JAMES I. COHEN
PARTNER
jcohen@verrill-law.com
207-253-4708

One Portland Square
Portland, ME 04101
Main 207-774-4000

April 18, 2024

Daniel T. Haley
Commission Chair
Board of Harbor Commissioners
For Portland Harbor
2 Portland Fish Pier, Suite 105
Portland, ME 04101

Re: ***Portland Pilots 3.25.24 Rate Filing – Follow-up Information to Board regarding Request for Protective Order***

Dear Chair Haley and members of the Board:

During last week's meeting of the Board of Harbor Commissioners for Portland Harbor (Board), the Board asked for additional information regarding the specific nature of the request by Portland Pilots, Inc. (Pilots) to ensure confidential treatment of Attachment 2 to its March 25, 2024 rate filing (Rate Filing). During the meeting, the Pilots offered to provide a redacted copy of Attachment 2 showing the line items but excluding the corresponding numbers, and the Board indicated that providing this information would be very helpful. In this regard, please find attached a copy of Attachment 2 listing the line items, but excluding the numbers. We hope this sufficiently informs the Board regarding the specific nature of our request for protective order.

Additionally, during the Board meeting, there was discussion regarding the Board's past practices regarding maintaining the confidentiality of data similar to Attachment 2. In particular, the Pilots in our request for protective order noted that the Commission in past rate cases had maintained the confidentiality of such information; however, there was a suggestion during the meeting that the Board did not maintain the confidentiality of such data in the context of a 2019 ratemaking proceeding involving the Pilots. The Pilots disagreed with this contention, but this issue was not resolved during the meeting. Rather, we indicated to the Board that we would further check the record to determine how confidential information has been treated by the Commission, and report back. At this point, we have now had a chance to review the 2019 Decision of the Board dated June 6, 2019 as well as three subsequent rate cases process by the Commission, and our findings are as follows.

- **2019 Rate Proceeding.** As an initial matter, this rate proceeding was the Commission's first rate proceeding following the Superior Court's issuance of an order in the *Bay Ferries* case. At that time, the Commission's processing of confidential information was less orderly than in the three subsequent rate proceedings initiated by the Pilots. The 2019 proceeding also involved an emergency rate request that truncated the opportunity to seek confidential treatment of documents. As a result, the 2019 proceeding appears to represent a mix of confidential submissions containing private expense data and public submissions containing similar data.

To illustrate the inconsistent manner in which data was treated in the 2019 case, the Commission's final order in the case is explicit in one instance that information of the type contained in Attachment 2 was provided and maintained confidentially by the Board. The language of the Order stated as follows:

> *Portland Pilots provided Confidential Exhibit 16, which compared the Portland Pilots' operating cost and safe operating cost for 2018 and 2019, with respective expected revenues for 2018 and 2019 under different pilotage rate scenarios… (Order at 6)*

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The order also noted the following other exhibits that were provided and deemed confidential (Order at 5):

2018 Charter Crew Salaries
2018 Porltand Pilots Individual Pilots' Salaries combined
2018 Portland Pilots Individual Pilots Salaries
2018 Invoice List
January through March 2019 Invoice List
2018 Payments Made
January through March 2019 Payments Made

At the same time, the order references several other documents containing private expense that were not submitted confidentially. To the best of the recollection of the Pilots, the inconsistent treatment of data reflected the accelerated nature of the case and the Commission's use of different procedures compared to prior rate cases. For this reason, we do not believe the treatment of data in the 2019 proceeding provides helpful guidance for how the Commission should treat private expense data now, nor did the 2019 proceeding appear to guide how information was treated in the three rate cases following 2019, which are highlighted below. In those cases, it appears that private expense data was consistently treated as confidential, which is ho we believe Attachment 2 should be treated in this case.

- **2020 Rate Proceeding.** In this rate proceeding, key documents in the case were treated in the following manner.

  These documents were treated confidentially:
  Exhibit "A": 2019 Pilot Units in the Port (January 1, 2019 – December 31, 2019) (formerly Exhibit "17")
  Exhibit "B": 2019 PPI Cash Receipts and Disbursements 2019
  Exhibit "C": 2019 Pilot Unit / Vessel Actual
  Exhibit "D": PPI Projected Cash Receipts and Disbursements for Year End 2020
  Exhibit "E": Projected Pilot Unit Year End 2020
  Exhibit "F": Port Comparison (formerly Exhibit "38")
  Exhibit "G": Pilot Unit Rate Comparison 2019, 2020, 2021
  Exhibit "H": Ship's Income by Pier 2019 (formerly Exhibit "22")
  Exhibit "I": Projected Ship Visits 2020

  These documents were treated publicly:
  Exhibit "J": Pilot Units Report
  Exhibit "K": Projected Pilot Units

- **2022 Rate Proceeding.** In this rate proceeding, documents were treated as follows:

These documents were treated confidentially:

Exhibit A: 2021 Pilot Units per Ship
Exhibit B: 2021 Ships by Pier
Exhibit C: 2021 Invoice list
Exhibit D: 2020 Ships by Pier
Exhibit E: 2020 invoice List
Exhibit F: Portland Pilots 2022 Rate Request Vessel Category Summary
Exhibit G: Portland Pilots 2020 Port Comparison $12.95 rate and $175. Capital Construction
Fund (CCF) Worksheet.
Exhibit H: 2022 Board Template 2020 and 2021 Actual, 2022 Projected $12.95 Rate and $175
CCF.
Exhibit I: 2019 Board Template for 2022 Review
Exhibit J: Portland Pilots 2020 1120S Tax Return
Exhibit K: Portland Pilots 1120S Signature Document
Exhibit L: Portland Pilots 2020 1120S Filing Instruction
Exhibit M: Portland Pilots Charter Corp 2020 1120S Tax Returns
Exhibit N: Portland Pilots Corp 2020 Signature Document
Exhibit O: Portland Pilots Charter Corporation 2020 1120S Filing Instructions

These documents were treated publicly:
Exhibit P: Yacht Visits 2019,2020,2021
Exhibit Q: Port Comparisons with Sample Ships Projected 2022
Exhibit R: Current Pilot Unit Rate Sheets
Exhibit S: Summer Deadweight Reports 2019, 2020 and 2021

- **2023 Rate Proceeding.** In this rate proceeding, documents were treated as follows:

These documents were treated confidentially:
Exhibit D: Portland Pilots comparable ship rates (including ship names) (under seal)
Exhibit E: Portland Pilots QuickBooks 2022 year-end report (under seal)
Exhibit F: Pilot Income, Expense, and Budget Projection for 2023
Exhibit G: Additional information pertaining to financial documents previously submitted and information pertaining to outstanding loans.
Exhibit H: Portland Pilots 2021 1120S Tax Return
Exhibit I: Portland Pilots Charter Corp 2021 1120S Tax Returns

These documents were treated publicly:
Exhibit A: Northeast five port comparison of rates (Port Vessel Rate Comparison at $14.14 / 8.7%)
Exhibit B: Maintenance Estimates for necessary repairs to pilot boats (supporting CCF request)
Exhibit C: Vessel Category Summary (with historical data, 2019 - 2022)

In light of the prior three rate proceedings, there is strong history of the Commission according confidential treatment to private expense data from the Portland Pilots, and we continue to believe the Commission should continue to accord confidential treatment to Attachment 2.

Scheduling order. In this letter, we are reiterating our earlier request for a scheduling order. By the time the Board next meets on April 27, 2024, it will have been more than one month since our initial filing. Please also note that I will personally be unavailable from April 30 through May 17th.

Public notice. To our knowledge, there has been no public posting by the Commission regarding our rate filing. We understand the Board still needs to resolve the confidential status of Attachment 2, but we do not believe resolution of this matter should get in the way of providing public notice of our rate filing. We raised this issue by email last week to the Commission, and reiterate our request for public posting in this letter.

Conclusion. For the reasons noted above, the Portland Pilots respectfully request that the Board issue a protective order that designates Attachment 2 as confidential information not subject to public disclosure, and further that any discussion by the Board regarding Attachment 2 be undertaken *in camera* in executive session.

Very truly yours,

James I. Cohen
Counsel for Portland Pilots, Inc.

cc: Kevin Battle, Harbor Master
Maya Howard, Assistant Harbor Master
Mary Costigan, Counsel for Harbor Commission
Capt. Calvin Klopp, Portland Pilots

ATTACHMENT 2 - CONFIDENTIAL

Submitted by Portland Pilots, Inc. dated April 8, 2024

1	**2024 Revenue Requirement for Portland Pilots, Inc.**			
2	**REVENUES**			
3		Year	2023 Actual	Projected Test Year
4		Vessel Total (CB)	[redacted]	[redacted]
5		Pilot Unit Rate	[redacted]	[redacted]
6		Pilot Units	[redacted]	[redacted]
7		Total income from Pilot units	[redacted]	[redacted]
8	**Total Fuel Surcharge**		[redacted]	[redacted]
9	**Projected Docking Fee (if approved)**		[redacted]	[redacted]
10	**Capital Construction Fund**		[redacted]	[redacted]
11	**TOTAL REVENUES** (Sum of Lines 7-10)		[redacted]	[redacted]
12	**EXPENSES**			
13	Pilot Boat Insurance, MOPS Insurance		[redacted]	[redacted]
14	Communications		[redacted]	[redacted]
15	APA Dues, Dues/Contributions, HC Tax and License Dues		[redacted]	[redacted]
16	Accounting, Legal		[redacted]	[redacted]
17	Vessel Consumables and Supplies, Office Supplies		[redacted]	[redacted]
18	Fuel		[redacted]	[redacted]
19	Vessel Rent [redacted], Captial Construction Loan, Debt Services		[redacted]	[redacted]
20	Electricity, Wharfage		[redacted]	[redacted]
21	Deckhand Contractors		[redacted]	[redacted]
22	Vessel Repairs		[redacted]	[redacted]
23	Deferred Vessel Repairs		[redacted]	[redacted]
24	**Subtotal: Expenses**		[redacted]	[redacted]
25	**Employee Compensation**			
26	Target Pilot Compensation (2023: 3 Pilots; 2024: 4 Pilots)		[redacted]	[redacted]
27	Boat Operators and Office Manager Salary, Payroll Benefits, Tax, Health Ins., Life Ins., HSA, SEP		[redacted]	[redacted]
28	**Subtotal: Employee Compensation**		[redacted]	[redacted]
29	**Return on Capital Investment** [redacted]		[redacted]	[redacted]
30	**TOTAL REVENUE REQUIREMENT** (Sum of Line 24, Line 28, and Line 29)		[redacted]	[redacted]
31	Grant Awards		[redacted]	[redacted]
32	**Shortfall**		[redacted]	[redacted]