

**STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
BOARD OF PILOT COMMISSIONERS  
PILOTAGE RATE REVIEW COMMITTEE**

IN RE: APPLICATION FOR A CHANGE  
IN RATES OF PILOTAGE FOR PORT  
EVERGLADES, FILED BY THE FLORIDA  
CARIBBEAN CRUISE ASSOCIATION, AND  
ALTERNATIVE APPLICATION FOR A  
CHANGE IN RATES OF PILOTAGE FOR  
PORT EVERGLADES, FILED BY  
PORT EVERGLADES PILOTS ASSOCIATION

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CASE NO.: PRRC 2014 - 2

**NOTICE OF INTENT TO MODIFY THE PORT EVERGLADES RATE OF PILOTAGE**

Pursuant to the provisions of Section 310.151, Florida Statutes, and Rule 61G14-22, Florida Administrative Code, the Pilotage Rate Review Committee (Committee) met at a duly-noticed public meeting in Fort Lauderdale, Florida on October 23, 24, and 25, 2018, to review the rate modification applications filed by the Florida Caribbean-Cruise Association (FCCA) and Port Everglades Pilots Association (PEP).

Committee members present were Sherif Assal, Robert Benson, Capt. Carolyn Kurtz, Louis Sola, Capt. Brian Seuter, and David Wilkins. Legal advisor to the Board was Clark R. Jennings, Senior Assistant Attorney General.

**APPEARANCES**

For Florida-Caribbean  
Cruise Association:

Thomas F. Panza, Esq.  
Panza, Maurer & Maynard  
3600 North Federal Highway, 3rd Floor  
Ft. Lauderdale, Florida 33308

For Port Everglades  
Pilots:

George N. Meros, Jr., Esq.  
Holland & Knight LLP  
315 South Calhoun Street, Suite 600  
Tallahassee, Florida 32301

### **THE APPLICANTS**

FCCA is a not-for-profit trade organization with a membership composed of fifteen cruise lines operating more than 100 vessels in Florida, Caribbean and Latin American waters. The FCCA is located at 11200 Pines Boulevard, Suite 201, Pembroke Pines, Florida. FCCA represents the majority of cruise line companies that either call on Port Everglades throughout the year or call Port Everglades home. FCCA members include Carnival Cruise Lines, Celebrity Cruises, Costa Cruises, Crystal Cruises, Disney Cruise Line, MSC Cruises, Norwegian Cruise Line, Princess Cruises, and Royal Caribbean. The cruise ships operated by FCCA's members are vessels subject to pilotage under Florida Statute §310.141, and thus are required to "have a licensed state pilot or certificated deputy pilot on board to direct the movements of the vessel when entering or leaving" ports in the State of Florida. Thus FCCA, as representative of its members who pay pilotage fees for calls on Port Everglades, is affected by the established pilotage rates at Port Everglades and maintains an interest adequate to pursue a change in the rate of pilotage by filing an application with the Pilotage Rate Review Committee (Committee).

PEP is an association composed of present harbor pilots that is treated as a partnership for tax purposes and which performs the pilotage services at Port Everglades. PEP is located at 1833 SE 17<sup>th</sup> Street, Fort Lauderdale, Florida. The purpose of the PEP is to provide pilotage services at Port Everglades in a safe and efficient manner and in compliance with the provisions of Chapter 310 Florida Statutes, the rules promulgated thereto, and any other provisions of law

governing the provision of pilotage services. As such, PEP is entitled to charge pilotage rates as provided in Section 310.151, F.S., and, as further provided therein, to seek rate increases by filing an application with the Committee.

**There are two applications for a change in the rates of pilotage at Port Everglades.**

On July 25, 2014, FCCA submitted an application for a change in rates of pilotage requesting a 25% reduction in the draft and tonnage rates at Port Everglades, but only for passenger vessels. Rates for all other vessels were requested to remain at current rates. All other authorized charges in the port would remain the same and there would be no change in draft and tonnage charges for cargo and other non-passenger vessels. PEP subsequently submitted an alternative application dated November 21, 2014, requesting a comprehensive adjustment in rates which would increase pilotage rates on small vessels and decrease pilotage rates on larger, frequent caller vessels, resulting in an overall estimated increase of total pilotage revenue of 11%. In addition, PEP's application included a surcharge for deputy pilot training and a surcharge for pension support which combined would have generated approximately 1.760 million dollars in additional annual revenue.

As provided in Rule 61G14-22.007 the Committee convened its Investigative Committee. During the Investigative Committee process interested parties, who were users of the pilotage services at the port, participated and made brief statements regarding the requested rate changes. Subsequent to the meeting of the Investigative Committee, legal representatives for several smaller cargo carriers provided substantial data for consideration. At the conclusion of the Investigative Committee's review of the Port, a report was prepared, and the findings rendered to the Committee as required by Rule 61G14-22.007. All data and correspondence received by the

Investigative Committee were referenced and attached as exhibits to said report.

Key assertions of both applicants and their specific modification requests may be found on pages 7 through 11 of the report of the Investigative Committee and the applications submitted which are part of the record.

In an effort to avoid a protracted process and potentially extensive litigation, the two applicants negotiated a mutually acceptable rate structure which followed the principles set forth in the recently established rate at the Port of Miami and which varied greatly from either of the initially filed applications. Recognizing that the Committee is not bound to an applicant's request but may establish whatever rate it deems fair, just, and reasonable, the two applicants requested that the Committee consider the negotiated proposed rate in lieu of the earlier disparate requests.

Turning to the merits of the pending requests, both original and proposed unified, the Committee has reviewed the various applications, the written and transcribed oral statements of those in attendance at the Investigative Committee hearings, the Report of the Investigative Committee with appended exhibits and transcripts, the various exhibits submitted by both FCCA and PEP, all position papers submitted by all affected parties, the applicants, and the public at large, as well as the testimony and any supporting exhibits of the following individuals:

Richard H. Law, CPA  
Law, Redd, Crona & Munroe, P.A., CPA's  
Tallahassee, Florida

Commander Galen Dunton  
U.S.C.G. Ret.  
Amelia Island, Florida

Jordan S. Cohen, Esq.  
Wicker Smith O'Harea McCoy & Ford, P.A.  
Ft. Lauderdale, Florida

Joe Leo, C.P.A.  
Keith McCullough and Company  
Ft. Lauderdale, Florida

Captain Michael Cunningham  
Port Everglades Pilots Association, Inc  
Ft. Lauderdale, Florida

Captain Jim Ryan  
Port Everglades Pilots Association, Inc.  
Ft. Lauderdale, Florida

Captain Keith Morton  
Port Everglades Pilots Association, Inc.  
Ft. Lauderdale, Florida

Mr. Salvador Menoya  
Crowley Line Services  
Ft. Lauderdale, Florida

Captain Hernan Zini  
Royal Caribbean Cruises, Ltd.  
Miami, Florida

Captain Gardiner Nealon  
Crowley Line Services  
Ft. Lauderdale, Florida

Captain George A. Quick  
Intl. Organization of Masters, Mates &  
Pilots  
Linthicum Heights, Maryland

Mr. Randolph Peterson  
King Ocean Services  
Ft. Lauderdale, Florida

Captain Andrew Edelstein  
Port Everglades Pilots Association, Inc.  
Ft. Lauderdale, Florida

Mike LaFleur  
SEACOR Island Lines  
Fort Lauderdale, Florida

### **THE STATUTORY FACTORS**

The Committee is charged with determining the rates of pilotage based upon a list of factors set forth in Section 310.151(5) which states as follows:

(a) In determining whether the requested rate change will result in fair, just, and reasonable rates, the Committee shall give primary consideration to the public interest in promoting and maintaining efficient, reliable, and safe piloting services.

(b) The Committee shall also give consideration to the following factors:

1. The public interest in having qualified pilots available to respond promptly to vessels needing their service.

2. A determination of the average net income of pilots in the port, including the value of all benefits derived from service as a pilot. For the purpose of this sub-paragraph, "net income of pilots" refers to total pilotage fees collected in the port, minus reasonable operating expenses, divided by the number of licensed and active state pilots within the ports.

3. Reasonable operating expenses of pilots.

4. Pilotage rates in other ports.

5. The amount of time each pilot spends on a actual piloting duty and the amount of time spent on other essential support services.

6. The prevailing compensation available to individuals in other maritime services of comparable professional skill and standing as that sought in pilots, it being recognized that in order to attract to the profession of piloting, and to hold the best and most qualified individuals as pilots, the overall compensation accorded pilots should be equal to or greater than the available to such individuals in comparable maritime employment.

7. The impact rate change may have in individual pilot compensation and whether such change will lead to a shortage of licensed state pilots, certificated deputy pilots, or qualified pilot applicants.

8. Projected changes in vessel traffic.
9. Cost of retirement and medical plans.
10. Physical risks inherent in piloting.
  
11. Special characteristics, dangers, and risks of the particular port.
12. Any other factors the Committee deems relevant in determining a just and

reasonable rate.

(c) The Committee may take into consideration the consumer price index or any other comparable economic indicator when fixing rates of pilotage; however, because the consumer price index or such other comparable economic indicator is primarily related to net income rather than rates, the Committee shall not use it as the sole factor in fixing rates of pilotage.<sup>1</sup>

The Committee finds that the data set forth in the Investigative Committee report fairly represents the state of shipping activity in the Port as well as accurately describes the operations of the Port and the activities of the pilots serving the Port. The Committee further finds that the financial data presented both as historical fact and as projections reasonably reflects the present and future financial state of pilotage charges (and the income derived therefrom) in the Port. The Committee accepts the Investigative Committee's application of the above-mentioned data to the various factors set forth in Section 310.151(5) and the conclusions set forth in its reports.<sup>2</sup> Moreover, to the extent that they do not contradict the findings of the Investigative Committee Report the Committee accepts the written submissions of both the PEP and the FCCA as accurate. It is noted that the submissions provided at the hearing by the

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<sup>1</sup> As the Committee opined in its decision on the requested rate decrease for the Port of Miami (PRRB Case No. 96-01 at page 8), it is the Committee's position that its authority extends to granting a rate decrease or increase, in whole or in part, or to deny the request completely. As will be set forth below the Committee also asserts its authority to grant relief which is contingent upon actions which must occur in order for the rates to take permanent effect.

<sup>2</sup> To the extent that the Committee has accepted the findings of the Investigative Committee in its Report, those findings should be read as though set out in full herein including any reference material contained in the appendices thereto.

applicants constitute a compilation of that data previously provided to the Investigative Committee and is incorporated into the Investigative Committee Report either in the body of the report or as attached exhibits. Specifically, as to the individual elements specified as follows the Committee makes the following findings:

1. The public interest in having qualified pilots available to respond promptly to vessels needing their service.

The Committee accepts and adopts the findings of the Investigative Committee as reflected on pages 12 and 13 of the Report of the Investigative Committee. It is noted that the commentary related to the September 10, 2018 Public Meeting is not adopted as the committee's findings as said commentary did not address the issue under review here.

2. A determination of the average net income of pilots in the port, including the value of all benefits derived from service as a pilot. For the purpose of this sub-paragraph, "net income of pilots" refers to total pilotage fees collected in the port, minus reasonable operating expenses, divided by the number of licensed and active state pilots within the ports.

The Committee accepts and adopts the findings of the Investigative Committee as reflected on pages 14, and 15 of the Report of the Investigative Committee.

3. Reasonable operating expenses of pilots.

The Committee accepts and adopts the findings of the Investigative Committee as reflected on pages 16, 17, 18, and 19 of the Report of the Investigative Committee. It is noted that the Summary paragraph on page 19 is not adopted as the committee's findings as said paragraph does not constitute a factual finding.

4. Pilotage rates in other ports.

The Committee accepts and adopts the findings of the Investigative Committee as reflected on pages 21 through 27 of the Report of the Investigative Committee.

5. The amount of time each pilot spends on actual piloting duty and the amount of time spent on other essential support services.

The Committee accepts and adopts the findings of the Investigative Committee as reflected on pages 28, 29, and 30 of the Report of the Investigative Committee. While the Committee does not adopt the commentary of the report writer concerning reasonableness of certain enterprises being considered in the time calculation nor does it adopt the assertions of certain parties referenced in the pages listed above, as said items do not constitute factual findings. The Committee does adopt as findings the three enumerated items listed as explanations by PEP for the average workload decline.

6. The prevailing compensation available to individuals in other maritime services of comparable professional skill and standing as that sought in pilots, it being recognized that in order to attract to the profession of piloting, and to hold the best and most qualified individuals as pilots, the overall compensation accorded pilots should be equal to or greater than the available to such individuals in comparable maritime employment.

The Committee accepts and adopts the findings of the Investigative Committee as reflected on page 31 of the Report of the Investigative Committee with the following comments:

The Committee has consistently established through various previous orders<sup>3</sup> related to this and other ports that it accepts the proposition that the pre-pilot career path is the same for persons who remain as senior bridge officers on American-flagged ships and for those who

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<sup>3</sup> All references to prior orders of the Committee include Orders of the Pilotage Rate Review Board, the predecessor rate setting entity authorized under Chapter 310.131, Florida Statutes.

become pilots.

In addition, Section 310.151(5)(b)6, sets the wage rate of “comparable professions” as the floor for pilot income not the ceiling. As was also noted in the Port Everglades (96-03) and Tampa (2008-01) Orders, the Committee has accepted that the wage rate of senior masters on American-flagged ships varies greatly and thus the Committee can find no specific number to use as the only acceptable “floor” for pilot compensation.

The Committee thus uses the range of masters’ salaries as a range of “floors” of pilots’ income to be applied depending on the amount of vessel traffic at a port, the physical characteristics of a port, the associated risks and complexities of handling vessels in a particular port, and the size of vessels handled. Similarly, while the Committee accepts that the Investigative Committee reported that nationwide average compensation for pilots was somewhere between \$500,000 and \$550,000 in 2017, such are only averages. Thus a pilot’s appointment to the major ports, such as the Ports of Tampa Bay, Port Everglades, Miami, Jacksonville, Canaveral, or Palm Beach would be considered as akin to the more prestigious, responsible, and highly paid masters position (Master, Mates and Pilots) while smaller ports, with correspondingly lesser amounts of traffic, smaller vessels to handle, and lower risks and complexity, would have a lower “floor” for income.

7. The impact the rate change may have on individual pilot compensation and whether such change will lead to a shortage of licensed state pilots, certificated deputy pilots, or qualified pilot applicants.

The Committee accepts and adopts the findings of the Investigative Committee as reflected on pages 32 through 34 of the Report of the Investigative Committee with the following exception; the committee does not consider the item of \$63,000 “other income” to be a valid consideration when calculating net income as this reflects a onetime infusion of cash resulting from the sale of

a boat. Therefore, the projected net income per pilot resulting from the proposed unified rate proposal is determined to be \$549,998.00 resulting in an estimated net increase of \$138,355 per pilot, per annum over the previous year's return.

8. Projected changes in vessel traffic.

The Committee accepts and adopts the findings of the Investigative Committee as reflected on pages 35, 36, and 37 of the Report of the Investigative Committee.

9. Cost of retirement and medical plans.

The Committee accepts and adopts the findings of the Investigative Committee as reflected on pages 38 through 42 of the Report of the Investigative Committee with the following comments:

It is clear from the analysis presented in the Investigative Committee Report along with the testimony presented by the two applicants that there are multiple ways the existing retirement plan may be considered. To the extent the Investigative Committee Report provides hard data, both numerical and explanatory concerning the pension plan, these are adopted as the Committee's findings. The Committee considers the pension plan a benefit and not an expense, however, its valuation is subject to debate. The Investigative Committee Report on page 40 demonstrates the range of those values. While the Committee will not at this time make a determination as to the exact value of the pension fund it has and will consider the range presented.

10. Physical risks inherent in piloting.

The Committee accepts and adopts the findings of the Investigative Committee as reflected on page 43 of the Report of the Investigative Committee.

11. Special characteristics, dangers, and risks of the particular port.

The Committee accepts and adopts the findings of the Investigative Committee as reflected on pages 44, and 45 of the Report of the Investigative Committee.

12. Any other factors the Committee deems relevant in determining a just and reasonable rate.

The Committee accepts and adopts the findings of the Investigative Committee as reflected on pages 46 through 50 of the Report of the Investigative Committee under “other relevant information” with the following comments:

The Committee recognizes that over the last several years the maritime industry has invested in the acquisition of substantially larger vessels. Many of these larger vessels now call upon Port Everglades. This change in the general character of the cruise business model, excluding day cruises, as well as the introduction of larger cargo vessels has resulted in a situation whereby fewer large vessels have generated a greater percentage of pilotage fees relative to the number of handles required *vis a vis* the small cargo and day cruise industry. Restated, although vessels at or under 10 GRT comprise forty-seven percent of the pilot handles at Port Everglades, due to the current rate formulary, they generate approximately only fourteen percent of the pilot revenue.

13. The Consumer Price Index and Labor Costs.

The Committee accepts and adopts the findings of the Investigative Committee as reflected on page 51 of the Report of the Investigative Committee with the exception that the second paragraph, last sentence, should read: Applying 37% increase for the CPI would produce \$462,000 in net income which is more than the \$412,000 actual net income received in 2017.

## ANALYSIS AND DECISION

The Committee is of the opinion that the rates of pilotage at Port Everglades should be modified based upon the Report, the applicants' presentations, the statements of the affected parties, and past Committee precedent. The Committee notes that the modified rates which would move the basis for the rates of pilotage from the traditional and now outdated formulary based primarily upon a vessel's tonnage to a more appropriate multifaceted formulary considering length, beam, draft, and tonnage should provide PEP with an appropriate annual net revenue increase while simultaneously reducing the rates of pilotage for the newer larger vessels calling upon the Port. While the Committee recognizes that certain smaller cargo carriers will see an increase in the cost of services provided by the PEP it notes that the existing rate has for several years been at or below costs for such carriers. The Committee recognizes the need to ensure that small carriers are afforded the use of the public port. Such carriers provide a valid and necessary service to the maritime community and to the flow of commerce. However, it would be unjust to expect the larger shipping concerns to continue to underwrite one of the costs of port operations to the degree the current rate formula now commands. While the new formula continues to allow some smaller carriers to receive pilotage services below costs it does reduce to some degree the discount previously enjoyed.

In general, the modified rates are necessary to more equitably distribute the costs of pilotage services at the Port among the various maritime consumers while bringing the income of the members of the PEP closer to where it was subsequent to the last rate increase and before recent increases in operating, consumer, and other costs. The Committee believes that these new rates assure that the quality of the pilotage services at Port Everglades remain constant and that the costs of these necessary services are more equitably distributed among the shipping

community allowing the PEP to maintain an average income that is acceptable to both the pilots and the maritime industry, and thus, acceptable to the Committee.

The Committee therefore determines that as of February 1, 2019 the rates of pilotage at the Port Everglades shall be Modified as follows:

1. The formula for calculating pilotage rates shall be:  
 $(\text{Length Rate} * \text{Length "LOA"}) + (\text{Beam Rate} * \text{Beam}) + (\text{Draft Rate} * \text{Draft}) + (\text{GT Rate} * \text{GT})$

2. The initial rates in dollars per foot shall be:

	<u>Vessels of less than 10,000 GT</u>	<u>Vessels of 10,000 GT or greater</u>
Length Rate (min 100 ft.):	0.75000	1.00000
Beam Rate (min 30 ft.):	3.75000	5.00000
Draft Rate (min 18 ft.):	22.50000	30.00000
GT Rate (min 5,000 GT)	0.01050	0.01400

3. Additional fees shall be:
  - a) Detention of Pilot: 25% of pilotage fee per hour after the first one half hour. In no case may a delay in departure caused by a medical emergency or force majeure be considered a detention;
  - b) Cancellation of Pilot: 25% of pilotage fee;
  - c) Late Payment Charge: 1.5% per month after 30 days from date of invoice submission;
4. All other existing fees will remain unchanged.
5. The draft rate for vessels with a draft of 31 feet 0 inches or greater shall increase by 6.0% each year for 10 consecutive years starting on the anniversary date one year following the effective date of this rate.

6. All other rates shall increase by 2.5% for the first 5 years followed by 2.0% for the next 5 years starting on the anniversary date one year following the effective date of this rate.

**DONE and ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 2019.

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DAVID WILKINS, CHAIRMAN  
PILOTAGE RATE REVIEW COMMITTEE

### **NOTICE OF HEARING RIGHTS**

You may seek review of this Order, pursuant to Sections 120.569 and 120.57, Florida Statutes, by filing a petition with the Executive Director of the Committee at Department of Business and Professional Regulation, P.O. Box 5377, Tallahassee, Florida 32314-5377, within 21 days of receipt of this Order. If you dispute any material fact upon which the Committee's decision is based, you may request a hearing before an administrative law judge pursuant to Section 120.57(1), Florida Statutes; your petition must contain the information required by Rule 28-106.201, Florida Administrative Code, *including a statement of the material facts which are in dispute*. If you do not dispute any material fact, you may request a hearing before the Committee pursuant to Section 120.57(2), Florida Statutes; your petition must include the information required by Rule 28-106.301, Florida Administrative Code.

Pursuant to Section 120.573, Florida Statutes, you are hereby notified that mediation pursuant to that section is not available.

Unless a proper WRITTEN request for a hearing is received on or before the above-stated deadline or if a request for hearing is made, but the request is subsequently withdrawn, this Notice shall become a **FINAL ORDER**.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been provided by U.S. Mail to: Thomas F. Panza, Panza, Maurer & Maynard, P.A., Bank of America Building, Third Floor, 3600 North Federal Highway, Fort Lauderdale, FL 33308; and George N. Meros, Jr., Holland & Knight LLP, 315 South Calhoun Street, Suite 600, Tallahassee, Florida 32301; and inter-office mail to Clark R. Jennings, Assistant Attorney General, Administrative Law Section, PL-01 The Capitol, Tallahassee, Florida 32399-1050 this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

DRAFT