

**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

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MOTION TO INTERVENE AS PARTY

Seaboard Marine Ltd., by and through their undersigned counsel, in accordance with the Florida Administrative Code and the Florida Administrative Procedure Act Code moves to intervene in this case and as grounds in support state as follows:

1. Seaboard Marine Ltd., (“Seaboard”) operates vessels that regularly navigate in and out of PortMiami. Because the vessels Seaboard sails are foreign-flagged, it contracts with the Biscayne Bay Pilots, Inc. for pilotage services.
2. The Biscayne Bay Pilots, Inc. is the sole organization for harbor pilots governed by the Department of Business and Professional Regulation, Board of Pilot Commissioners Pilotage Rate Review Committee for vessels transitioning in and out of PortMiami.
3. Because this action concerns the pilotage rates for PortMiami and the Pilotage Rate Review Committee recently approved a significant rate increase for harbor pilots in PortMiami, Seaboard seeks to intervene in this action as a party. *See* Fla. Admin. Code Ann. r. 28-106.205 (“Persons other than the original parties to a pending proceeding whose substantial interest will be affected

by the proceeding and who desire to become parties may move the presiding officer for leave to intervene.”).

4. Of note, other Miami Operators filed their motion to intervene in June and was set to be considered on July 24, 2018. The hearing on July 24, 2018 has been cancelled due to scheduling conflicts and, upon information and belief, will be rescheduled for a future date and time. As the hearing on the other Miami Operators’ motion to intervene has not yet been rescheduled, the current parties to this action will not be prejudiced by the relief sought.

5. Facially, this Motion may appear late, because it was not filed “at least 20 days before the final hearing.” *Id.* However, this Committee may still grant the right to intervene and “impose terms and conditions” to “limit prejudice” to the named parties “for good cause shown.” *Id.*

6. Here, good cause exists to allow for intervention as this stage, because the Final Order filed on May 9, 2018 was not adopted at a duly-notice “final hearing¹.” Rather, the May 9, 2018 Final Order was a byproduct of a settlement reached April 26, 2018 and approved by the Committee presumably during the meeting of the “The Pilotage Rate Review Committee” on April 27, 2018 that followed the “General Board Meeting.”

7. The “Notice of Meeting” published in advance of the April 27, 2018 on March 22, 2018 gave no indication that there would be a “final hearing “on April 27, 2018 or that “final agency action” was being considered. As such, the triggering event (“the final hearing”) for setting the deadline for intervention (“at least 20 days before the final hearing”) never properly occurred, because no “final hearing” was ever noticed.

¹ “The presiding officer shall set the time and place for all hearings and shall serve written notice on all parties at their address of record. No less than 14 days’ notice shall be given for the hearing on the merits of the petition unless otherwise agreed by the parties or unless otherwise provided by law.” *See Fla. Admin. Code Ann. r. 28-106.208.*

8. In accordance with Fla. Admin. Code Ann. r. 28-106.205, Seaboard states as follows:

(a) Intervenor, Seaboard, is represented by Jordan S. Cohen, Esq.,

JCohen@wickersmith.com and Brandon J. Hechtman, Esq.,

BHechtman@wickersmith.com, of Wicker Smith O'Hara McCoy & Ford, P.A., 2800

Ponce de Leon Boulevard, Suite 800, Coral Gables, FL 33134, Phone: (305) 448-

3939, Fax: (305) 441-1745;

(b) Not applicable, see (a) above.

(c) As set forth above (¶¶ 1-3), Intervenor, is entitled to participate in the proceeding as a matter of constitutional and statutory right, pursuant to agency rule, and because their substantial interests are subject to determination and will be affected by the proceeding;

(d) The Intervenor opposes the agency action set forth in the May 9, 2018 Final Order.

(e) The Intervenor via its counsel sought to confer with counsel for the parties of record on the same day that counsel sought the same parties' position within regard to Intervenor's effort to intervene and join in the petition for writ of certiorari now pending in the Third District Court of Appeals. The current parties to this action all opposed Intervenor's effort to join in the case now pending in the Third District Court of Appeal and none of the parties responded separately to the request made in this action. Intervenor assumes the response is the same, i.e., they oppose.

WHEREFORE, Seaboard Marine Ltd. in accordance with Fla. Admin. Code Ann. r. 28-106.205 requests this Motion to Intervene be granted to allow them to protect their substantial interests affected by the pilotage rate increase adopted by the Committee and published for the first time on May 9, 2018.

Date: July 23, 2018

/s/ Jordan S. Cohen

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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; Brittany Long (balong@radeylaw.com); Captain Sam Stephenson (captainsam4@yahoo.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 23rd day of July, 2018.

/s/ Jordan S. Cohen

Jordan S. Cohen, Esquire
Florida Bar No. 551872