

FILED	
Department of Business and Professional Regulation AGENCY CLERK	
CLERK	Ronda L. Bryan
Date	8/30/2017
File #	

**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, and Alternative Application for a Change in Rates of Pilotage for PortMiami, filed by Biscayne Bay Pilots, Inc.

Case No.: PRRC 2014-1

BISCAYNE BAY PILOTS' RESPONSE TO MOTION FOR CLARIFICATION FILED BY FCCA AND BBP'S MOTION FOR CLARIFICATION OF THE PRRC'S NOTICE OF INTENT

Pursuant to rule 28-106.204, Florida Administrative Code, the Biscayne Bay Pilots, Inc. ("BBP" or "the Pilots") file this Response to the Motion of the Florida-Caribbean Cruise Association ("FCCA") for Clarification of Notice of Intent to Modify the Port of Miami Rate of Pilotage ("Notice of Intent"). As part of this pleading, BBP also files its own Motion for Clarification of the Notice of Intent. In support, the Pilots state:

1. The Notice of Intent correctly reflects the preliminary decision of the Pilotage Rate Review Committee ("PRRC") to create a three-tiered system of rates based on Gross Registered Tonnage (GRT) of the vessels calling on PortMiami. The three tiers, as reflected on the spreadsheet on the screen during the PRRC's final deliberations, provide for a six percent increase in rates up to 80,000 GRT. Beginning at 80,000 GRT, rates are reduced by 35 percent. *See* Notice of Intent, at pp. 12-13. For vessels at 130,000 GRT or higher, a further 35 percent reduction in rates would be imposed. A copy of the spreadsheet that formed the basis for the PRRC's decision is attached as **Exhibit A.**¹

RECEIVED

AUG 30 2017

DBPR Agency Clerk

¹ **Exhibit A** reflects the final version of the spreadsheet as circulated to all parties by Committee Secretary Anne Ahrendt immediately following the hearing. *See* **Exhibit B**.

2. First, FCCA is incorrect that the PRRC intended to impose the breakpoint between the first and second tier at 70,000 GRT. As more fully discussed below, the transcript of the proceeding supports the conclusion in the Notice of the Intent that the second tier is proposed to begin at 80,000 GRT.

3. Second, contrary to the language in the Notice of Intent, the rate reduction identified for the third tier (130,000 GRT and above), applies to both passenger and cargo vessels. Nothing in the record supports distinguishing between passenger vessels and cargo vessels in the setting of rates in any tier. *See* Notice of Intent, pp. 12-13.

4. Each of these issues is discussed separately below.

Gross Registered Tonnage

5. During the course of the final day of the PRRC hearing, on May 19, 2017, committee members discussed several different means of revising rates. As the transcript shows, Commissioner Oatis presented a spreadsheet to begin the discussion, reflecting work that he had begun the previous evening on his own and/or or in conjunction with Richard Law, the PRRC's outside accountant. Tr., Vol. III, pp. 50-58.² Commissioner Oatis's original proposal called for a 12.4 percent rate increase up to 50,000 GRT. Tr., p. 56, lines 1-13. The next tier would begin at 50,000 GRT and cover up to 100,000 GRT with a 35 percent discount on rates. *Id.*, p. 56, lines 14-17. Yet another tier with another 35 percent discount would begin at 100,000 GRT. *Id.* All tiers applied "consistently . . . to passenger and cargo vessels," Mr. Oatis stated. *Id.*, p. 56, lines 18-19.

6. Much discussion followed, with committee members asking both that the percentage rate increase and the GRT tier breakpoints be adjusted. Tr., Vol. III, pp. 62-75. A

² The full transcript of the hearing's final day (Volume III) is attached as Exhibit B to FCCA's Motion for Clarification.

significant point in the discussion was that GRT tiers at Port Everglades use the breakpoints of 80,000 and 130,000 GRT. *Id.*, p. 65, pp. 93-94.

7. Commissioner Kurtz asked that the spreadsheet be changed to show 80,000 GRT as a starting point for Tier 2. *Tr.*, Vol. III, p. 75, lines 21-22. Immediately thereafter, Commissioner Sola asked that the rate increase in Tier 1 be reduced from 12.4 percent to 6 percent. *Id.*, lines 23-25. Following much discussion, Commissioner Oatis made both of these changes on the spreadsheet that was on the screen during the PRRC meeting. *Id.*, pp. 93-98. On page 97 of the transcript, Commissioner Oatis stated that “we have moved tiers away from the 50,000 to the 80,000, and then again to 130,000 . . .” *Tr.*, Vol. III, p. 97, lines 9-11 (emphasis supplied).

8. Following additional discussion about other elements of the rate structure, Commissioner Assal stated as follows:

Mr. Assal: I do agree, and would like to see, it, me, you started at the 60,000 -- no, let me rephrase that, the 70,000 range, versus going started at the 80,000 -- the majority of, of the fleets, and that goes from whether it is cruise or cargo, is in up to the 70,000, the majority, so we're emphasizing on the minority here. So my personal opinion, I get that 50,000 might be low, but I would look at starting at the 70,000.

Tr., Vol. III, p. 108, lines 22-25; p. 109, lines 1-6.

9. Despite expressing his personal opinion, Commissioner Assal did not make a motion to change the tier breakpoint on the spreadsheet from 80,000 GRT to 70,000 GRT, and the spreadsheet was not revised. *See Exhibit A*. Instead, his comments were followed immediately by a statement from Commissioner Kurtz objecting to the entire approach. *Tr.*, Vol. III, p. 109, lines 7-8.

10. Much additional discussion followed, and Commissioner Kurtz made a motion to both abandon the tiered rate structure and the proposed rate increase. *Tr.*, Vol. III, p. 125. Instead, only certain proposed ancillary charges, such as the harbor control fee sought by the Pilots, would

be approved. Her proposal was modeled on a spreadsheet, but her motion failed. *Id.*, p. 131, line 9.

11. The committee then agreed to return to the earlier spreadsheet, with the ancillary charge elements supported by Commissioner Kurtz, included. *See Tr.*, Vol. III, p. 131, lines 15-24:

Chair: . . . My suggestion if someone did make a motion would be to incorporate the four components of Commissioner Kurtz's previous recommendation into the model that has the other four components of the, the step up, the draft component, the harbor control fee, and the, and the 6% increase. Are you crunching numbers on it?

Mr. Oatis: I'm trying to get it back to where it was.

Commissioner Oatis later confirmed that all of the elements of Commissioner Kurtz's proposal had been included in the earlier spreadsheet showing the tier breakpoints. *Tr.*, Vol. III, p. 134, lines 1-11.

12. Commissioner Winegeart then made the following motion:

I would like to make a motion that we approve the proposal that we have in front of us that includes the harbor pilot control fee and increase of 6% until 70,000 GRT, a rate reduction on GRT from 80,000 to 120,000, and a further rate reduction from 130,000 and above, and also to increase the draft, and the auxiliary services such as the cancellation fee, and I can't remember the last one, detention fee.

Tr., Vol. III, p. 134, lines 14-23 (emphasis supplied). Even FCCA acknowledges in its Motion for Clarification that the spreadsheet in front of the committee at the time this motion was made shows as a breakpoint between Tiers 1 and 2 at 80,000 GRT. FCCA Motion, ¶ 6, p. 4.

13. Finally, the following exchange occurred just before the vote was taken:

Mr. Assal: For clarification I believe the Commissioner stated that the tiering started at 70,000 tons, but I believe it starts at 80,000; is that correct?

Mr. Oatis: That's correct, after 70,000.

Mr. Assal: After 70,000.

Mr. Oatis: As it's presented on the board.

Tr., Vol. III, p. 138, lines 1-9 (emphasis supplied). Commissioners then voted 4-2 to approve the various rate changes reflected on the spreadsheet. *Id.*, p. 139, lines 5-6.

14. Without question, the spreadsheet “on the board” at the time of the discussion above showed the breakpoint between Tiers 1 and 2 at 80,000 GRT. *See Exhibit A.* This spreadsheet was sent to commissioners and interested parties by Board Secretary Anne Ahrendt at 12:53 p.m. on May 19, 2017, shortly after the hearing concluded. *See Exhibit B.*

15. While some of the discussion concerning the tier breakpoint is undoubtedly confusing, BBP asserts that the Notice of Intent accurately reflects the PRRC’s intent to establish the tier breakpoint at 80,000 GRT, given that the spreadsheet “on the board” and under review by committee members at the time of the vote showed the tier breakpoint at 80,000 GRT.

Tier 3 Rates

16. The BBP does take issue, however, with one element of the Notice of Intent as circulated by PRRC staff on August 23, 2017. On page 12 of the Notice, under the Analysis and Decision section, the statement is made that the Committee voted to “further reduce the tonnage rates for passenger vessels only, for additional tonnage at or in excess of 129,999 GRT by 35%” (Emphasis supplied). Similarly, on page 13 of the Notice, the proposed rate structure indicates that the Tier 3 reduction (at or above 130,000 GRT) of 35 percent would apply only to passenger vessels.

17. The hearing transcript reflects no intent by PRRC members to treat rates for passenger and cargo vessels differently in any tier. In fact, at least two Commissioners emphasized that no such distinction was being made. Commissioner Oatis, who presented the first spreadsheet as part of the committee’s deliberations, stated that the tiers applied “consistently . . . to passenger and cargo vessels,” Tr., p. 56, lines 18-19. Commissioner Sola, in articulating the rationale for the

PRRC's decision during discussion on the final motion, stated that "I do not believe that it favors, or un-favored one category, or client, or the other." (Emphasis supplied). *See, e.g.*, Tr. Vol. III, p. 137, lines 15-17.

18. The transcript does include some discussion noting that there currently are not any cargo ships calling on PortMiami that reach the 130,000 GRT level. *See, e.g.*, Tr. Vol. III, p. 42, lines 6-18. However, there was also discussion throughout the hearing about neo-panamax vessels getting larger and the likelihood that cargo ships calling on PortMiami would get bigger in the future. BBP does not believe that any basis exists to distinguish among the rate for cruise and cargo vessels in any tier, even though that means the Pilots will ultimately have to charge less in pilotage rates for any cargo ships that meet or exceed 130,000 GRT.

19. Distinctions between rates for cargo and passenger vessels should be eliminated on both pages 12 and 13 of the Notice. Paragraph 2 on page 13 of the Notice should apply to all vessels, and Paragraph 3 on page 13 should be deleted in its entirety, given that passenger and cargo vessels were intended to be treated the same in all circumstances.

For the reasons expressed, BBP respectfully requests that the FCCA Motion for Clarification concerning the breakpoint for Tier 2 be denied and that BBP's Motion for Clarification concerning the categories of vessels in Tier 3 be granted.

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

CERTIFICATE OF SERVICE

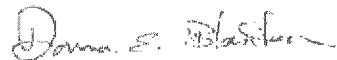
I certify that the original of this pleading was filed with the Agency Clerk and the Executive Director at the Department of Business and Professional Regulation and that a true copy was served this 30th day of August, 2017, via email to the following:

Thomas F. Panza, FBN 138551
Panza Maurer & Maynard
3600 North Federal Highway, 3rd Floor
Ft. Lauderdale, Florida 33308
Telephone: 854-390-0100
tpanza@panzamaurer.com
Counsel for Petitioner Florida-Caribbean
Cruise Association

Clark Jennings
Assistant Attorney General
Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399-1050
Clark.Jennings@myfloridalegal.com

Krista Woodard, Executive Director
Board of Pilot Commissioners
2601 Blair Stone Road
Tallahassee, Florida 32399-0783
krista.woodard@myfloridalicense.com

Anne W. Ahrendt
Government Analyst 1
Board of Pilot Commissioners
2601 Blair Stone Road
Tallahassee, Florida 32399-0783
anne.ahrendt@myfloridalicense.com



Donna E. Blanton

Passenger

GRT	# of Handles	Revenue	Fee/Handle	Harbor Control Fee			GRT Fee			Draft Rate	Fee of Draft	Avg Draft Fee
				6.0% Increase	35.0% Decrease	35.0% Decrease	Tier 1	Tier 2	Tier 3			
5,000	106	64,312	607	\$ 100	\$ 0.0386	\$ 0.0251	193	\$ 17,433				
20,000	20	32,074	1,604	\$ 100	\$ 0.0386	\$ 0.0251	772	\$ 17,433				
30,000	145	233,432	1,610	\$ 100	\$ 0.0386	\$ 0.0251	1,158	\$ 17,433				
40,000	144	330,778	2,297	\$ 100	\$ 0.0386	\$ 0.0251	1,543	\$ 17,433				
50,000	24	63,715	2,655	\$ 100	\$ 0.0386	\$ 0.0251	1,929	\$ 17,433				
60,000	24	78,259	3,261	\$ 100	\$ 0.0386	\$ 0.0251	2,315	\$ 17,433				
70,000	623	2,103,122	3,376	\$ 100	\$ 0.0386	\$ 0.0251	2,701	\$ 17,433				
80,000	209	754,853	3,612	\$ 100	\$ 0.0386	\$ 0.0251	2,952	\$ 17,433				
90,000	72	281,891	3,915	\$ 100	\$ 0.0386	\$ 0.0251	3,202	\$ 17,433				
		<u>3,942,436</u>										

Assuming all Passenger Vessels < 28 Feet

100,000	57	232,884	4,086	\$ 100	\$ 0.0386	\$ 0.0251	3,453	\$ 17,433			
110,000	205	890,343	4,343	\$ 100	\$ 0.0386	\$ 0.0251	3,704	\$ 17,433			
120,000	114	541,833	4,753	\$ 100	\$ 0.0386	\$ 0.0251	3,955	\$ 17,433			
130,000	130	653,288	5,025	\$ 100	\$ 0.0386	\$ 0.0251	4,118	\$ 17,433			
140,000	96	487,426	5,077	\$ 100	\$ 0.0386	\$ 0.0251	4,281	\$ 17,433			
160,000	108	581,400	5,383	\$ 100	\$ 0.0386	\$ 0.0251	4,607	\$ 17,433			
		<u>3,387,175</u>									

5 year compounded increase of 6%

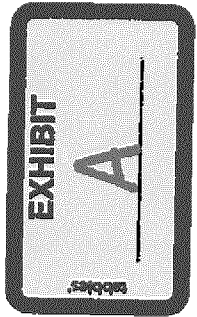
GRT	# of Handles	Revenue	Fee/Handle	Harbor Control Fee			GRT Fee			Draft Rate	Fee of Draft	Avg Draft Fee
				6.0% Increase	35.0% Decrease	35.0% Decrease	Tier 1	Tier 2	Tier 3			
5,000	1,795	1,089,052	607	\$ 100	\$ 0.0386	\$ 0.0251	193	\$ 17,433				
10,000	265	334,910	1,264	\$ 100	\$ 0.0386	\$ 0.0251	386	\$ 17,433				
20,000	80	133,184	1,665	\$ 100	\$ 0.0386	\$ 0.0251	772	\$ 17,433				
30,000	69	151,608	2,197	\$ 100	\$ 0.0386	\$ 0.0251	1,158	\$ 17,433				
40,000	277	670,972	2,422	\$ 100	\$ 0.0386	\$ 0.0251	1,543	\$ 17,433				
50,000	313	887,151	2,834	\$ 100	\$ 0.0386	\$ 0.0251	1,929	\$ 17,433				
60,000	12	39,174	3,264	\$ 100	\$ 0.0386	\$ 0.0251	2,315	\$ 17,433				
70,000	241	906,889	3,763	\$ 100	\$ 0.0386	\$ 0.0251	2,701	\$ 17,433				
90,000	102	431,684	4,232	\$ 100	\$ 0.0386	\$ 0.0251	3,202	\$ 17,433				
		<u>4,644,623</u>										
		<u>11,974,234</u>										

33.82% Increase

GRT	# of Handles	Revenue	Fee/Handle	Harbor Control Fee			GRT Fee			Draft Rate	Fee of Draft	Avg Draft Fee
				6.0% Increase	35.0% Decrease	35.0% Decrease	Tier 1	Tier 2	Tier 3			
5,000	1,795	1,089,052	607	\$ 100	\$ 0.0386	\$ 0.0251	193	\$ 17,433				
10,000	265	334,910	1,264	\$ 100	\$ 0.0386	\$ 0.0251	386	\$ 17,433				
20,000	80	133,184	1,665	\$ 100	\$ 0.0386	\$ 0.0251	772	\$ 17,433				
30,000	69	151,608	2,197	\$ 100	\$ 0.0386	\$ 0.0251	1,158	\$ 17,433				
40,000	277	670,972	2,422	\$ 100	\$ 0.0386	\$ 0.0251	1,543	\$ 17,433				
50,000	313	887,151	2,834	\$ 100	\$ 0.0386	\$ 0.0251	1,929	\$ 17,433				
60,000	12	39,174	3,264	\$ 100	\$ 0.0386	\$ 0.0251	2,315	\$ 17,433				
70,000	241	906,889	3,763	\$ 100	\$ 0.0386	\$ 0.0251	2,701	\$ 17,433				
90,000	102	431,684	4,232	\$ 100	\$ 0.0386	\$ 0.0251	3,202	\$ 17,433				
		<u>4,644,623</u>										
		<u>11,974,234</u>										

Cargo

Base Case Revenue	11,243,155
Net Revenue Increase	731,079
Pilots FTE	18
Net Income Increase per FTE	40,616



Passenger

GRT	# of Handles	Revenue	Fee/Handle	GRT Rate	GRT Fee	Draft Rate	Feet of Draft	Draft Fee
5,000	106	35,517	335	\$ 0.0364	182	\$ 17.433	8.8	153
20,000	20	29,200	1,460	\$ 0.0364	728	\$ 17.433	42.0	732
30,000	145	209,432	1,444	\$ 0.0364	1,092	\$ 17.433	20.2	352
40,000	144	303,798	2,110	\$ 0.0364	1,456	\$ 17.433	37.5	654
50,000	24	56,249	2,344	\$ 0.0364	1,820	\$ 17.433	30.0	524
60,000	24	69,684	2,904	\$ 0.0364	2,184	\$ 17.433	41.3	720
70,000	623	1,945,578	3,123	\$ 0.0364	2,548	\$ 17.433	33.0	575
80,000	209	725,661	3,472	\$ 0.0364	2,912	\$ 17.433	32.1	560
90,000	72	279,985	3,889	\$ 0.0364	3,276	\$ 17.433	35.1	613
		<u>3,655,104</u>						

100,000	57	237,828	4,172	\$ 0.0364	3,640	\$ 17.433	30.5	532
110,000	205	931,330	4,543	\$ 0.0364	4,004	\$ 17.433	30.9	539
120,000	114	577,531	5,066	\$ 0.0364	4,368	\$ 17.433	40.0	698
130,000	130	720,124	5,539	\$ 0.0364	4,732	\$ 17.433	46.3	807
140,000	96	556,076	5,792	\$ 0.0364	5,096	\$ 17.433	40.0	696
160,000	108	702,044	6,500	\$ 0.0364	5,824	\$ 17.433	38.8	676
		<u>3,724,933</u>						

Cargo

5,000	1,795	666,730	371	\$ 0.0364	182	\$ 17.433	10.9	189
10,000	265	283,219	1,069	\$ 0.0364	364	\$ 17.433	40.4	705
20,000	80	115,526	1,444	\$ 0.0364	728	\$ 17.433	41.1	716
30,000	69	132,316	1,918	\$ 0.0364	1,092	\$ 17.433	47.4	826
40,000	277	598,725	2,161	\$ 0.0364	1,456	\$ 17.433	40.5	705
50,000	313	796,605	2,545	\$ 0.0364	1,820	\$ 17.433	41.6	725
60,000	12	35,306	2,942	\$ 0.0364	2,184	\$ 17.433	43.5	758
70,000	241	817,086	3,390	\$ 0.0364	2,548	\$ 17.433	48.3	842
90,000	102	417,605	4,094	\$ 0.0364	3,276	\$ 17.433	46.9	818
		<u>3,863,118</u>						

11,243,155

Donna Blanton

From: Ahrendt, Anne <Anne.Ahrendt@myfloridalicense.com>
Sent: Friday, May 19, 2017 12:53 PM
To: Brittany Adams Long; Captain Carolyn Kurtz (pilotmom42@aol.com); Captain James P. Winegeart (winegeart@jaxpilots.com); Carla O'Bannon (carla@americanguardservices.com); Cindy Dubon (cdubon@panzamaurer.com); Clark Jennings (clark.jennings@myfloridalegal.com); David Wilkins (dewilkins22@aol.com); Donna Blanton; Galen Dunton; Jennifer Graner (JGraner@panzamaurer.com); Louis Sola (lousola@gmail.com); Marlene K. Stern (marlene.stern@myfloridalegal.com); Paxton N. Crew; Richard Law (rlaw@lrcm.com); Sherif Assal (sherif@americanguardservices.com); Thomas F. Panza (tpanza@panzamaurer.com); Vincent "Chris" Oatis (chris.oatis@us.gt.com); Woodard, Krista
Subject: Pilotage Rate Review Rate Structure
Attachments: Revised Rate Structure (80K).xlsx

Per your request.

Please let me know if you have problems accessing the spreadsheet.

Kindly,
Anne Ahrendt
Board of Pilot Commissioners

