

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

<b>FILED</b>	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	<b>4/13/2017</b>
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 BISCAYNE BAY PILOTS' AMENDED  
MOTION TO DISMISS FCCA PETITION**

COMES NOW, the Florida-Caribbean Cruise Association (“FCCA”) files this response to the Biscayne Bay Pilots’ (“BBP”) amended motion to dismiss the FCCA’s application for a change in the rates of pilotage at PortMiami, and in support thereof states as follows:

**1. The Factual Basis for BBP’s Motion to Dismiss.**

BBP alleges that the FCCA lacks standing to pursue its rate change application because its “substantial interests” are not directly affected by the pilotage rates at PortMiami. BBP argues that FCCA member lines allegedly pass on pilotage fees to cruise customers, and that member lines do not pay pilotage and cannot be affected by the rates established as a result. Amended Motion to Dismiss, pp. 1-6. This argument is not grounded in law or fact, and must be denied.

There is significant irony in BBP’s argument regarding cost bearing. BBP’s rate *increase* application is replete with arguments that BBP needs an increase because BBP’s “costs” of doing business – from healthcare to fuel to inflation – are growing. See Exhibit A. Yet, all of BBP’s costs are paid with money from the pilotage fees BBP charges its customers, the cruise and cargo lines. Thus, on one hand, BBP argues that the FCCA does not have standing to participate in rate change proceedings because it allegedly passes on pilotage costs to cruise customers, and on the other hand BBP is seeking a rate change proceeding because of its allegedly increasing piloting

costs, the very costs it passes on to its cruise line customers. If BBP's theory holds true – which it does not – because BBP passes on its costs to pilotage paying vessels, these vessel lines are best suited to determine whether BBP's operating expenses are reasonable, not BBP.

In reality, the fact that cruise lines may recoup the cost of pilotage fees from customers is not a revelation. Because BBP operates under the protection and benefit of a state sanctioned monopoly, it is frequently shortsighted about how businesses operate in reality. At the end of the day, like any functional business, a cruise line will – at a bare minimum – recoup its entire costs associated with any particular customer, whether that cost is related to food, lodging, entertainment, or operational and administrative expenses. If cruise lines sell a cruise to a customer for less money than it costs to operate a cruise for that customer, the cruise lines go out of business. Cruise lines are not in the business of going out of business.<sup>1</sup>

It is concerning that BBP is seeking to prevent the cruise lines, their primary customer and source of revenue, from holding BBP accountable for the pilotage fees BBP charges. A lack of transparency and accountability, and a desired lack of oversight, continue to be hallmarks of the BBP organization. That is not what the Florida Legislature contemplated when it developed the state mandated piloting monopoly. BBP's motion to dismiss continues BBP's battle to avoid a final rate hearing in this matter. This may be due to BBP's potential concern that most reasonably-minded, common-sense individuals would conclude that the cruise lines' payment of around \$7.3 million of BBP's \$11.3 million in revenues (or 65% of all revenue) in 2016 is not fair, just, and reasonable, as section 310.151(3), Florida Statutes, requires (that section states, in

---

<sup>1</sup> The absurdity of BBP's position is further underscored in the context of cargo or container ships. Take a situation where a wholesaler purchases, for example, sweatshirts from China, shipped to PortMiami. The wholesaler will pay for the cost of the sweatshirt and shipping costs which, presumably, take into account the shippers' cost of pilotage at PortMiami. The wholesaler then sells the sweatshirts to different retail outlets, recouping the cost it paid to secure the sweatshirts – including pilotage – from the retailer, plus a profit. The retailer then sells the sweatshirts to a customer, recouping the costs paid to the wholesaler, plus a profit. Would BBP contend that in this case the shipping entity that is legally required to pay pilotage is not allowed to challenge the pilotage rates, but instead it would have to be the retail customer?

part, “[t]he committee shall investigate and determine whether the requested rate change will result in fair, just, and reasonable rates of pilotage.”). It may also be due to the fact that many cruise lines are paying ten, eleven, twelve or thirteen thousand dollars in pilotage fees for a single call on port, or around four hours of piloting services. Or it may be due to the fact that BBP pilots are making *more* money for doing *less* work, due to the inflated pilotage charges paid by cruise lines.

Whatever the case, BBP’s motion is legally insufficient, and the issue of whether cruise lines recoup pilotage costs from their customers (if it occurs) is irrelevant to whether the FCCA has standing to pursue its rate change application, or to defend against BBP’s rate increase application. BBP’s amended motion to dismiss must be denied for the following reasons.<sup>2</sup>

**2. BBP Has Relied Upon The Financial Impact Of Pilotage Fees On Cruise Lines In Past Filings And Appeals In This Matter.**

BBP’s argument that FCCA member lines are not impacted by pilotage fees because they are allegedly passed on to customers directly conflicts with previous arguments BBP has made regarding the financial impact of pilotage fees on cruise lines.

When BBP sought to disqualify former Board of Pilot Commissioners and Pilotage Rate Review Committee members Burke and Miguez, BBP’s central argument was that because these individuals were employed by two FCCA member lines, and because the member lines stood to be financially impacted by a rate decrease, they could not be impartial. BBP’s motion to disqualify former Commissioners Burke and Miguez (and its appellate documents) stated:

No reasonable person would expect Commissioners Burke and Miguez to vote against the interests of their employers – Royal Caribbean and Carnival – **in a**

---

<sup>2</sup> In addition to the issues outlined below, counsel for the Board of Pilot Commissioners and Pilotage Rate Review Committee has indicated that these proceedings are quasi-legislative, and it is questionable whether BBP can even raise the issue of standing as it has at this point in the proceeding.

**proceeding that has the potential of *saving their employers substantial amounts of money.***

See Exhibit B, p. 6. (emphasis added). The position BBP took in its motion to disqualify is the direct opposite of the position BBP now takes in its motion to dismiss. Unless BBP made a material misrepresentation to the First District Court of Appeal regarding the impact of pilotage fees on cruise lines, which the FCCA does not believe would be the case coming from the caliber of counsel BBP utilizes, then BBP's arguments in its previous motions and appeals is alone sufficient to demonstrate that the FCCA has standing in these proceedings.

If cruise lines pass along pilotage fees and are not financially impacted – as BBP now alleges – then there would have been no basis for BBP's motion to disqualify or its statement that the former Commissioners would vote to protect the financial interests of their employers and save them “substantial amounts of money.” BBP took this position in its previous pleadings and appeals because it believed FCCA member lines would be directly affected by a decrease in the pilotage rates. BBP now attempts to take the directly opposite position in alleging that the cruise lines are not directly affected by the pilotage rates because they are allegedly passed on. BBP cannot have it both ways, and BBP's prior pleadings and appeals in these proceedings are alone sufficient – on their face – to demonstrate that the FCCA has standing in this matter, and that BBP acknowledges the facts giving rise to standing.

**3. BBP's Motion Relies On Facts Extraneous To The FCCA's Petition And Must Be Denied.**

Setting aside – briefly – the fact that BBP's motion is legally insufficient even if BBP can prove that cruise lines pass on pilotage fees to customers, BBP's motion fails to allege sufficient facts to prove this point. BBP's motion relies on the testimony of Terry Thornton, a senior vice president at Carnival Corporation, where Mr. Thornton stated that Carnival passes on the

pilotage fee cost to its cruise customers. Amended Motion, p. 3, ¶3. Mr. Thornton’s testimony was taken from a rate change proceeding in Galveston, Texas. BBP also relies on ticket contract and legal notice language that BBP found on the internet for various FCCA member lines. None of the facts that BBP relies upon in its motion to dismiss comes from the FCCA’s rate decrease application, which is the foundational document that triggered these rate change proceedings, or from any of the other documents of filings in this case to date, and BBP’s motion must be denied as a result. See Wildflower, LLC v. St. Johns River Water Mgmt. Dist., 179 So. 3d 369, 374 (Fla. 5th DCA 2015) (holding that where nothing on the face of a complaint indicated a lack of standing, it was improper to dismiss the complaint for lack of standing); First Nat. Life Ins. Co. v. Baccadutre, 650 So. 2d 1118, 1119 (Fla. 1st DCA 1995) (“Because it is apparent from the record that, in granting the third-party defendant’s motion to dismiss, the trial court relied upon matters not contained within the four corners of the complaint, we reverse.”).

Similarly, Florida law is clear that lack of standing is an affirmative defense and “require[s] some factual proof in order to be sustained,” and that standing therefore “ordinarily cannot be raised in a motion to dismiss.” Wildflower, LLC, 179 So. 3d at 374. The facts alleged in BBP’s motion demonstrate exactly why BBP’s motion is factually and legally insufficient. For example, BBP cites excerpts of various cruise lines’ legal notices or ticket contracts, which include statements regarding customer payment of port taxes, fees, and expenses. Amended Motion, pp. 4-6.<sup>3</sup> As BBP is aware – but fails to point out in its motion – the FCCA is made up of 19 member lines. Yet, BBP only includes ticket language or legal notice excerpts for 5 cruise lines (Carnival, Royal Caribbean, Norwegian, Princess, and Celebrity Cruise Lines). BBP’s

---

<sup>3</sup> BBP cites the cases of Latman v. Costa Cruise Lines, N.V., 758 So. 2d 699, 701 (Fla. 3d DCA 2000) for the proposition that “cruise lines for years have been passing on ‘port charges,’ which include pilotage, to their passengers.” Amended Motion, p. 6, ¶6. Whatever findings were made in the *Latman* cases *seventeen years ago* are irrelevant to the specific facts of this case or how pilotage fees are accounted for, or whether they are relevant to the legal issue of standing.

motion is devoid of *any* factual allegations regarding how other FCCA member lines which call on PortMiami – such as AIDA, Azamara, Disney, MSC, Oceania, or Regent Seven Seas – account for pilotage fees. Thus, even if BBP could establish from a legal standpoint that the FCCA would not have standing if cruise lines pass on pilotage fees to customers (which it cannot), BBP has not alleged sufficient facts to demonstrate that all FCCA member lines engage in that practice.

Moreover, much of the language BBP cites does not support its argument that all pilotage fees are passed through to customers. For example, the language for Royal Caribbean and Celebrity Cruise Lines does not state that pilotage fees are passed on to customers. The language BBP cites states that the “Cruise Fare” or “Cruise Tour Fare” does not include “government or quasi-government taxes and fees, whether assessed on a per passenger, per vessel, per berth or per ton basis...” Amended Motion, pp. 4-6, ¶5. Nothing in the language states whether, how, or to what extent pilotage fees paid by the cruise line are attributed in charges to the customer.

It would be a gross error for this Committee to grant a motion to dismiss that is not only woefully lacking in facts, but is based solely on matters not contained within the four corners of the FCCA’s rate decrease application. Dismissal for lack of standing requires “factual proof” to be sustained, and BBP has failed to set forth such required factual proof.

**4. This Committee Has Recognized the FCCA’s Standing and BBP Has Waived The Right To Argue Standing At This Juncture.**

Even if BBP has not waived the standing issue (which it has) and is allowed to rely on facts extraneous to the FCCA’s petition (which it should not be), BBP’s motion to dismiss must also be denied because this Committee recognized the FCCA’s standing to pursue a rate change application, and BBP waived the right to raise standing at this juncture in the proceedings, which have been ongoing for over three years.

At the previous rate change hearing on the FCCA's application in 2014, this Committee explicitly recognized that the FCCA has standing to pursue a rate change application. See Exhibit C. Notably, BBP *never objected* to the FCCA's standing, or argued that the FCCA lacks standing, despite the fact that BBP argued the issue of passing through pilotage rates later in that hearing, and even cited to the ticket contracts utilized in BBP's current motion to dismiss. Id. At the previous hearing, a PortMiami pilot gave the following testimony on behalf of BBP:

So, the big ships are already getting a discount. **And, when one considers that pilot fees are passed directly onto the customer, which in this case is the passenger, I'd like to show you the ticket contract for the Carnival Cruise Lines.**

This comes right off their website and it says cruise fair does not include cruise, taxes, fees and port expenses. Pilotage is included, right there...**According to this, the passenger is paying. It says it right there.**

Id. Thus, BBP had the information which forms the basis of its motion to dismiss in its possession at the previous rate hearing in 2014. BBP never raised the issue of standing then, and has not raised it since that time. The FCCA did not file a new rate change application since that hearing alleging any different facts as it would relate to the issue of standing. BBP's failure to raise standing previously results in a waiver. Glynn v. First Union Nat. Bank, 912 So. 2d 357, 358 (Fla. 4th DCA 2005) ("There is no question that lack of standing is an affirmative defense that must be raised by the defendant and that the failure to raise it generally results in waiver.").

BBP may attempt to argue that it recently obtained information or facts that only now gave rise to its motion to dismiss for lack of standing, in the form Mr. Thornton's testimony from the hearing at the Port of Galveston. Such an argument fails to demonstrate a waiver has not occurred. First, BBP has set forth no facts demonstrating that the "ticket contract" and "legal notice" language was not available online during the past three years, sufficient to warrant such an extensive delay in raising the issue of standing. This is particularly true in light of BBP's

reliance in Carnival’s ticket contract language at the 2014 hearing. Furthermore, Mr. Thornton’s testimony adds nothing factually that indicates why BBP could not have raised the standing argument three years ago. This is another effort by BBP to either further avoid a final hearing in this matter or to try to raise potential issues to appeal should BBP be unhappy with the final hearing outcome. BBP waived any right to raise standing, and its motion should be denied.

**5. The FCCA Is A Named “Party” To These Proceedings Under Section 120.52, F.S.**

Despite the fact that BBP’s motion to dismiss must be denied because BBP has made past allegations against the FCCA demonstrating its standing, because it is based on arguments BBP has waived, and because it is based on facts not contained in the record of these proceedings, the FCCA clearly has standing regardless of any facts alleged by BBP.

As BBP correctly points out in its motion, the term “party” is defined in section 120.52(13), Florida Statutes, and the definition states, in relevant part, that a party includes:

- (a) Specifically named persons whose substantial interests are being determined in the proceeding.
- (b) Any other person who, as a matter of constitutional right, provision of statute, or provision of agency regulation, is entitled to participate in whole or in part in the proceeding, or whose substantial interests will be affected by proposed agency action, and who makes an appearance as a party.

(emphasis added). BBP attempts to argue that the FCCA does not meet the definition of a “party” set forth in section 120.52(13)(b), because the FCCA cannot satisfy the two prong standing test set forth in Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981). Not only is this legally and factually incorrect, but before even getting to the definition of a party in section 120.52(13)(b), BBP fails to address in its motion the fact that the FCCA constitutes a “party” under the first definition, as a “specifically named person” whose substantial interests are being determined.



Here, the FCCA is *the applicant* in this proceeding, it is *the entity* that filed the application which has led to these proceedings, it is *the specifically named party* whose interests are being determined. If the FCCA's rate decrease request is granted, the FCCA member lines stand to pay substantially lower pilots rates, likely in the amount of millions of dollars over the course of the upcoming years. BBP's motion fails to address the fact that the FCCA is a specifically named party under section 120.52(13)(a), which is further supported by the statutory language in Chapter 310, and its motion must again be denied as a result.

**a. Chapter 310 Requires Vessels To Pay Pilotage and Gives Entities Impacted By Pilotage Rates Standing To Pursue Pilotage Rate Changes.**

BBP's motion to dismiss ignores the plain fact that cruise line vessels, along with other vessel types, are the entities *legally required* to pay pilotage, and that these entities are statutorily granted the right to seek pilotage rate changes. The fact that some cruise lines may recoup part or all of this expense from a customer, no different than how most businesses recoup expenses from customers through charges for a service or fees (including BBP), does not change the legal obligation of the cruise lines or mean the cruise lines are not the rate payers.

Foremost, the express language section 310.002(7) defines the term "pilotage" as the following:

(7) "Pilotage" means the compensation fixed by the Pilotage Rate Review Committee **which is payable by a vessel, its owners, agents, charterers, or consignees to one or more pilots in the port where piloting is performed.** The word "pilotage" also means the compensation of all types and sources derived by one or more pilots or deputy pilots for the performance of piloting at that port by licensed pilots or by certificated deputy pilots, whether such piloting is performed pursuant to this chapter or is performed by state-licensed pilots or state-certificated deputy pilots when acting as a federal pilot for vessels not required by this chapter to use a state-licensed pilot or state-certificated deputy pilot.

(emphasis added). *Payable by a vessel, its owners, agent, charterers, or consignees.* Not payable by a customer, not payable by anyone else. If a cruise vessel – or any other vessel subject to

pilotage under section 310.141 – calls on PortMiami, it is the vessel or vessel owner that is legally responsible to pay the pilotage fee. A cruise line customer has no responsibility or legal liability to pay pilotage fees under Chapter 310, and it may behoove this Committee to inquire with BBP as to who BBP invoices and seeks payment from when a cruise line calls on PortMiami. If BBP answers this question honestly, which the FCCA expects it would, the answer would not be the cruise line customer, but the cruise line. If a customer does not pay the cruise line, or elects not to take the cruise, the FCCA member lines are not absolved from the responsibility to pay the pilotage fee. Thus, BBP’s claim that cruise lines responsible for paying pilotage fees are not substantially and directly impacted by payment of such fee is both factually baseless and contrary to Chapter 310.

Second, the very statute upon which BBP’s entire motion relies – section 310.151(2), Florida Statutes – explicitly states that any party whose “substantial interests are directly affected by the rates established” may seek a change in the rates. Yet BBP argues that being economically impacted by the rates is not sufficient to challenge the pilotage rates being charged. This argument is mystifying. Most reasonable people would believe that to be “directly affected by the [pilotage] rates established” would be to “pay” the pilotage rates established. It is impossible to fathom or imagine a manner in which a party could be more “directly affected by the pilotage rates” than by *paying* the pilotage rates. Not surprisingly, BBP posits no argument as to why payment of the pilotage fee does not constitute being “directly affected” by the pilotage rates established. BBP’s motion even undermines its own argument in this respect. As BBP points out, an applicant seeking a rate change may (but is not required to), claim that the pilotage rates cause the applicant “financial hardship.” Amended Motion, p. 11. The only way to suffer “financial hardship” from the pilotage rates being charged would be *to pay the pilotage rates*

*charged*, which further makes clear that rate payers are entitled to seek pilotage rate change applications pursuant to section 310.151, Fla. Stat.<sup>4</sup> Thus, the statutory language in sections 310.002(7) and 310.151(2) make clear that the FCCA is a “party” under section 120.52(13)(a), Florida Statutes, as being someone who is “directly affected” by the pilotage rates established.

In the case of Prescription Partners, LLC v. State, Dept. of Fin. Services, 109 So. 3d 1218 (Fla. 1st DCA 2013), for example, the Court stated that a health care provider (or its assignee) that filed a petition for dispute resolution challenging payment by an insurance carrier for workers’ compensation medical services constituted a “specifically named party” due to the statutory provision explicitly given those providers the right to file such petitions. Prescription Partners, LLC v. State, Dept. of Fin. Services, 109 So. 3d 1218, 1223 (Fla. 1st DCA 2013).<sup>5</sup> The Court went on to state that the petitioner was the “party with the ‘personal stake’ in the outcome of the proceedings,” and noted that “the purpose of requiring a party to have standing to participate in an administrative or judicial proceeding is ‘to ensure that a party has a sufficient interest in the outcome of the litigation which warrants the court’s entertaining it and to assure that a party has a personal stake in the outcome so he will adequately represent the interest he asserts.’” (citing Gregory v. Indian River Cnty., 610 So.2d 547, 554 (Fla. 1st DCA 1992)).

Similar to Prescription Partners, in this case section 310.151(2) gives any party “directly affected” by the rates established the right to petition this Committee for a change in pilotage rates. By virtue of this language, the FCCA is a specifically named party, as the FCCA is

---

<sup>4</sup> BBP’s argument that the FCCA did not claim “financial hardship” in its application is a red herring, and totally irrelevant. Amended Motion, p. 11. As BBP is aware, claiming financial hardship in an application is an option, *but not a requirement or prerequisite*, to seeking a change in pilotage rates. Failure to claim financial hardship has no bearing – nor has BBP alleged one – or relationship to whether the FCCA and its member lines are directly affected by pilotage rates.

<sup>5</sup> Section 440.13(7), Florida Statutes, states that “[a]ny health care provider who elects to contest the disallowance or adjustment of payment by a carrier under subsection (6) must, within 45 days after receipt of notice of disallowance or adjustment of payment, petition the department to resolve the dispute.”

unquestionably “directly affected” by the rates, has filed a petition to change the rates, and because the FCCA clearly has a “personal stake” in the outcome of the proceedings and will adequately represent the interests it asserts. Even BBP has argued that FCCA member lines would “save substantial amounts of money” if its rate decrease application was granted.

Accordingly, the language in sections 310.002(7) and 310.151(2), Florida Statutes, gives the payers of pilotage rates the right to seek a pilotage rate change, and the FCCA therefore has standing by virtue of this statutory language, and is a “specifically named party” within the definition of section 120.52(13)(a), Florida Statutes. BBP’s motion must be denied as a result.

**6. Even If The FCCA Is Not A Specifically Named Party (Which It Is), The FCCA Meets The Standing Requirements To Be A “Party” Under Section 120.52(13)(b), Florida Statutes.**

BBP’s motion to dismiss must also be denied because, even if the FCCA does not meet the standing requirements to be a specifically named party (which it does), the FCCA also would meet the requirements to have standing under section 120.52(13)(b) as “any other person...whose substantial interests will be affected”.

Section 120.52(13)(b) defines the word “party” in a manner which allows individuals or entities that are not direct parties to the proceeding – *i.e.* third parties or intervenors – to participate in an administrative proceeding so long as their substantial interests are directly affected by the proceeding. In order to ensure that only appropriate third parties are allowed to intervene in an administrative proceeding, Florida courts have long utilized the two prong test for third party standing developed in *Agrico Chemical Company v. Department of Environmental Regulation*, 406 So. 2d 478, 482 (Fla. 2d DCA 1981). BBP’s motion to dismiss relies entirely upon its argument that the FCCA cannot satisfy the two-prong Agrico test, and that it lacks standing as a result. BBP is incorrect.

First, BBP's reliance on Agrico is misplaced and further demonstrates the factual and legal insufficiency of its motion to dismiss. Florida courts have stated that Agrico's standing requirements are inapplicable to specifically named parties whose substantial interests are being determined under section 120.52(13)(a), Florida Statutes. W. Frank Wells Nursing Home v. State, Agency for Health Care Admin., 27 So. 3d 73, 74 (Fla. 1st DCA 2009); Maverick Media Group, Inc. v. Dep't of Transp., 791 So.2d 491 (Fla. 1st DCA 2001) (both noting that the Agrico test is inapplicable to "a **specifically named** party whose substantial interests were determined in the proceeding pursuant to sections 120.52(12)(a)). Rather, the First District has stated that "the Agrico test **only applies to third parties.**" W. Frank Wells Nursing Home, 27 So. 3d at 74 (emphasis added); Maverick Media Group, Inc., 791 So.2d at 491. The purpose of Agrico, ultimately, is "to preclude parties **from intervening** in a proceeding where those parties' substantial interests are totally unrelated to the issues that are to be resolved in the administrative proceedings." Mid-Chattahoochee River Users v. Florida Dept. of Env'tl. Prot., 948 So. 2d 794, 797 (Fla. 1st DCA 2006) (emphasis added); Gregory v. Indian River County, 610 So.2d 547, 554 (Fla. 1st DCA 1992).

These cases demonstrate the BBP's misplaced reliance on Agrico. Here, the FCCA is neither an intervening party nor a third party, but is the applicant seeking a pilotage rate change under Chapter 310, Florida Statutes. BBP has not, and cannot, allege facts demonstrating that the FCCA is a third-party intervenor to these administrative proceedings, thus requiring proof of party status under section 120.52(13)(b) and Agrico. This, again, demonstrates the FCCA's status as a specifically named party under section 120.52(13)(a), and has standing to pursue these proceedings. Thus, Agrico's two-prong standing test for intervening third parties is inapplicable

in this case as a matter of law. Nonetheless, even if this Committee applied Agrico to the instant circumstances – which it should not – the FCCA satisfies both prongs of the Agrico test.

**a. Application of Agrico In These Circumstances**

BBP correctly outlines the two-pronged test developed in Agrico, which states that an individual or entity will have a “substantial interest” in a proceeding if: “1) he will suffer injury in fact which is of sufficient immediacy to entitle him to a section 120.57 hearing, and 2) his substantial injury is of a type or nature which the proceeding is designed to protect.” Agrico Chem. Co. v. Dep't of Env'tl. Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981). As the Agrico court stated, “[t]he first aspect of the test deals with the degree of injury. The second deals with the nature of the injury.” Id. at 482. The FCCA satisfies both factors.

Regarding the degree of injury, there is no question the FCCA meets this factor. If the FCCA’s rate decrease is granted, or BBP’s rate increase is granted, FCCA member lines directly stand to gain or lose millions of dollars over the upcoming years in savings or additional pilot costs. BBP even argued as much in its prior motions and pleadings in this matter. This is a significant financial injury, which is sufficient to meet the first prong of the Agrico test, as even the Court in Agrico determined that the petitioners in Agrico met the first prong by showing “a high degree of potential economic injury.” Id.

BBP cites to cases which are totally irrelevant to whether the FCCA member lines would suffer an injury due to the increase or decrease in rates. The Florida Society of Ophthalmology and City of Sunrise cases both dealt with, essentially, a third party attempting to *intervene* in a licensing or permitting administrative action, where the third parties’ purported injury was potentially being economically harmed because the newly licensed or permitted entity would increase competition and potentially draw away business. This is not the case here. The FCCA is not intervening and has alleged a real and direct financial interest, and potential harm, in

pilotage rates being increased or decreased. This harm has nothing to do with potential injury caused by increased competition. To the extent that BBP argues that FCCA member lines would only be speculatively harmed if they included pilotage fees in ticket prices, and thus potentially lost customers as a result, BBP is incorrect.

Regarding the second prong of Agrico, BBP argues that cruise lines' financial interests are not within the "zone of interests" protected by Chapter 310, and that the purpose of Chapter 310 is to protect the public interest. Amended Motion, pp. 10-11. BBP argues that none of the twelve factors in section 310.151 that this Committee must utilize in determining whether to change rates address cruise lines' economic interests. BBP goes on to cite a number of cases where a party's economic interests were not within the "zone of interests" protected by the relevant statutory scheme in question. BBP's analysis is flawed, and it relies on cases that are readily distinguishable from the instant matter.

Most notably, BBP is patently incorrect in its argument that Chapter 310 does not contemplate protecting the economic interests of cruise lines, or any other vessel subject to pilotage. As discussed extensively above, section 310.151(2) explicitly allows anyone whose substantial interests are "directly affected by the [pilotage] rates established," to file an application for a change in the rates at PortMiami. Cruise lines are legally required under Chapter 310 to utilize port pilots and to pay pilotage fees, and are thus "directly affected" by the pilotage rates established. Thus, the statutory scheme clearly contemplates that the vessel lines that are financially impacted by pilotage rates will file rate change applications.

With respect to BBP's argument that the twelve factors in section 310.151 do not include the cruise lines' economic interests, there is nothing surprising about this fact. Whether intentionally or not, BBP and other pilot organizations around the country continue to conflate

the issue of what is a fair and reasonable pilotage charge with the issue of a cruise lines' financial condition. The latter is not relevant to pilotage rate change proceedings, or whether a vessel line has standing to pursue such proceedings. Pilot organizations continue to try to shift the narrative from how expensive their services are, to how much money cruise lines make, how cruise lines operate, and how pilotage fees are accounted for. A simple analogy demonstrates the absurdity of the narrative BBP and other organizations are trying to advance.

Assume you receive a bill from your cable provider, and you believe the bill to be far too expensive. The cost of the TV and internet service itself is high, and there are numerous taxes, fees, and other charges included in the bill. You call the cable provider to determine why the cable service is so expensive, to determine if it is a reasonable price for the service provided, for an explanation of the costs and fees and whether they are necessary, and to see if you can get the prices for TV and internet reduced. When you call the cable provider, they do not request that you provide them with your financial statements, with your tax returns, with information showing if you are rich or poor, whether you made a lot of money last year or a little, or whether you pay for the cable bill or someone else contributes to the expense. All of that information, as it is here, is completely irrelevant to the cable provider. It is irrelevant as to whether the cable company is providing a good service at a reasonable price. It is irrelevant to whether the costs and fees charged by the cable company are fair, reasonable and necessary. It is irrelevant to whether the cable company can provide you the same service, or a better service, at a better price. Yet no one would argue that you, the cable customer, are not economically impacted and substantially and directly affected by the cost of cable, of whether it is \$50 a month or \$200 a month, \$600 a year or \$2,400 a year. Yet, this is precisely what BBP argues.



BBP argues that because the financial impact on vessel lines is not listed in the twelve factors in section 310.151, the cruise lines are not substantially affected by the pilotage rates. The Legislature understood that the two issues are unrelated, and it understood the fundamental idea demonstrated by the above analogy when it gave parties that are “directly affected” by the pilotage rates the right to file a rate change application, but developed review criteria that focus on the *pilots’ operations and whether the fee being charged is fair and reasonable* in a manner sufficient to cover reasonable operating expenses and salaries.<sup>6</sup> Requiring the cruise lines, or any pilotage paying vessel lines’, financial or economic condition to be considered as a factor for the Committee’s consideration in section 310.151 would be pointless, as it has no bearing on the issue of whether the pilots’ are charging a fair and reasonable fee for the service provided. As the statutory scheme makes clear, however, that does not mean that cruise lines and rate payers are not directly affected by the rates being charged, which is precisely why the Legislature gave rate payers the right to seek pilotage rate changes at Florida ports.<sup>7</sup>

Finally, the cases cited by BBP in its motion which BBP claims support its position that economic interests are not within the “zone of interests” are all distinguishable, and one statement in BBP’s motion makes it clear that the FCCA meets the second prong of Agrico. The cases cited by BBP are distinguishable because in this case (as outlined above), the economic

---

<sup>6</sup>BBP also argues that section 310.151(6) – which outlines the factors upon which pilotage can be fixed – does not state that there can be different rates for vessel types, somehow this equates to the lack of protection of economic interests for cruise lines. The FCCA does not understand the thrust of this argument. Nothing in Chapter 310 prohibits this Committee from fixing a lower rate for certain vessel types, albeit using the same vessel criteria, such as draft and tonnage. It is unclear what bearing the vessel characteristics upon which pilotage is charged has to do with the issue of standing whatsoever.

<sup>7</sup> Sections 310.151(5)(b)(3) and (5)(b)9 require this Committee to consider the “reasonable operating expenses of pilots” and the “cost of retirement and medical plans.” Under BBP’s theory of cost bearing, these costs are 100% passed through to cruise lines and other vessel lines calling on PortMiami, in the form of BBP’s pilotage charge to these vessels, and are paid entirely by pilotage paying vessel lines, not by BBP. In that regard, under BBP’s theory, because the cruise lines bear the cost burden of the pilots’ operating expenses and health and retirement plans, then the cruise lines’ economic interests would be directly at issue. This, again, demonstrates the inconsistent nature of BBP’s positions.

interest of rate payers is contemplated and protected under the statutory scheme, by virtue of the fact that section 310.151(2) gives any party “directly affected by the [pilotage] rates established” the right to seek a rate change. BBP’s motion even acknowledges that if economic interests are given consideration “in the underlying statute,” then the second prong of Agrico can be satisfied, which is just the case here.

WHEREFORE, because the Florida-Caribbean Cruise Association meets the definition of a “party” under section 120.52(13), Florida Statutes, because the Biscayne Bay Pilots cannot raise standing at this point in the proceedings, and because the Biscayne Bay Pilots have waived any right to raise the issue of standing at this point in the proceedings, the Biscayne Bay Pilots’ motion to dismiss must be denied.

Respectfully submitted,

By: s/Thomas F. Panza  
THOMAS F. PANZA  
FLA. BAR NO. 138551  
2400 East Commercial Boulevard, Suite 905  
Fort Lauderdale, FL 33308  
Tel: (954) 390-0100  
Fax: (954) 390-7991

**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served by e-mail on this 13<sup>th</sup> day of April, upon the following:

Donna E. Blanton  
Florida Bar No. 948500  
Radey Law Firm  
301 South Bronough, Suite 200  
Tallahassee, Florida 32301  
Telephone: 850-425-6654  
[dblanton@radeylaw.com](mailto:dblanton@radeylaw.com)

Krista Woodard  
Executive Director  
Board of Pilot Commissioners  
2601 Blair Stone Road  
Tallahassee, Florida 32399-0783  
[Krista.woodard@myfloridalicense.com](mailto:Krista.woodard@myfloridalicense.com)

Clark Jennings  
Assistant Attorney General  
Office of the Attorney General  
PL-01, The Capitol  
Tallahassee, Florida 32399-1050  
[Clark.Jennings@myfloridalegal.com](mailto:Clark.Jennings@myfloridalegal.com)

By: s/Thomas F. Panza  
THOMAS F. PANZA

**PART B**

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

PortMiami

2. Detailed explanation of rate change being requested:

Effective upon entry of Final Order

An adjustment in rates of +6% +/- cpi for five years followed by an indefinite +/-cpi adjustment.

- a) A tonnage and draft rate adjustment of +6% over 2002 rates for all vessels
- b) A minimum draft adjustment of +4 feet (increasing the minimum draft from 14 feet to 18 feet)
- c) A Harbor Control surcharge of \$100 per vessel
- d) A CPI adjustment to all rates and fees based on increase or decrease in the Consumer Price Index for All Urban Consumers (CPI-U), Miami-Fort Lauderdale published by the United States Bureau of Labor Statistics.
- e) Implementation of a second pilot charge to certain Neo-Panamax cargo vessels equivalent to an additional full pilotage fee
- f) A cancellation charge adjustment from \$50 to 25% of the pilotage fee
- g) A detention charge adjustment from \$50 to 25% of the pilotage fee per hour or portion thereof applied retroactively from the confirmed time after the first half hour of delay
- h) Other rates, fees, and minimums currently in effect would remain unchanged

3. Basis for requested rate change:

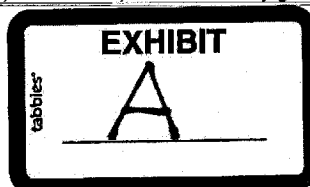
**INCREASE IN OPERATING EXPENSES** – In the sixteen years since BBPA's most recent rate change request, operating expenses have risen from \$1,946,075 to \$2, , an increase of 4 .1%. Inflationary pressures have driven costs up across the board, but the most noteworthy outlays have gone for health insurance, employee salaries, computer/website, and fuel:

**1. HEALTH INSURANCE** - The Pilotage Rate Review Committee has historically viewed health insurance cost as a fringe benefit and includes this cost as added pilot income. The fact of the matter is, however, that health insurance is an ordinary and necessary expense that the vast majority of businesses incur for all employees. Premiums for health insurance in the United States have skyrocketed in recent years and they continue to do so on an unprecedented scale with no end in sight. Despite the practice of adding this business expense back as though it is received as income, it is clear that the exponential increase in the cost of health insurance has not equated to a marked increase in net income to pilots, but rather the opposite is true. Since the final installment of our most recent rate increase in 2002, medical insurance premiums have risen from \$505,520 to \$967,921, an increase of 91.5%. Separately, the same figures representing the pilot portion of medical insurance premiums are \$256,351 and \$458,084, an increase of 78.7%, which currently represents 8.2% of total pilot income, versus 2.3% fourteen years ago.

**2. EMPLOYEE SALARIES** – The cost of living in the Miami area is among the highest in the nation, and inflation in the local economy continues to outpace the nationwide average. The Biscayne Bay Pilots operate with the bare minimum of staff needed with no redundancy. Because of this, the organization is vulnerable to employee turnover and the corresponding loss of training and experience that goes into our staff. Accordingly, in order to attract and retain the caliber of reliable and experienced employees needed to maintain this level of service, we generally try to keep our employees' salaries whole and level in real dollar terms in accordance with the consumer price index. We have to do this to maintain the level of service that we provide to our customers despite the fact that pilotage rates and pilot incomes fall far short of inflation. The majority of our employees have been with us for over 20 years. In the sixteen years since our last rate change request, employee salary expenditures have risen from \$515,565 to \$729,518, an increase of 41.4% despite the elimination of one employee position due to economic pressures.

**3. HARBOR CONTROL** – The Biscayne Bay Pilots serve as the nerve center of maritime affairs in a way unlike that of any other pilot association in any other seaport. PortMiami has neither a harbormaster, nor a vessel traffic service. The Biscayne Bay Pilots developed and maintain the vessel traffic service for PortMiami, and all traffic is scheduled and coordinated through the pilots' Harbor Control office. Our web site is instantaneously updated 24 hours a day, 7 days a week, 365 days a year and receives 66,000 page views per month. It is the primary source of vessel transit information to vessel agents, the US Coast Guard, Department of Homeland Security, Customs and Board Patrol (CBP), Center for Disease Control, immigration, seaport security, tugboat companies, stevedoring companies, port administration, and any and all others who use this information as an integral component of their planning. Unlike other pilot associations in Florida, we have previously provided this vital service without charge despite an ongoing investment of over \$336,000 to develop and maintain it. The ever increasing costs and burdens of continuing to provide this necessary service, however, now require that port users be charged for these costs, the same as with other Florida ports. The training and expertise of our employees with this equipment is vital to the operation of a system on which the entire port relies.

**4. FUEL** – Since the final installment of our most recent rate increase in 2002, diesel fuel prices have risen from \$0.89/gal to \$4.48/gal in 2008 and have averaged \$3.32/gal over the past three years. We are at the mercy of market forces for this expense with no way to increase our fee to compensate aside from the lengthy, expensive, and uncertain rate application process. Due to a decrease in traffic volume and the installation of more fuel-efficient engines in two of our pilot boats, fuel consumption has actually gone down during this same period, from 77,594 to 52,653



gallons per year, yet the net increase in fuel expense has still risen \$59,750 - 75%.

5. COMMUNICATIONS NETWORK -- As a critical part of our Harbor Control system, the Biscayne Bay Pilots maintain a private UHF radio network utilized exclusively for communications between pilots, pilot boats, vessels, tugboats, and port administration. In 2012, FCC regulatory changes necessitated a complete replacement of our entire system including repeaters, all radios, and our transmission antennae at the pilot station. The cost of this equipment totaled over \$41,000.

6. PPU -- Part of the Biscayne Bay Pilots continuing commitment to providing the highest level of service is keeping up with technology. In that regard, we have been at the forefront in the development and testing of portable piloting units. In essence, these are high accuracy electronic navigational systems with electronic charts that supplement the pilots' sight navigation skills on large vessels. They are carried onboard by the pilots, and they are independent of ships' navigational systems which are frequently found to be poorly calibrated and not properly adapted for navigation in tightly confined channels. While an error in ship's position of a ship length, though common, is irrelevant and unnoticeable when navigating across the ocean from one pilot station to the next, that error renders thousands of dollars spent on ships' electronic navigation equipment useless in a tightly confined port such as PortMiami. Biscayne Bay Pilots' commitment to this technology is ongoing, and as technology rapidly changes, continual investment is required. Our expenditures to date total over \$29,000.

COST CONTROL MEASURES EXHAUSTED- The outcome of our previous rate hearing (PRRB final order effective April, 2000) was the reduction of a requested increase of 15% to a granted increase of 3 annual installments o In the fourteen years since the last increase, revenue has declined 2.2% in nominal terms and over 30% in real inflation-adjusted terms. Meanwhile operating expenses increased over 28%. In 2008, after experiencing a revenue decline over 10% in 2007, we undertook the process and expense of compiling a rate increase application. Shortly after our application was submitted, it became apparent that our revenue decline in the previous year was representative of a much broader economic decline. In hindsight, the decline in port activity was a leading economic indicator for the beginning of the Great Recession, which economists have officially identified as starting in December of 2007. At the request of the port and in consideration of our consumers, we withdrew our much needed rate increase request. As did everyone else in the economy, we undertook austerity measures as much as we were able without sacrificing the very high level of service that we provide.

We sold one of our pilot boats thus eliminating the ability to take a boat out of service at any time for maintenance or repair. The consequence of this was the need for additional capital expenditures, despite the steep revenue decline, along with increased expense and very careful timing of planned maintenance to keep the remaining boats in top operating condition and ready for simultaneous service at all times. One of the primary refurbishment upgrades was the installation of 30% more fuel-efficient engines. We spent over \$1 million in this process, with the expectation of extending the useful life of these boats another 7-10 years. That was eight years ago. All of our boats are well beyond their expected service life despite multiple repowerings, and all of them are in the process of being repowered now. One of our boats is 40 years old, one is 33 years old, and one is 22 years old. These boats are highly specialized to operate safely as a steady platform to board ships in the most severe of weather conditions, and the cost of a new pilot boat ranges from \$1.2-1.8 million.

Despite operating with the minimum of staff, we found a way to streamline our business office and to eliminate one staff position. The net savings, including salary and all benefits, has been \$89,600/year.

Pilots who were long past their eligibility to retire agreed to defer their retirement thus enabling us to defer the expense of training new deputies. Long before the freefall decline in our revenue stopped, indeed a year before it bottomed out in 2012, we were tasked by PortMiami to ensure that we were "Big Ship Ready" as part of the greatest capital investment in the port's history. We embarked on the nationwide Florida state regulated competitive process of seeking and training an unprecedented nine new deputy pilots to replace retiring pilots. The training for these new deputies involved preparing them to safely handle the largest ships ever to call on PortMiami within three years. The expense involved in training these new pilots has totaled over \$1.7 million.

INCREASED COST OF LIVING -- Since the final installment of our last rate increase in 2002, revenue has decreased 2.2%. During the same period, the consumer price index (all urban consumers, Miami-Ft. Lauderdale) has increased 31.1%, causing a commensurate increase in operating expenses. Despite cost-cutting measures, pilot compensation decreased 12.9% from 2002 to 2007. Obviously, the Biscayne Bay Pilots have been adversely affected on both sides - lower compensation and a higher cost of living. The cost of living was particularly affected after the devastating hurricane season of 2005 when, for example, the cost of insuring of a home in South Florida increased 150%. Further, home prices in Miami have skyrocketed since 2002 more than doubling between 2002 and 2006. Even with the collapse of the real estate bubble, housing prices are still up over 60% since 2002.

**APPLICATION FOR CHANGE OF RATES OF PILOTAGE  
PAGE FIVE**

7. Comparison of the average net income of pilots in the port, using current rates, including the value of all benefits derived from services as a pilot, to the projected average net income using the requested rates.

7(a). Using current rates:

	PRIOR YEAR (2015)	PRESENT YEAR (2016)	PROJECTED YEAR I (2017)	PROJECTED YEAR II (2018)
Total Number of Pilots	1	1	1	1
Gross Pilotage Fees	\$10,935,966	\$10,54	\$10,48	\$10,48
Operating Expenses	\$5,	\$5,	\$5,	\$5,
Net Income	\$5,	\$5,	\$	\$4,
Average Net Income Per Pilot	\$3	\$28	\$2	\$2

7(b). Using requested rates:

	PRIOR YEAR (2015)	PRESENT YEAR (2016)	PROJECTED YEAR I (2017)	PROJECTED YEAR II (2018)
Total Number of Pilots	1	1	1	1
Gross Pilotage Fees	\$10,935,966	\$11,105,	\$12,03	\$12,833,0
Operating Expenses	\$5,	\$5,	\$5,	\$
Net Income	\$5,	\$	\$6,	\$6,
Average Net Income Per Pilot	\$3	\$31	\$34	\$38

8. a) Pilotage rates in other ports deemed relevant by the applicant:

The most objective way to determine whether pilotage rates are fair, just, and reasonable is to compare rates in other ports for standardized vessels. By comparison, Miami's rates are well below the statewide average and are also among the lowest in the nation.

**Table 1 - Rate Comparison for Major Florida Ports**  
(ranked by large vessel charge)

Florida Port	Rate \$/ft	Min Feet	GT \$/ton	Minimum Ton	Standard Vessel Fee				
					Small	Medium	Large	Neo Panamax	Large Cruise
Tampa	39.27	12	0.0713	2600	\$657	\$2,586	\$5,135	\$9,616	\$10,920
Jacksonville	21.20	15	0.0464	3000	\$457	\$1,856	\$3,232	\$6,058	\$7,070
<b>Miami</b>	<b>17.43</b>	<b>14</b>	<b>0.0364</b>	<b>2500</b>	<b>\$335</b>	<b>\$1,280</b>	<b>\$2,564</b>	<b>\$4,789</b>	<b>\$5,568</b>
Key West	18.40	12	0.0345	2000	\$290	\$1,260	\$2,498	\$4,625	\$5,330
Port Everglades	13.30	14	0.0356	2500	\$275	\$1,158	\$2,373	\$4,473	\$5,225
Port Canaveral	12.50	12	0.0280	2500	\$220	\$962	\$1,940	\$3,642	\$4,258
<b>Average(Mean)</b>	<b>20.35</b>		<b>0.04203</b>		<b>\$372</b>	<b>\$1,517</b>	<b>\$2,957</b>	<b>\$5,534</b>	<b>\$6,395</b>
<b>Miami (proposed)</b>	<b>18.48</b>	<b>18</b>	<b>0.038584</b>	<b>2500</b>	<b>\$429</b>	<b>\$1,357</b>	<b>\$2,718</b>	<b>\$5,076</b>	<b>\$5,902</b>

Small Vessel LOA 342', Beam 55', Depth 26.9', GRT 2033, DWT 5196, Draft 18'  
 Medium Vessel LOA 636', Beam 79', Depth 26.9', GRT 23200, DWT 26800, Draft 25'  
 Large Vessel LOA 965', Beam 106', Depth 70.2', GRT 53208, DWT 67616, Draft 36'  
 Neo Panamax: Maersk Altair LOA 1108' Beam 150', Depth 75', GRT 109534, DWT 110295, Draft 46'  
 Cruise: Navigator of the Seas LOA 1021' Beam 127', Depth 70', GRT 139570, DWT 9616, Draft 28'

Source - Published Pilot Tariff Rate sheets for each port.

In Miami, the process starts when a pilot is called and activated for an assignment. This happens two hours before the pilot is required to board the vessel. During this time, the pilot prepares for the assignment by evaluating the weather and current conditions specific to that job, ensuring that adequate tug assets are available for that job, considering and coordinating other traffic movements that might affect that job, and in general, considering all of the factors which may affect the safety and efficiency of that particular assignment. On a practical level, the pilot also has to consider Miami traffic/accident conditions and whether it will take thirty minutes or two hours to reach the pilot station on time. For an inbound assignment, the thirty to forty-five minute pilot boat ride out to the pilot boarding station five and a half miles offshore is included in this two hour call out time. During peak times, multiple pilots for jobs that are within one hour of one another are taken offshore on the same boat. This adds to the time spent aboard the pilot boat significantly and can involve spending an hour and a half on the pilot boat. (i.e. If there are multiple jobs boarding between 0400-0500, all pilots for those jobs are taken offshore on the same boat which would generally leave at 0330 or earlier. The pilot for the 0500 job is on the pilot boat at 0330, or an hour and a half before boarding his job. A similar situation occurs when multiple ships are departing closely together and multiple pilots are on the boat waiting offshore for an extended period for the last pilot to disembark.) After the pilot boards the ship and makes his way to the bridge, a Master-Pilot information exchange is conducted, for the Pilot to inform the Captain of the details of the transit and conditions within the port, and for the Captain to inform the Pilot of any peculiarities or malfunctioning equipment on the ship. Once that is complete, the Pilot takes control of the vessel and maneuvers the ship throughout pilotage waters, and in most cases docks the vessel. This is Bridge Time and takes one to three hours depending on the type and size of vessel, the weather and current conditions, whether the vessel has to turn around, where it is berthing, and whether tugs are occupied with another vessel causing a delay. (Often, the pilot encounters a delay and has to wait offshore waiting for tug availability while another ship is docking and using the tugs.) The pilot then calls the Harbor Control office and requests transportation back to the pilot station. While the vessel finishes mooring and rigging the gangway, the pilot is still on task, though unavailable for another assignment until the gangway is set and he can disembark. This process takes around half an hour. Once the pilot disembarks the vessel, he is picked up by a car and returned to the pilot station. That takes twenty to thirty minutes or longer depending on whether multiple pilots will be picked up from other jobs before returning to the pilot station. Once at the pilot station, the pilot reports to the harbor control office for another assignment which can sometimes be immediate and other times in a matter of hours. Some jobs, particularly small ships, take less time than others, but the general process is the same and most of these times are consistent. On an average basis, Actual Piloting Duty or Time On Task for Miami pilotage jobs is 4.5 hours.

#### Other Essential Support Services

Each of the Biscayne Bay Pilots either assume defined support roles within the organization or assist with the duties of those in defined roles. These roles include the Chairman, Vice-Chairman, and Secretary/Treasurer (Executive Committee); Boat Manager; Building Manager; Computer Manager; Communications Officer; and Training Officer. Four pilots serve as delegates to the Florida Harbor Pilots Association, while two others serve on the Florida Harbor Pilots Association executive committee. One pilot currently serves on the Board of Pilot Commissioners. The Biscayne Bay Pilots standing committees include Guidelines, Community Liaison, and Political Action. Ad hoc committees are formed continually to address new or periodic issues. The Biscayne Bay Pilots are represented on the USCG's South Florida Area Committee, the Strategic Weather Advisory Team, the Miami Harbor Safety Committee, the Miami River Commission, the Propeller Club, and the Greater Miami Chamber of Commerce. We play a major liaison role with the USCG and other law enforcement agencies, especially Seaport Security. In the same regard, we have been actively involved with all aspects of the growth and influence of the Department of Homeland Security. The Seaport Director and his staff often consult with us concerning prospective vessel calls and the associated details related to transits and berthing. We meet frequently with elected government officials on the city, county, state, and even federal level regarding local maritime affairs, such as municipal infrastructure as it relates to the seaport, legislation to enhance maritime transportation and safety, and dredging. We provide assistance to hydrographic and environmental research groups whenever they conduct operations in the area. We also devote a significant amount of time to customer relations. Additionally, we have a statutory obligation to mentor students at all levels and to report this to the legislature. A reasonable estimate of time spent on all of these essential support services is 1,000 hours per year for members of the Executive Committee, and 500 hours per year for other pilots.

This equates to an average of 1,000 hours of Actual Piloting Duty per pilot. Each pilot is on call 27 weeks (4,536 hours) per year. In addition, each pilot is also assigned three standby weeks per year, during which he must be available for duty within 12 hours to cover in case another pilot is ill or injured. While on duty, pilots are required to be available for work 24/7. There are no holidays or weekends off. When one pilot is unavailable due to illness, injury, or other emergency, the standby pilot is immediately called to take his place. Additionally, pilots are required to perform "Other Essential Support Services" to maintain the business and to support the overall operation of the port. As described above, these Other Essential Support Services consume between 500-1,000 hours per year. In total, Biscayne Bay Pilots spend between 1-7 and 2-3 hours per year in active service to the profession of piloting as part of the 4,536 hours per year that they are on call. By comparison, an employee in an average corporation working 40 hours per week, 52 weeks per year, with 15 days of paid vacation, 10 paid holidays, 9 sick/personal days, and weekends off, works about 1,808 hours per year... without ever being on call to return to work with two hours notice, never mind risking life and limb climbing a rope ladder up the side of a moving ship in rough weather, nor the stress levels that pilots routinely face in their duties.

#### Additional Relevant Information:

1. LAW ENFORCEMENT SUPPORT—Miami is home of the USCG Southeast District Command, as well as one of the Coast Guard's largest local bases, making Miami one of the Coast Guard's highest profile ports in the nation. Subsequent to the events of 9/11 and the incarnation of the Department of Homeland Security, security measures have multiplied, particularly in Miami with its large USCG presence and its visibility as the "Cruise Capital of the World." The Biscayne Bay Pilots have done our utmost to assist with these measures. We provide launch service to USCG boarding parties at no charge. We coordinate vessel movements at the Captain of the Port's request, while we continuously relay communications to vessels under investigation. USCG officials rely on the Biscayne Bay Pilots for most of the information they need to plan their commercial vessel inspection operations, which consumes a large portion of our employees' time. Other law enforcement agencies at the port depend on our cooperation as well. CBP, USDA, Immigration, FDLE, Miami-Dade police, Seaport Security—all confer with BBPA when planning their operations. As we have for the USCG, we have allocated pilot boat resources, at our own cost, to many of these officials. When Homeland Security needed a central location to install hardware associated with a new video surveillance system, we donated space in our pilot station, the use of our radio communications tower as a mounting location for high resolution surveillance equipment, and we provide the electricity to run this system all at no charge.

FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
PILOTAGE RATE REVIEW COMMITTEE

In re: Application for a Change in Rates  
of Pilotage, filed by the Florida  
Caribbean-Cruise Association

Case No.:

DBPR Agency Clerk

JUL 24 2014

RECEIVED

MOTION AND SUGGESTION TO DISQUALIFY  
COMMISSIONERS BURKE AND MIGUEZ  
AND REQUEST FOR CONTINUANCE OF PUBLIC HEARING

Pursuant to section 120.665, Florida Statutes, and rule 28-106.204, Florida Administrative Code, Biscayne Bay Pilots, Inc. ("BBP" or "Biscayne Bay Pilots") files this Motion and Suggestion to Disqualify Commissioners Burke and Miguez and Request for Continuance of Public Hearing and states:

1. On June 13, 2014, BBP filed a Motion and Suggestion to Disqualify Commissioners Nielsen and Fox from participating in the above-styled proceeding on grounds of their bias, prejudice, or interest. *See* § 120.665, Fla. Stat. A copy of this Motion is attached as **Exhibit A** and incorporated herein by reference.

2. No meeting of the Pilotage Rate Review Committee ("Committee") was noticed to address the Motion and it was never ruled on. On July 16, 2014, BBP filed an Emergency Motion requesting a ruling on the Motion and Suggestion to Disqualify Commissioners Nielsen and Fox. A copy of that Motion is attached as **Exhibit B** and is incorporated herein by reference. That Emergency Motion also was never ruled on.

3. The same day the Emergency Motion was filed, Governor Rick Scott issued a press release stating that he had appointed Thomas Burke and Enrique Miguez to the Board of Pilot Commissioners ("Board"). *See Exhibit C*. Burke was identified as the Vice President of





Risk Management for Royal Caribbean Cruises, Ltd. Miguez was identified as the Vice President and Deputy General Counsel for Carnival Corporation. According to the press release, Burke and Miguez were appointed to fill "vacant" seats. *Id.*

4. The following morning the undersigned filed a public records request for documents associated with the appointments and any resignation letters that may have created vacancies on the Board. Resignation letters dated June 30, 2014, from former Commissioners Stephen Nielsen and John Fox were produced. *See Composite Exhibit D.* Additionally, the applications of Commissioners Burke and Miguez were produced. **Composite Exhibit E.**

5. By virtue of their appointments to the Board, Burke and Miguez will also serve as members of the Committee. § 310.151(1)(b), Fla. Stat. ("The committee shall consist of the following seven members of the board: two board members who are licensed state pilots actively practicing their profession . . . two board members who are actively involved in a professional or business capacity in the maritime industry, marine shipping industry, or commercial passenger cruise industry; one board member who is a certified public accountant with at least 5 years of experience in financial management; and two board members who are citizens of the state."). (Emphasis supplied). Because Burke and Miguez are the only Board members who are actively involved in the maritime industry, marine shipping industry, or commercial passenger cruise industry, they are automatically members of the Committee.

6. The public hearing on the Application for a Change in Rates of Pilotage filed by the Florida-Caribbean Cruise Association ("FCCA") is scheduled for July 31 and August 1, 2014. From the sequence of events described above, it is evident that Commissioners Nielsen and Fox resigned as a result of BBP's motion seeking their disqualification and that substitute

appointments to fill their slots were rushed through the process so that the cruise lines would be represented on the Committee at the time the public hearing is held.<sup>1</sup>

7. Commissioners Burke and Miguez should be disqualified from participating in any proceedings associated with FCCA's application because they are employed by members of FCCA – the very applicant that is seeking a reduction in pilotage rates for passenger vessels calling on PortMiami. The first page of FCCA's application for a reduction in pilotage rates states: "Applicant is a not-for-profit trade organization composed of 15 member cruise lines operating more than 100 vessels in Floridian, Caribbean and Latin American waters. Applicant represents close to every cruise line company that either calls on PortMiami throughout the year or calls PortMiami home, including Carnival Cruise Lines, Celebrity Cruises, Costa Cruises, Crystal Cruises, Disney Cruise Line, MSC Cruises, Norwegian Cruise Line, Princess Cruises, and Royal Caribbean." (Emphasis supplied.) Commissioner Burke's application to the Board demonstrates that he has been employed by Royal Caribbean for more than 11 years. Commissioner Miguez's application shows that he has been employed by Carnival for more than 17 years. *See Composite Exhibit E*. Both men obviously are senior executives of members of the applicant entity and, as such, cannot be considered as objective Committee members who will make a decision based on the evidence presented, as opposed to what is in the best interest of their employers.

---

<sup>1</sup> Notably, on June 23, 2014, FCCA sought a 15-day extension of time to file a response to BBP's Motion and Suggestion to Disqualify Commissioners Nielsen and Fox. That request was granted. *See Composite Exhibit F*. However, no response was ever filed by FCCA. The reason for FCCA's lack of response to BBP's Motion is now apparent; FCCA was orchestrating the resignations of Commissioners Nielsen and Fox and their replacements with Commissioners Burke and Miguez. Neither Fox nor Nielsen needed to be replaced before the scheduled rate hearing; section 120.665(1) states that "if a quorum remains after the individual is disqualified, it shall not be necessary to appoint a substitute." The resignations of Commissioners Nielsen and Fox left five members on the seven-member Rate Review Committee.

8. Section 120.665, the statute under which BBP seeks Burke's and Miguez's disqualification, is part of Chapter 120, Florida Statutes, the Administrative Procedure Act ("APA"). It explicitly recognizes that even when the Code of Ethics does not require a public officer to refrain from participating in a particular proceeding, there are times when an "agency head" should nonetheless be disqualified because of "bias, prejudice, or interest." Section 120.665(1) provides:

Notwithstanding the provisions of s. 112.3143, any individual serving alone or with others as an agency head may be disqualified from serving in an agency proceeding for bias, prejudice, or interest when any party to the agency proceeding shows just cause by a suggestion filed within a reasonable period of time prior to the agency proceeding. If the disqualified individual was appointed, the appointing power may appoint a substitute to serve in the matter from which the individual is disqualified. If the individual is an elected official, the Governor may appoint a substitute to serve in the matter from which the individual is disqualified. However, if a quorum remains after the individual is disqualified, it shall not be necessary to appoint a substitute.

(Emphasis supplied).<sup>2</sup>

9. "Agency Head" is defined as "the person or collegial body in a department or other government unit statutorily responsible for final agency action." § 120.52(3), Fla. Stat. The Rate Review Committee is responsible for final agency action regarding rates. *See* § 310.151(4)(a), Fla. Stat. ("If the committee concludes that the petitioner has not raised a disputed issue of material fact and does not designate the petition for hearing, that decision shall be considered final agency action for purposes of s. 120.68."). *See also* § 310.151(7), Fla. Stat. ("The decisions of the committee regarding rates are not appealable to the board."). Thus, the Rate Review Committee is an "Agency Head" subject to section 120.665. *Cf. Cagan v. Bd. of*

---

<sup>2</sup> Section 310.151(1)(c), which governs the Committee and its consideration of changes in pilotage rates, references section 112.3143, which is part of the Florida Code of Ethics for public officials. Section 310.151(1)(c) provides: "Committee members shall comply with the disclosure requirements of s. 112.3143(4) if participating in any matter that would result in special private gain or loss as described in that subsection."

*Real Estate*, 409 So. 2d 48, 49 (Fla. 5th DCA 1982) (explaining that the Board of Real Estate was the agency head that disciplined real estate professionals).

10. As the party<sup>3</sup> seeking disqualification of Commissioners Burke and Miguez, BBP is required to demonstrate “just cause” why they should be disqualified. *See Bay Bank & Trust Co. v. Lewis*, 634 So. 2d 672, 678 (Fla. 1st DCA 1994).

11. The standard for showing bias or prejudice pursuant to section 120.665 is “whether the facts alleged would prompt a reasonably prudent person to fear that they will not obtain a fair and impartial hearing.” *Charlotte Cnty. v. IMC-Phosphates Co.*, 824 So. 2d 298 (Fla. 5th DCA 2002). “It is not a question of how the [agency head] actually feels, but what feeling resides in the movant’s mind and the basis for such feeling.” *Id.* The court in *IMC-Phosphates* also noted that “an impartial decision-maker is a basic component of minimum due process in an administrative proceeding.” *Id.* at 300-301, (quoting *Cherry Communications, Inc. v. Deason*, 652 So. 2d 803, 804-05 (Fla. 1995)).

12. Case law discussing when a presiding officer is biased often focuses on whether that presiding officer has “prejudged” a particular case. *See, e.g., Wargo v. Wargo*, 669 So. 2d 1123, 1124-25 (Fla. 4th DCA 1996) (“A judge may form mental impressions and opinions during the course of presentation of evidence, as long as she does not ‘prejudge the case.’”) (quoting *Brown v. Pate*, 577 So. 2d 645, 647 (Fla. 1st DCA 1991)); *Williams v. Balch*, 897 So. 2d 498, 498 (Fla. 4th DCA 2005) (“Disqualification is required when litigants demonstrate a

---

<sup>3</sup> BBP, by virtue of filing its Notice of Appearance of Intervenor on June 13, 2014, is a party to FCCA’s rate proceeding now pending before the Committee. *See* § 120.52(13), Fla. Stat. (defining “party” to a proceeding). Thus, BBP has standing to file this Motion.

reasonable, well-grounded fear that they will not receive a fair and impartial trial or that the judge has pre-judged the case.”)<sup>4</sup>

13. Importantly, BBP does not seek to disqualify Commissioners Burke and Miguez because they are associated with the commercial passenger cruise industry. Section 310.151 contemplates that two members of the Committee may come from that industry. Rather, it is their employment by members of the Applicant itself, FCCA, which demonstrates bias, prejudice, or interest.<sup>5</sup> No reasonable person would expect Commissioners Burke and Miguez to vote against the interests of their employers – Royal Caribbean and Carnival – in a proceeding that has the potential of saving their employers substantial amounts of money. Thus, BBP has a well-founded fear that it will not receive a fair and impartial hearing, and it is reasonable to assume that Commissioners Burke and Miguez have “prejudged” the FCCA application and are prepared to vote in favor of the requested 25 percent reduction in pilotage rates for PortMiami.<sup>6</sup>

---

<sup>4</sup> Although the standards for disqualification of judges may not be identical to the standards for disqualification of an agency head pursuant to section 120.665 (see discussion in *Bay Bank & Trust*, 634 So. 2d at 678), the court in *IMC-Phosphates Co.* relied on the established standards for disqualification of judges in establishing the legal standard for disqualification pursuant to section 120.665 and determining that the head of a state agency needed to be disqualified from entering the Final Order in an administrative proceeding. 824 So. 2d at 300.

<sup>5</sup> This entire issue could have been avoided had the Governor chosen to replace Commissioners Nielsen and Fox with representatives of the maritime industry or marine shipping industry – as is permitted by section 310.151(1)(b) – instead of the commercial passenger cruise industry.

<sup>6</sup> Notably, a member of BBP also is a member of Board of Pilot Commissioners and serves on the Committee. He is Commissioner John R. Fernandez, and on May 28, 2014, he advised the Rate Review Committee staff that he will recuse himself from the proceeding concerning the FCCA application. In an email, Commissioner Fernandez wrote:

On advice of counsel, I am going to recuse myself from sitting on the Pilotage Rate Review Committee (PRRC) deliberations of the FCCA rate reduction application hearing that will take place here in Miami in July. Please activate the alternate committee member, Capt. Kurtz, so that she can clear her schedule to

14. BBP also requests that the public hearing now scheduled for July 31 and August 1 be continued until the motion for disqualification can be ruled on. The interests of all parties would be served by a decision on BBP's motion in advance of the hearing. If, in fact, the motion is denied at the hearing and an appellate court later determines Commissioners Burke and Miguez should have been disqualified, a new hearing will be required. All parties, including members of the Committee, will have wasted two days participating in a hearing that will be meaningless. Moreover, it violates BBP's due process rights to proceed with the hearing before BBP has the opportunity to seek review of an order denying its motion (if, in fact, the motion is ultimately denied). *See State ex rel. Allen v. The Bd. of Public Instruction of Broward Cnty.*, 214 So. 2d 7, 10 (Fla. 4th DCA 1968) (“[T]he due process guaranteed right to a fair and impartial tribunal is a present right, the denial of which would not be remedied by appeal. For this reason it has long been recognized as settled law in this state that prohibition is an appropriate remedy to prevent judicial action when the judge is disqualified . . . .”) (emphasis added).

15. BBP's original motion to disqualify Commissioners Fox and Nielsen was filed almost seven weeks before the scheduled hearing on FCCA's Application in accordance with section 120.665, which provides that such motion be filed within a reasonable period of time prior to the agency proceeding.” (Emphasis supplied). This motion is being filed as soon as possible after BBP learned of the machinations that led to the resignations of former Commissioners Nielsen and Fox and the appointment of Commissioners Burke and Miguez. The intent of the statutory requirement that any motion for disqualification be filed “within a reasonable period of time prior to the agency proceeding” must be so that the motion can be

---

participate in this important hearing. I am recusing myself from the PRRC only on the FCCA application as it pertains to the Biscayne Bay Pilots.

ruled on before the proceeding commences. By failing to consider BBP's Motion before the hearing commences, the Committee would be ignoring both the plain language and the intent of section 120.665. Thus, the public hearing now scheduled for July 31 and August 1 must be continued to a later date that allows the current disqualification motion to be ruled on and that allows BBP time to seek any appropriate review of that ruling, if necessary.

For the reasons expressed, BBP respectfully requests that Commissioners Burke and Miguez be disqualified from participating in any proceeding relating to FCCA's application. BBP also respectfully requests that the scheduled hearing be continued in order to provide ample time to resolve the motion before the hearing.

Respectfully submitted,



Donna E. Blanton  
Florida Bar No. 948500  
Radey Law Firm  
301 South Bronough, Suite 200  
Tallahassee, Florida 32301  
Telephone: 850-425-6654  
[dblanton@radeylaw.com](mailto:dblanton@radeylaw.com)

And

Robert Peltz  
Florida Bar No. 220418  
The Peltz Law Firm  
10220 SW 141<sup>st</sup> Street  
Miami, Florida 33176  
Telephone: 786-732-7219  
[rpeltzlaw@gmail.com](mailto:rpeltzlaw@gmail.com)  
COUNSEL FOR BISCAYNE BAY  
PILOTS, INC.

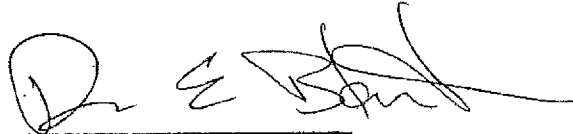
**CERTIFICATE OF SERVICE**

I certify that a true copy of the foregoing was served this 24th day of July, 2014, via

Federal Express to the following:

Thomas F. Panza, FBN 138551  
Panza Maurer & Maynard  
3600 North Federal Highway, 3<sup>rd</sup> Floor  
Ft. Lauderdale, Florida 33308  
Telephone: 854-390-0100  
[tpanza@panzamaurer.com](mailto:tpanza@panzamaurer.com)

Counsel for Petitioner Florida Caribbean-  
Cruise Association

A handwritten signature in black ink, appearing to read 'D E Blanton', written over a horizontal line.

Donna E. Blanton



STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATIONS

CASE NO.: F12-2903B

BOARD OF PILOT COMMISSIONERS  
(VOLUME I)

Hyatt Regency Miami  
400 Southeast 2nd Avenue  
Miami, Florida 33131

July 31st, 2014

**EXHIBIT**

**C**

tabbles

GROUP

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

APPEARANCES: .

ON BEHALF OF THE APPLICANT

THOMAS F. PANZA, ESQUIRE  
3600 North Federal Highway, 3rd Floor  
Fort Lauderdale, Florida 33308

ON BEHALF OF THE PILOTS

DONNA BLANTON, ESQUIRE  
P.O. Box 10967  
Tallahassee, Florida 32302

ROBERT D. PELTZ, ESQUIRE

P.O. Box 56-6556  
Miami, Florida 33256

BOARD MEMBERS PRESENT:

CARLOS M. TRUEBA, CHAIRMAN  
ROBERT SWINDELL  
CLIFF WALTERS  
CAROLYN KURTZ  
THOMAS BURKE  
ENRIQUE MIGUEZ  
DAVID T. ULRICH

OTHERS PRESENT:

CLARK JENNINGS, ASSISTANT ATTORNEY GENERAL  
RICHARD H. LAW, CPA  
GALEN DUNTON - PILOT CONSULTANT  
DANIEL BIGGINS - EXECUTIVE DIRECTOR, DBPR  
DONALD SHAWN - ADMINISTRATIVE ASSISTANT, DBPR  
GALEN DUNTON  
BJORN OVE HANSEN  
WILLIAM BAUMGARTNER  
JOEL GLICK  
MICHAEL Z. JACCOMA  
ANDREW MELICK  
GEORGE QUICK  
ROBERT LAMONT

GEORGE BURKLY

JOHN JACOBSON

PAUL KIRCHNER

1       THEREUPON:

2               MR. CHAIRMAN: Good morning everyone. I'm  
3 going to go ahead and call the meeting to order.  
4 It's the meeting of the Pilots Rate Review Board.  
5 Today is July 31st, 2014. I would like to begin the  
6 meeting by thanking God for allowing us to be here  
7 and that he look over our families and ourselves  
8 and give us today some wisdom and understanding to  
9 carry out the great business of the State of  
10 Florida.

11              Having said that, if I can have a roll call?

12              THE CLERK: Sure. Commissioner Trueba?

13              COMMISSIONER TRUEBA: Here.

14              THE CLERK: Commissioner Swindell?

15              COMMISSIONER SWINDELL: Here.

16              THE CLERK: Commissioner Walters?

17              COMMISSIONER WALTERS: Here.

18              THE CLERK: Commissioner Miguez?

19              COMMISSIONER MIGUEZ: Here.

20              THE CLERK: Commissioner Ulrich?

21              COMMISSIONER ULRICH: Here.

22              THE CLERK: Commissioner Kurtz?

23              COMMISSIONER KURTZ: Here.

24              THE CLERK: Commissioner Burke?

25              COMMISSIONER BURKE: Here.

1           MR. CHAIRMAN: Everyone being present, I'd  
2           like to briefly go over a couple of requests that  
3           the commissioners power down their phones and  
4           everyone else in the audience if you can put it on  
5           silence so that there's not too much disturbance.  
6           We would like to have one meeting.

7           We ask everyone that today we keep it to the  
8           facts, try not to be too repetitive on things that  
9           have been said before for the sake of time. And, I  
10          think there's some signature cards or a list for  
11          those that want to speak during the hearing.

12          And, we will -- I guess we will be calling  
13          them in the order in which they sign up and with  
14          that I think I'm going to turn it over to  
15          Mr. Jennings.

16          MR. JENNINGS: Thank you, Mr. Chairman.  
17          Mr. Chairman, we are here today to address an  
18          application for a reduction in the rate of pilotage  
19          for the Port of Miami filed on March 20th, 2014 by  
20          the Florida Caribbean Cruise Association.  
21          Subsequent to that filing, the Biscayne Bay Pilots  
22          Incorporated filed a notice of appearance of  
23          intervener.

24          Mr. Chairman, as a housekeeping matter, it  
25          would be appropriate at this time to entertain a

1 motion to recognize the standing of both groups as  
2 parties in this cause.

3 MR. CHAIRMAN: If I do have a motion?

4 COMMISSIONER MIGUEZ: I so move.

5 COMMISSIONER BURKE: Second.

6 MR. CHAIRMAN: Any discussion? Okay. Let's  
7 call the vote. All those in favor?

8 (The Commissioners collectively respond I.)

9 MR. CHAIRMAN: Not opposed? Motion carries.

10 MR. JENNINGS: Thank you, Mr. Chairman.

11 Mr. Chairman, we have a few other motions that we  
12 need to address before you can proceed with the  
13 application hearing.

14 One piece of housekeeping, we did -- excuse  
15 me, Commissioners, when I say we, I'm using the  
16 royal sense, I'm referring to you and not  
17 necessarily to myself. I certainly have no vote in  
18 this matter.

19 The Committee received a motion to seek  
20 disqualification of Commissioners Neilson and Fox  
21 in an emergency motion filed on the 16th of July  
22 asking that there be an emergency determination of  
23 that motion. And, this was filed by the Biscayne  
24 Bay Pilots.

25 Obviously with Commissioners Neilson and Fox

1           During that time he obtained an unlimited  
2           master's license. So, welcome Mr. Jaccoma, Captain  
3           Jaccoma.

4           CAPTAIN JACCOMA: Good morning, Commissioners.  
5           I'm Captain Mike Jaccoma. I'm proud to be one of  
6           the Miami pilots here speaking to you today.

7           (Thereupon, Mike Jaccoma, was sworn in accordance  
8           with law and testified as follows:)

9           CAPTAIN JACCOMA: All right. So, again, good  
10          morning everybody. It's my pleasure to speak with  
11          you this morning and I'm going to speak with you  
12          about the economic factors. I have cut a lot out of  
13          my presentation because I know we're under a time  
14          constraint. So, I'll try and go through it as  
15          quickly as I can but hopefully I won't miss  
16          anything.

17          The last Rate Hearing was in Miami and that  
18          was over fourteen years ago. The setting of that  
19          rate was not done arbitrarily. It was done by a  
20          Rate Board without any pilot member. And, the same  
21          factors that you're going to consider today were  
22          considered then. The evidence was reviewed by an  
23          Administrative Law Judge at a DOAH Hearing and the  
24          evidence the Judge found supported the Board's  
25          decision.