

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

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	5/2/2016
File #	

In re: Application for a Change in Rates
Of Pilotage, filed by the Florida
Caribbean-Cruise Association, and
Alternative Application for a Change in
Rates of Pilotage for PortMiami, filed by
Biscayne Bay Pilots, Inc.

**RESPONSE TO MOTION AND SUGGESTION TO COMMISSIONER SOLA THAT
HE DISQUALIFY HIMSELF FROM PILOTAGE RATE PROCEEDINGS
INVOLVING THE FLORIDA-CARIBBEAN CRUISE ASSOCIATION AND
BISCAYNE BAY PILOTS**

COMES NOW, the Florida-Caribbean Cruise Association ("FCCA") by and through its undersigned counsel and pursuant to Rule 28-106.204, Florida Administrative Code, hereby files this Response to the Biscayne Bay Pilot's Motion and Suggestion to Commissioner Sola That He Disqualify from Pilotage Rate Proceedings Involving the Florida-Caribbean Cruise Association and Biscayne Bay Pilots, and states as follows:

1. The Biscayne Bay Pilot's ("BBP") motion to disqualify Commissioner Sola is nothing more than an attempt to further delay rate change proceedings from taking place at PortMiami and erode the statutory requirement that the Pilotage Rate Review Committee be comprised of balanced representation to ensure fair and reasonable pilotage rates. BBP's motion is an improper misrepresentation and distortion of the facts in an attempt to justify disqualification of Commissioner Sola for the same reason that former commissioners were disqualified from participating on the Committee. For the reasons set forth below, BBP's motion should be denied.

I. Commissioner Sola Holds No Membership In The FCCA

2. Foremost, BBP's motion fails to point out that that Commissioner Sola's employer currently holds no membership with the FCCA, as it resigned membership as of December 3, 2015. See Exhibit A¹. Thus, BBP's claim that Commissioner Sola's employer is a "member" of the FCCA – and that this purported membership "means that BBP will not receive a fair hearing" from Commissioner Sola (BBP Motion and Suggestion to Disqualify, p. 6) – is simply incorrect.

3. Because the entire foundation of BBP's motion rests on the assertion that Commissioner Sola's employer is a member of the FCCA and thus a *de facto* party to the FCCA's rate decrease application (a woefully incorrect assertion albeit, as addressed below), BBP's motion to disqualify must be dismissed in light of the fact that Commissioner Sola's employer does not hold any membership with the FCCA. Because it holds no membership, it cannot be considered a *de facto* party to the FCCA's rate decrease application, as alleged by BBP, and the bias or prejudice BBP fears from such *de facto* participation ceases to exist. Accordingly, BBP's motion must be dismissed as a result.

II. Disqualification Is Not Warranted Under Legal Precedent Set In Prior Rate Review Committee Cases.

4. Regardless of the membership status in the FCCA, the fundamental foundation of BBP's motion to disqualify Commissioner Sola is based on an intentional distortion of the facts and misapplication of the previous disqualification cases heard by the First District Court of Appeal. Applied correctly, those cases make clear that disqualification of Commissioner Sola is not warranted here, and that no foundation for a reasonable fear of bias

¹ The letter states December 3, 2014, which is a typographical error. The correct date is December 3, 2015.

or prejudice exists on behalf of BBP.

5. The First District Court of Appeal clearly outlined why Commissioner Burke and Miguez were disqualified from participating in the previous Pilotage Rate Review Proceedings pertaining to the FCCA's application at PortMiami, stating in two opinions:

While FCCA is the named party in the rate-reduction application, its member cruise lines, including Burke's and Miguez's employers, are the de facto parties. Biscayne Bay Pilots I, 160 So. 3d at 560 n2. (explaining that "section 310.151(2), Florida Statutes, only allows groups whose 'substantial interests are directly affected by the rates set by the committee' to apply for a rate change").

Biscayne Bay Pilots, Inc. v. Florida Caribbean-Cruise Ass'n, 177 So. 3d 1043, 1044-45 (Fla. 1st DCA 2015) (emphasis added).

Although the Cruise Association is the named party in the underlying proceeding, the cruise lines that are members of the association (including Royal Caribbean and Carnival) are the de facto parties because section 310.151(2), Florida Statutes, only allows groups whose "substantial interests are directly affected by the rates set by the committee" to apply for a rate change and Florida Home Builders Association v. Department of Labor and Employment Security, 412 So.2d 351 (Fla. 1982), and its progeny make clear that a trade association's standing to participate in an administrative proceeding is based on the fact that its members' substantial interests are being affected by the agency action at issue.

Biscayne Bay Pilots, Inc. v. Florida Caribbean-Cruise Ass'n, 160 So. 3d 559, 560 (Fla. 1st DCA 2015) (emphasis added). In finding that Commissioners Burke and Miguez should have been disqualified, the Court ultimately stated that "BBP's motion for disqualification should have been granted because 'a reasonably prudent person would fear that he or she would not obtain a fair and impartial proceeding before Committee members who are senior executives of the de facto parties that initiated the proceeding and whose rate change application is awaiting the Commissioners' decision.'" Biscayne Bay Pilots, Inc. v. Florida Caribbean-Cruise Ass'n, 177 So. 3d 1043, 1045 (Fla. 1st DCA 2015) (emphasis added).

6. BBP intentionally disregards multiple substantial and glaring differences between the factual circumstances in the Biscayne Bay Pilots cases and those presented here. In the Biscayne Bay Pilots cases, the First DCA found it critical that the cruise lines were the *de facto* applicants in the rate change proceedings because only their “substantial interests are directly affected by the rates set by the committee.” Thus, because the cruise lines were the *de facto* applicants, and because two senior executives of the *de facto* applicant cruise lines sat on the Rate Review Committee, and because the Committee was considering the *de facto* applicant cruise lines’ rate change application, the Court found that a reasonably prudent person could fear that the senior executives would not render an impartial judgment.

7. The circumstances here differ in *every single respect*. Commissioner Sola is not an employee of any of the *de facto* applicant cruise lines here. As BBP’s own motion to disqualify states:

Evermarine was founded in 2005 by Commissioner Sola and is one of the largest yacht dealers in Florida, California, the Republic of Panama, and South America.

BBP’s Motion and Suggestion to Disqualify Commissioner Sola, p. 2, n. 1. Thus, while Commissioners Burke and Miguez were employees of *de facto* applicants, Commissioner Sola is not. While Commissioners Burke and Miguez’s employers – Royal Caribbean and Carnival, respectively – have substantial interests directly affected by the pilotage rates set by the Committee, and therefore have standing to seek pilotage rate changes at PortMiami, Commissioner Sola’s employer has no substantial interest in pilotage rates, nor would it have standing to pursue a pilotage rate change. While Royal Caribbean and Carnival had an application for a rate decrease pending before their own high ranking employees on the Committee, Evermarine does not. Thus, despite BBP’s attempt to claim that the

circumstances here mirror those with Commissioners Burke and Miguez, there is *literally* not a single fact between the two cases that is the same.

8. BBP's attempt to equate Commissioner Sola to former Commissioners Burke and Miguez is further misguided based on BBP's claim that Commissioner Sola's "*membership in FCCA* means that he, like Commissioners Burke and Miguez, is the applicant itself..." BBP's Motion and Suggestion to Disqualify Commissioner Sola, p. 6 (emphasis added). BBP's statement is misleading and, in essence, rests on a game of semantics. BBP attempts to equate the cruise line "members" of the FCCA that are the *de facto* applicants in the PortMiami proceedings, with the different level memberships that individuals or businesses interested in the cruise line can hold with the FCCA. Many individuals or entities can hold associate or platinum memberships with the FCCA, but that membership does not turn those individuals into parties with substantial interests in pilotage rates set under section 310.151, so as to make them *de facto* applicants to the present rate change proceedings.²

9. For BBP's motion to hold any water, it would have to be determined that Evermarine is a *de facto* applicant to the FCCA's rate change application, no different than Royal Caribbean or Carnival Cruise Lines. Despite making its motion to disqualify, this is a position that even BBP must know is frivolous. Whatever the outcome of the rate change proceedings at PortMiami, Evermarine's substantial interests are not directly affected by the pilotage rates

² The Associate membership level is only \$500. If an individual from Oklahoma who is a cruising enthusiast pays \$500 to be an associate member of the FCCA, does the Oklahoman automatically become a *de facto* member of any rate change proceedings sought by the FCCA in Florida? The answer to that question would, obviously, be no. The Oklahoman does not own any vessels that call on PortMiami, does not pay pilotage rates, and is not substantially affected by pilotage rate changes. Yet, according to BBP, the Oklahoman would be considered a *de facto* applicant of the FCCA, no different than Carnival, Norwegian, or Royal Caribbean Cruise lines. This is an absurd conclusion, yet it is exactly the conclusion reached by BBP in seeking to disqualify Commissioner Sola.

being set at PortMiami in any way, shape, or form, nor does BBP's motion contain any such allegation. In BBP's motions to disqualify in the Biscayne Bay Pilots cases, BBP constantly reiterated its purported fear that no Rate Review Committee member would ever vote for a rate change which would financially impact his or her employer. Here, as BBP is well aware, Commissioner Sola's employer – Evermarine – has zero financial interest in the rates being set at PortMiami, and the fear expressed by BBP previously is non-existent. BBP's strained attempt to draw a parallel between the previous disqualification cases and the current circumstances is not based on actual facts, but a misinterpretation and misapplication of the actual facts as they exist today. BBP's motion has no foundation in fact, and must be dismissed. D.H. ex rel. J.R. v. Dep't of Children & Families, 12 So. 3d 266, 270 (Fla. 1st DCA 2009) ("A verified motion for disqualification must contain an actual factual foundation for the alleged fear of prejudice.") (quoting Fischer v. Knuck, 497 So. 2d 240, 242 (Fla. 1986)).

10. BBP's motion also states that Commissioner Sola's former Platinum Membership with the FCCA provided him the opportunity to have "direct access to the cruise industry" and to "cultivate close relationships with FCCA Member Line CEOs, presidents and executives..." which are listed as a benefit of being a platinum member of the FCCA. BBP Motion and Suggestion to Disqualify Commissioner Sola, p. 2. This statement is intended by BBP to insinuate and suggest that that Commissioner Sola's former membership in the FCCA has lead him to be biased or prejudiced towards the FCCA and against any pilot organization. The problem with BBP's statement is that it is nothing more than rank speculation. BBP has set forth no facts demonstrating that Commissioner Sola has ever had access to cruise executives, has ever met a cruise executive, has ever developed any type of relationship with a cruise

executive, has ever had a discussion with a cruise executive (let alone one about pilotage rates), or that any such meetings or discussions would lead BBP to fear that Commissioner Sola cannot adjudicate a rate change application in an unbiased manner. BBP's implication is nothing short of speculation piled on top of speculation, and is totally inadequate in showing a reasonable basis for fear of bias or prejudice. Moore v. State, 820 So. 2d 199, 206 (Fla. 2002) (“[A] movant's subjective fears or speculation are not reasonably sufficient to justify a well-founded fear of prejudice.” (citing Arbelaez v. State, 775 So. 2d 909 (Fla. 2000); 5-H Corp. v. Padovano, 708 So. 2d 244, 248 (Fla.1997); Fischer v. Knuck, 497 So.2d 240, 242 (Fla.1986)); Shuler v. Green Mountain Ventures, Inc., 791 So. 2d 1213, 1215 (Fla. 5th DCA 2001) (stating that the facts and reasons given for disqualification “must tend to show personal bias or prejudice.”) (citing State v. Shaw 643 So. 2d 1163, 1164 (Fla. 4th DCA 1994) (emphasis added).

11. Finally, BBP's motion is in direct disregard of the statutory requirements for the Pilotage Rate Review Committee set forth in section 310.151, Fla. Stat. According to BBP, no employee of any cruise, container, cargo, or other vessel calling on PortMiami can sit on the Rate Review Committee to adjudicate the FCCA's and BBP's applications. Because BBP's rate increase application applies to *all vessel types* (not only cruise lines), every employee of those lines would be biased or prejudiced under BBP's theory because their employers would stand to financially gain or detriment from any rate change.

12. Now that two business professionals have been appointed to the Committee – two professionals who have *no financial or vested interest* in the rates being set, and who are “actively involved...in the maritime industry, marine shipping industry, or commercial

passenger cruise industry” as is contemplated by section 310.151 – BBP claims they are biased *because of their very “active involvement” in the industry*. While BBP is beholden to no one given its statutory monopoly over piloting and the guaranteed income it provides, for the rest of the world that operates under normal capitalistic pressures, relationships are frequently the foundation of any good, lasting business relationship. For professionals in any area of business, active involvement in the profession is critical to lasting business success and commonly includes the development of business relationships and involvement in trade and other professional organizations.

13. Yet, BBP claims that this type of involvement forms the very foundation for disqualification of a Committee member, which leaves a gaping question as to who – according to BBP – could ever sit on the Committee from the maritime industry. According to BBP, no vessel line employee can sit on the Committee, nor can any business professional who has any type of a relationship with a vessel line impacted by a rate change can. It is becoming more and more clear that BBP would prefer for there to be no maritime representation on the Committee, despite the fact that the pilots have two individuals on the Committee who have far more interest in the rates being set than any maritime industry member, and who are clearly biased against any applicant seeking a rate decrease.

14. The pilots, who are all members of, and joined at the hip through, the Florida Harbor Pilot Association, and who all have a vested interest in keeping pilotage rates at sister ports as high as possible for comparison purposes, engage in a system of substituting pilots from the Board onto the Committee to purportedly remove any bias or prejudice that may exist. This charade does absolutely nothing to remove the bias or prejudice that exists in the minds of all

pilots sitting on the Board against any rate decrease application. The pilots sitting on the Committee have a vested and direct interest in the rates being set at the ports across the State of Florida, unlike Commissioner Sola, who is in no way impacted directly or indirectly by any rate change at PortMiami. In fact, at a Legislative Committee hearing of the Board on January 21, 2016, the FHPA proposed a legislative change to the piloting statutes to include annual, automatic increases to the pilotage rates across the state based on Consumer Price Index (“CPI”) adjustments. See Exhibit B, p. 48, ln. 5 – p. 50, ln. 14. This is the *same proposal* made by BBP in its rate increase application. Not surprisingly, Commissioner Jaccoma (a pilot in BBP’s organization), expressed support for the proposal, as did Commissioner Kurtz. Exhibit B, p. 53, lns. 8-15; p. 59, lns. 1-24. Commissioners Ulrich and Phipps, both from Port Everglades, also have a pending rate application before this Committee that seeks a pilotage rate increase based, at least in part, on annual CPI inflation adjustments. See Exhibit C. It is impossible for one to bury their head far enough into the sand to actually believe that these pilots are capable of objectively, fairly, and impartially rendering decisions on BBP’s and the FCCA’s rate change applications. Yet it is the pilots, with their overwhelming bias, who claim that Commissioner Sola – who has no financial interest, no vested interest, no participation – in piloting or pilotage rates, who is biased or prejudiced. If BBP believes Commissioner Sola to be biased or prejudiced, which clearly has not been demonstrated here, then BBP certainly must agree that each port pilot sitting on the Committee, and any pilot that can be substituted from the Board, is considerably more biased or prejudiced and must disqualify themselves from participation.

15. Section 310.151 clearly requires to “actively involved” professionals in the “maritime,

marine shipping industry, or commercial passenger cruise industry” to sit on the Committee. Commissioner Sola is exactly such a member. The statutory requirements must be given meaning, and BBP’s motion to disqualify should be denied.

WHEREFORE, the Florida-Caribbean Cruise Association respectfully requests that Commissioner Sola **DENY** the Biscayne Bay Pilots’ Motion and Suggestion To Disqualify Himself.

Respectfully Submitted,

PANZA, MAURER & MAYNARD, P.A.
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Fort Lauderdale, FL 33308
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Fax: (954) 390-7991

By: s/Thomas F. Panza
THOMAS F. PANZA
FL. BAR NO. 138551

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served by

e-mail on this 2nd day of May, 2016, upon the following:

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By: s/Thomas F. Panza

THOMAS F. PANZA
FLA. BAR NO. 138551



Florida-Caribbean Cruise Association
11200 Pines Blvd. Suite 201
Pembroke Pines, Florida 33026
Phone: (954) 441-8881

Cancellation of Platinum Member Status

Dear Ms Paige:

As of 3 Dec 2014, we would like to officially cancel our Platinum Member Status for our Company Evermarine, LLC (Port Amador).

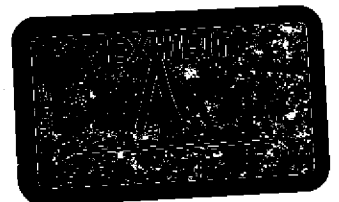
It has been a pleasure to work with the FCCA and meet so many new friends and visit so many new places over the past year.

I would appreciate you cancelling this membership effective immediately and removing our company from the website. If you have any questions, I can be reached at 305-900-5530.

kind regards,

A handwritten signature in black ink, appearing to read "L Sola".

Louis Sola
CEO
Evermarine, LLC
sola@evermarine.com
305-900-5530

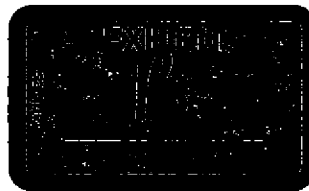


FLORIDA DEPARTMENT OF
BUSINESS AND PROFESSIONAL REGULATION

LEGISLATIVE COMMITTEE OF
THE BOARD OF PILOT COMMISSIONERS

JANUARY 21, 2016

CROWNE PLAZA
FORT LAUDERDALE AIRPORT/CRUISE PORT
455 SOUTHEAST 24 STREET
FORT LAUDERDALE, FLORIDA



DownTown Reporting

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ATTENDANCE :

BOARD MEMBERS :

- Sherif Assal
- Michael Jaccoma
- Carolyn Kurtz
- Cheryl Phipps, Chair
- Carlos Trueba
- David Ulrich
- Brian Ramos
- Louis Sola
- David Williams
- James Winegeart

ALSO PRESET :

- Anne Ahrendt, Government Analyst
- Thomas Campbell, Executive Director
- Galen Dunton, Consultant
- Mr. Husband
- Clark Jennings, Office of the Attorney General
- Marlene Stern, Board Counsel

1 as Exhibit 4 that was written on the 22nd of
2 May, 2015.

3 **THE CHAIR:** Okay, and, Mr. Husband, I
4 guess you drafted it.

5 **MR. HUSBAND:** Yes. And I was just asked
6 to -- and this is kind of a follow on from a
7 lot of discussions about cost recovery that
8 we've just been talking about. As you know,
9 the CPI is at least one of the factors that you
10 can consider in the context of, of a rate case,
11 when you look at how long it's been since,
12 since rates were established, and that they
13 were, you know, raised, or what have you.

14 So the suggestion was, or at least one way
15 to deal with that, and it's something that you
16 see in ports in other states, is that they
17 would have an automatic inflation adjustment to
18 the pilot rates in that particular port.

19 And so what I've kind of drafted for you
20 here, and there's variations on that theme, but
21 this is based on the consumer price index, and
22 it's a reasonably easy calculation. If I can
23 do it it's reasonably easy, to take the, you
24 know, the index, and measure that inflation
25 adjustment over time. And the way this is set

1 up, it would be essentially an automatic, more
2 or less an automatic thing, in that it would be
3 up to the pilots in a given port to, to make
4 that calculation, determine if they wish to
5 apply for the CPI adjustment or not, and they
6 could apply up to that, that level.

7 So if the CPI was, let's say inflation,
8 which it hasn't been that high of late, but
9 let's say it was 3 percent, the pilots in that
10 port could decide they would apply for 2
11 percent, maybe in, in consultation with their
12 port users that's a more acceptable number.

13 But it would be essentially kind of a flow
14 through mechanism without the, the contentious
15 process that, that we kind of have now. And
16 there is, and as I mentioned this is kind of a
17 mechanism you'll see in other ports that have,
18 you know, something like this, and there are
19 variations in that theme.

20 For example, rather than looking at a
21 one-year snapshot of inflation it could be a
22 five-year rolling average of inflation, that
23 way outlier years don't, you know, skew the,
24 the result, and it's measured over a lengthier
25 period of time. You can also look at other

1 indexes beyond the CPI. There's other indexes
2 that arguably, you know, could be applied. So
3 that's kind of the concept, and it was, you
4 know, my effort to kind of put that down into
5 something you could actually mull and talk
6 about.

7 **THE CHAIR:** And on 207, that's an example
8 of what you were --

9 **MR. HUSBAND:** Correct, and then those are
10 the calculations as you, you know, if you did
11 those calculations based on that language
12 that's, you know, how it would have run over
13 the, the period of the last five years
14 essentially.

15 **THE CHAIR:** Okay, thank you. Any comments
16 from anyone on this? Mr. Trueba?

17 **MR. TRUEBA:** I -- I mean I object to any,
18 to any indexing based on the current rate that
19 we have. I'm -- I'm --

20 **THE CHAIR:** Which -- who is we when you
21 say we have?

22 **MR. TRUEBA:** I'm -- I am trying to -- I
23 think the way in which revenue is charged to
24 the, to the ships, is haphazard. It's -- it's
25 -- and it might be the best way that we use,

1 in that rate itself. So if you index that,
2 that rate, because essentially that's what
3 you're doing, in what how you're charging these
4 different ships, then I cannot support that.
5 That's in Miami. I don't know about the rest
6 of the ports, I mean, but, but until that is
7 resolved, I cannot support an inflation.

8 **THE CHAIR:** Go ahead Mr. Jennings.

9 **MR. JENNINGS:** Thank you. Just if we may,
10 Commissioners, I know that Commissioner Trueba
11 just used an example of a hearing that has been
12 held which is now, we're in process, so I
13 simply caution you, let's, let's avoid trying
14 to discuss a particular case.

15 And I appreciate you wanting to set an
16 example, and that was the most available to
17 you, but from this point forward let's refrain
18 from discussing cases that may be currently
19 pending or about to appear before in the near
20 future the rate review committee please. Thank
21 you.

22 **THE CHAIR:** Thank you. Commissioner
23 Jaccoma, did you want to respond?

24 **MR. JACCOMA:** I'm trying to think about
25 all this. I just think that the -- just

1 looking at this on itself without any port
2 particularly in mind, there are some economists
3 today that are predicting, you know, runaway
4 inflation, double-digit inflation. We just
5 looked at the period of time that it takes to
6 get somebody to review and change the rate in a
7 port; it can take quite a period of time.

8 Once a rate is changed, it takes 18 months
9 before somebody can come back from that port
10 and ask for a change. So the potential exists
11 today that you could have a port where the
12 pilots are seeing double-digit inflation who
13 can't have their rate adjusted for quite a
14 period of time, and that would be quite unfair
15 to that particular port.

16 So this is a mechanism that would, in
17 fact, you know, shield the individual ports
18 from a situation like that that could exist. I
19 mean that's just one way to look at it.

20 **THE CHAIR:** Commission Sola.

21 **MR. SOLA:** As I read this, it's an
22 automatic increase after they do the
23 application, correct?

24 **THE CHAIR:** This wouldn't follow an
25 application, no.

1 **MS. KURTZ:** I just want to address what
2 Commission Assal just said, is, yes, it would
3 be automatic 1 or 2 or 3 percent, but what
4 happens is pilot groups don't go for increases
5 often, it's 10 years, 15 years, because it's
6 such a cumbersome and expensive process to go
7 through. So really to save everybody time and
8 money I think the effort was just to make it
9 smaller and more frequent to avoid the kind of,
10 you know, procedure we went through at the last
11 one, that it's almost, it's a year and a half
12 and it's still not resolved.

13 So, you know, again, I, you know, I agree
14 with Commissioner Trueba that the process is
15 flawed, and, and we, you know, we do need to do
16 something. I think this is a real effort to
17 minimize the impact. Actually, well, like I
18 can't, because it's a specific thing, but, you
19 know, pilot rates are flat basically, because
20 we don't get increases, and there's just no
21 other way to recover money that we're putting
22 out. So that, that's what is behind it. You
23 know, it's not that we just want this automatic
24 raise every year. That's not really the case.

25 **MR. ASSAL:** I understand.

FLORIDA
 DEPARTMENT OF BUSINESS
 AND PROFESSIONAL
 REGULATION
 P O Box 5377
 TALLAHASSEE, FLORIDA
 32314-5377
 850-717.1980

STATE OF FLORIDA
 APPLICATION FOR A
 CHANGE IN RATES OF
 PILOTAGE

DO NOT WRITE IN THIS SPACE
 FOR OFFICE USE ONLY

APPLICATION SHOULD BE TYPED

PLEASE CHECK THE APPROPRIATE BOX TO IDENTIFY THE APPLICANT:

Individual Person
 Single Licensed State Pilot

Other Entity
 Group of Licensed State Pilots

PART A APPLICANT PROFILE DATA

Name of Individual/Association/Group
 Port Everglades Pilots Association

Name of Authorized Representative & Title
 George N. Meros, Jr.
 GrayRobinson, P.A.
 301 South Bronough Street, Suite 600
 Tallahassee, Florida 32301
 Telephone: 850-577-9090
 Email: george.meros@gray-robinson.com

Home Telephone:
 (Include area
 code)
 (954) 522-4437

Business
 Telephone:
 (Include area
 code)
 (954) 522-4491

Mailing
 Address:

Street and No.

Apartment No.

Social Security Number or Federal Employer
 ID Number (Optional):

P.O. Box 13017

59-0578021

City

State

Zip Code

Port Everglades, FL 33316

Permanent
 Address:

C/O

Street and No.

Apartment No.

1833 SE 17th Street

City

State

Zip Code

Fort Lauderdale, FL 33316

IF PERSONS OTHER THAN A PILOT:

Detailed statement setting forth the substantial interest of the applicant and how the applicant is directly affected by the established rates:

N/A



PART B

1. Name of Port for which rate change is being requested:

Port Everglades

2. Detailed explanation of rate change being requested:

Effective on Final Order

An adjustment in rates providing a tonnage discount of between -25% and -50% to the largest vessels calling at Port Everglades, but resulting in a net adjustment of +11% in rates overall:

a) A draft charge increase as follows:

The current charge of \$13.30 per draft foot with a 14-foot minimum increased to:

For vessels with draft of	0 to 20 feet:	\$18.00 per draft foot (14-foot minimum)
	21 to 30 feet:	\$22.00 per draft foot
	31 to 40 feet:	\$29.00 per draft foot
	Over 40 feet:	\$45.00 per draft foot

b) To promote business at the Port, encourage vessel calls during periods of off-peak berth and pilot utilization, and encourage calls by larger vessels, the following discounted niche categories are requested. After a vessel's second call, the vessel may apply for and receive special tonnage rates as follows:

First 80,000 GT	\$0.0356 per GT and
On tonnage from 80,001-130,000 GT	\$0.0267 per GT and
On tonnage over 130,000 GT	\$0.0178 per GT
Weekly "feeder-size" vessel (less than 18,000 GT)	\$0.0320 per GT
Frequent caller (2,500-80,000 GT)	\$0.0320 per GT

- c) No change to the base tonnage rate of \$0.0356 per GT with a 2,500 GT minimum. This charge applies to every movement of a vessel and is based on the highest published tonnage.
- d) For weekly scheduled "feeder-size" vessels of less than 18,000 GT, a tonnage charge decrease to \$0.0320 per GT.
- e) For frequent calling vessels, calling on a regular service with at least 3 arrivals per week, a tonnage charge decrease to \$0.0320 per GT for the first 80,000 tons.
- f) Detention – \$150 per hour after the first 0.5 hours.
- g) Canceled or delayed sailing – \$150 after pilot is dispatched to vessel.

- h) Running lines by pilot boat – \$300.
- i) Shifting – \$330 plus draft and tonnage charge.
- j) Placing personnel on or off vessel by pilot boat – \$200.
- k) Piloting or shifting ship or barge without motive power and/or steering – 2.0 x draft and tonnage charge.
- l) Any movement of a vessel operating under a USCG letter of deviation or any vessel with a deficiency that affects maneuverability – 2.0 x draft and tonnage charge.
- m) Anchor – \$400 plus draft and tonnage charge. This charge shall also apply to taking a vessel from anchor, if requested.
- n) Second pilot – When a second pilot is need for safety or at the request of the master, owners, agents, charters, operators, port, or under consultation with the pilot, each pilot will receive full tariff charge.
- o) Deputy training charge – \$20 per certificated deputy pilot per movement on all vessel movements.
- p) Pension charge – \$200 per vessel movement. (Note: This charge is not included in the calculation of the net adjustment of +11% requested above.)

Effective January 1, 2016

Capital investment, maintenance, and pilot-training and education charge – A charge of \$70 per vessel will be assessed per vessel movement.

Effective January 1, 2017

As recommended by the Rate Committee Chairman, a CPI adjustment to the rates will be made based on the change in the CPI (up or down). CPI will be calculated on a rolling 3-year average of the annual CPI, All Urban Consumers published by the United States Bureau of Labor Statistics. The CPI adjustment shall apply to all charges and rates with the exception of special tonnage rates in excess of 80,000 GRT, which shall remain unchanged.

Effective January 1, 2018

A CPI adjustment to the rates will be made based on the change in the CPI (up or down). CPI will be calculated on a rolling 3-year average of the annual CPI, All Urban Consumers published by the United States Bureau of Labor Statistics. The CPI adjustment shall apply to all charges and rates with the exception of special tonnage rates in excess of 80,000 GRT, which shall remain unchanged.

Effective January 1, 2019

A CPI adjustment to the rates will be made based on the change in the CPI (up or down). CPI will be calculated on a rolling 3 year average of the annual CPI, All Urban Consumers published by the United States Bureau of Labor Statistics. The CPI adjustment shall apply to all charges and rates with the exception of special tonnage rates in excess of 80,000 GRT, which shall remain unchanged.

This rate adjustment deals directly with issues raised at the Miami rate-reduction hearing in July 2014. Tonnage charges are reduced on the largest vessels and frequent callers. Draft charges are increased to allocate the revenue more evenly over the entire spectrum of port traffic, and consideration is given to small vessels.

Surcharges, common in most U.S. ports, are introduced to offset some of the more variable expenses and are treated in a way that spreads them evenly across port traffic. Overall revenue is increased to promote a safe, efficient, and reliable piloting service, and the resulting rate is fair, just, and reasonable, as defined by Chapter 310, Florida Statutes. The resulting rate is among the lowest of any of the major ports in the United States.

3. Basis for requested rate change:

Introduction

It is the public policy of the State of Florida—and a policy of the highest order—to secure not minimally qualified pilots, but world-class pilots of the highest skill and expertise. *See* § 310.151(5)(b)6., Fla. Stat. (2014) (providing 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 that available to such individuals in comparable maritime employment”); *id.* § 310.0015(3) (noting that Florida’s regulation of port pilots “benefits and protects the public interest by maximizing safety . . . and enhancing state regulatory oversight”).

Moreover, it is the public policy of the State to out-compete other maritime professions for the best and most capable mariners—and then to hold them accountable to the public, rather than to ship owners and operators, through strict state licensure and regulation. *See ACL Bahamas Ltd. v. Dep’t of Bus. & Prof’l Regulation, Pilotage Rate Review Comm.*, Case No. 10-2335 ¶ 56 (Fla. DOAH Jan. 31, 2012), *approved and adopted*, (Fla. PRRC Apr. 18, 2012) (explaining that wage rate of comparable professions is a “floor” for pilot compensation); *In Re: Application of Port Everglades Pilots Ass’n for Rate Increase in Port Everglades*, Case No. 97-3656, 1998 WL 866445, at *12 (Fla. DOAH Feb. 24, 1998; Fla. PRRB June 10, 1998) (explaining that the “law does not tie pilot compensation to other maritime professions other than to set a ‘floor’ for pilot compensation”).

The legislative mandate to the Pilotage Rate Review Committee is crystal clear. In deciding rate applications, the Committee must “give primary consideration to the public interest in promoting and maintaining efficient, reliable, and safe piloting services.” § 310.151(5)(a), Fla. Stat. (2014) (emphasis added).

To “promote” piloting services means “to contribute to the growth or prosperity of” piloting services. *See* <http://www.m-w.com>. To promote “efficient” piloting services means to make those services “capable of producing desired results without wasting materials, time, or energy.” *Id.* To promote “reliable” piloting services means to ensure piloting services that are “able to be trusted to do or provide what is needed.” *Id.*

The overarching policy of the State of Florida is “to attract to the profession of piloting, and to hold the best and most qualified individuals as pilots.” § 310.151(5)(b)6., Fla. Stat. (2014).

The PEP alternative application, based on real facts and common sense, proves that a moderate, equitable adjustment of the current rate structure will serve the public interest in promoting and motivating efficient, reliable, and safe piloting services in Port Everglades. It has been eleven long years and over 120,000 handles since the PEP has had a rate increase. During that time, the cost of living has increased by 29.6%, and real CPI-adjusted pilot net income has decreased by approximately 14%. The facts will show that despite having the highest number of jobs per day in the country, and despite having to navigate one of the riskiest ports in the nation, the PEP net income is well below the average pilot compensation of 23 organizations consisting of 760 pilots.

**APPLICATION FOR CHANGE OF RATES OF PILOTAGE
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PART C AFFIDAVIT OF APPLICANT (This section must be sworn to in the presence of a Notary Public or an officer authorized to administer oaths)

I hereby certify that I have read the foregoing statements including all attachments and exhibits, and that they are true and correct to the best of my knowledge and belief.

Signature of Applicant

Michele J. Cunningham

COUNTY OF: *Broward*
STATE OF: *Florida*

SUBSCRIBED AND SWORN TO BEFORE ME THIS *21* DAY OF *November* 20*14*



Laurie J. Bodine
SIGNATURE OF PERSON ADMINISTERING OATH

MY COMMISSION EXPIRES