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January 21, 2020

**Via U.S. mail and email: [Amanda.Ackermann@myfloridalicense.com](mailto:Amanda.Ackermann@myfloridalicense.com)**

Ms. Amanda Ackermann, Executive Director  
Pilotage Rate Review Committee  
Department of Business and Professional Regulation  
P.O. Box 5377  
Tallahassee, FL 32314-5377

RE: Application for Change of Rates of Pilotage at Port of Jacksonville and Fernandina  
by St. Johns Bar Pilot Association and Fernandina Pilot, LLC  
Our File No.: 94818-7

Dear Ms. Ackermann, Chair Benson and Commissioners:

Please accept the following submission on behalf of our clients Crowley Puerto Rico Services, Inc. and Crowley Caribbean Services, LLC (collectively “Crowley”) in response to the St. Johns Bar Pilot Application (the “Application”) currently scheduled for public hearing on January 22-23, 2020.

Crowley is no stranger to this Committee. As this Committee knows, Crowley, along with other adversely impacted port users, appeared before this Committee in October of 2018 in connection with two (2) applications filed seeking changes in pilotage rates for Port Everglades. While Crowley was accused of being “late” to that proceeding given its supposed failure to “timely” respond to defectively noticed applications<sup>1</sup>, certain Commissioners expressed thanks that Crowley (and other cargo operators) sought to take a more active role in that proceeding. In

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<sup>1</sup> As discussed herein, Crowley is party to an appeal pending before the First District Court of Appeal in relation to the Port Everglades proceedings. Crowley maintains the Committee lacked jurisdiction to convene the October 2018 rate hearing on the applicants’ “settlement” rates where those rates had never been the subject of published applications.

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doing so, the Committee acknowledged there had been shortcomings in prior proceedings where the voices of cargo operators had not been heard (i.e., PortMiami), and acknowledged the value in hearing from the widest possible group of port users as to how the proposed rates would impact their operations, and whether the proposed rates were fair, just and reasonable as to *all* rate payers. The proposed rates were approved in a 4-2 vote over Crowley's objection. Crowley timely filed a notice of appeal of the Notice of Intent to adopt new rates ("NOI"), requesting, amongst other things, a referral to the Department of Administrative Hearings ("DOAH"). That request was denied which serves, in part, as the basis for Crowley's appeal before the First District Court of Appeal. That appeal, along with appeals filed by two (2) other adversely impacted port users remains pending. As discussed in Crowley's Motion to Dismiss and/or Stay of these proceedings, no public hearing should be held on this Application – an Application that expressly relies on the challenged Port Everglades rates and seeks to adopt a strikingly similar rate structure – until the First District rules on the pending Port Everglades appeal.

History seeks to repeat itself where the Committee has noticed the subject Application for public hearing next week with zero input from a single impacted rate payer. This is not – at least not from Crowley's perspective – because rate payers do not want to be heard. This is because the Committee's "notice" practices appear designed to defeat the provision of effective notice to impacted rate payers. The universe of impacted rate payers in JAXPORT are known and discrete. The St. Johns Bar Pilots (the "Pilots") interact with and invoice them on a daily basis. Yet, for some reason, the subject Application, filed last October and noticed for meetings around the Thanksgiving holiday, was never raised in their regular interactions and communications.

The Investigative Committee's "fact finding" meeting involved zero interviews with impacted port users. The Investigative Committee acknowledges that no one – aside from the Pilots – showed up to its public meeting. How could this be? Had the Investigative Committee sought to develop facts regarding the impact of the requested rates on port users, they would have had no difficulty finding Crowley: Crowley's headquarters are located in Jacksonville, it currently leases twelve (12) acres at JAXPORT, with plans to expand its footprint; and it has been a major vessel operator at Tallyrand terminal for many years. Crowley operates its Puerto Rico service as well as Caribbean services at JAXPORT and Talleyrand and is a major user of pilotage services.

To be clear, Crowley acknowledges that the Pilots have not received a formulaic rate increase for some time and that a reasonable increase in rates may be appropriate. But the current Application raises a number of concerns, concerns that have not and cannot be fully and fairly evaluated on the current record on or by January 22, 2020.

The Investigative Committee estimates that each pilot would earn, on average, \$478,000 per year (including benefits, discussed further below) under the current rates which would increase to \$564,000 for year 1 under the proposed rates. *See* IC Report at p.23. Crowley acknowledges and appreciates that the Pilots are highly skilled mariners who provide a critically important public

service. Still, the Committee should take a long, hard look at a request to impose large rate increases where the Pilots are already compensated – through a state authorized monopoly – at compensation levels far in excess of what the market would bear. Notably, in Port Everglades, those pilots had argued that rates should be increased on cargo operators because they had been receiving pilotage services at below “costs.”<sup>2</sup> Interestingly, the Pilots here – represented by the same attorneys – have not provided any information as to their purported cost to perform a handle.

Focusing solely on the Pilots’ projected income and revenue, the IC Report presents a number of projections and calculations which appear internally inconsistent and confusing. At page 23, the Committee denotes Total Average Income for 2007 (base) year of \$405,000. The Committee denotes Total Average Income of \$478,000 for 2018. *Id.* This \$478,000 figure is repeated as the Committee’s projection for 2020 without a rate increase. *Id.* The same base year income (2007) can be found at page 31, although here it is denoted at “Average Net Income.” Assuming an apples to apples comparison, this projected income without the requested rate increase (\$478,000) compares “very close” to the Committee’s CPI projection of \$483,000.<sup>3</sup> *Id.* at 31. By contrast, income projections for 2020 of \$564,000 far exceed CPI. *Id.*

And the requested rates are unquestionably excessive when viewed in terms of revenue per handle. Applying a 36%<sup>4</sup> CPI figure, average revenue would increase to \$2,166 per handle. But the proposed rates would increase average revenue per handle to \$2,669, a 23.22% increase above CPI. Respectfully, the Pilots have not justified the need for such a large increase. To the contrary, the Investigative Committee found there has been no shortage of “qualified” applicants for open positions at JAXPORT at the current rate structure.

In addition, the Investigative Report appears to grossly understate the impact of the requested rates on operators like Crowley. Exhibit 4 to the Report sets forth pilotage charges on a per user basis. That exhibit lists 122 movements for “Crowley” for some unidentified year totaling \$310,577.64. Yet, Crowley anticipates 416 movements for 2020. At current rates, charges for these movements would total \$710,320. At the requested rates, Crowley would be charged \$894,712 for these same movements, an increase of \$184,392. Some of Crowley’s vessels would experience per handle increases of 57.7%. And this is just for Crowley. A chart summarizing Crowley’s cost increases is attached as Exhibit A.

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<sup>2</sup> This finding continues to be vigorously disputed and is currently before the First District Court of Appeal.

<sup>3</sup> Crowley does not understand the IC Report’s reference to projected net income of \$489,000 for 2020 where

<sup>4</sup> See IC Report at p.32.

As in Port Everglades, the rate increase proposed here disproportionately affects smaller vessels, such as vessels operated by Crowley. This is unreasonable, unjust, and unfair. Indeed, larger vessels – including neopanamax vessels – are consistently referenced throughout the Application as being a significant cause of danger and difficulty; however, they are not being assessed with commensurately significant rate increases. And references to the neopanamax are particularly puzzling as no neopanamax has yet arrived to JAXPORT. As noted in the Application, channel expansion is at least a year from completion. Nevertheless, the Pilots request funding for a vessel to service neopanamax ships. However, as this service has not been established, there is no documentation as to why the Pilots need this additional vessel at this time.<sup>5</sup>

To the extent the Pilots seek to pass off the cost of an additional vessel on port users like Crowley, additional information should be provided. No explanation is provided to explain the wide range provided for this vessel's cost, to wit, \$2.6 – \$2.8 million for a 56 foot pilot boat and \$3.8 - \$4.0 million for a 64 foot pilot boat. *See* IC Report at p.66. Certain of the Pilots' financial submissions appear to contemplate a vessel purchase price of \$1.25 million, not \$2.6 - \$4.0 million. *See* IC Report at p. 11. Further, these speculative cost increases appear to be designed for the Pilots to recoup the cost of the vessel in a single year, instead of spreading the costs of over 10 years, in a financially and commercially reasonable fashion.

In addition, Crowley objects to the request to add flat fees with no relationship to vessel characteristics. *See* IC Report at p.5 (discussing \$100 port control fee and \$15 training and technology fee). Florida Statute Section 310.151(6) only authorizes the PRRC to fix rates of pilotage based on vessel characteristics. Because the proposed port control and training and technology fees are not related to any vessel characteristics they are not permissible under Section 310.151. Moreover, to the extent the training and technology fee is intended to subsidize certain aspects of the Pilots' professional development, it appears excessive. *Compare id.* at p.5 (\$15 fee x 3,826 projected handles = \$57,390) *with* p. 120 (projected Professional development of \$33,658 for 2020).

The Application also compares JAXPORT to non-Florida ports like Savannah, Brunswick, Charleston, and Mobile. However, this analysis is overly simplistic where it ignores the fact that

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<sup>5</sup> The Pilots request that this Committee rely on their speculative numbers despite the admitted prematurity of the projection because “the projected cost will likely be realized in the next few years and given the frequency of pilotage rate hearings, the effect on the cost of operations and net pilot income is relevant at this time.” This does not justify inclusion of this speculative cost issue at this time. Nothing prevents the pilots from applying for a rate change when the neopanamax service has begun. Presumably those associated costs would be borne by the neopanamax operators. For instance, at PortMiami, an additional pilot may be assigned to neopanamax vessels and the pilots may charge the neopanamax vessels a double pilotage fee.

pilots in Georgia, South Carolina, and Alabama pay state income tax while Florida pilots, including the Pilots here, do not. To the extent pilotage incomes in other states are used as comparators, they should be tax adjusted.

Perhaps most of concern, the Application seeks to continue and expand upon the Pilots' anachronistic unfunded pension plan. Unlike every other modern private and public business, the Pilots have no actual retirement plan, instead making massive "pension" payments to retired pilots paid for by current rate payers.<sup>6</sup> Crowley does not contend that pilots can never retire or that they should not receive a reasonable (and properly funded) pension in retirement. But the current arrangement is very concerning. Under the proposed rates, a pilot who retires at age 55 is entitled to receive 50% of the earnings of a current pilot. At the current ratio of active to retired pilots, these pension payments are effectively uncapped. This means that if the compensation for active Pilots increases as the result of a rate change, the pension payout for each already retired pilot will also increase. If the requested rates are adopted without change average retired pilot pension payments will exceed \$300,000.00, all borne by current rate payers. How does this promote the current safe navigation of deepwater ports? What public good does this promote? Crowley respectfully suggests that the active Pilots should not receive any rate increase until pension payments to retirees are frozen or fixed in a reasonable manner. While Crowley does not oppose to paying reasonable increases for the services being performed by active Pilots, it strenuously opposes paying increased rates for the benefit of already retired pilots.

The unfunded retirement scheme contributes to Crowley's concern regarding the PRRC's makeup. By statute, active pilots must sit on the PRRC. And the PRRC must consider pilotage rates in other Florida ports when determining the reasonableness of the requested rates. This renders every pilot "interested" in the proceedings because an increase in pilotage in one port makes it more likely other ports will see a rate increase, which under the current system means an increase for retired pilots as well. A challenge to the constitutionality of the PRRC's composition is currently before the First District.

In closing, this Committee should not rush to judgment and approve the requested rates without meaningful input from Crowley and other port users. No meaningful notice of these proceedings was ever provided. No explanation has been provided by the Pilots as to how or why the proposed rates were developed. Was this done in consultation with other rate payers? Were these rates designed to shift pilotage costs from certain types of vessels to others? And if so why? To the extent this rate change is predicated on the Port Everglades rates, consideration of a similar rate change is, at best, premature. Certainly, no independent basis has been provided to support a request for average Pilot compensation for year 1 of \$564,000.

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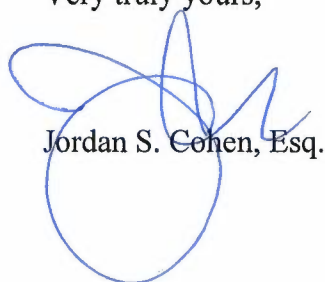
<sup>6</sup> The existence and valuation of these unfunded pension plans is currently before the First District on the Port Everglades appeal. The Investigative Committee acknowledges similarities in the subject pension arrangement.

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Crowley maintains that these proceedings should be stayed and the hearing scheduled for January 22-23, 2020 should be continued. In the event the Committee disagrees and intends on moving forward as scheduled, Crowley looks forward to an opportunity to be heard as an "Affected Person." Given the notice issues outlined in Crowley's Motion to Dismiss and/or Stay and pre-existing scheduling conflicts, the undersigned will be unable to attend a hearing commencing January 22<sup>nd</sup>. Crowley's Chief Counsel Alan Twaits, Esq. will be in attendance.

Thank you for your time and consideration in this regard.

Very truly yours,



Jordan S. Cohen, Esq.

JSC/EAA

cc: Alan Twaits, Esq.

**Impact of Proposed JAX Pilotage Rates**

	<b>Current Average Cost Per In/Out</b>	<b>Proposed Average Cost Per In/Out</b>	<b>Estimated Increase Per In/Out</b>	<b>Estimated Percentage Increase</b>	<b>Estimated Annual In/Outs</b>	<b>Estimated Annual Cost Increase</b>
<b>CONROs</b>	\$ 2,380	\$ 2,684	\$ 304	12.8%	208	\$ 63,176
<b>RW850s</b>	\$ 835	\$ 1,317	\$ 482	57.7%	104	\$ 50,127
<b>CV1300s</b>	\$ 1,235	\$ 1,918	\$ 684	55.4%	104	\$ 71,098
						<u>\$ 184,401</u>