

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

FILED	
Department of Business and Professional Regulation AGENCY CLERK	
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Date	2/27/2019
File #	

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 2014-2

FCCA's MOTION TO STRIKE SEACOR ISLAND LINES, LLC'S PETITION FOR FORMAL ADMINISTRATIVE HEARING, OR IN THE ALTERNATIVE TO DETERMINE THAT NO DISPUTED ISSUES OF MATERIAL FACT EXIST

COMES NOW, the Florida-Caribbean Cruise Association and hereby files this, its Motion to Strike SEACOR Island Lines, LLC ("SEACOR"), Petition for Formal Administrative Hearing, Or In The Alternative To Determine That No Disputed Issues Of Material Fact Exist, and in support thereof state as follows:

On January 22, 2019, a Notice of Intent to Modify the Port Everglades Rate of Pilotage was issued by the Pilotage rate Review Committee ("PRRC").

Pursuant to that Notice, an interested party could seek review of the Order pursuant to Sections 120.569 and 120.57, Florida Statutes, by filing a petition with the Executive Director of the Committee at the Department of Business and Professional Regulation within 21 days of receipt of the Order. Further, if any interested party disputed any material facts upon which the Committee's decision was based, that party could request a hearing before an administrative law judge pursuant to Section 120.57(1), Florida Statutes.

SEACOR filed a petition for administrative hearing on February 13, 2019, which fails to state disputed issues of material fact. As a result, SEACOR's petition does not justify a section

120.57 hearing. In its petition, SEACOR sets forth the following allegations of disputed issues of material facts:

1. Whether the proposed rate increase is fair, just, and reasonable;
2. Whether SEACOR's substantial interests are directly affected by the proposed rate increase;
3. Whether the proposed rate increase would increase SEACOR's pilotage rates by approximately 187%;
4. How much the proposed rate increase would add to SEACOR's annual operating costs;
5. Whether proposed rate increase would place an unreasonable burden on SEACOR's business operations;
6. Whether the proposed rate increase is in the public interest; and
7. Whether the proposed rate increase is needed to maintain or secure adequate pilot boats, office facilities and equipment, dispatch systems, communication equipment and other facilities, and equipment and support services necessary for a modern, dependable piloting operation;

SEACOR has failed to allege any disputed issues of material fact entitling it to a section 120.57(1) administrative hearing. As a result, the petition should not be designated for a hearing. *Schafer v. Dep't of Bus. & Prof'l Regulation*, 844 So. 2d 757, 758 (Fla. 1st DCA 2003) ("When material facts are not in dispute, an agency need not refer a matter to the Department of Administrative Hearings for a formal hearing, even if such a hearing is requested by a party."); *Cambas v. Dep't of Bus. & Prof'l Regulation*, 6 So. 3d 668, 670 (Fla. 5th DCA 2009), *cause dismissed sub nom. Cambas v. Florida Dept. of Bus. & Prof'l Regulation*, 20 So. 3d 848 (Fla. 2009) ("However, when no material facts are in dispute, an agency is not required to hold a formal hearing.").

I. Paragraphs 1, 6, and 7 Are Simply Restatements Of Section 310.151, Fla. Stat.

The allegations in paragraphs 1, 6, and 7 are patently not disputed issues of material fact, they are simply restatements of the statutory criteria outlined in section 310.151, Florida Statutes. If restating the statute rose to the specter of alleging a disputed issue of fact, then the statutory requirement of alleging a disputed issue of fact would be rendered meaningless. Moreover, the PRRC did consider these criteria by way of its investigative report and the two-day hearing held

on this matter. These allegations point to no specific, material fact relied upon by the PRRC that is genuinely in dispute.

II. A Substantial Interests Determination Is Not A Disputed Issue of Fact.

The allegation in paragraph 2 is unclear and likely misplaced. The PRRC has no obligation to make “substantial interest” determinations as part of its rate-making function, and whether SEACOR’s substantial interests are affected is not a disputed issue of material fact and is not relevant to the appropriate rate of pilotage at Port Everglades. A substantial interests determination is pertinent to whether SEACOR has standing to pursue an administrative challenge to the PRRC’s rate-making order, but it most certainly is not a disputed issue of material fact. *Friends of the Hatchineha, Inc. v. State, Dept. of Env’tl. Regulation*, 580 So. 2d 267, 269 (Fla. 1st DCA 1991) (“To be entitled to a section 120.57 hearing, there must be final agency action affecting the petitioner’s substantial interests, coupled with a disputed issue of material fact.”) (quoting *General Dev. Utils., Inc. v. Florida Dep’t of Env’tl. Reg.*, 417 So.2d 1068, 1070 (Fla. 1st DCA 1982)) (emphasis added).¹

III. The Purported Financial Impact on SEACOR Are Not Facts In Dispute

The allegations in paragraphs 4 and 5 are simply not *disputed material facts* giving rise to the right to a section 120.57(1) hearing, and SEACOR cannot create a disputed issue of fact by presenting open ended questions about the impact of the rate change *after the hearing is complete*.

The two allegations simply aren’t facts in dispute. SEACOR does not allege, nor is there any evidence in the PRRC’s fact-finding adoption or final rate change decision that anyone disputed whether the approved rate change would add to SEACOR’s operating costs or increase its rates by 187%. These two allegations are, at worst, facts *not in dispute* and, at best, *agreed upon*

¹ Even if it was part of the PRRC’s rate-making function, which it is not, SEACOR alleges nothing demonstrating that the question over its substantial interests being affected was ever in dispute.

facts. There is no evidence that they are *facts in dispute* and. As a result, there is simply nothing to be resolved by virtue of a section 120.57(1) hearing.

This is further demonstrated by the fact that SEACOR now attempts to frame open-ended questions as disputed issues of fact, all this after the PRRC's investigation was undertaken and the rate change hearing is complete. A potential party to a section 120.57 hearing cannot create a disputed issue of fact by simply interjecting itself into a proceeding and raising a laundry-list of questions it believes the agency did not resolve. If that were the case, every single agency action would automatically be subject to 120.57(1) hearing and the whole requirement for a disputed issue of fact to exist would be rendered a nullity.

IV. Whether The Rate Change Places An “Unreasonable Burden” On SEACOR Is A Value Judgment Subject To The PRRC’s Discretion, Not A Disputed Fact.

The allegation in paragraph 5 is not an issue of fact and is not within the province of an administrative law judge to determine. Whether the proposed rate increase places an “unreasonable burden” on SEACOR is an absolute matter of value judgment and opinion. What one person may consider to be an “unreasonable burden”, another may consider reasonable. In the interest of brevity, the FCCA respectfully refers this Committee to its motion filed with respect to Crowley Liner Service and King Ocean for its legal argument demonstrating why such a value judgment determination is not within the province of an administrative law judge, and can only be determined pursuant to the PRRC's quasi-legislative rate-making authority.

V. SEACOR’s Petition Rests Upon The Faulty Premise That The PRRC Was Obligated To Determine The Rate Change Impact On A Vessel-By-Vessel Basis.

The allegations in paragraphs 2-5 also assume that the PRRC was obligated to undertake a specific determination of the rate change's impact on SEACOR, which is incorrect, and that its purported failure to do so constitutes a disputed issue of material fact, which is also incorrect.

Florida Statute §310.151 contains criteria the PRRC is required to consider, none of which

require the PRRC to make a company-by-company, vessel-by-vessel determination of the financial impact of any proposed rate change. There are thousands of vessels calling on Port Everglades operated by dozens, if not hundreds, of different individuals and business owners. Nearly all of those entities are private businesses, many operating out of different parts of the country or world. Not only is it not legally required, but it would be impossible for the PRRC, every time it was considering a rate change at any Florida port, to determine the financial impact on every vessel line calling on port. A party cannot raise a disputed issue of fact to warrant a section 120.57(1) hearing simply by filing a petition after a rate change hearing is complete arguing that the PRRC did not undertake a detailed analysis of the potential financial impact on its business.²

Based on the above, the FCCA does not believe SEACOR has raised any disputed issue of material fact that warrants a section 120.57(1) hearing. As a result, the FCCA respectfully believes the PRRC should conclude no disputed issues of material fact exist, should not designate the petition for a final hearing, and should deem the order final agency action for the purposes of section 120.68, Florida Statutes. *See Fla. Stat.* 310.151(4)(a);

VI. SEACOR's Request For Relief Likely Cannot Be Granted

Finally, in their request for relief SEACOR asks “that the Administrative Law Judge find, in their Recommended Order, that the Notice and proposed rate increase is invalid or should be reversed in its entirety . . .” The FCCA does not believe such relief can be afforded under Chapter 120, as the resolution of any purported disputed issues of fact would be returned to the PRRC, so the PRRC could decide whether it wants to alter the pilotage rate.

Reversing the PRRC's order in its entirety is much more drastic relief, which seeks to

² If that were the case, every single rate change would be automatically subject to a section 120.57(1) hearing. A vessel line could simply wait until a rate change is effectuated, and file a petition arguing that the PRRC failed to consider the specific financial impact on its business. Such an outcome is improper and contrary to law.

essentially revert the Port Everglades proceedings to their infancy, thus wiping out years of progress made by this Committee and the parties. Even if there were disputed issue so fact alleged, which the FCCA believes there is not, it is unclear why the resolution of those disputed issues would require this Committee's order to be overturned in its entirety.

This request is also problematic given that SEACOR deliberately elected not to participate in the Port Everglades rate change proceedings for over four years. After the FCCA and PEP have spent considerable time, resources and energy on the Port Everglades proceedings, SEACOR now seeks to have the entirety of this Committee's work over the last five years overturned in its entirety. Not only does the FCCA believe this is highly prejudicial to the parties who have participated in this matter in good faith for the last five years, but there is no legal basis to allow such an outcome to take place.

WHEREFOR, the FCCA respectfully requests that this Committee strike the SEACOR's Petition for Formal Administrative Hearing, or in the alternative, determine that the petition raises no disputed issues of material fact, does not warrant a hearing under section 120.57, and deem the PRRCs' rate change order as final agency action for the purpose of section 120.68, Florida Statutes.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served by electronic delivery on the 27th day of February upon the following:

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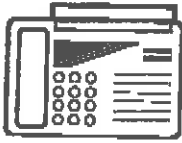
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