

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

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

CASE NO.: PRRC 2014-A

MOTION TO STRIKE OR DISMISS CARGO ENTITIES' RESPONSE

COMES NOW, the Florida-Caribbean Cruise Association hereby files this Motion to Strike and Response to Crowley and King Ocean's ("Cargo Entities," hereinafter) Amended Response to Port Everglades Rate Proceeding and Proposed Final Order Under Agreement By The FCCA and Port Everglades Pilots, and states as follows:

I. The Cargo Entities Response Is Untimely And Must Be Stricken Or Dismissed By This Committee As A Matter Of Law

The Cargo Entities' filing must be stricken because: 1) it has not been granted intervention; and 2) the response was filed nearly six weeks after the statutory deadline for filing a response.

First and foremost, both King Ocean and Crowley Liner Services filed motions to intervene in this matter. The FCCA filed extensive responses setting forth various legal and factual reasons why intervention cannot, as a matter of law, be granted to the Cargo Entities. Most notably, that the Cargo Entities were well past the statutory deadline for party participation. The Cargo Entities' motions for intervention have not yet been ruled upon by this Committee. Because intervention has not been granted and cannot be granted because the Cargo Entities missed the deadline for participation, the Cargo Entities are prohibited from participating as an intervening party. Yet, the

Cargo Entities submitted their filing as though they are a participating party. They are not, and the very filing of the “response” was improper and it must be stricken.

Second, the Cargo Entities provide absolutely no legal support, no citation to statute, no citation to administrative code provision, no citation to any court case that supports the filing of this response. The absence of legal support in the Cargo Entities’ response is presumably because the controlling statute *clearly prohibits* the Cargo Entities from filing a response at this point in time. The FCCA will not belabor all of the reasons why the Cargo Entities cannot be permitted to intervene as a matter of law, as those arguments are set forth extensively in the FCCA’s responses to the Cargo Entities’ motions to intervene, but section 310.151(3), Florida Statutes dictates, expressly, that “**all interested parties**...may file an answer, an additional or alternative petition, or any other applicable pleading **or response, within 30 days after**” the notice published by this Committee on August 1, 2018. The Cargo Entities *response* is around *40 days late*; the notice published by this Committee set a deadline for all responses to be filed by August 31, 2018. The Cargo Entities totally avoid even addressing this indisputable fact in their response.¹ The statute, by requiring responses to be submitted within the 30-day notice period, prevents eleventh-hour

¹ The Cargo Entities are so lacking in legal support, that they make the stretch of arguing that the proposed agreement between the FCCA and PEP constitutes a new rate change application, again without citation to any statute, administrative rule, or law supporting their position. This argument, too, is without merit. The Cargo Entities point out that counsel for this Committee stated it is not a rate change petition, and it is non-sensical that two interested parties, who complied with all statutory requirements for filing applications and initiating the rate change process, could not subsequently seek to find an agreement that could be presented to the Committee without it being considered a new rate change application subject to the application filing requirements under section 310.151 and the Florida Administrative Code. If that were the case, any change – no matter how minor – to a proposed rate structure, whether unilaterally or through negotiations between parties, would require interested parties to continually file and re-file applications with every change, would require continual investigations, and would turn the rate change process on its head.

responses or interventions from taking place, which is exactly what the Cargo Entities are attempting to do here.

Respectfully, the FCCA does not believe it is within the Committee's discretion to accept or deny, to consider or not consider, the Cargo Entities' response. Florida law required any such response to be filed by August 31, 2018. The Committee does not have the discretion to accept responses past that time without directly contravening the statute. The Cargo Entities' filing must be stricken or dismissed accordingly.

II. The Cargo Entities Opposition About The Proposed Agreement Is Troubling

The FCCA believes that the Cargo Entities' opposition and complaints to the proposed agreement is something that should trouble this Committee considerably. The FCCA and PEP have been dealing with the pending Port Everglades matter for four years, just like the FCCA and PortMiami pilots have engaged in over four years of rate change proceedings. In the PortMiami proceeding, this Committee encouraged the parties to work together to reach a mutual agreement for a change in rates at that port. The parties did. In this case, the parties have endeavored to do the same. Having the parties work together towards a mutually agreeable rate change resolution should be encouraged, and typically is encouraged both in litigation and in other legislative, regulatory and administrative proceedings. Yet the Cargo Entities seek to cast the proposed agreement as some sort of clandestine, unfair agreement aimed at punishing cargo while benefiting the FCCA and PEP. It most simply is not. Had the Cargo Entities properly attempted to participate in this matter during the four years this case was pending (consistent with the deadlines for such participation), they unquestionably would have been included in any discussions or meetings as it relates to a proposed agreement. They deliberately chose not to. The Cargo Entities non-involvement, which is no one's fault but their own, should not serve as a basis to punish the parties

that have rightly and fairly participated in these proceedings and who have been willing to reach across the aisle to develop a mutually agreeable resolution to this matter.

Moreover, in an attempt to show the purported importance of the proposed rate change on the Cargo Entities, they point to their economic impact on the surrounding communities and the competitive nature of their business. The FCCA respects that fact, as it operates under the same, if not more significant, pressures and circumstances. As the Cruise Line International Association stated, the global cruise industry “contributed \$7.97 billion to Florida’s economy in 2016.”² Cruise line members of the FCCA compete heavily against one-another and look closely at every single cost and expense associated with any particular cruise, including every single port cost incurred, including pilotage fees. What doesn’t make sense about the Cargo Entities argument, however, is that if competition is so tight and margins are so thin, then why didn’t the Cargo Entities participate in these proceedings for the past four years? The FCCA is impacted by pilotage fees, so it took action and filed a rate change application. The Port Everglades Pilots are impacted by the pilotage fees, so they filed a timely response to intervene. The Cargo Entities have been nowhere to be seen. Because the Cargo Entities failed to participate and sat on their rights for four years, they now seek to cast the proposed agreement, which is a very good, productive and beneficial thing, into a negative light. It is the Cargo Entities’ eleventh-hour attempt, after four years of these proceedings, to turn these proceedings on their head and totally upend the good faith efforts of the FCCA and PEP to reach a mutual agreement, that should be discouraged.

² Global Cruise Industry Contributes \$7.97 Billion to Florida’s Economy, Cruise Line International Association, October 4, 2017, found at: <https://globenewswire.com/news-release/2017/10/04/1140814/0/en/Global-Cruise-Industry-Contributes-7-97-Billion-to-Florida-s-Economy.html>

III. The Cargo Entities Response Demonstrates Exactly Why The Current Pilotage Rates Are Inequitable, Unreasonable, and Must Be Changed

Finally, while the Cargo Entities' response should be stricken or dismissed, the FCCA must point out that while the Cargo Entities attempt to demonstrate how purportedly inequitable the proposed agreement between the FCCA and PEP would be if adopted, the Cargo Entities' data actually demonstrates exactly why the proposed agreement should be adopted.

Before addressing the Cargo Entities' data, it is important to point out that, contrary to what the Cargo Entities claim in their response, the proposed settlement does not account for "massive decreases on pilotage rates for cruise ships with those cost savings (and more) being passed on to cargo..." *Response*, p. 7. Rather, the proposed settlement provides moderate savings for the FCCA member lines and merely reinstating some equity back into the pilotage rate paying system. The current rate structure at Port Everglades, which relies so heavily on GRT, is outdated and has resulted in cruise lines being massively penalized over the past 10-15 years due to the increased GRT of cruise ships. As a result, the cruise line industry has been heavily subsidizing the payment of pilotage fees at Port Everglades, with cargo ships being the sole beneficiary of that subsidization. If there has been any cost shift at Port Everglades, it has been a shift of pilotage costs and subsidization of the cargo industry onto the FCCA cruise line members for the past 10 to 15 years. The proposed agreement is not a cost shift to the cargo entities, it is a much-needed step in the right direction toward equity and a correction to a system that has become totally out of whack.

A look at the data included by the Cargo Entities in their response makes this point. The maximum gross register tonnage for Crowley Liner Services is 15,375, and the maximum gross register tonnage for King Ocean is 21,018. *Combined*, King Ocean and Crowley accounted for 1,935 handles in 2017, and total pilotage fees of \$1,342,525. In 2017, Royal Caribbean *alone*

accounted for 368 handles and \$2,562,119 in pilotage fees. Thus, Royal Caribbean had *only 19% of the handles that the two Cargo Entities had in 2017, but paid \$1.219 million more in pilotage fees than the Cargo Entities combined.* The Cargo Entities pay around \$695 dollars per handle, on average, while Royal Caribbean pays around \$6,950 per handle, on average, a 10-fold difference. If Royal Caribbean had 1,935 handles at Port Everglades like the Cargo Entities, based on its average fee per handle *it would pay nearly \$13.5 million a year in pilotage fees.*

The Cargo Entities' proposed rate structure is also wholly unacceptable, as it would result in another significant rate increase, largely on the backs of the cruise industry. An increase in GRT from \$0.0343 to \$0.0439 (the Cargo Entities do not specify if the proposed increase is on the only on the first 80,000 GRT, or would apply as a single GRT rate as opposed to the current tier structure) is significantly detrimental to the cruise industry. Because the Cargo Entities have vessels with low GRTs, and the current rate structure disproportionately relies on GRT as a metric for setting pilotage fees, the relative impact on the Cargo Entities would be much lower. The Cargo Entities proposed structure would only cause FCCA members to even further subsidize the cargo industry in the payment of pilotage rates and exacerbate the inequity that already exists in the system today. Depending on how the Cargo Entities proposal is structured and based on initial estimates, the FCCA anticipates the Cargo Entities' proposal would result in an immediate increase on its fees in the range of 15% up to 53%.

The Cargo Entities attempt to boil the proposed agreement down to an "us versus them" proposition-that the FCCA and PEP purportedly benefit, while the cargo industry pays the price. While it is a narrative that understandably suits the Cargo Entities' position, it is just not the case. The proposed agreement, if ultimately adopted by this Committee, only aims to provide some level of equity across all classes of ships – whether cruise or cargo – where ships more accurately pay

their fair share. What the Cargo Entities fail to recognize, is that it is the cruise line industry that has been significantly penalized, to the tune of millions and millions of dollars, over the past 10-15 years due to the heavy reliance on GRT in the setting of pilotage fees at Port Everglades. The proposed agreement is nothing more than a correction, albeit not even a correction that brings total equity for the cruise lines, back towards a system that more rationally spreads costs across the entire industry. While the Cargo Entities certainly can argue that they would not be happy about the increase in their pilotage fees if the proposed agreement is ultimately adopted by this Committee, they cannot argue that the proposed agreement is not equitable.

WHEREFORE, the FCCA respectfully requests that this Pilotage Rate Review Committee enter an order striking or dismissing King Ocean and Crowley Liner Services response.

Respectfully submitted,

PANZA, MAURER & MAYNARD, P.A.
Coastal Towers
2400 E. Commercial Boulevard, Suite 905
Fort Lauderdale, FL 33308
Tel: (954) 390-0100
Fax: (954) 390-7991

/s/Thomas F. Panza

THOMAS F. PANZA
FLA. BAR NO. 138551
JENNIFER K. GRANER
FLA. BAR NO.: 907091

Counsel for Florida-Caribbean Cruise Association

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served by electronic delivery on the 17th day of October, upon the following:

Donna E. Blanton
Radey Law Firm
301 South Bronough, Suite 200
Tallahassee, Florida 32301
Telephone: 850-425-6654
dblanton@radeylaw.com
Counsel for Biscayne Bay Pilots, Inc..

Marlene K. Stern
Assistant Attorney General
Clark Jennings
Assistant Attorney General
PL-01 The Capitol
Tallahassee, Florida 32399-1050
Marlene.stern@myfloridalegal.com
Clark.jennings@myfloridalegal.com
***Counsel for Florida Department of Business
and Professional Regulation Pilotage Rate
Review Committee***

Jordan S. Cohen
Brandon J. Hechtman
Wicker Smith O'Harea McCoy & Ford, P.A.
515 E. Las Olas Blvd., Suite 1400
Ft. Lauderdale, FL 33301
JCohen@wickersmith.com
BHechtman@wickersmith.com
***Counsel for Crowley Liner Services, Inc.
and King Ocean Services, LTD.***

George Meros
Holland & Knight LLP
315 South Calhoun Street, Suite 600|
Tallahassee, FL 32301
George.meros@hkllaw.com
Counsel for Port Everglade Pilots

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

Warren H. Husband
Metz, Husband & Daughton
PO Box 10909
Tallahassee, FL 32302-2909
whh@metzlaw.com
***Counsel for Florida Harbor Pilots
Association***

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