

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

IN RE: APPLICATION FOR A CHANGE IN
RATES OF PILOTAGE FOR PORT MIAMI,
FILED BY THE FLORIDA CARIBBEAN
CRUISE ASSOCIATION, AND
ALTERNATIVE APPLICATION FOR A CHANGE
IN RATES OF PILOTAGE FOR PORT MIAMI,
FILED BY BISCAYNE BAY PILOTS, INC.

CASE NO.: PRRC 2014 - 1

NOTICE OF INTENT TO MODIFY THE PORT OF MIAMI RATE OF PILOTAGE

Pursuant to the provisions of Section 310.151, Florida Statutes, and Rule 61G14-22, Florida Administrative Code, the Pilotage Rate Review Committee (Committee) met at a duly-noticed public meeting in Miami, Florida on May 17, 18, and 19, 2017, to review the rate modification applications filed by the Florida Caribbean-Cruise Association (FCCA) and Biscayne Bay Pilots Inc. (BBP).

Committee members present were Sherif Assal, Capt. Carolyn Kurtz, Vincent Oatis, Louis Sola, David Wilkins, and Capt. James Winegeart. Legal advisor to the Board was Clark R. Jennings, Assistant Attorney General.

APPEARANCES

For Florida-Caribbean
Cruise Association:

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

For Biscayne Bay
Pilots Inc.:

Donna E. Blanton, Esq.
Radey Law Firm
301 South Bronough Street, Suite 200
Tallahassee, Florida 32301

THE PARTIES

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

BBP is an association composed of present harbor pilots that is treated as a partnership for tax purposes and which performs the pilotage services at Port Miami. BBP is located at 2911 Port Boulevard, Miami, Florida. The purpose of the BBP is to provide pilotage services at Port Miami in a safe and efficient manner and in compliance with the provisions of Chapter 310 Florida Statutes, the rules promulgated thereto, and any other provisions of law governing the

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

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

In March 2014, FCCA submitted an application for a change in rates of pilotage requesting a 25% reduction in the draft and tonnage rates at Port Miami, but only for passenger vessels. Rates for all other vessels were requested to remain at current rates. A rate hearing was held in July 2014. However, due to a successful challenge concerning committee composition, the results of that hearing were declared void by the District Court of Appeal in 2016. Subsequent to that Order all stakeholders agreed to begin the hearing process anew. FCCA's application was submitted for this subsequent rate hearing without any change to the requested 25% reduction on rates for passenger vessels or any updates on data or other information. BBP subsequently submitted an alternative application dated March 24, 2016, to increase rates of pilotage over a five-year period.

As provided in Rule 61G14-22.007 the Committee convened its Investigative Committee which began the investigation of the two applications in March 2016, but due to litigation between the applicants and accompanying agreements to stay the rate proceedings during the pendency of said litigation, the investigation was suspended on May 27, 2016. In February 2017, the Investigative Committee was instructed to complete the investigation. Both applicants agreed to not amend their original application and agreed not to require the other applicant to do so.

During the Investigative Committee process interested parties, who were users of the pilotage services at the port, participated and made brief statements regarding the requested rate

increase. At the conclusion of the Investigative Committee's review of the Port, a report was prepared and the findings rendered to the Committee as required by Rule 61G14-22.007.

FCCA Application

The FCCA asserts that passenger vessels pay a disproportionate share of pilotage fees compared to their relative share of total handles. FCCA submitted data to the Investigative Committee demonstrating that in 2013, 34% of total handles were passenger vessels, while 64% of total pilotage revenue was passenger related and that in years 2015 and 2016 passenger vessels represented approximately 39% of total handles and 60.5% of total revenue. FCCA asserts that the pilotage rates charged to passenger vessels are not fair, just and reasonable as required by Chapter 310.151(3), *Florida Statutes*.

BBP Application

The BBP application is their first request to increase pilotage rates since the last modification in 2002. An application was submitted in 2009 but it was voluntarily retracted because what appeared at the time, was the beginning of a significant economic recession. The Pilots knew it was bad timing for all parties affected. The 2014 application by FCCA and the related legal administrative procedures, that were resolved in early 2017, further delayed the Pilot's opportunity to request a rate increase. In sum, the Pilots have not had a change in rates for over 15 years.

Key assertions of both applicants and their specific modification requests may be found on pages 3 through 8 of the report of the Investigative Committee and the applications submitted which are part of the record.

Turning to the merits of the pending requests, the Committee has reviewed the various applications, the written and transcribed oral statements of those in attendance at the Investigative Committee hearings, the Report of the Investigative Committee with appended exhibits and transcripts, the various exhibits submitted by both FCCA and BBP, as well as the testimony and any supporting exhibits of the following individuals:

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

Captain Stuart Lily
Biscayne Bay Pilots, Inc.
Miami, Florida

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

Captain Bronson Stubbs
Biscayne Bay Pilots, Inc.
Miami, Florida

Paxton Crew, Esq.
Qualified Representative for BBP
League City, Texas

Mr. Paul G. Kirchner
Executive Director – General Counsel
American Pilots Association
Washington, D.C.

Admiral William D. Baumgartner
Senior Vice President, Global Marine
Operations
Royal Caribbean Cruises, Ltd.
Miami, Florida

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

Captain Bjorn Ove Hansen
Vice President Nautical & Port Operations
Norwegian Cruise Line Holdings
Fort Lauderdale, Florida

Mr. John Heller, CPA
Marcum, LLP
Fort Lauderdale, Florida

Joel Glick, C.P.A.
Berkowitz, Pollack, Brant
Miami, Florida

Mr. Tim E. Donney
Lighthouse Marine Risk Consulting, LLC
Newtown, Pennsylvania

Captain Jonathan Nitkin
Chairman
Biscayne Bay Pilots, Inc
Miami, Florida

Mr. Brent Dibner
Dibner Maritime Associates, LLC
Chestnut Hill, Massachusetts

Captain Christopher Scott Marlow
Vice Chairman
Biscayne Bay Pilots, Inc.
Miami, Florida

Mr. Thomas Kornegay
Executive Director, Port of Houston (Ret.)
Houston, Texas

Mr. Baird Lobree
Lobree Corporation
Miami, Florida

Captain Zach Condon
St. Andrews Bay Harbor Pilots Association
Panama City, Florida

Ms. Genai Corban
Naples, Florida

THE STATUTORY FACTORS

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

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

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

1. The public interest in having qualified pilots available to respond promptly to vessels needing their service.
2. A determination of the average net income of pilots in the port, including the value of all benefits derived from service as a pilot. For the purpose of this sub-paragraph, "net income of pilots" refers to total pilotage fees collected in the port, minus reasonable operating expenses, divided by the number of licensed and active state pilots within the ports.
3. Reasonable operating expenses of pilots.
4. Pilotage rates in other ports.
5. The amount of time each pilot spends on a actual piloting duty and the amount of time spent on other essential support services.
6. The prevailing compensation available to individuals in other maritime services of comparable professional skill and standing as that sought in pilots, it being recognized that in order to attract to the profession of piloting, and to hold the best and most qualified individuals as pilots, the overall compensation accorded pilots should be equal to or greater than the available to such individuals in comparable maritime employment.
7. The impact rate change may have in individual pilot compensation and whether such change will lead to a shortage of licensed state pilots, certificated deputy pilots, or qualified pilot applicants.
8. Projected changes in vessel traffic.
9. Cost of retirement and medical plans.
10. Physical risks inherent in piloting.
11. Special characteristics, dangers, and risks of the particular port.
12. Any other factors the Committee deems relevant in determining a just and reasonable rate.

(c) The Committee may take into consideration the consumer price index or any other comparable economic indicator when fixing rates of pilotage; however, because the consumer

price index or such other comparable economic indicator is primarily related to net income rather than rates, the Committee shall not use it as the sole factor in fixing rates of pilotage.¹

The Committee finds that the data set forth in the Investigative Committee report fairly represents the state of shipping activity in the Port as well as accurately describes the operations of the Port and the activities of the pilots serving the Port. The Committee further finds that the financial data presented both as historical fact and as projections reasonably reflects the present and future financial state of pilotage charges (and the income derived therefrom) in the Port. The Committee accepts the Investigative Committee's application of the abovementioned data to the various factors set forth in Section 310.151(5) and the conclusions set forth in its reports.² Specifically, as to the individual elements specified as follows the Committee makes the following findings:

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

The Committee accepts and adopts the findings of the Investigative Committee as reflected on pages 17 and 18 of the Report of the Investigative Committee.

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

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

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

The Committee accepts and adopts the findings of the Investigative Committee as reflected on pages 19, 20, and 21 of the Report of the Investigative Committee.

3. Reasonable operating expenses of pilots.

The Committee accepts and adopts the findings of the Investigative Committee as reflected on pages 22, 23, 24, and 25 of the Report of the Investigative Committee with the following comments:

The Committee recognizes the age of the three pilot boats utilized by BBP as well as the deteriorating condition of the docking facilities and the need for the near future repair and replacement costs associated with said items as reflected on page 23 of the report to be a major factor in this rate increase request.

4. Pilotage rates in other ports.

The Committee accepts and adopts the findings of the Investigative Committee as reflected on pages 26 - 32 of the Report of the Investigative Committee.

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

The Committee accepts and adopts the findings of the Investigative Committee as reflected on pages 33, 34, and 35 of the Report of the Investigative Committee with the following comments:

The Committee accepts and adopts the information contained in FCCA Exhibit “O” (a slide entitled “202 Hours Per Week, Every Week?”). The Committee acknowledges that rather

than retain and expense outside services for such items as building and boat management, pilots perform these necessary tasks when not engaged in the ship handle process. The Committee further acknowledges that there may be disagreement as to which specific extra-piloting activities currently conducted by BBP should be considered “essential” as that term is considered by statute. However, the Committee is unwilling to make such a determination here acknowledging that a substantial portion of the tasks are essential. Importantly, the Committee recognizes that BPP plays a very significant role in maintaining harbor control and serves as the harbormaster for the Port of Miami, a service most often provided by other parties in ports around the nation which result in additional charges being levied against vessels utilizing said ports. Currently, no separate harbormaster charge is assessed at the Port of Miami as such costs have been absorbed into the rates of pilotage by BBP.

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

The Committee accepts and adopts the findings of the Investigative Committee as reflected on page 36 of the Report of the Investigative Committee with the following comments:

The Committee has consistently established through various previous orders³ related to this and other ports that it accepts the proposition that the pre-pilot career path is the same for persons who remain as senior bridge officers on American-flagged ships and for those who become pilots.

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

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

The Committee thus uses the range of masters’ salaries as a range of “floors” of pilots’ income to be applied depending on the amount of vessel traffic at a port, the physical characteristics of a port, the associated risks and complexities of handling vessels in a particular port, and the size of vessels handled. Similarly, while the Committee accepts that the nationwide average compensation for pilots is somewhere between \$400,000 and \$410,000, such are only averages. Thus a pilot’s appointment to the major ports, such as the Ports of Tampa Bay, Port Everglades, Miami, Jacksonville, Canaveral, or Palm Beach would be considered as akin to the more prestigious, responsible, and highly paid masters position (Master, Mates and Pilots) while smaller ports, with correspondingly lesser amounts of traffic, smaller vessels to handle, and lower risks and complexity, would have a lower “floor” for income.

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

The Committee accepts and adopts the findings of the Investigative Committee as reflected on pages 37 - 42 of the Report of the Investigative Committee.

8. Projected changes in vessel traffic.

The Committee accepts and adopts the findings of the Investigative Committee as reflected on pages 42, 43, 44, and 45 of the Report of the Investigative Committee.

9. Cost of retirement and medical plans.

The Committee accepts and adopts the findings of the Investigative Committee as reflected on pages 46 -50 of the Report of the Investigative Committee.

10. Physical risks inherent in piloting.

The Committee accepts and adopts the findings of the Investigative Committee as reflected on page 50 of the Report of the Investigative Committee.

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

The Committee accepts and adopts the findings of the Investigative Committee as reflected on pages 51, 52, and 53 of the Report of the Investigative Committee.

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

The Committee accepts and adopts the findings of the Investigative Committee as reflected on page 53 of the Report of the Investigative Committee under “other relevant information” with the following comments:

The Committee recognizes that over the last several years the cruise industry has invested in the acquisition of substantially larger vessels. Many of these larger vessels now call upon the Port of Miami. This change in the character of the cruise business model has resulted in a situation whereby the cruise industry has generated a greater percentage of pilotage fees relative to the number of handles required *vis a vis* the cargo industry. Restated, although the cruise industry does not comprise the majority of the pilot handles at the Port of Miami, due to the current rate formulary, it generates the majority of the pilot revenue.

13. The Consumer Price Index and Labor Costs.

The Committee accepts and adopts the findings of the Investigative Committee as reflected on pages 54, 55, and 56 of the Report of the Investigative Committee.

ANALYSIS AND DECISION

The Committee is of the opinion that the rates of pilotage at the Port of Miami should be modified based upon the Report, the applicants' presentations and past Committee precedent. The Committee notes that the modified rates which would increase the tonnage rates of pilotage by 6% for all vessels, with a 5000 GRT minimum, applied to the first 79,999 GRT; reduce the tonnage rates of pilotage by 35% for all vessels on additional tonnage at or in excess of 80,000 GRT, up to 129,999 GRT; and further reduce the tonnage rates for passenger vessels only, for additional tonnage at or in excess of 129,999 GRT by 35%; increase the minimum draft to 18 feet and no change in the draft rates between 18 and 28 feet and increase the draft rates by 33.8% for all vessels for additional draft in excess of 28 feet; adding a new harbor control charge of \$ 100 per transit; modified cancellation and detention fees; and at the pilots' discretion, authorizing to add a second pilot to neopanamax vessels and doubling the pilotage fee on such handles; should provide BBP with a net revenue increase of approximately \$731,000 per annum while simultaneously reducing the rates of pilotage for the newer larger vessels calling upon the Port.

In general, the modified rates are necessary to more equitably distribute the costs of pilotage services at the Port among the various maritime consumers while bringing the income of the members of the BBP closer to where it was subsequent to the 2002 rate increase and before recent increases in operating, consumer, and other costs. The Committee believes that these new rates assure that the quality of the pilotage services at the Port of Miami remain constant and that

the costs of these necessary services are more equitably distributed among the shipping community allowing the BBP to maintain an average income that is acceptable to both the pilots and the maritime industry, and thus, acceptable to the Committee.

The Committee therefore determines that as of October 1, 2017, the rates of pilotage at the Port of Miami shall be Modified to the following:

1. Draft Charges apply to all vessels at \$17.433 per draft foot with an 18-foot minimum, for the first 28 feet and \$23.325 per foot above 28 feet;
2. For Passenger Vessels, the following tonnage rates apply:
 - a. A tonnage charge of \$0.0386 per Gross Registered Ton (GRT) with a 5,000 GRT minimum, applied to the first 79,999 GRT;
 - b. A tonnage charge of \$0.0251 per Gross Registered Ton (GRT) shall be applied for each additional Ton at or above 80,000 GRT, up to 129,999 GRT;
 - c. A tonnage charge of \$0.0163 per Gross Registered Ton (GRT) shall be applied for each additional Ton at or above 130,000 GRT;
3. For Cargo Vessels, the following tonnage rates apply:
 - a. A tonnage charge of \$0.0386 per Gross Registered Ton (GRT) with a 5,000 GRT minimum, applied to the first 79,999 GRT;
 - b. A tonnage charge of \$0.0251 per Gross Registered Ton (GRT) shall be applied for each additional Ton at or above 80,000 GRT;
4. At the discretion of BBP an additional pilot may be assigned to any neopanamax vessel calling on Port Miami with the commensurate result that said vessel shall be charged a double pilotage fee. In no case, may more than two pilots be assigned to handle any neopanamax vessel;

5. Detention of pilots – 25% of accessed pilotage fee. In no case, may a delay in departure caused by a medical emergency or force majeure be considered a detention;
6. Cancellation of pilots – 25% of accessed pilotage fee;
7. Harbor Control Charge- \$100 per transit.
8. All other existing rates will remain unchanged.

DONE and ORDERED this ____ day of _____, 2017.

DAVID WILKINS, CHAIRMAN
PILOTAGE RATE REVIEW COMMITTEE

NOTICE OF HEARING RIGHTS

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

Pursuant to Section 120.573, Florida Statutes, you are hereby notified that mediation

pursuant to that section is not available.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been provided by U.S. Mail to: Thomas F. Panza, Panza, Maurer & Maynard, P.A., Bank of America Building, Third Floor, 3600 North Federal Highway, Fort Lauderdale, FL 33308; and Donna E. Blanton, Radey Law Firm, 301 South Bronough, Suite 200, Tallahassee, Florida 32301; and inter-office mail to Clark R. Jennings, Assistant Attorney General, Administrative Law Section, PL-01 The Capitol, Tallahassee, Florida 32399-1050 this _____ day of _____, 2017.
