cargo into the Great Lakes/St. Lawrence Seaway System.

On one hand, while this could be seen as a benefit to the pilots with increased personnel and rates, it is ultimately going to hurt the system as a whole. It will damage the marketability of the system. It's going to put rates over what is presently barely making them competitive. 126 ships through the seaway system is not exactly what all of us hoped for when the seaway was constructed, nor do any of our organizations see it as our current goal. We, as ports who are trying to facilitate job creation, not only on our docks, but within cargo owners themselves and work with the vessel lines, see this as something that could potentially be the last straw for a lot of shippers to take their cargo elsewhere, and we don't want to see that.

When we talk about efficiencies and reliability, economic efficiencies within the system are equally as important and, as John mentioned, our comments will be submitted in much more detail, but all of our American ports on the Great Lakes collectively have a major issue with this.

MR. THEIS: I'm just going to turn this way to look at you guys. Okay? I'm Stuart Theis, executive director of the U.S. Great Lakes Shipping Association, and I'm here to say, unfortunately, very little. I think one of the reasons for that, of course, is that there was a very short period of time that was allowed for us to try and digest this work product and make intelligent comments about it, and the consequence, we have begun to develop comments, we have similar comments to what have just been expressed here in terms of economic impact, but also with respect to methodology and the actual (indiscernible) of the filing itself. And so I really -- we made a command decision.

Well, I said have said earlier, for those of you who don't know, the Great Lakes Shipping Association is an association of agents that represent principals, and the principals, of course, they really exist (indiscernible) and there's obviously been quite a bit of blow-back, simply that the size of the increase in the nature of 50 percent is a pretty strong number, and there's been -- so, I think one of the common comments was, "What?" We need to find out what a lot of this is supposed to really mean. And so we really made the decision rather than meet and stand here, taking a few things that are in the filing that we have identified that would make no sense for us, we reserve our comments solely at this point to the written comments which we're going to be providing before the 9th of November.

And possibly, I don't know if this is administratively possible, but maybe -- this occurred to me that after the written comments were submitted that there might be a useful purpose via a public meeting or some sort of a face-to-face meeting with the pilots and with the Coast Guard to say, look, why don't you say that. I mean I don't know if that's a normal administrative thing that's available, but it's just something we might suggest. Really saying that maybe this meeting would have been better, you know, after the 9th of November. I know there's urgency because of when you're going to have this, this particular rate in effect at the first -- the beginning of the season rather than the first of August. But in any event, what I'm here to say on behalf of my association and the people who are really the stakeholders who are the clients of my members of the association, we really are not prepared to get into any real substantive items. And if we were, it would be only a small part of the situation.

But I must say in closing that there's a lot of consternation, there's a lot of -- similar to what the other gentleman said. This is something that is a great concern to the principals and where the future of their business is going to lie with respect to other boat transportation which carry this cargo in North America. Thank you very much.

MR. WALTER: Stu, I can respond to your procedural question. We are sorry for the short notice for this meeting. There's a reason for it, which is that when we announce a public meeting, that in itself requires agency clearance, and there's inevitably a delay in announcing a public meeting. So the most efficient way for us to announce today's meeting was to be able to place the meeting notice right in the NPRM, and we couldn't plan the meeting too far ahead. We didn't -- you know, we knew for only about a week when the NPRM would actually publish and we wanted to make sure that we as quickly as possible got some preliminary sense of the type of comments that we would receive by November 9th.

It is possible for us to think about a follow-up public meeting. That will be subject to the same clearance process I described. So we can't promise at this point that we will do a follow-up. If we do, it would most likely be before November 9th, because if it takes place after November 9th, then we would need to extend the public comment period. And as you pointed out, because of the statutory deadline of March 1, 2016, for setting next year's rates, it's important for us to be able to move quickly from the public comment period into development of the final rule, and that takes several months. Hope that answers your question.

MR. THEIS: Thank you.

MR. BELZILE: Jean-Francois Belzile for the Shipping Federation of Canada. To our members, this NPRM is -- excuse my strong words, but it's simply outrageous, it's not acceptable and unsustainable to business, and should be retracted altogether. We have submitted some constructive proposal for improving vital services on the Great Lakes on our letter dated July 8, 2014, and some of those suggestions being trying to identify synergies between the GLP pilotage system and the U.S. Coast Guard NPRM and the actual American systems of the Great Lakes. We also proposed looking after the need for double pilotage (indiscernible) new technology developments. We also suggested looking at the need for undesignate -- pilotage on undesignated waters. So those are some suggestions that we put forward, but for which I didn't receive any feedback from Coast Guard. And also, it doesn't seem that our comments have been acknowledged into the NPRM. So for those reasons, we would like the Coast Guard to retract this NPRM.

MR. QUICK: Good afternoon. My name is George Quick. I'm the vice president of the International Organization of Masters, Mates & Pilots, and I represent the state pilots in the 24 coastal states in the United States. I'm a former pilot and pilot regulator and administrator, so I'm familiar with the process that we we're going through at this time. I have no objection to the relatively short notice, because I understand the timelines and constraints that the Coast Guard is working under, and we have until November 9 to get public comments into the docket, which seems to be more than adequate for our purposes.

I appreciate the efforts the Coast Guard has put into coming up with this change in methodology. It's long overdue and needs simplification and to reflect reality, which the past process did not do. But after reviewing the proposed regulations, it's very apparent to me it's still a work in progress that needs considerable input and a need for clarification and better understanding of what the Coast Guard intends to -- or how the Coast Guard intends to implement their proposed regulations.

We do have one major concern and that's the linkage with the Canadian pilot compensation. The check of the currency exchange rates between Canada -- Canadian dollar and the U.S. dollar over the last ten years reflect a 45 percent swing, and that type of volatility being applied to U.S. revenues that are unrelated to workload or expenses makes the U.S. system unsustainable. We don't believe we can live with a 45 percent swing that's totally unrelated to anything other than currency exchanges. We think a better approach would be to use comparable U.S. pilot compensation where we have adequate data provided, and that would be working in the U.S. system and the U.S. economic and social taxes and similar administrative structure and management structure of the pilot associations.

We have a problem with comparing U.S. pilots with Canadian pilots, because there is quite a difference between U.S. pilots, who are contractors and have to maintain the system and manage the system and have legal liabilities as contractors, with Canadian pilots holding (indiscernible) status and have no management responsibility. So even if we could solve the currency fluctuation problem, we still have to adjust in some way for the difference in workload and social and economic conditions between the U.S. and Canada and the structure of U.S.

pilotage versus Canadian pilotage.

I think that we prefer not to go into any great amount of detail at this time. We have a docket that's open until November 9. We are going to go through the proposed rate very carefully and present very comprehensive comments to the docket. Thank you.

MR. SWARTOUT: John Swartout, president, Western Great Lakes Pilots Association, District 3. I just have a few questions. David, you said that the Appendix C rates haven't been used since 2011 because they produce erroneous results. Are you proposing to delete Appendix C, just get rid of it, or --

MR. DEAN: Yes.

MR. SWARTOUT: Okay. So it wouldn't -- if you start doing multi-year rates, that wouldn't be something that Appendix C would have anything to do with?

MR. DEAN: Not that we see.

MR. SWARTOUT: Okay. Any change to Appendix B, the definitions section?

MR. DEAN: Regarding the investment base?

MR. SWARTOUT: Any of the definitions.

MR. DEAN: In our new methodology, we removed the investment base in one of the calculations.

MR. WALTER: John, let me give you some information on that. What we're proposing is the elimination of A, B and C. We would replace the current appendices entirely with a new Part 404 rate-making methodology, and that would be the only methodology in our regs.

MR. SWARTOUT: Okay. Thanks. In Section 7 of the NPRM, that's the regulatory analysis.

MR. DEAN: Okay.

MR. SWARTOUT: Part D, Collection of Information, the paragraph Estimate of Annual Burdens says from 19 to 2,129.5. I assume that's hours. It doesn't say that, though.

Can you explain what the increased burden consists of? That's a big change in that collection of information burden. I assume that has to do with the Klein, but we're --

MR. DEAN: It does, yes.

MR. SWARTOUT: -- already doing Klein, so I'm just wondering why it would take so much more time to do.

MR. HAVILAND: Let's let Sharon answer that for us.

MR. DEAN: Okay.

MS. HAGEMAN: So what that's doing is -- so basically what it wasn't included before, like -- so we have this information. It's just it wasn't captured in our current COI. So what this is just doing is, because it wasn't captured, we now have to. So it's not necessarily the burden is increasing so much. This is being done already. It's just now we have to include it as a burden, so --

MR. SWARTOUT: Just you're recognizing that burden.

MS. HAGEMAN: Yes.

MR. SWARTOUT: Okay.

MR. DEAN: And the additional exhibits, you know, we were discussing with Klein, with potentially upgrading to a new version of Klein that might allow more electronic access for other people to do. So this -- the burden increase reflects the potential that pilots could possibly use to set a base as well, in addition to establishing (indiscernible).

MR. SWARTOUT: Okay. That's all I have. Thanks.

MR. LOFTUS: Just a follow-up question kind of. John Loftus with the Detroit Port Authority. Is there a statutory requirement that says only the Coast Guard is involved in the rate-making process from an agency standpoint?

MR. WALTER: Yes.

MR. LOFTUS: It is statutorily required that --

MR. WALTER: It is statutory.

MR. LOFTUS: So if --

MR. WALTER: It's statutory in the sense that it -- that it gives the authority only to the Secretary of Homeland Security, and even back when we were under the Department of Commerce, the Secretary has always delegated that authority to the Coast Guard and we're the only agency involved.

MR. LOFTUS: So it's the Secretary of Homeland Secretary that is delegated the responsibility? It's up to the Secretary to determine which agency is going to be the one doing that?

MR. WALTER: Correct.

MR. LOFTUS: Would he be allowed to, you know, bring in other departments within the federal government?

MR. HAVILAND: Can I answer this?

I'll give you a quick history lesson. Back in 1960 the Great Lakes Pilotage Office was known as the Great Lakes Pilotage Administration. It was under the Department of Commerce. At the time, the Coast Guard was under the Department of Treasury. When Lyndon Johnson decided to create the Department of Transportation, the Coast Guard went there and the Great Lakes Pilotage Authority was then transferred from Commerce to Transportation, but directly to the Coast Guard. So when the law says that, you know, the federal government is the only one that can do these rates, back in the '90s the Coast Guard transferred this office to the St. Lawrence Seaway Development Corporation. The pilots sued and the government won the first round, but lost on appeal. So the federal courts say that the only people that can administer this program is the United States Coast Guard.

MR. LOFTUS: Okay.

MR. LEMIRE: Robert Lemire, Great Lakes Pilotage. Point of clarification. In the NPRM there's mention of introducing a change point at Iroquois. Is it Iroquois Lock or around Iroquois or could there be more clarification in your final rule? From what I understand in the memorandum of agreement, the change point in that, this would need to be on U.S. side, or maybe -- maybe just a discussion on that, Todd?

MR. HAVILAND: Yeah. We've been pretty public about this. Our change points are just general geographic areas, so we don't think it's possible nor practical to say, "Here's a lat/long. This is exactly where the pilot has to change." So the idea is we've got a 10.8-hour transit and it needs to be broken up for safety reasons, and we think that Iroquois Lock, in that general area, is the best place to do it. Now, if we can't do it at the lock, then we'll have to look at other alternatives, but the idea is to break that transit up.

MR. LEMIRE: Okay.

MR. HAVILAND: Are there any other questions or comments?

(No response.)

MR. WALTER: What I would suggest is that we take a short break and it may be that after the break people will have some additional thoughts.

MR. HAVILAND: Sure. Let's take fifteen minutes.

(Off the record from 1:48 p.m. until 2:12 p.m.)

MR. HAVILAND: Good afternoon again. We'd like to re-open the question and comment period. If anyone has any questions or comments, please come to the front.

MR. GALLAGHER: Dan Gallagher, president of District 2 Pilots Association. I want to comment on the confusion regarding the director's adjustment to the 2013 independent audit report regarding the disallowance of a hundred percent of K&L Gates' legal fees.

Lobby fees are clearly defined by Congress. We've given the independent auditors the amount attributed to the lobbying fees, which they never -- the independent auditors never made any adjustments. Nowhere in the United States in any pilotage organization are legal fees disallowed in any rate making. Mr. Frank Flynns (ph.), the previous couple directors past, made a disallowance for legal fees. He substantially cut the amounts and he used the underground --

underwater divers' legal fees basically for a basis. That was overturned by the Coast Guard. So we'd like the director to look at that. And if needed, we provided all the fees and everything in a breakdown. If you need more, we'd be more than happy to provide those. Thank you.

MR. BOYCE: John Boyce, president of District 1. The new proposed rate has some changes in what would be billable under the rate, and we need more clarification onto what those changes are and what would and would not be billable. And also, in the calculation to derive a bridge hour cost, what would now be considered an unbillable hour, those hours would need to be removed from the bridge hours to arrive at a cost which we would bill.

MR. HAVILAND: Can you expand on that? I think I understand what you're saying, but I don't want to assume that.

MR. BOYCE: In the -- I'm not -- I don't recall what step it is in the rate or what table, but there's one that has the total needed revenue divided by, I think it's called time on task, gives you a bridge hour cost.

MR. HAVILAND: Um-hmm.

MR. BOYCE: In that time on task, numbers that admittedly previously were not tracked because they weren't looked at quite this way, in that number for 2016 there are hours that would be considered unbillable. Those hours would need to be removed from that time on task to arrive at a billable hour, so we work from that backwards. Does that make sense?

MR. HAVILAND: Do you mind if I say a few things?

MR. WALTER: Go ahead. For clarification, sure.

MR. HAVILAND: Sure. As far as what's billable, we believe that from the time you get on board the ship until the time you get off is billable. Now, if some things happen that causes the pilot to stay on board that ship that are a result of pilot inefficiencies, we don't think that the industry should have to pay for those things.

MR. BOYCE: I apologize. I forget what the new dates are. It used to be the April and December. Now it's November and April. Outside those dates, weather, traffic are billable. The summer side of those dates are not. So, for example, a ship anchors for fog in June. That would be an hour workload that you're on the ship, but would be an unbillable delay. Hours such as that would need --

MR. HAVILAND: Okay.

MR. BOYCE: -- to be removed from the calculation. That make sense?

MR. HAVILAND: Does it make sense to you, Dave?

MR. DEAN: Sure.

MR. HAVILAND: So tell me if I'm correct in what you're saying. So if a ship has to go to anchor because there's fog, you don't want us to include that in the historic time because we're not going to allow you to bill for it.

MR. BOYCE: It would be on the workload side because you have a person there, but you wouldn't be able to bill for that delay.

MR. HAVILAND: So you want us to include that in the pilot assigned cycle to determine that, and also to remove that time away from the billable hours because --

MR. BOYCE: Yes.

MR. HAVILAND: -- it's going to, in your opinion -- and I'm not -- it's going to artificially increase --

MR. BOYCE: Billable hours.

MR. HAVILAND: -- billable hours. I think I understand what you're saying.

Does Sharon or Dave or Rich --

MR. BOYCE: I don't think it's going to be a huge amount, but in correctness, it would be affected.

MR. HAVILAND: Understood.

MR. SWARTOUT: John Swartout again, Western Great Lakes Pilots Association. I've got a question about -- it's not clear to me from the NPRM how you'll use the revenue audits to determine whether the rate is effective. Are you going to look at was the projected revenue achieved, or was the revenue per bridge hour achieved? Because revenue is going to go up and down with bridge hours. Total revenue is going to go up and down with bridge hours. But dollars per bridge hours should be what the rate says it's going to be.

MR. HAVILAND: Is that something we can answer?

MR. WALTER: If you want to clarify how you determined that.

MR. HAVILAND: The primary purpose of the revenue audits is to write another level of transparency. Up until the 2013 audits, there was a lot of discussion about what the associations may or may not be generating for revenue. And once that amount came in, at least for me it was real easy to take this is the revenue they generated, these were their expenses, this is what was left over for pilot compensation, and this is what was left over, I believe, you know, for training, for infrastructure development or investment, for capital investment.

So for us, we believe, if we look at revenue audits and the expense audits, over time it will provide the level of transparency that we all need to sit down and have adult conversations about these rates, but it will also tell us, you know, is the billing scheme correct, you know, is our goal of trying to, you know, over time get you -- get the pilots to gain some level of predictability on how much a pilot can make, and also, as much as we can, to stabilize rates. Did I answer your question or --

MR. SWARTOUT: Well, the question is specifically about the revenue audits and, you know, how they'll be used to decide if the rate did what it was supposed to do. And I know I've asked you the question before and I'm still --

MR. HAVILAND: No, but we should -- if

traffic is up 20 percent, we should expect, you know, about 20 percent more revenue. If traffic's down, you know, 10 percent, revenue should be down about 10 percent. And if those things aren't correlating, then there's probably something we need to adjust.

MR. SWARTOUT: Okay. Thanks.

MR. GALLAGHER: I was wondering if you could give us some clarification on the pilot training fees that you're allowing for each district, $150,000 per person for an applicant pilot to bring on board, and also for continuing education. If, for example, in a year we were to collect in excess of the $300,000, but our expenses far exceeded the $300,000, would that be subtracted from the future revenues?

MR. WALTER: Go ahead.

MR. HAVILAND: Oh, sure. The intention of the surcharge is to accelerate expenses that we would probably see in three to four years into the following year's rate, and the other idea behind that is the things that we're allowing to be surcharged, we want to make sure that you're made whole on those big expenditures. So for the training and hiring of applicant pilots, which facilitates moving ships and, you know, minimizes or limits delays, is something that we think when you incur that cost, you should be reimbursed a hundred percent, regardless of what traffic is. So what we'll do is -- we just view it as almost like an advance on, you know, a future rate. So if you collect "X" in this year for an expense that we see in a future audit, then we'll reconcile those numbers and make sure that we either add money to the rate or subtract money from the rate. But the goal is, you know, not to allow you to collect twice for the same expense.

MR. GALLAGHER: But we could -- because year to year, you know, one year we may be under the 300 and the next year we may be over. So if we go over one year and we have the excess amount, it won't be held against us. Likewise, if we do go under, you know, we shouldn't be -- we shouldn't benefit from that.

MR. HAVILAND: Yeah. There's no need -- there's no reason for you to benefit or be penalized. It's just we want to make sure that if you're doing the things that are helping to improve efficiency, improve reliability and improve safety, that your associations get a hundred percent of that money back.

MR. GALLAGHER: Okay. Thank you.

MR. WALTER: We could do it like an auction: going once, going twice.

MR. HAVILAND: Sure. Good idea.

MR. LEMIRE: One comment. Robert Lemire, Great Lakes. We'll save you from sending you a letter. Your estimate, you're knocking off 2009, which I agree with. Traffic was terrible. But you're omitting 2014. We're now seeing in Canada we're going to keep 2014, because 2015 is similar in traffic. Just a comment. Maybe you want to revisit that, because I think if you omit 2014, your numbers might again be short on how many pilots you need in each district. Just a comment. Because we're finding traffic in 2014, 15 percent up and another 3 or 4 this year, so if you're using just 2013, you might be short. Just a comment.

MR. HAVILAND: If that's it, is there anything we have to do to close the meeting?

MR. WALTER: You just have to say, "We're closed."

MR. HAVILAND: All right. Thank you very much for your attendance today. We look forward to receiving your written comments.

(Meeting concluded at 2:25 p.m.)

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Great Lakes Pilotage

Before: US Coast Guard

Date: 09-17-15

Place: Romulus, MI

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

Neal R Gross

Court Reporter