

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



IN RE: APPLICATION OF FLORIDA CARIBBEAN-CRUISE ASSOCIATION FOR A REDUCTION IN RATES OF PILOTAGE AT PORT EVERGLADES. CASE NO.: PRRC 2014-2

CROWLEY’S AND KING OCEAN’S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION THE FINAL HEARING OF THE PRRC

COME NOW Moving Intervenors CROWLEY LINER SERVICES, INC. (“Crowley”) and KING OCEAN SERVICES, LTD. (“King Ocean Services”) and KING OCEAN AGENCY, INC. (“King Ocean Agency”) (collectively “King Ocean”) and submit this motion to dismiss for lack of subject matter jurisdiction the final hearing of the Pilotage Rate Review Committee (“PRRC”) in the Port Everglades Rate Proceeding regarding the Proposed “Final Order Under Agreement” by the Florida Caribbean Cruise Association and Port Everglades Pilots Association and further state:

1. Florida Caribbean Cruise Association (“FCCA”) filed a formal rate change application on July 29, 2014. FCCA’s application with exhibits totaled 798 pages. It requested “a 25% decrease in the draft and tonnage rates and all pilotage charges for which draft and tonnage apply, for passenger vessels only.” (Rpt. Investigative Committee, p. 3 of 303)
2. Port Everglades Pilots Association (“PEP”) filed a formal rate change application on November 21, 2014. PEP’s application with exhibits totaled 320 pages. It requested “a comprehensive adjustment in rates which would increase pilotage rates on small vessels and

decrease pilotage rates on larger, frequent caller vessels, resulting in an overall estimated increase of total pilotage revenue of 11%.”¹ (Rpt. Investigative Committee, p. 3 of 303)

3. The investigative process related to FCCA’s and PEP’s applications was suspended in 2015. (*See* Rpt. Investigative Committee, p. 3 of 303).

4. Subsequently, in or about September of 2018² the FCCA and PEP came to an “agreement” on a change in pilotage rate structure for Port Everglades.

5. At some point, FCCA and PEP provided their agreement to the PRRC in a document titled “Wording for the final order under agreement by both the FCCA and Port Everglades Pilots Association” (“Proposed Final Order Under Agreement,” a copy of which is attached hereto as Exhibit A).³ The Proposed Final Order Under Agreement is a one (1) page document outlining a pilotage-rate formula that varies greatly from the “original” FCCA application and the “original” PEP application. (*See* Rpt. Investigative Committee, p. 3 of 303).

6. In other words, FCCA and PEP submitted “changes [and] additions to the[ir] original application.” *See* Fla. Admin. Code Ann. r. 61G14-22.007(4).

¹ The reference in the Investigative Report to a proposed decrease on “larger, frequent callers” is somewhat unclear, as the Pilots’ original application sought a (more modest) increase on frequent callers (feeders) at Port Everglades. In any event, it is undisputed that the final proposed “agreement” is markedly different from the Pilots’ original application.

² The timing of the subject negotiations and/or the date an “agreement” was reached are not currently part of the record. Filings in the PortMiami Rate Proceeding suggest some manner of agreement of proposed rates for Port Everglades had been reached by April of 2018. In any event, the substance of any such agreement was not disclosed in this proceeding, in any fashion, until September of 2018.

³ The Proposed Final Order Under Agreement does not appear as a submission on the PRRC’s docket. Crowley and King Ocean were provided a copy of it at the September 10, 2018 Investigative Hearing.

7. “Any changes or additions to the original application must be sent in the form of a revised application with seven (7) copies, and must be received by the Board Office five (5) business days prior to the completion date of the investigation.” *Id.*

8. “The filing of a revised application begins the application process anew requiring the Board staff to review the revised application for completeness within 30 days as provided in subsection (3).” *Id.*

9. Subsection (3) mandates that applications be facially complete and comply, *see id.* r. 61G14-22.007(3), with Florida Administrative Code Rules 61E13-2.005 or 61E13-2.006, which set forth required content for applications by a pilot or persons other than a pilot, respectively.

10. Jurisdiction of the PRRC is predicated upon the receipt of a properly filed and complete application:

- a. “Upon determination of completeness of the application, the Board’s Chairman or the Vice Chairman in the event of his absence shall schedule a public hearing on the application for the change in rates of pilotage.” and
- b. “The investigation and the public hearing proceeding shall not occur until that determination has been made and all pending applications are consolidated.”

See id. r. 61G14-22.007(5)-(6).

11. Here, the PRRC lacks jurisdiction to conduct the hearing. Although FCCA and PEP now seek the PRRC to approve their Proposed Final Order Under Agreement, which is a significant change from their respective original applications, no amended or revised application was submitted by either party, as required. *See id.* r. 61G14-22.007(4). Rather, since the investigative process was suspended in 2015, “the Chair of the PRRC agreed that the two applicants would not need to amend their respective applications. The Investigative Committee was instructed to

investigate the agreed upon rate request given whatever current information is provided by the applicants, interested parties and other available sources.”⁴ (Rpt. Investigative Committee, p. 3 of 303)

12. The Florida Administrative Code does not empower the Chair of the PRRC to waive the requirement that any changes or additions to an application be set forth in a revised application, which is, in turn, served on the Board and then noticed for a public hearing pursuant to Florida Administrative Code Rule 61G14-22.007. *See, e.g., Vantage Healthcare Corp. v. Agency for Health Care Admin.*, 687 So. 2d 306, 308 (Fla. 1st DCA 1997) (“The agency is obligated to follow its own rules.” (citations omitted)).

13. The PRRC also lacks jurisdiction because the one (1) page “Proposed Final Order Under Agreement” between FCCA and PEP plainly fails to comply with Florida Administrative Code Rules 61E13-2.005 or 61E13-2.006 and could not be deemed a facially complete revised application.

14. Accordingly, the PRRC lacks jurisdiction to hold the hearing as scheduled to commence on October 24, 2018.

WHEREFORE Crowley and King Ocean move to dismiss for lack of subject matter jurisdiction the October 24-26, 2018 hearing on Port Everglades Pilotage Rates and further relief the body deems necessary and just under the circumstances.

Date: October 18, 2018

/s/ Jordan S. Cohen
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⁴ This “ruling” is not set forth in the PRRC’s docket. A request has been made to the PRRC to provide any transcript or meeting minutes where this ruling was memorialized.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing documents has been provided by e-mail to: AGC.Filing@myfloridalicense.com; Cindy Dubon (cdubon@panzamaurer.com); Clark Jennings (clark.jennings@myfloridalegal.com); Donna Blanton (dblanton@radeylaw.com); Greg McDermott (GMcDermott@panzamaurer.com); Jennifer Graner (JGraner@panzamaurer.com); Woodard, Krista (Krista.Woodard@myfloridalicense.com); Marlene K. Stern (marlene.stern@myfloridalegal.com); Thomas F. Panza (tpanza@panzamaurer.com); Warren H. Husband (whh@metzlaw.com); on this 18th day of October, 2018.

/s/ Jordan S. Cohen
Jordan S. Cohen, Esquire
Florida Bar No. 551872

Exhibit A

Wording for the final order under agreement by both the FCCA and Port Everglades Pilots Association

The following modifications shall be made to pilotage rates per pilot in Port Everglades:

1. The base formula for calculating pilotage rates shall be modified

From: $((\text{Draft Rate} * \text{Draft}) + (\text{GT Rate} * \text{GT}))$

To: $((\text{LOA Rate} * \text{LOA}) + (\text{Beam Rate} * \text{Beam}) + (\text{Draft Rate} * \text{Draft}) + (\text{GT Rate} * \text{GT}))$

2. The initial base rate in dollars per foot shall be:

	<u>Standard Rate</u>	<u>Discount Rate – Vessels less than 10,000 GT</u>
LOA Rate:	1.00000	0.75000
Beam Rate:	5.00000	3.75000
Draft Rate:	30.00000	22.5000
GT Rate:	0.01400	0.01050

Minimum Pilotage: The following minimum charges will apply:

LOA: 100 feet Beam: 30 feet

Draft: 18 feet GT: 5000 GT

3. Additional Fees shall be:

Detention of Pilot – 25% of pilotage fee per hour after the first one half hour. In no case may a delay in departure caused by a medical emergency or force majeure be considered a detention.

Cancellation of Pilot – 25% of pilotage fee

Late Payment Charge: 1.5% per month after 30 days from the date of invoice submission

4. The draft rate for vessels with a draft of 31 feet 0 inches or greater shall increase by 6.0% each year for 10 consecutive years starting on the anniversary date one year following the effective date of this rate.

All other rates shall increase by 2.5% for the first 5 years followed by 2.0% for the next 5 years starting on the anniversary date one year following the effective date of this rate.