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BOARD OF PILOT COMMISSIONERS

PILOTAGE RATE REVIEW COMMITTEE HEARING

Hampton Inn & Suites Cape Canaveral Cruise Port
9004 Astronaut Boulevard
Cape Canaveral, Florida 32920

June 17, 2022

Commencing at 9:00 a.m.

Present: Bob Benson, Chair
Carolyn Kurtz, Commissioner
Michael Jaccoma, Commissioner
Sherif Assal, Commissioner
Marlene Stern, Esq., Board Counsel
Amanda Ackermann, Executive Director
Mollie Peck, Government Analyst

Also
Present: Captain Thomas L. Bushy
Richard H. Law, CPA
Captain Ben Borgie, Canaveral Pilots' Assn.
George N. Meros, Jr., Esq.
Adam Ceserano, Florida-Caribbean Cruise Assn.

Court Reporter: Elizabeth J. Beyer
Angell Reporting Service
8195 N. Wickham Rd., Suite 200
Melbourne, FL 32940
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1 CHAIR: Okay, folks. It is 9:00. I want to
2 welcome everyone to the Pilotage Rate Review Committee
3 hearing, Port Canaveral, June 17th.

4 We will start with the roll call, Mollie, please.

5 MS. PECK: Commissioner Benson?

6 CHAIR: Here.

7 MS. PECK: Commissioner Kurtz?

8 COMMISSIONER KURTZ: Here.

9 MS. PECK: Commissioner Jaccoma?

10 COMMISSIONER JACCOMA: Here.

11 MS. PECK: And Commissioner Assal?

12 COMMISSIONER ASSAL: Here.

13 CHAIR: Okay, thank you. Everyone is accounted
14 for.

15 My opening comments are very brief. I want to
16 welcome everyone here. Administratively, I want to ask that
17 no one take any phone calls while in the room. If you have
18 an important phone call, we understand that, but please
19 leave the room. It's too tight, in terms of circumstances,
20 and we want to make sure the court reporter hears everything
21 that we have to say.

22 And that will go for discussions, too. If two
23 people want to discuss something, please leave the room
24 quietly and come on back.

25 There's water behind us. Don't hesitate to walk

1 quietly back there and get whatever. We're not going to ask
2 you to sit here and not have anything to drink, what have
3 you. And restrooms are right outside the door.

4 On your agenda it lists Donna McNulty as our
5 committee counsel, but she had a conflict, so Marlene Stern
6 is going to sit in for her and go through the things that
7 Donna normally does.

8 I'm going to toss it to Marlene right now to start
9 it off, talking procedurally about why we're here and what
10 we're going to be doing, how we're going to handle it, and
11 then we'll get on with the presentations.

12 MS. STERN: Okay, thank you. I have some comments
13 for the record and for the commissioners.

14 This is a hearing before the Pilotage Rate Review
15 Committee to address the petitions for modification of the
16 rate of pilotage in Port Canaveral.

17 As background for the record, the Canaveral Pilots'
18 Association filed an application to modify the Canaveral
19 pilotage rates on January 7, 2020. And the
20 Florida-Caribbean Cruise Association filed an alternative
21 application on January 17, 2020.

22 The pilots later filed an amended application on
23 March 8, 2022.

24 The pilots and the FCCA filed a proposed settlement
25 agreement on April 19, 2022. The proposed settlement

1 agreement is essentially the same as the amended pilots'
2 application, except for two things. First, the proposed
3 rate escalator in the amended application, 3.5 percent, was
4 reduced to 2.5 percent in the settlement agreement. And
5 second, the effective date of the rate was pushed back to
6 January 1, 2023, in the settlement agreement.

7 We ask the commissioners to consider all the
8 materials presented and public comments, and determine if
9 the rate of pilotage in the Port of Canaveral should be
10 modified up or down or stay the same.

11 In making that determination, please state on the
12 record the reasons for your decision. As you know, in
13 determining whether the requested rate change will result in
14 a fair, just, and reasonable rate, the committee is required
15 to give primary consideration to the public interest in
16 promoting and maintaining efficient, reliable, and safe
17 piloting services.

18 Section 310.151(5) sets forth the following factors
19 for the committee to consider: Average net income of pilots;
20 reasonable operating expenses of pilots; pilotage rates in
21 other ports; amount of time spent piloting; prevailing
22 compensation available to individuals in other maritime
23 services; the impact the rate change may have in individual
24 pilot compensation and whether such change will lead to a
25 shortage of licensed state pilots; projected traffic; cost

1 of retirement; physical risks inherent in piloting; special
2 characteristics of the port; any other factors the committee
3 deems relevant; and the CPI or other comparable indicators
4 may be used, but not be the sole factor in fixing rates.

5 Section 310.151(6) provides the basic outline of
6 the vessel characteristics the commission can consider.
7 They are: length; beam; net tonnage, gross tonnage, or dead
8 weight tonnage; freeboard or height above the waterline;
9 draft or molded depth; and any combination of these or
10 relevant characteristics.

11 After the PRRC's decision in this matter, a notice
12 of intent will be drafted. The committee will then
13 reconvene for the purpose of reviewing the draft notice of
14 intent, to determine whether it appropriately reflects the
15 committee's decision. After issuance of the notice of
16 intent, any substantially affected person will have an
17 opportunity to challenge that notice.

18 And that concludes the opening comments from me.

19 CHAIR: Thank you.

20 Next on the agenda is the findings of the
21 investigative committee, which was prepared by Richard Law
22 and Captain Bushy. This is of incredible benefit to the
23 committee members, in that they compile an incredible amount
24 of data, and gives us an opportunity to evaluate key issues
25 and what have you, in line with the factors that Marlene

1 just read.

2 So I'll give the floor to the two of you, and ask
3 you that -- we are completely aware of what's in the report
4 itself, but if you want to go through the highlights for the
5 benefit -- and then at the end, if we have any questions,
6 we'll ask you at that time.

7 MR. LAW: Thank you, Mr. Chairman. We'll try to
8 limit our presentation.

9 CHAIR: Cover whatever needs to be covered, but
10 don't drag it out.

11 MR. LAW: Let me start with a few edits, if you
12 will. On page 3, the date of the initial application --
13 Mollie just informed me -- was not January 7, 2020, but
14 December 28, 2019.

15 The next correction is on page 7, at the top of the
16 page. The cargo traffic makes up 38 instead of 28 percent,
17 and 10 percent of revenue instead of 6.6.

18 And on page 16, table 1, footnote 1, the boat
19 replacement fee for Palm Beach is \$50, not \$25.

20 And on page 19, table 6, the average handle time in
21 Tampa is 7.5 hours, instead of 7.0.

22 The first thing I'd like to say is I want to
23 express our appreciation to Captain Borgie and his team for
24 their openness, complete transparency, cooperation, in
25 providing us information to do the investigation and

1 complete our report. I was really amazed for a pilot to be
2 able to dig into the accounting data and respond to our
3 requests almost -- in a very quick and efficient manner. I
4 found that everything that he gave us was honest and fairly
5 represented.

6 The last rate change was in 1991, so it's been
7 30 years since there's been a rate change. In the meantime,
8 cruise traffic has gone up both in numbers and -- almost
9 exponentially -- in size. What this has done is
10 supplemented -- the rates for cruise have increased because
11 of the draft -- I mean the tonnage -- increases; but in the
12 meantime, cargo -- the rates for cargo have just remained
13 the same. And cargo has really benefited for a long period
14 of time by not having a rate increase commensurate with
15 other rate increases around Florida; so it's kind of been a
16 supplemental benefit to cargo.

17 Examples are: The minimum fee was \$220, but the
18 lowest cargo vessel was only -- based on size -- was only
19 \$568. With the requested rate, that same vessel will have a
20 fee of \$2,447, which is a 331 percent increase.

21 The average small cargo vessel is 700 -- the
22 average of 198 of those vessels pay currently \$730; and they
23 will go up to \$2,877.

24 And then the large vessels, like a large petroleum
25 vessel, there's 132 handles. Their current average is

1 \$2,700 -- \$2,741; they'll go up to \$6,338, 131 percent.

2 So the reason I'm pointing this out is the smaller
3 vessels are getting a 300 percent increase; a little bit
4 larger cargo vessels are getting 294 percent; but the
5 largest vessels are getting 131. So it makes what the rate
6 changes in other ports have been, is to bring up the
7 pilotage fee for smaller vessels. And that's what this is
8 doing, is hitting the smaller cargo much heavier than the
9 larger cargo.

10 The effect on cruise customers is really quite
11 remarkable, too, because the reduced benefit only affects
12 vessels 140,000 tons and above; below that, they're either
13 flat or have slight increases. Overall, the total increase
14 -- or decrease in total cruise pilotage in this port is
15 negative \$25,000, reduced by \$25,000 aggregate. But Royal
16 Caribbean will receive \$145,000 reduction; Carnival,
17 \$118,000 reduction; and Disney a \$69,000 reduction. But
18 then the smaller cruise vessels are making up that
19 difference, to where the aggregate reduction for all cruise
20 is \$25,000.

21 The cargo as revenue now represents 10 percent of
22 revenue. It's requested that they will represent 21 percent
23 of the revenue, even though their handles are 38 percent of
24 revenue.

25 Cruise is 62 percent of handles, and was

1 representing 90 percent of revenue; and that will be reduced
2 to 79 percent of revenue.

3 I'm going to move to pages 4 and 5, and just run
4 through a few highlights on the requested rates. On page 4
5 under the caption "additional rates," they're requesting a
6 docking fee of between \$300 and \$200. This only applies to
7 cargo. We did not -- later we'll get into our projection of
8 net pilot income, the P&Ls that we projected in '22 and '23.
9 We did not estimate what the revenue would be in this.

10 Captain Borgie said that cargo generally pays
11 docking, but not the cruise. But if there is 1,000 cargo
12 vessels that pay a \$250 docking fee -- average between \$200
13 to \$300 -- that is \$250,000. And we did not build that into
14 our projection, just so you know, because we're charged with
15 determining what is the average net income; and that is not
16 included in there. There's a number of miscellaneous fees
17 not included in the total projection, because we don't
18 really know how many handles that will be applied to, just
19 so you know.

20 The pilot boat fee of \$50 is new. The detention of
21 pilot fee has changed a little bit. Cancellation is a new
22 fee. Shifting fee has changed. Dead ship movement fee is a
23 new fee not previously charged.

24 The late payment fee, they're requesting 3 percent.
25 You know, 3 percent is 36 percent a year. You know,

1 typically -- most businesses would be charging
2 1.5 percent/18 percent for late payments. So this is twice
3 that, just to point that out.

4 The board governance fee. This is -- nowhere else
5 in Florida is this fee passed on to the customers. There is
6 -- this is kind of a sticky point, because the statute says
7 the board will charge a fee on the pilotage fee that is set
8 by you. Well, if you set the fee and it includes that, then
9 they're going to charge it, but then they're going to have
10 to charge another .7 on that.

11 It's like -- it's like the sales tax dilemma. What
12 is -- when you include sales tax in the price, the
13 Department of Revenue says, well, you have got to back it
14 back down. So it's really kind of a sticky thing, the way
15 that the State might enforce .7 to this, what they have to
16 remit to the Department.

17 So I'm just pointing that out. It's a little more
18 complicated than just applying .7 -- which in \$8 million,
19 .7 is \$56,000. Is it worth it?

20 Okay. I'm going to move on to our analysis of
21 pilot income. If you'll move on to pages 12 and 13, these
22 are really an important two pages here in our determination
23 of average net income per pilot. On page 12, the most
24 recent audit we have is 2018. That is very stale
25 information right now, so we use the internal financial

1 statement for 2021. And that's really -- halfway through
2 that year, the pandemic traffic is beginning to come back to
3 the port, so that's really an anomaly year in itself, but it
4 is the most current -- I mean the most accurate year that's
5 completed, that we can present -- and also to show you what
6 they went through, through '21. It was much worse in '20,
7 much worse.

8 So in projecting what 2022 will be, that's really
9 kind of the exercise of estimating numbers. And there's a
10 lot of potential error in estimating what's going to happen,
11 both in traffic, in inflation, fuel, any number of things.

12 So the reason we present this in such detail this
13 year is for the board to see the operations and expense
14 categories, to kind of get a feel for what are the expenses,
15 you know, fuel, health insurance, labor, things like that,
16 the major categories. And also you can look at fluctuations
17 between periods, just to see the reasonableness of those.

18 But the reason we have to present it in this format
19 is because of the way Canaveral Pilots allocate income
20 between retirees and active pilots. They deduct -- first of
21 all, deputies are not considered pilots to share in income;
22 they're salary. That's one thing.

23 Health insurance is an expense that has nothing to
24 do with a pilot share of income. So we have to throw -- put
25 that above the line, above net income, to determine

1 distributable net income. It's not really net income, but
2 it's what they distribute, based on the shares percentages
3 that we're presenting there.

4 And then so we present the share of the
5 distributable income. Then we add back benefits, and even
6 for the retirees, what is their health care benefit added to
7 their share income. Then for pilots we do the same thing,
8 but we add one more thing, which is the lobbying and
9 political expenses, which are not determined to be
10 reasonable, ordinary, necessary expenses of a pilot
11 operation, because we consider that discretionary.

12 At the bottom of the page, you'll see the imputed
13 retirement benefit of \$50,000.

14 Same thing goes for the next page, trying to
15 project with the rate increase estimated net income. What
16 we found in the evaluating traffic in this port was when the
17 application was made, they thought they would have about
18 2,150 in handles. When we got the first four months of the
19 year, it was going to be much -- annualizing those months,
20 it was going to be much higher.

21 So Captain Borgie went back and said, yes, things
22 are changing here. There's 32 percent more traffic expected
23 for 2022 and '23 than what they thought when they made the
24 application back in December -- even before, when they were
25 preparing their application. So these numbers are not

1 really what the pilots are expecting.

2 But they also were thinking that, well, we'll have
3 seven pilots. Well, they really -- their target is to get
4 back to nine pilots, which is what they had in 2018. But
5 there's a delay in getting these pilots on.

6 So there's really a distortion of all this growth
7 in handles. And they still are, in 2022, at 6.5 FTE pilots
8 doing this. So there's kind of an income distortion,
9 because they're working pretty hard to serve the port. But
10 if you get nine pilots in 2022, that net income goes from
11 682 to 492. It's a big, big difference when you add -- get
12 up to nine pilots.

13 And on the projection on page 23 -- I mean for 2023
14 -- instead of seven pilots, if there were nine, that net
15 income number of 699 would be 543. So I think it's really,
16 again, projecting information. With -- the volatility of
17 traffic and then the delay in getting the number of pilots
18 that they should really be staffed at affects these numbers.

19 I want you to understand that, because eventually
20 when we get to the point of what's prevailing fair
21 compensation -- you know, I want you to understand that. Of
22 course, you don't set compensation; you set rates -- you set
23 fair and reasonable rates. And I think when you see in
24 Captain Bushy's presentation about comparable rates and
25 things like that, that will put that into some perspective

1 for you.

2 The operating expenses that we've seen -- I think
3 you saw yesterday the facilities the pilots have --
4 reasonable expenses. There's nothing extravagant here,
5 there's no cars. They operate a very lean schedule. They
6 don't have any administrative staff. They pay their own
7 pilots to do the bookkeeping, the billing, the whatever.

8 Now, two pilots get paid \$36,000 a year each. I
9 run that through -- I distribute that across all the pilots,
10 to determine, and not just allocate it to one or two; I just
11 average it all in, just so you know. You might hear about
12 that later, but just so you know how we treated that, is we
13 average it into the distributable net income.

14 The -- I guess one of the bigger cost things that
15 really happened also is in 2018 there were three retirees.
16 And when things got really bad in 2020, four pilots retired.
17 Now you have seven.

18 And the way their shares work, it really -- you can
19 just see the dramatic effect of average of what the total
20 retirement expense is when there are three retirees versus
21 seven. In 2022, it's almost \$2.4 million shared between
22 seven pilots. In 2018, it was \$578,000 shared between
23 three. So this -- these four pilots who retired have just
24 dynamically changed the allocation of income here.

25 I'm going to let Captain Bushy go through some more

1 elements of our report.

2 CAPTAIN BUSHY: Thank you, Richard.

3 Good morning, everyone. Section 4 on page 17
4 predominantly we talked about. As we introduced a couple
5 years ago, we decided to create a standardization of vessels
6 as small, medium, large, extra-large. That was for
7 comparison's sake only for the ports.

8 Of note, the extra-large vessel we used is 130,000
9 gross registered tons, which is not really big, from what
10 Port Canaveral can handle. Port Canaveral goes up to
11 227,000 at this point, as does Miami and Port Everglades.
12 But 130 was good because that applied to most all the ports.
13 There are restrictions in Tampa and Jacksonville because of
14 bridge heights, so they obviously couldn't take the bigger
15 ships. So, we used those things.

16 In using that comparison, you'll see that Port
17 Canaveral, under its proposed rate, is still number four in
18 the state on what their average of all classes will be. In
19 large vessels it will be \$4,325; but the average will be
20 \$2,617 -- which is number four. So that table is
21 self-explanatory, if you analyze that.

22 Increases over time. Port Everglades -- Port
23 Canaveral. Port Canaveral has requested an increase of
24 2.5 percent over the next nine years. It gets a little
25 confusing where they increase the rate of increase to

1 6 percent on the deep draft vessels. This table shows, if
2 you look at the small, medium, large, extra-large, the large
3 vessels were the ones that were affected by the deep draft
4 increase of 6 percent. So that's why you see they have
5 25 percent, 25 percent, and 42 percent; and then 25 percent
6 is the base, the increase over the nine years. That's all
7 because of the deep draft fee.

8 Pilotage fees per nautical mile. That's a little
9 bit of a tough one in the state of Florida, where you have
10 Tampa that's an extreme length, Jacksonville is pretty long,
11 and then you have the really short ports, like Port
12 Everglades and Palm Beach. But Port Canaveral is not wicked
13 high in their proposal; still within a reasonable amount.

14 (Laughter from audience.)

15 CAPTAIN BUSHY: Does that Boston term offend you?
16 I'm sorry. I apologize.

17 Table 6, analysis of revenue per handle. As
18 Richard has pointed out, there's a correction there. Tampa
19 average handle hours is 7.5, as opposed to 7. And once
20 again, Port Canaveral does not climb to the top of the pole
21 on that, based upon its proposed rates.

22 And in revenue per handle, again Port Canaveral is
23 in a conservative position. It's higher but commensurate
24 with Port Everglades; but it's still not at the top.

25 And table 8 shows a comparison of Port Canaveral's

1 proposed rates against other ports throughout the
2 Southeastern United States and the Gulf of Mexico. And you
3 see Port Canaveral will in fact be the lowest rate. There
4 were a couple ports proposed by -- in the application by
5 Canaveral Pilots, that we dropped out. Basically, Galveston
6 and Freeport, Texas -- I think Associated Branch Pilots of
7 Louisiana -- because I didn't find them applicable, so I
8 took them out of the table.

9 Moving into section 5, as Richard has pointed out,
10 the number of pilots has kind of been going through dramatic
11 changes in the last three years. Right now they're
12 operating at six-plus. I say that's six-plus, because
13 they're on the cusp of going to seven when a deputy goes
14 state pilot soon, and then they have another deputy about
15 midway through the training program. And later this year,
16 they're going to add another deputy.

17 So right now, it's fair to say that the Canaveral
18 Pilots are working pretty hard. They're putting in a lot of
19 time for the revenue they're making. So -- and we have to
20 point out that the deputies are working a lot more than the
21 state pilots. Based upon the system that they have,
22 deputies have to get the time, the rates, the trips in for
23 their training program.

24 So the training program is listed in the
25 application as three years. It kind of more comes out in

1 the vicinity of two years and nine months, and can, in some
2 circumstances, based upon the quality of the trainee, can
3 drop a little bit less than that point, like maybe two years
4 and seven months.

5 The pilots right now are doing a significant amount
6 of handles, as pointed out on page 21, but that number will
7 go from -- drop significantly in 2023 when they're up to
8 eight state pilots. And as Richard pointed out, the amount
9 of work they do associated with the shore staff is
10 significant, because they don't have a shore staff.

11 I jump up to section 7. Canaveral Pilots'
12 Association has a pretty good history of attracting
13 applicants. Applications, of course, are the lifeblood to
14 the feeding of the deputy pilot program. And if you're
15 unfamiliar with the Florida system, the application process
16 is rigorous. And once the application is accepted, the
17 examination progress is beyond rigorous; it's very, very
18 difficult.

19 So I prepared table 9 -- by the way, it says
20 "table AAA" on page 23, but it really should be table 9, as
21 shown on page 24. You see the number of applications, the
22 number of tested individuals, and the number of pass rate.
23 It's -- Port Canaveral does okay -- it does pretty well in
24 the applications, as compared to the smaller ports like Palm
25 Beach and Pensacola, Panama City. So that's attributable to

1 -- I mean, Canaveral is right up there with Miami and Port
2 Everglades and Tampa with applications, because their
3 compensation is higher. They make more money, they're going
4 to attract more applications.

5 Slight difference in this from your report, Captain
6 Borgie, is I used raw applications because I felt that that
7 was a better indicator of what the interest in the port was,
8 as opposed to those that had gone through the filter and
9 made it though the approval process.

10 Moving up to -- very quickly -- up to section 10.
11 Nearly everyone in this room -- there is no question that
12 there are physical risks associated with piloting. Piloting
13 is right up there with longshoremen and -- gosh --

14 CAPTAIN BORGIE: Commercial fishermen.

15 CAPTAIN BUSHY: -- commercial fishermen and
16 loggers; very, very dangerous -- and divers. All the pilots
17 are cognizant of that.

18 And when a pilot in the United States -- which has
19 happened three times in the last two years -- when a pilot
20 in the United States dies, there's a very good chance that
21 these pilots in Canaveral Pilots' Association knew that
22 individual; so it's a tremendous impact on them.

23 Special characteristics in the port. Port
24 Canaveral is a pretty straightforward port, but they contend
25 with extremely large vessels in a port that has a tendency

1 to have a lot of recreational traffic. So they can have --
2 they can have congestion problems in the port. Their
3 pilotage waters are pretty clean; they're all project
4 maintained by the Army Corps of Engineers.

5 However, there are shoaling circumstances. And
6 they're running around with pretty deep draft vessels.
7 There are some parts of the channels in Port Canaveral that
8 are not maintained to 44 feet, that are down to 35 and less.
9 And the port can have, as I said, shoaling, but also the
10 weather can have an effect of their depth -- available depth
11 of water.

12 I think that about covers it. I would simply close
13 from my part -- before it goes back to Richard -- this
14 morning's Maritime Reporter had three circumstances, three
15 reports on container ships. One was a container ship that
16 went aground in Savannah the other day. Another container
17 ship had three members jump offboard in the St. Johns River.
18 And then the Ever Given's insurance company has been
19 expected to have \$2 billion in claims associated with the
20 Ever Given grounding in the Suez.

21 So I'll just summarize that by saying it's
22 paramount that we do everything in our power in presenting
23 an investigative report that gives us the best opportunity
24 to bring in the best pilots.

25 I'll turn it back to Richard.

1 MR. LAW: Mr. Chairman, our report speaks for
2 itself. I don't think we need to go through it any more,
3 unless -- but we will open it up for questions.

4 CHAIR: I think we'll have a couple questions, but
5 -- anybody have any questions?

6 COMMISSIONER JACCOMA: I have one question.
7 Richard, you were talking about the distributable net income
8 for the pilots, that you were distributing the cost of them
9 paying themselves amongst the group.

10 Why wouldn't that be an expense? I mean, any other
11 association would pay individuals to come in and do those
12 jobs themselves.

13 MR. LAW: It's income to them. It's spread between
14 them. But I think the fact that we're pointing it out that
15 way is what's important.

16 COMMISSIONER JACCOMA: It's not a huge amount of
17 money, compared to the overall --

18 MR. LAW: Right.

19 COMMISSIONER JACCOMA: -- but I was just wondering
20 why that was.

21 MR. LAW: But in determining average net income per
22 pilot -- that's what our objective is -- if they make a
23 salary for doing additional services, then we have to
24 include that. But I get your point; and that's why I point
25 that out.

1 COMMISSIONER JACCOMA: Fair enough.

2 MR. LAW: It is an expense.

3 COMMISSIONER KURTZ: Just a very small thing, but
4 you pointed out that the late fee is 3 percent -- or
5 proposed late fee is 3 percent, and maybe normal industry
6 practice for a late fee is 1.5.

7 It's a deterrent; it's not a moneymaker. I don't
8 think they're planning on making money by charging a
9 3 percent late fee. It's to keep customers paying on time.
10 It's just a deterrent, not really a revenue source.

11 CHAIR: I had a few questions. You mentioned a
12 docking fee for cargo is not included in the projections of
13 2023. Are the other fees included, as well?

14 MR. LAW: No.

15 CHAIR: So none of the fees?

16 MR. LAW: Except for the boat fee.

17 CHAIR: Okay.

18 COMMISSIONER KURTZ: On that same note, is that
19 standard not to include those separate fees from the rates,
20 so they don't funnel into income? I'm confused by the
21 method.

22 CHAIR: They don't have any of that revenue in the
23 top line item, so whatever that fee is, it's going to go to
24 the bottom line item.

25 COMMISSIONER KURTZ: Okay. It just gets added on

1 at the end. Okay.

2 MR. LAW: Can I answer your question, though?

3 CHAIR: Sure.

4 MR. LAW: The reason we don't is we don't know how
5 many vessels are going to utilize some of these ancillary
6 services. So when you're looking at estimating revenue, and
7 you're looking at \$8 or \$9 million, there's an error factor
8 in that estimation, just by using the base fee. Okay?

9 So getting into trying to quantify the ancillary
10 fees, when we've looked at -- in the applications, they
11 break down what they make in these different fees. It's not
12 that much, really. But the reason I pointed out this
13 docking is, it could be, but it wasn't a fee that was there,
14 so I don't know what it's going to be.

15 CHAIR: We could never look with precision in any
16 kind of projections with budgets and that type of thing, and
17 what have you. I'm just saying these fees, whatever they
18 may be, are not in that top line item projection.

19 MR. LAW: Correct.

20 CHAIR: Just verifying for my fellow commissioners.

21 The model has nine pilots for the projection in
22 terms of how many there are going to be, but it says the
23 desired state pilots -- on page 21 -- is eight.

24 So are you shooting for eight, then, or are you
25 shooting for nine? Again, it changes the numbers a bit.

1 Just so we know -- there's no sense dividing it by nine or
2 by ten if, you know, it's deemed that the desired number of
3 pilots, your fit, is eight.

4 So what number should we be using, in terms of
5 evaluating?

6 CAPTAIN BORGIE: Would you like me to address that
7 now, or later in my presentation?

8 CHAIR: Sure, you can address that now.

9 CAPTAIN BORGIE: Captain Ben Borgie, Canaveral
10 Pilots' Association.

11 We really need to maintain eight pilots at all
12 times, to properly service this port. As we have seen with
13 injury and sickness and COVID, one pilot dropping out could
14 really happen, and have a negative impact on our operation.
15 If we only had eight pilots, we'd be back down to seven.

16 So our long-term goal is eight; but to get to
17 eight, you need to get to nine, in order to absorb future
18 retirements and also injury, sickness, and so forth. So we
19 maintain nine -- we want nine to maintain eight, if that
20 makes sense, sir.

21 CHAIR: It does, the way you present it. If I saw
22 it as one line item, then no. Thank you.

23 MR. LAW: And we were very sensitive in presenting
24 those two pages, and sent all this back to Captain Borgie
25 for review. But I asked him, "What number of pilots do you

1 want me to use for '23?" He said, "Use nine." So we kind
2 of locked down on that and went with nine.

3 CHAIR: Okay. The last question I have is -- we
4 have quite a number of charts here, and I think I follow
5 them. But in terms of the requested cargo rates, where
6 would I see how that sets up against the other ports?
7 Because when we look at the blended increased request, it's
8 153 percent and change, and in some cases it's over
9 300 percent for certain size vessels.

10 So where does this rate increase -- it's a push on
11 the cruise side -- actually, it was an increase of 25, not a
12 decrease -- but it's a push on the cruise side, but on the
13 cargo it's pretty dramatic, in terms of percentages. Again,
14 you're telling me that some of this is a catch-up, they've
15 been getting away with not paying, you know, their full
16 board for all this time before we get the increase.

17 But how would these projected rates or proposed
18 rates match up against other rates in the state for cargo?

19 MR. LAW: At one time we were -- the way their
20 application was presented, they said "small, medium, large
21 cargo; small, medium, large cruise." And we thought, wait a
22 minute; they're all just ships.

23 But most -- we just felt like it was too busy, if
24 you will, to try to break it down. This section 4 with all
25 these tables was getting a little -- a little bit too much

1 information.

2 And that's why we kind of shrunk that down to just
3 small, medium, large, extra-large, knowing that the
4 extra-large are those large cruise ships, and most of the
5 rest is cargo.

6 Is that right, Captain Borgie?

7 CAPTAIN BORGIE: Yep.

8 MR. LAW: We thought we could shrink it down to
9 where it's small, medium, large, extra-large.

10 COMMISSIONER ASSAL: The Chair was asking
11 comparison between other ports -- correct me if I'm wrong.

12 CHAIR: Yeah.

13 COMMISSIONER ASSAL: On page 47, you could see a
14 chart that explains the rate difference for cargo, that
15 153 percent that you're talking about; right?

16 But what the Chair is asking, Richard, is that with
17 other ports -- and I know we've done other pilots' rate
18 review hearings before, but we did it by tonnage, I believe,
19 right, not labeled them under small, medium, or large?

20 MR. LAW: No, we did small, medium, and large.

21 That exhibit on exhibit 3 or attachment 3 shows you
22 all the cargo, current and proposed.

23 COMMISSIONER ASSAL: For this port.

24 MR. LAW: Right.

25 COMMISSIONER ASSAL: But what the Chair is asking

1 is a comparison from other cities.

2 MR. LAW: I think you have to go back to page 17.

3 COMMISSIONER JACCOMA: You've got table 8 on
4 page 22.

5 MR. LAW: If you go to page 17, then you can see it
6 in comparison to -- it's table 3. Does that answer your
7 question?

8 COMMISSIONER KURTZ: It's not a percentage, it's
9 dollar amount.

10 CHAIR: No, dollar amount is fine. I just want to
11 get a sense.

12 COMMISSIONER JACCOMA: You also have it on page 20
13 of your report, table 4, Comparison of Florida Ports to
14 Other Southern U.S. Ports, Galveston, Freeport.

15 CHAIR: Okay. Does anybody have any other
16 questions?

17 COMMISSIONER ASSAL: No.

18 CHAIR: Okay. Well, thank you very much for your
19 presentation. I think we covered what we need to cover, and
20 fortunately didn't get dragged out with things we didn't
21 want to hear.

22 With that, we'll recognize Captain Borgie. Come on
23 up.

24 Captain, I know you've heard me say this a few
25 times, but in terms of the risks of being a pilot and the

1 potential damage you could cause by making -- a pilot making
2 a mistake, we're fully aware of it. My fellow committee
3 members, as pilots, face it every day. And the two of us
4 have seen every YouTube video that could be sent to us in
5 terms of that. And I still don't know why you do it. But
6 you can mention it for the record, but we don't need to go
7 through a lot because we're fully appreciative of the
8 challenges.

9 CAPTAIN BORGIE: I understand. With your
10 indulgence, sir, I would like to take a few minutes at that
11 time just to mention something that's very personal to us in
12 Port Canaveral.

13 CHAIR: By all means. I don't want to cut you off.
14 You have all the time you need to cover whatever you think
15 is relevant and what have you. But that particular element
16 of it we've seen sliced and diced so many ways that we just
17 don't want -- I'd rather you steer towards really what you
18 think is the most important to support your application.

19 CAPTAIN BORGIE: Yes, sir.

20 CHAIR: Thank you.

21 CAPTAIN BORGIE: Mr. Chairman, Commissioners, thank
22 you for the opportunity to speak to you today.

23 I want to take just a few minutes -- not too much
24 time -- to go back and figure out why we're here today, and
25 how I got here and how we got here.

1 When I was a child, eight or nine years old, people
2 would ask me, "What do you want to do when you grow up?" I
3 said, "I'm gonna be a ship pilot." Eight years old; "I'm
4 gonna be a ship pilot." "That's nice, Benji. You become a
5 ship pilot." When I was a kid, I was Benji.

6 But in my whole life, it never changed. I went to
7 high school. My dad said, "Where are you going to college?"
8 "I'm going to maritime academy." "No, you have to have
9 other options." "Nope, maritime academy."

10 After the maritime academy, what did I want to do?
11 I wanted to become a ship captain as quickly as possible. I
12 sailed foreign flagged ships, making \$54 a day, working my
13 way up, getting my license advanced to an unlimited master's
14 license, and then continuing my goal to become a pilot.

15 I said, "Okay, now I want to become a pilot
16 somewhere in this country." California; that didn't work.
17 Louisiana, Texas; that didn't work. And then I found
18 Florida. One of the advantages about Florida and the system
19 we have is no nepotism. I thought, this is great. If I
20 have the qualifications to apply, and I take this arduous
21 test, and I study hundreds of thousands of hours, and I get
22 the top score, then I get the opportunity to begin the
23 program. I said, that's perfect for me. I'm ready for
24 that. I want to do that.

25 So I started taking the test in '01. Took me a

1 couple times to get there. Finally got through, got the top
2 score in 2003 in Port Canaveral; and that's where I've been
3 piloting ever since.

4 Now, fast-forward to 2018, and that's where the
5 conversations began with the FCCA to address the antiquated
6 pilot rates here in Port Canaveral. The FCCA and I talked,
7 and we agreed that the cruise lines were subsidizing the
8 cargo carriers in this port; because the pilots were making
9 enough money on cruise, that we were undercharging the cargo
10 lines. We were losing money on the cargo ships because we
11 were making money on the cruise lines.

12 We agreed with the cruise lines, the FCCA, that
13 that's not fair; let's address that. Well, that's where the
14 original application came from back in 2019 when it was
15 filed.

16 And then we're moving forward -- in 2020, COVID
17 hit; that changed everything. That destroyed the cruise
18 industry. It destroyed us. We were in really bad shape.
19 The only reason we survived was because we had pilots who
20 were willing to work with no pay, and federal government
21 grants. We took advantage of those grants that were out
22 there, the PPP money, the CERTS grants. We took advantage
23 of those grants, and used those grants for their intended
24 purposes of keeping our business going.

25 I'm going to go through the thirteen sections.

1 Mr. Chair, I promise to be brief. I won't be overly
2 descriptive.

3 CHAIR: Don't cut out anything you think needs to
4 be covered. Don't overdo my message.

5 CAPTAIN BORGIE: Very good. Yeah, okay. So I'll
6 just touch on the individual sections here. Section 310.151
7 -- before I start, I just want to reiterate that Captain
8 Bushy and Richard Law have been very good to work with.
9 We've had a good, open relationship. And the report that
10 they produced I thought was well done and fairly accurate.
11 I have no major disagreements with anything in it.

12 There's a couple things that I'm going to go over
13 in a moment, where I'm going to amplify some of the things
14 that Mr. Richard Law brought up, and I'm going to clarify a
15 few things. But, there's no major discrepancies in the
16 report, as far as the Canaveral Pilots are concerned.

17 Section 1, public interest in having qualified
18 pilots available. I believe that section was written by
19 Captain Bushy, but sometimes it's not always clear who
20 wrote what, so if I call out the wrong gentleman, please --

21 CAPTAIN BUSHY: We wrote it. We wrote it.

22 CAPTAIN BORGIE: Okay. All right. So, pilots are
23 essential to the safe movement of vessels; agreed.

24 And the massive economic consequences of a ship
25 blocking the channel; agreed. I mean, huge. Huge. And I

1 think the report does a good job of pointing that out about
2 the essential public interest.

3 We concur with the findings of the report, and
4 fully agree.

5 Number 2, determination of net income for the
6 pilots in the port. Richard Law has done a good job of
7 talking about pilot numbers. And when you divide the pie up
8 into more pieces, each piece gets smaller. And I think we
9 have fully addressed that part of the pilot numbers.

10 I do want to take a little deeper dive into what
11 Richard Law talked about in volatility of pilot income. And
12 the report tends to use averages, like a 12-month average;
13 and I don't know if that's the best way to truly identify
14 volatility of pilot income. I think to do that, you really
15 have to focus on the severe ups and downs.

16 And, boy, did the Canaveral Pilots experience some
17 downs, especially fourth quarter in 2020. It's stated in
18 the report, but to me it's a big deal and needs to be
19 publicly put out there.

20 In the fourth quarter 2020, the Canaveral Pilots
21 made no money, zero money. Yet, all of us went to work, put
22 the public interest first, put our physical risk to handle
23 these ships and to bring these ships in -- and not only did
24 we not make money; we had to borrow money to pay our
25 expenses.

1 We survived that, but that was a tough, tough time.
2 When you talk about pilot income volatility, that was the
3 bottom. That was the floor.

4 And even going forward when we started making a
5 little money, it really was a little bit of money.

6 Captain Sean Morrisey is here.

7 You want to come up, Sean?

8 Sean Morrisey has been with us about five years.

9 CAPTAIN MORRISSEY: Almost seven.

10 CAPTAIN BORGIE: Almost seven years. Fully
11 qualified pilot, came to us from the maritime industry,
12 licensed ship captain.

13 He was -- he was tasked with standing a normal
14 watch, like the rest of us, and standing -- handling ships,
15 putting his life on the line.

16 And how much did you make in that 12-month period?

17 CAPTAIN MORRISSEY: About \$36,000.

18 CAPTAIN BORGIE: \$36,000 over that 12-month period.
19 Our employees made more than one of the senior pilots in
20 Port Canaveral. That just -- I wanted to put there out to
21 illustrate just really the ups and downs.

22 Of course, when it comes to income volatility, that
23 gets back to the projections part, which I will address
24 separately. The other thing about pilot volatility -- and
25 this sort of corresponds with the projections part of it --

1 but a lot of the handles that Richard Law has talked about,
2 the increase in handles over the past six months, especially
3 since January 1st, has been the result of small U.S. flagged
4 vessels: SpaceX, Q-LNG; these are all U.S. flagged vessels
5 that would fit under the "small" category, but they still
6 count as one handle.

7 So if you handle a 1,000-foot cruise ship, that's
8 one handle. If you handle a 200-foot work boat from the
9 north side to the south side, that's one handle. So in
10 terms of number of handles, when you start handling all this
11 small stuff, that handle number goes way up. And that was
12 one of the reasons why -- admittedly so -- our projections
13 were off with the initial amended application, because we
14 were not anticipating all of the small SpaceX traffic, LNG
15 traffic, barge traffic.

16 But as a result, the other side point to that is a
17 lot of these small vessels are U.S. flagged vessels. And
18 right now they're using our services because we're so damn
19 cheap; right? We lose money on all of those small vessels
20 because of our minimum fees we currently have in place. But
21 the thought process is, it's possible that once they get
22 their justified rate increases on the small ships, that
23 they're going to seek federal pilotage otherwise, so they
24 won't be using our services. So those projections of all
25 those handle numbers could drop drastically if these

1 operators of these U.S. flagged small vessels decide to go
2 elsewhere.

3 So that's my -- that's my talk on number 2. And if
4 there's any questions, please stop me along the way. We can
5 address them as we go or at the end, whatever the Chair --

6 CHAIR: You just answered one of my questions, in
7 terms of the flow back on cargo with some of these things
8 just basically going to other routes if they find a
9 300 percent increase or whatever being too much.

10 CAPTAIN BORGIE: Just to be clear, only the U.S.
11 flagged ships can take that option, right, that are under
12 federal registry, not all of the small ships.

13 Number 3, reasonable operating expenses of pilots.
14 I'll highlight two words -- three words, and move on:
15 "frugal"; "well-maintained."

16 Number 4 --

17 CHAIR: He took me seriously.

18 CAPTAIN BORGIE: I told you, three words.

19 Number 4, pilotage rates in other ports. Referring
20 to the Bushy-Law report -- again, we've talked about it, but
21 it bears repeating -- reference table 3, Canaveral proposed
22 rates will still be lower than all of the other Florida
23 ports with the large and extra-large vessels.

24 Will still be lower than all the other Florida
25 ports for large and extra-large vessels.

1 Table 8, the first row in bold, it talks about --
2 the last column, big, bold letters, capital: "Lowest."
3 Canaveral Pilots' proposed rates will be lower, and the
4 lowest of all of the comparable southeast ports in the U.S.
5 So any discussion about cargo ships leaving town because of
6 pilotage rates is really a nonfactor.

7 Number 5, the amount of time each pilot spends on
8 piloting duty. Our calculation was slightly different than
9 the calculation used in the report. Our number was 4.75;
10 the number in the report is 3.4.

11 That's not as big of a difference as it seems,
12 because our number we took the maximum -- and the maximum of
13 all of the factors -- and that came to 4.7.

14 The report uses a weighted average handle time --
15 is that correct -- so that's why the number is a little bit
16 less. To me it's not enough to be a material difference.
17 We're happy to accept that 3.4 number.

18 And, we can move on. Prevailing compensation
19 available to other individuals in maritime services. I have
20 been sitting in rate hearings for 15 years -- not nearly as
21 long as Mr. Law -- but I always cringe when the comparison
22 of a pilot to a U.S. flagged ship captain comes up, because
23 there's so many reasons why that comparison is not valid.

24 Mr. Law points out one of them is the issue of
25 pension. We've talked about funded versus nonfunded pension

1 plan. A ship captain, union member, has a funded pension
2 plan; and pilots don't. The other aspect about what a ship
3 captain has, is he's an employee. So when he's off, he's
4 off. He doesn't get calls when he's off duty about pilot
5 boat issues, pilot boat expenses, employee issues. He
6 doesn't have -- he or she does not have ownership
7 responsibilities when it comes to being a U.S. flagged ship
8 captain.

9 The other thing, too, is shipping companies go out
10 of business. We have seen that happen a lot. If you are a
11 union captain on a U.S. flagged ship, your company goes out
12 of business, what do you do? You go back to the union hall
13 and you get another ship. Pilots can't do that.

14 Captain John Bouchard will testify to that, that if
15 you have a loss of business in your port that you're
16 dedicated to service, you can't just go someplace else and
17 get another job. You have to decide what you're going to do
18 to service that port that you've been tasked with by the
19 State of Florida.

20 The other aspect, too, is that a U.S. flagged ship
21 captain is not responsible to maintain a federal and state
22 license. Individual pilots in the state of Florida have to
23 maintain a federal and state license -- and the state
24 license especially so, because if you don't maintain your
25 state license, you're going to get an e-mail from Mollie

1 that you're deficient and you need to get your act
2 together.

3 So that's why I don't like the analysis of a ship
4 captain versus the pilot. It's just not a good analysis
5 because what a pilot does and the responsibilities and the
6 physical risk that a pilot has is really not comparable to a
7 U.S. flagged ship captain.

8 As far as the average income mentioned in the
9 report under section 6, we accept that. I didn't want to
10 hire a consultant to come in here and sit in front of you
11 and take your time shouting out numbers. We think that
12 number is a little low, but we'll accept that number as
13 accurate.

14 And, ready to move on. The impact rate change may
15 have in individual pilot compensation. I think Captain
16 Bushy did a very detailed, excellent job with this, and we
17 concur with his findings.

18 Projected changes in vessel traffic. I touched on
19 this a little bit. Richard Law and I agree 100 percent that
20 these projections are difficult. Projections I made in the
21 initial application for 2020, of course, were absolutely
22 blown out the window.

23 Also, the other aspect about cargo projections
24 specifically in Port Canaveral is that, unlike every other
25 major Florida port, we have no cargo liner services. We

1 don't. We don't have the Maersks. We don't have the
2 Crowleys. So projecting cargo work, especially big ship
3 cargo work, is near impossible in Port Canaveral.

4 I mean, today we have multiple cargo ships. On
5 some days we'll go with zero cargo ships; two or three days
6 in a row, no cargo ships. It's very sporadic. It's up and
7 down. So trying to come up with reliable projections on the
8 cargo side is very difficult.

9 I will reiterate what Richard Law said, that when
10 we originally produced our projections, four months later
11 they were determined to be pretty far off. And I admit
12 that; that's true. So what did we do? We provided new,
13 updated information with the information that we had. Where
14 was the error in those projections? The vast majority of
15 the error in those projections goes back to what I talked
16 about: the small, U.S. flagged cargo stuff that's very
17 unpredictable.

18 Our cruise ship projections were actually pretty
19 steady, but our cargo projections were off, so therefore the
20 number of handles was off. But in good faith we sent them
21 the numbers, we corrected those, and now we have updated,
22 more accurate numbers in this report.

23 Cost of retirement and fringe benefit plans. We do
24 pay our employees well. We just gave our boat operators an
25 average 25 percent increase in their wages. We do have a

1 very expensive union retirement plan. I had no input in
2 obtaining that plan. That plan is contractually obligated
3 to the active pilots, so we're stuck with it. But, it is a
4 good insurance plan. I'm not complaining about the quality
5 of the plan, I'm just trying to explain to the Chair and the
6 board why it's so expensive with the union plan.

7 Our retirees do have a good deal. We spend a lot
8 of money on our retirees. But again, as Mr. Law pointed
9 out, that's due to a contractual obligation. When all the
10 active pilots in this room signed up for the Canaveral
11 Pilots' Association, we were given articles of association
12 that say, these are the rules you have to follow. These are
13 what the retirees make. You don't like it, you're not a
14 pilot here. So, sign here. We all did. So now -- I don't
15 want to use the term we're stuck with it, because it's not
16 necessarily a bad plan, but we don't have any ability to
17 modify it. So a lot of these costs and the retirement costs
18 we're kind of handcuffed with.

19 310.151(10), physical risks of piloting. As the
20 Chair pointed out, I'll be brief with this, but this does
21 hit close to home.

22 In October 2019, Captain Doug Brown was debarking a
23 submarine right here, six miles from where we're sitting.
24 And a wave hit him, and he fell in between the submarine and
25 the pilot boat. The pilot boat ran him over. He went

1 underneath the pilot boat. His life vest inflated, which
2 caused him to get stuck underneath the pilot boat as the
3 pilot boat ran him over.

4 As a result, he got severely injured by the prop
5 and came up a bloody mess astern of the boat. The pilots
6 had to come and bring him aboard. We had -- EMS services
7 brought him to the hospital. They were able to save his
8 foot, sew it back on, and he lived.

9 And as far as I know, according to Margaret
10 Matthews, who we had involved in the case, Doug Brown was
11 the only person she had ever talked to after he or she fell
12 off a ladder.

13 So as a result of this injury, he had to retire.
14 He could not come back to work. He survived, but his career
15 was over; and he was not financially ready to retire, but he
16 was forced to retire.

17 It just goes back to the physical risks of
18 piloting, and how real that was for us here in Port
19 Canaveral.

20 310.151(11), special characteristics, dangers of
21 the port: One of the marketing terms that Port Canaveral
22 likes to use is we are a quadrimodal port. Everybody's
23 heard of trimodal ports: rail, land, and sea. But Port
24 Canaveral, you've got space; right? So now we're a
25 quadrimodal port.

1 So as a result, we have to deal with a lot of space
2 traffic, rocket barges. And because we're in a launch zone
3 -- we'll see that this afternoon at 12:09, they're going to
4 have a launch -- those launch restrictions do impact
5 maritime traffic. And the cruise lines and the cargo ships
6 are dependent on the pilots to ensure that we keep track of
7 all that, and make sure that those space operations have as
8 little negative impact to the cargo and cruise ship
9 operations as possible. We get calls all the time: "Captain
10 Ben, when's the launch? What can we do? What's our
11 window?" We answer that, and we're part of that.

12 We're a naval submarine base. As a result, NOTU --
13 it's an operations test -- it's a test unit. And so all of
14 the Ohio ballistic missile submarines need to come into Port
15 Canaveral every five years to test all of their launch
16 equipment. We don't have a Navy pilot here, so the
17 Canaveral pilots have been trained to handle all of the
18 submarine and Navy work.

19 Submarine work is completely different from other
20 ships. On a submarine, you have the rudder in front of the
21 propeller. As a result, they don't steer very well at all,
22 unless they're moving 6-7 knots through the water. So as a
23 result, you really have to get your turn marks right. You
24 have really got to be on your game when you're dealing with
25 nuclear submarines. It's part of what we do.

1 And as a result, that's why our boats are
2 specifically designed the way they are, is to accommodate
3 the submarine operations in this port. Those of you who
4 were on the boat yesterday, you noticed there's only one
5 engine. Most pilot boats have twin engines; reliability and
6 so forth. But Canaveral pilot boats, we can't have twin
7 engines because that would put the propeller too close to
8 the side of the submarine hull. So we have specially
9 designed boats to accommodate the pilot submarine transfers.

10 As Captain Bushy noted, the port generally has been
11 the same size for 50 years. We've cut a little here, added
12 a little here, dredged a little here; but the port generally
13 is the same size it's been, yet the ships have gotten
14 demonstrably bigger.

15 So we continue to have ships the size of which
16 outgrow this little port. As such, you have a 1,200-foot
17 ship in the channel, winds blowing 20-30 knots; that swept
18 path or crab angle -- whatever term you want to use --
19 increases dramatically.

20 If you have a 400-foot-wide channel and you have a
21 1,200-foot ship crabbing 3 to 4 degrees, you have very
22 little left on either side. That's what we do here, day in,
23 day out.

24 Number 12, other relevant information. Our two
25 pilot boats -- one is 1998. Our goal all along was to

1 replace the pilot boats at a 25-year interval. We're
2 already behind schedule now on that boat built in 1998, and
3 we need to replace that. She's worked hard for us, but the
4 time has come and we need to work on replacing that boat.

5 The other boat, built in 2014, is still in good
6 shape, but her engine now has over 8,000 to 9,000 hours.
7 And because we are single-engine boats, and because it takes
8 so long to acquire a replacement engine now, we are already
9 in the process of buying an engine and replacing the engine
10 in that boat.

11 Last one, number 13: The board may take into
12 consideration inflation and other factors. As quoted in the
13 report, applying the change in CPI to the existing fee of
14 \$568 would generate \$1,214, which is \$422 more than the
15 requested pilotage fee of \$692. What does that tell me?
16 That tells me that the proposed increases on cargo do not
17 even keep up with inflation.

18 Any other questions on the 310.151(13)
19 requirements?

20 George, can you come up here and talk about the
21 executive summary?

22 CHAIR: Hold on. Do we have any questions for
23 Captain Ben?

24 COMMISSIONER JACCOMA: I don't think so.

25 CHAIR: I have one or two. You talked about the

1 health insurance, which does, on the surface, seem to be
2 very expensive. You have no options in terms of other
3 placement, to try to save some money on that insurance?

4 CAPTAIN BORGIE: One of the interesting aspects
5 about the MM&P union plan that they have for pilots is not
6 only does it cover traditional health insurance, it also
7 covers workers' compensation.

8 Most companies generally would have to have a
9 separate workers' compensation policy and a separate health
10 care policy. The one for the pilots through the union is
11 all together. So that's one of the reasons why it's so
12 expensive; it covers both aspects.

13 Does that answer your question?

14 CHAIR: Yeah.

15 CAPTAIN BORGIE: Okay.

16 CHAIR: I commend you on being so focused at eight
17 years old, because when I was eight I had no idea --

18 George, we'll recognize you.

19 MR. MEROS: Certainly. Commissioners, my name is
20 George Meros, Shutts & Bowen.

21 First of all, I want to thank all of you for your
22 service.

23 I want to talk only very briefly, but on a really
24 important matter to me and to us, and that is the
25 collaboration and cooperation that we have been able to

1 obtain with the settlement with the FCCA and the pilots.

2 Having been involved in at least four rate
3 proceedings -- and maybe one more -- where it was very
4 difficult and hard to see any collaboration, cooperation --
5 it was exactly to the contrary -- things were much more
6 expensive, things were much more unpredictable.

7 And when I think about the statutory obligation
8 that the legislature imposed, that we get -- we have the
9 best and brightest people, for the safety of the state and
10 our economy. And it was very difficult for a substantial
11 period of time to imagine that young pilots that would like
12 to come to Florida would really want to do so under the
13 circumstances we had with a lot of very difficult
14 litigation-type challenges.

15 We had some extraordinary testimony with an
16 extraordinarily talented young man from Boston in the
17 Everglades matter, who basically said he had passed
18 everything -- I'm sorry he had passed everything more than
19 you had, Ben. He testified very simply, "I have a young
20 family. I love Florida. I want to be here, but I don't
21 have a sense of consistency. I don't have a sense that I
22 will necessarily be able to be here in five years or eight
23 years or ten years, and that causes me a real problem."

24 And so after that -- really, it was about that time
25 that the FCCA and the pilots started talking to each other,

1 and doing so in a productive way. And now we have, after a
2 sustained period of time, and to the great credit of the
3 Captain here and the FCCA, a remarkable agreement that was
4 negotiated in good faith -- without a gun to anyone's head
5 -- and with true cooperation.

6 And that has been, in my experience, an
7 extraordinary thing for everyone, and for truly getting the
8 new, young, best and brightest pilots. So I very much
9 commend the FCCA, Captain Borgie, and all of the pilots that
10 spent a good bit of time negotiating that.

11 But there is now a sense of good faith and a sense
12 of looking forward that did not exist for a long period of
13 time. So I congratulate everyone.

14 CAPTAIN BORGIE: Just one more closing statement,
15 if I may, Mr. Chair?

16 CHAIR: Yes.

17 CAPTAIN BORGIE: It is the position of the
18 Canaveral Pilots that the adoption of the settlement
19 agreement with the FCCA will result in fair, just, and
20 reasonable rates. In adopting this settlement agreement, we
21 believe the Pilotage Rate Review Committee will be in
22 compliance with the statutory requirement to give primary
23 consideration to the public interest in promoting and
24 maintaining efficient, reliable, and safe pilot services.

25 CHAIR: We have someone from the FCCA here to speak

1 on that issue?

2 CAPTAIN BORGIE: Yes.

3 CHAIR: So recognized.

4 Thank you, gentlemen.

5 CAPTAIN BORGIE: Thank you.

6 MR. CESERANO: Good morning, Mr. Chairman, Board of
7 Commissioners. My name is Adam Ceserano. I'm the president
8 of the FCCA. How is everyone? All right.

9 So I have a very short statement. So noticing how
10 you're saying --

11 CHAIR: My message is really coming through. Let
12 me be clear, if anybody in the room has anything that's
13 relevant, we will listen.

14 MR. CESERANO: I was back there noting stuff off,
15 cutting it out.

16 So again, my name is Adam Ceserano. I'm president
17 of the Florida-Caribbean Cruise Association.

18 For those of you who don't know us or are not
19 familiar with us, we're a not-for-profit association made up
20 of 23 member cruise lines that represent the interests of
21 our destinations and stakeholders in Florida, the Caribbean,
22 South and Central America, including Mexico.

23 Our cruise lines work with the pilots in numerous
24 Florida ports, including Port Canaveral. In fact, the
25 cruise industry is a vital and important part of Florida's

1 economy, generating \$8 billion in economic activity
2 throughout the year.

3 This year, Port Canaveral should receive around 850
4 cruise calls. That's an increase of roughly 20 percent from
5 2019. The port requires the services of the Canaveral
6 pilots for all of its calls and services between our cruise
7 lines that are calling in the port, moving out throughout
8 international waters.

9 You know, basically saying here also -- adding --
10 or cutting it short is, our -- the cruise industry and the
11 Florida pilots have not always seen eye to eye, let's be
12 honest about that.

13 CHAIR: We have seen that.

14 MR. CESERANO: But today is a new day; right?
15 Today is a new day of communication. And, fortunately,
16 times have changed, and times have changed for the better.

17 The FCCA and the Canaveral Pilots have come
18 together and put forth a joint proposed settlement agreement
19 before you today. The proposed settlement agreement is the
20 product of many months of negotiations in good faith, and
21 the parties have made an appearance at this hearing today.

22 We fully support the agreement that has been
23 reached with the FCCA and the Canaveral Pilots, and we urge
24 the committee to approve the settlement agreement without
25 modification.

1 Thank you for your consideration.

2 CHAIR: Thank you.

3 MR. CESERANO: Told you, I took a bunch of stuff
4 out.

5 CHAIR: I apologize for the hours of time that you
6 took to prepare it.

7 MR. CESERANO: It's fine.

8 CHAIR: Anybody have any questions?

9 Okay. Thank you.

10 MR. CESERANO: Thank you.

11 CHAIR: Now we have -- go with presentations from
12 other affected parties.

13 Anybody else want to be recognized by the
14 committee? Maybe that's the person that left, got cut out,
15 too.

16 Public comments. Anybody have any public comments?

17 Okay. Actually, why don't we take 15 minutes, and
18 then we'll come back for deliberations.

19 (A break was taken.)

20 CHAIR: Okay. We're going to bring it to order
21 again. And then the next item we have is deliberation and
22 determination of the request for change, whereby the pilots
23 will discuss concerns or levy any questions or what have you
24 to the interested parties, and then we'll pass it over to
25 Marlene Stern.

1 So anybody want to start this off? You want me to
2 start it off?

3 COMMISSIONER KURTZ: Why don't you start?

4 CHAIR: Okay. Well, I want to thank everybody for
5 all the hard work. You know, I know a lot's been put into
6 this. There's a lot invested in this.

7 But, I do have one or two concerns. The first one
8 is the governance rate that we're carving out as a separate
9 line item.

10 It's pointed out in the study that we haven't done
11 this with any other port. And that's not to say that if
12 there's a good idea or constructive idea or what have you
13 that the port brings up, that makes sense, we won't support
14 it.

15 But in this case -- I'll speak to Captain Borgie --
16 I just don't see why this would be anything different than
17 the other handling with the other ports, and how it would
18 benefit in any way just to have this add-on, as opposed to
19 just a cost of doing business.

20 We don't have administrative fee add-ons. We don't
21 have so many other type of add-ons. I know you have no
22 control over this; it's set by the state.

23 Being the chair of this particular committee, we're
24 woefully in the hole because we have no revenue, but we
25 continue to have expenses.

1 But I just don't see the addition of that
2 particular item, as opposed to the other items that you have
3 in business.

4 So if you want to speak to that before I object to
5 bringing it into the rate change, I welcome your comments.

6 CAPTAIN BORGIE: Captain Ben Borgie, Canaveral
7 Pilots.

8 Yes, this is a new fee. This hasn't been done
9 before; that's absolutely correct. These fees like this are
10 very commonplace in other ports outside of Florida. Outside
11 of Florida, a lot of these fees do exist.

12 I understand this fee has caused some heartache,
13 and I understand why, because it's not a fixed, hard number;
14 it's a floating fee. I understand why that would cause some
15 concern.

16 Having said that, we still think it's a valid fee,
17 and we still think it's justified. We do not feel it's
18 prohibited by anything in Statute 310.

19 However, if there is a lot of concern over it, we
20 understand that. We'd be willing to concede that fee, if
21 that so chooses -- so pleases the Pilotage Committee.

22 CHAIR: Anybody else want to speak to that?

23 CAPTAIN BORGIE: One more comment, sir?

24 CHAIR: Yes.

25 CAPTAIN BORGIE: Provided that the rest of the

1 agreement is not impacted by that, because --

2 CHAIR: We acknowledge you're not conceding yet,
3 then, but we need to discuss any other objections before we
4 say school's out, so to speak.

5 So any other comments, in terms of the fee itself?
6 Does anybody feel the same way I do?

7 COMMISSIONER JACCOMA: I would say I kind of like
8 the idea of it myself, because having been a pilot for a
9 number of years in a port where you do have to pay it, you
10 know it's a fee you're going to have to pay.

11 Like Ben pointed out, other states -- when I did
12 some research years back, it did show that they have these
13 additional charges, and that was one of them. I thought it
14 was a good idea, but I do see that some people don't here.

15 But the one thing I would say, it says from zero to
16 1.5 percent. So I guess that means depending -- it's a
17 direct pass-through; is that correct?

18 CAPTAIN BORGIE: Yes. That is how it was intended,
19 as a direct pass-through. That's correct. So no markup, no
20 annual cost escalation fee.

21 CHAIR: But how would that be different than any
22 other expense that -- I mean, you have a lot of expenses
23 that you know you have to pay, that you have no control over
24 the amount of that particular expense.

25 How would that -- why would the governance fee be a

1 carve-out, add-on, so to speak, as opposed to just a cost of
2 doing business? And then you build it into the rate
3 structure, to cover what your anticipated expenses are.

4 CAPTAIN BORGIE: When it comes to writing an
5 application, of course that's what a lot of it comes down
6 to, is what are valid fees? What are probably not the best
7 fees, not the most appropriate fees?

8 As Captain Jaccoma pointed out, some of these fee
9 sheets from, like, the San Francisco Bar Pilots, they have
10 15, 16 different fee items: training fee, communications
11 fee, regulatory fee; all these fees.

12 So yes, there is some judgment that goes into
13 preparing the application, to decide which fees are
14 appropriate and which fees are not appropriate.

15 Yes, this is a new fee, so I understand why there
16 is some concern over this.

17 CHAIR: And I --

18 COMMISSIONER ASSAL: If I may interject?

19 CHAIR: Yes.

20 COMMISSIONER ASSAL: From zero to 1.5 basically
21 leaves the discretionary of the fee to you guys?

22 CAPTAIN BORGIE: No, sir.

23 COMMISSIONER ASSAL: What does zero come from,
24 then?

25 CAPTAIN BORGIE: So the fee that we're referring to

1 is assessed by this board, by the Board of Pilot
2 Commissioners, assesses a fee to all of the pilot groups in
3 Florida based on gross pilot revenue.

4 So every month we have to fill out a form that
5 lists gross pilot revenue and how many handles we have, and
6 the current assessment rate which is set by this board as
7 .7 percent. This board can change it.

8 So it has nothing -- the pilots are subject to what
9 this board decides to -- I believe the 1.5 percent, I
10 believe that's in the statute, but --

11 MS. ACKERMANN: Up to 2.

12 CHAIR: 2 percent.

13 CAPTAIN BORGIE: Okay. All right. Thank you.
14 Thank you for the clarification.

15 CHAIR: I think I'm pretty clear in understanding
16 this. Right now it's .7, so he's going to be able to pass
17 through .7. If it goes up to 1.5, he doesn't have to come
18 back to this board for rate change or whatever, he's going
19 to be able to set the 1.5.

20 If it goes over the 1.5, then he's going to be able
21 to pass through the 1.5, and the rest is just going to flow
22 through as an expense. So he's giving himself wiggle room
23 for this fee to a little bit more than double, to get to the
24 1.5, to pass it through without any other discussion with
25 this particular committee.

1 Correct?

2 CAPTAIN BORGIE: Yes.

3 COMMISSIONER KURTZ: I have a question about that
4 for Marlene, actually. Is it allowable to have something
5 variable within the rate? We've always been told that,
6 like, once you set the rate, all these things are fixed.

7 MS. STERN: They are fixed.

8 COMMISSIONER KURTZ: Then you're sort of capturing
9 something in it that's variable? I just want to understand
10 if we're allowed to do that.

11 MS. STERN: No, in my opinion you're not allowed to
12 do that.

13 When you set the rate -- you say in your rates that
14 there's a 2.5 -- in the settlement agreement there's a
15 2.5 percent escalator. Well, that's okay because you're
16 telling everybody it's going up this amount every year.

17 The .7 percent pilotage assessment fee, however,
18 you can't -- you don't know when it's going to go up. You
19 have to -- the whole point of these rates is to give people
20 notice. So that's part of the point. People will not be on
21 notice if it jumps from .7 to 1.5 percent, for example.
22 That might mean something. That might matter to people.
23 That's a new rate; you need to come in for a new rate case,
24 in my opinion.

25 So the way -- it can't be done the way it is

1 proposed to be done.

2 The other thing I just wanted to comment on -- I
3 don't know other states' statutes; I don't know how it
4 works. So I just -- I can only speak to Florida. But the
5 way it's written in the settlement agreement, it's not clear
6 that it's a pass-through.

7 You know, if our definition of pilotage -- and I
8 think this is what Mr. Law was getting at -- is it meets our
9 definition of pilotage. So you assess the .7 percent, say,
10 against the other costs of piloting the ship. That
11 .7 percent is pilotage. Then when DPBR assesses the
12 pilotage against you, you are going to be paying the
13 .7 percent on all that you've collected from the boat
14 owners, charterers, or whomever you've collected it from.

15 So the exact way -- it's not written as a
16 pass-through clearly to me, and the way it's written it
17 looks like pilotage. So that's another problem with it.
18 Now that's not to say you can't -- you can amend the
19 settlement agreement here if you wanted to, but I don't
20 think -- I think, in any case, the way -- it's going to be
21 hard to get around the definition of pilotage. That's all I
22 wanted to make the board members aware of and the board.

23 COMMISSIONER JACCOMA: If I could, then, what
24 you're saying, in essence, then is that .7 percent would
25 then be hit with another .7 percent on top of it when --

1 MS. STERN: Yeah, because the .7 meets the
2 definition of pilotage.

3 COMMISSIONER ASSAL: That means you're adding to
4 the fee; so it's not a separate line item, you're just using
5 that terminology. So then you just add your fee to another
6 whatever percent -- because when you have a fluctuating,
7 floating -- just one day I want to do this, next day I want
8 to do that; you just can't do that.

9 CHAIR: I think you had mentioned that you'd step
10 down off of that if we call it a day.

11 You have a docking/undocking fee, a pilot boat fee,
12 retention of pilot, cancellation of pilot, shifting fee
13 within the harbor, dead ship movement, late payment fee, in
14 addition to this governance fee. I don't have any problem
15 with any of that. I'm not going to pick and choose from
16 each one of those, because this is the only one I have
17 anxiety about.

18 And the only other one is -- the 1.5 percent
19 increase per year I'm okay with, but why the draft increase
20 to 6 percent a year?

21 CAPTAIN BORGIE: Okay. Yes. So I think you said
22 1.5. It's 2.5.

23 COMMISSIONER ASSAL: It's 2.5.

24 CHAIR: You're right. I'm thinking of the
25 governance. Yes.

1 CAPTAIN BORGIE: Yeah. And so the additional draft
2 fee applies only to vessels that are deeper in the water
3 than 32 feet. So all of the cruise ships currently sailing
4 this harbor are excluded from that 6 percent cost escalation
5 fee.

6 Part of that was when we were originally writing
7 the application we were doing comparisons about what deep
8 draft tankers were paying at other ports; and we were way
9 behind. So in order to kind of shrink that gap a little
10 bit, this was an area where we could recoup some of that
11 cost for these deep draft tankers, which do require a lot of
12 additional piloting skill because they're so big and so
13 heavy. So that was just another area we thought was a fair
14 way to shrink that gap under that vessel class.

15 CHAIR: But if you're proposing fair and reasonable
16 rates on the deep draft tankers now, right, why would that
17 go up annually at a quicker rate, in terms of the increase?
18 Are you saying what you're proposing now is not fair, it's
19 actually lower than it should be?

20 CAPTAIN BORGIE: It's fair and reasonable for this
21 coming year.

22 CHAIR: Okay.

23 CAPTAIN BORGIE: And the fair and reasonable rate
24 for 2024, I think, would include that 6 percent and
25 2.5 percent; that would be a fair and reasonable rate in

1 2024.

2 It would be a fair and reasonable rate in 2025 to
3 have 2.5 percent on top of those 2024 numbers.

4 With inflation 8.3 percent, of course, nobody knows
5 where that's going.

6 CHAIR: I was going to say, take it one at a time
7 here.

8 CAPTAIN BORGIE: Nobody knows where that's going to
9 go. But, 2.5 is the -- what the accountants tell me has
10 been kind of the normal inflation rate. So I do believe the
11 2.5 percent will result in a fair and reasonable rate in the
12 following years.

13 CHAIR: I'm not pushing the 2.5 percent; I'm
14 pushing the 6.

15 CAPTAIN BORGIE: Which only applies to -- what
16 percentage of our vessels does that percent apply to?
17 Sorry. I didn't prep him for that question.

18 COMMISSIONER KURTZ: I have a comment.

19 CAPTAIN BORGIE: Please.

20 COMMISSIONER KURTZ: I'll just make a comment while
21 he's looking that up.

22 The additional risk of handling deeply laden
23 vessels wasn't properly addressed before. And I believe
24 that is part of the higher -- the acceleration of that rate
25 more accurately reflects that risk of being closer to the

1 bottom.

2 And that's a pretty common thing in lots of ports,
3 is the rate is higher at higher drafts. The same way
4 certain vessels are risky because there's a lot of sail
5 area, vessels that are closer to the bottom present that
6 risk under the water. The rate, in my opinion, should
7 reflect that to some degree. It's harder to handle
8 something at 38 -- there's a lot more risk -- than handling
9 something at 27 feet.

10 CHAIR: As a nonpilot, I have no question to
11 understanding that, in terms of how close you are to
12 anything, including the bottom.

13 I guess all I'm saying is, you have fair and
14 reasonable rates today -- or not today, but if we accept
15 this proposal at fair and reasonable rates -- then why
16 annually would one element to that fee go up two and a half
17 times faster than the 2.5 percent? I could be missing the
18 point.

19 (All speaking at once.)

20 CHAIR: I could be missing the point. I just want
21 to have an understanding before we take a vote on what we're
22 doing.

23 COMMISSIONER JACCOMA: This has been done before, I
24 think, in my port, Miami, as well as Port Everglades, they
25 have this 6 percent accelerator on that larger draft. So

1 it's not something that hasn't been done.

2 I think maybe George Meros knows that, because he
3 worked with the Port Everglades pilots. So I think this is
4 something that's been done in the past. And maybe Richard
5 Law keeps track of that as well.

6 MR. LAW: Not that I'm aware of.

7 CHAIR: I'm trying to get an understanding. I'm
8 not looking to take anything away from the pilots. I just
9 want to make sure we can justify, you know, the
10 deliberations, what we're discussing --

11 COMMISSIONER JACCOMA: The rate in other ports is a
12 6 percent accelerator?

13 MR. LAW: It's a 54 percent increase, so I'm not
14 aware of that.

15 COMMISSIONER JACCOMA: You're not? Miami? Port
16 Everglades?

17 MR. LAW: I'm not aware of that.

18 COMMISSIONER ASSAL: When we did Miami, we talked
19 about accelerating on tonnage. You remember when we sat and
20 we had one of the CPAs on the pilotage rate review board?

21 It doesn't accelerate, it's based upon the size of
22 the vessel and the volume, but we set it straight across.
23 It wasn't all these vessels paid that, all these vessels
24 paid this. It wasn't just a one line item for anything over
25 a certain draft is going to pay an excess 6 percent, that is

1 correct.

2 COMMISSIONER KURTZ: Ben, did you take this from
3 another Florida model?

4 CAPTAIN BORGIE: Yes.

5 COMMISSIONER KURTZ: Because I don't remember a
6 past --

7 CAPTAIN BORGIE: We definitely did. We adopted the
8 Miami model. We adopted the Port Everglades model. One of
9 the reasons why we adopted those models is because those
10 models -- the structures in this fee structure was approved
11 by this board.

12 So yes, we did copy a lot of the rate structure,
13 and then adjusted the numbers accordingly to make it
14 appropriate for Port Canaveral.

15 COMMISSIONER KURTZ: We previously approved that.

16 COMMISSIONER ASSAL: I know that, but we did not
17 approve a specific draft to be an extra increase. No way we
18 did. I would stand on that.

19 COMMISSIONER JACCOMA: We did it before.

20 COMMISSIONER ASSAL: Okay. Then we should pull up
21 the records, then, but I know 6 percent was not done for one
22 draft, anything over a certain --

23 COMMISSIONER JACCOMA: It's over a certain draft.

24 COMMISSIONER KURTZ: It was a category of draft.

25 CAPTAIN BORGIE: Also, Mr. Chairman, as far as the

1 percentage of vessels in Port Canaveral that are deeper than
2 32 feet, that would be subject to this 6 percent,
3 approximately 5 to 7 percent.

4 COMMISSIONER KURTZ: Well, I mean, if we've set a
5 precedent by approving that model, then that's something
6 that we've done. I don't know if someone wants to pull up
7 those results, so we can evaluate.

8 MS. STERN: I'll see if I can.

9 MS. ACKERMANN: It would be on the Department's
10 website.

11 (All speaking at once.)

12 CHAIR: Even if it's not in there, if it makes
13 sense to the committee, we will approve it. I just want to
14 see if there is a precedent that we have to follow.

15 CAPTAIN BORGIE: I do believe it is in there, but I
16 am not going to go on memory.

17 CHAIR: Okay.

18 (All speaking at once.)

19 CHAIR: I just want to be able to document what
20 we're doing, and what have you; not to beat it down.

21 CAPTAIN BORGIE: I respect that, sir. Thank you.

22 CHAIR: Just doing due diligence here, in terms of
23 setting these.

24 This is why I raced everybody else through the
25 proceedings, so we'd have time to waste on looking for this.

1 COMMISSIONER KURTZ: Then anybody who comes after
2 can use those precedents.

3 MS. ACKERMANN: For Port Everglades, Item Number 5
4 in the motion of intent to modify pilotage rates: Draft
5 rate for vessels with a draft of 31 feet, 0 inches, or
6 greater, shall increase by 6.0 percent each year for
7 10 consecutive years, starting on the anniversary date one
8 year following the effective date of this rate.

9 (All speaking at once.)

10 CHAIR: Then I'm sitting with just this governance
11 rate.

12 Does anyone else have any other items that --
13 Sheriff?

14 COMMISSIONER ASSAL: No, sir.

15 CHAIR: Okay. Then I guess we'll accept your
16 giving up the governance rate.

17 We do have to go through a process to go through
18 the report, so we can document everything that we considered
19 before we take a final vote, but I think pulling the
20 governance rate out is going to make it easier for us to do.

21 CAPTAIN BORGIE: That's under your purview, sir,
22 you and your fellow commissioners.

23 CHAIR: The floor is yours.

24 MS. STERN: Okay. At this point, I just want to go
25 -- I would ask for a vote on each of the factors, based on

1 the information presented and the report that Mr. Law and
2 Captain Bushy wrote. So this is just facts, do you agree
3 with the facts in the report. I'm going to go through
4 factor by factor. What you decide to do with those facts in
5 rate setting is a different matter.

6 All right. First we need to have a vote on the
7 public interest of having qualified pilots available to
8 respond promptly to vessels needing their service.

9 Do you agree with the facts in the investigative
10 committee report on that topic? So we need a motion.

11 CHAIR: Need a motion approved for each one?

12 COMMISSIONER KURTZ: Can we say "So moved"?

13 MS. STERN: Yes, if you agree, "so moved" is fine.

14 COMMISSIONER KURTZ: So moved.

15 CHAIR: Second.

16 All those in favor?

17 CHAIR: Aye.

18 COMMISSIONER KURTZ: Aye.

19 COMMISSIONER JACCOMA: Aye.

20 COMMISSIONER ASSAL: Aye.

21 MS. STERN: Okay. A determination of the average
22 net income of pilots, as prepared in the investigative
23 report.

24 COMMISSIONER KURTZ: So moved.

25 COMMISSIONER JACCOMA: Second.

1 CHAIR: All those in favor?

2 COMMISSIONER JACCOMA: Aye.

3 CHAIR: Aye.

4 COMMISSIONER ASSAL: Aye.

5 COMMISSIONER KURTZ: Aye.

6 MS. STERN: Reasonable operating expenses of the
7 pilots. Approved?

8 COMMISSIONER KURTZ: So moved.

9 COMMISSIONER JACCOMA: Second.

10 CHAIR: Aye.

11 COMMISSIONER JACCOMA: Aye.

12 COMMISSIONER ASSAL: Aye.

13 COMMISSIONER KURTZ: Aye.

14 MS. STERN: All right. The section on pilotage
15 rates in other ports.

16 COMMISSIONER KURTZ: So moved.

17 COMMISSIONER JACCOMA: I'll second that.

18 CHAIR: All those in favor?

19 Aye.

20 COMMISSIONER JACCOMA: Aye.

21 COMMISSIONER KURTZ: Aye.

22 COMMISSIONER ASSAL: Aye.

23 MS. STERN: The amount of time each pilot spends on
24 actual piloting duty and the amount of time spent on other
25 essential support services, as presented in the

1 investigative committee report.

2 COMMISSIONER KURTZ: So moved.

3 COMMISSIONER JACCOMA: Second it.

4 CHAIR: All in favor?

5 COMMISSIONER ASSAL: Aye.

6 COMMISSIONER JACCOMA: Aye.

7 CHAIR: Aye.

8 COMMISSIONER KURTZ: Aye.

9 MS. STERN: The prevailing compensation available
10 to individuals in other maritime services of comparable
11 professional skill and standing as sought in pilots. Is
12 that section --

13 COMMISSIONER KURTZ: So moved.

14 CHAIR: I'll second.

15 All those in favor?

16 Mike, you can get the next one.

17 COMMISSIONER JACCOMA: Aye.

18 COMMISSIONER KURTZ: Aye.

19 CHAIR: Aye.

20 COMMISSIONER ASSAL: (Raises hand.)

21 CHAIR: Sherif, you got an "aye"?

22 COMMISSIONER ASSAL: Aye. I'm sorry. I apologize.

23 MS. STERN: The impact rate change may have in
24 individual pilot compensation, and whether such change will
25 lead to a shortage of licensed state pilots, certified

1 deputy pilots, or qualified pilot applicants.

2 COMMISSIONER KURTZ: So moved.

3 COMMISSIONER JACCOMA: Second.

4 CHAIR: All those in favor?

5 COMMISSIONER ASSAL: Aye.

6 COMMISSIONER JACCOMA: Aye.

7 COMMISSIONER KURTZ: Aye.

8 CHAIR: Aye.

9 MS. STERN: Projected changes in vessel traffic.

10 COMMISSIONER KURTZ: So moved.

11 COMMISSIONER JACCOMA: Second.

12 CHAIR: All those in favor?

13 COMMISSIONER JACCOMA: Aye.

14 COMMISSIONER ASSAL: Aye.

15 COMMISSIONER KURTZ: Aye.

16 CHAIR: Aye.

17 MS. STERN: Cost of retirement medical plans.

18 COMMISSIONER KURTZ: So moved.

19 COMMISSIONER JACCOMA: Second.

20 CHAIR: Aye.

21 COMMISSIONER JACCOMA: Aye.

22 COMMISSIONER ASSAL: Aye.

23 COMMISSIONER KURTZ: Aye.

24 MS. STERN: Okay. Physical risks inherent in
25 piloting.

1 COMMISSIONER KURTZ: So moved.

2 COMMISSIONER JACCOMA: Second.

3 CHAIR: All those in favor?

4 COMMISSIONER ASSAL: Aye.

5 COMMISSIONER JACCOMA: Aye.

6 COMMISSIONER KURTZ: Aye.

7 CHAIR: Aye.

8 MS. STERN: Special characteristics, dangers, and
9 risks of the particular port.

10 COMMISSIONER KURTZ: So moved.

11 COMMISSIONER JACCOMA: Second.

12 COMMISSIONER ASSAL: (Raising hand.)

13 CHAIR: Sherif?

14 COMMISSIONER ASSAL: Aye.

15 CHAIR: Aye.

16 COMMISSIONER KURTZ: Aye.

17 COMMISSIONER JACCOMA: Aye.

18 MS. STERN: Any other factors the committee deems
19 relevant in determining a just and reasonable rate. That
20 refers to the section of the investigative committee report.
21 If you agree with it, then say "so moved."

22 COMMISSIONER KURTZ: So moved.

23 COMMISSIONER JACCOMA: Second.

24 CHAIR: Aye.

25 COMMISSIONER ASSAL: Aye.

1 COMMISSIONER KURTZ: Aye.

2 COMMISSIONER JACCOMA: Aye.

3 MS. STERN: All right. And then the -- the
4 committee may take into consideration the Consumer Price
5 Index or any other comparable economic indicator when fixing
6 rates of pilotage; however, because the Consumer Price Index
7 or such other comparable economic indicator is primarily
8 related to net income rather than rates, the committee shall
9 not use it as the sole factor in fixing rates of pilotage.

10 This gets to, also, the 2.5 percent escalator.

11 The -- well, first of all, do you agree with that
12 section in the investigative committee report?

13 COMMISSIONER KURTZ: So moved.

14 COMMISSIONER JACCOMA: Second that.

15 CHAIR: All those in favor?

16 Aye.

17 COMMISSIONER KURTZ: Aye.

18 COMMISSIONER JACCOMA: Aye.

19 COMMISSIONER ASSAL: Aye.

20 MS. STERN: So now the facts have been accepted,
21 and they will become part of the record, the investigative
22 committee report.

23 What now is needed is a vote on the rates. We have
24 been discussing mostly the settlement agreement. And you
25 can go above the settlement agreement; you can adopt the

1 application, one or the other application as presented, or
2 the settlement agreement. This is where you can do what you
3 want.

4 If we want to modify the settlement agreement by
5 eliminating the board governance fee, we would have to move
6 to amend that, and then adopt it. So we could say, you
7 know, we want to adopt the settlement agreement except we
8 want to eliminate the board governance fee; that would be
9 the motion.

10 But we -- I would like some discussion. This is
11 the part where we need concrete reasons for why you want to
12 do what you decide to do, for the record.

13 COMMISSIONER JACCOMA: So concrete decisions other
14 than what we just went through of the 13?

15 MS. STERN: Right. Those are the facts.

16 COMMISSIONER JACCOMA: So if we diverge from -- or
17 if we even accept the settlement agreement, we have to give
18 you our reasons in addition to that?

19 MS. STERN: Yes.

20 COMMISSIONER KURTZ: You have to say that you agree
21 with --

22 COMMISSIONER JACCOMA: Right.

23 MS. STERN: Because the facts are one thing. And,
24 you know, that's very important. But to get from the facts
25 to a rate, that's a policy decision. We need to know what

1 policies you're furthering. Does that help?

2 COMMISSIONER ASSAL: Marlene, if I may ask a
3 question. So I'm assuming the settlement agreement is the
4 same as the application? Correct me if I'm wrong.

5 MS. STERN: Well, they're almost the same. The
6 amended app --

7 CAPTAIN BORGIE: The amended application --

8 MS. STERN: Mr. Borgie, Captain Borgie knows more.

9 CAPTAIN BORGIE: So the settlement agreement is
10 identical to the amended application, with two exceptions.
11 One exception is the settlement agreement requests an
12 implementation date of January 1, 2023; that was not in the
13 amended application.

14 The second change was that the amended application
15 was requesting 3.25 -- three and one quarter -- percent
16 annual cost escalation factors. Through discussions with
17 the FCCA, it was agreed that that would be reduced from 3.25
18 to 2.5. Those are the only two changes from the application
19 to the settlement agreement.

20 COMMISSIONER ASSAL: So with that being said, are
21 we then accepting the settlement agreement or the
22 application, so I understand.

23 MS. STERN: Okay. Well, the thing that's on the
24 table from the port and the FCCA is the settlement
25 agreement. You don't have to accept that, but you can. You

1 can accept the amended -- the port's -- I mean the pilots'
2 association amended application with the 3.25 escalator.
3 Or, we have an application from the Florida-Caribbean Cruise
4 Association, which we haven't talked about much today;
5 that's there. Or, you can use any one of those as a basis
6 for your decision, and vary the terms.

7 You're free, this is -- you have a lot of options.
8 But, like I said, the settlement agreement's been the focus,
9 and that was the focus, I believe, of the investigative
10 committee report.

11 CHAIR: At the end of the day, we have a settlement
12 agreement between the FCCA and the pilots. In my mind, we
13 should focus on the settlement agreement -- absent anybody
14 who thinks differently -- less the governance fee.

15 COMMISSIONER KURTZ: I agree.

16 COMMISSIONER ASSAL: I think Marlene's asking why
17 do we want to -- whichever way we decide, we've got to come
18 up with a reason publicly why are we saying we're accepting
19 this.

20 MS. STERN: Correct.

21 COMMISSIONER ASSAL: I can only speak for my
22 opinion. I don't know why it took them 30 years to put a
23 rate review in.

24 CHAIR: To get in line with everybody else.

25 COMMISSIONER ASSAL: You know, I think, based upon

1 what they're requesting, is not -- you know, if you look at
2 the acceleration of 2 percent CPI for the past 30 years,
3 where would they be at right now -- everybody had to suffer
4 with COVID: cruise lines, containers -- up until recently,
5 the whole world did. We've all had to adapt and change our
6 lives.

7 I agree with the settlement agreement because I
8 think it was just -- it's been too long for a lot of these
9 pilots. I think that what they're -- for what they do for
10 -- in keeping the water safe and keeping themselves safe and
11 everything, I think that they deserve it. Thirty years is a
12 long time without somebody getting an increase.

13 And thank God for cruise ships, because if they
14 weren't existing in those sizes, I don't know if the pilots
15 could have survived, especially with rates from cargo. And
16 I think -- I've been in Florida now for 22 years, Port of
17 Miami. Seen them all get away with, you know, cargo,
18 smaller vessels were not paying their fair share.

19 I think it's good. The only thing I think is that
20 the board of governance, zero to 1.5 percent, I don't agree.
21 I think -- because when you calculate your math and your
22 numbers for growth or funds, you've already got that built
23 in; or, you ask for an acceleration, or ask for more money,
24 whatever the case may be.

25 I think those are -- there's certain costs that we

1 have in -- when we bill customers, in our hourly rate or
2 tonnage rate or whatever the case may be. We already know
3 what our fees are and we know what to expect.

4 Now, people's workers' comp varies. At least yours
5 is set, which is great; you know what it is. Thank God --
6 hopefully no more incidents.

7 But that's my reasoning. It's about time.

8 CHAIR: I think, from my perspective, we've been
9 given a very uniform and comprehensive report, in terms of
10 investigative report. We've looked it against other ports
11 and things that we have approved in the past. We looked at
12 all those factors that we just accepted.

13 To me that is enough, you know, from my
14 perspective, to support the settlement agreement with that
15 one modification.

16 COMMISSIONER JACCOMA: Can I ask a question? For
17 the FCCA: This is a settlement agreement. So are you -- you
18 have no problem with -- I mean, it's all or nothing, or we
19 can change it and you're still in agreement?

20 MR. CESERANO: As to FCCA, we are here for the
21 agreement, for no modifications.

22 COMMISSIONER JACCOMA: So if the governance fee
23 goes?

24 MR. CESERANO: Then we'd have to talk to the pilots
25 again.

1 CHAIR: But keep in mind that would be -- that
2 add-on you'd not be receiving. Would you be arguing, "No,
3 no, we insist on getting that add-on of .7 percent"?

4 MR. CESERANO: No.

5 CHAIR: Okay. So you would be accepting it if we
6 take this one add-on off; correct?

7 MR. CESERANO: Yeah.

8 CHAIR: Okay.

9 COMMISSIONER JACCOMA: I have another question.
10 Would it be acceptable if you added the add-on .7 percent
11 onto the 2.5 percent that goes up per year? In essence,
12 that does the same thing.

13 CHAIR: But he's already accepted that the
14 .7 percent -- I'm sorry.

15 COMMISSIONER ASSAL: He said he doesn't even
16 require it there, if it's not there. He's already said he
17 has no problem with the agreement based upon taking it out.

18 CHAIR: Why would he argue he wants it back in?

19 COMMISSIONER KURTZ: I can't believe I'm actually
20 going to say this, but I am really uncomfortable with the
21 attempt to recover the governance fee because I think if we
22 do that, then it should apply to every port. Why should one
23 port pass through the fee that gets paid to the board?

24 So I agree with you eliminating recouping the
25 governance fee. I'm uncomfortable with the variable nature

1 of it and the complication in calculating it that it
2 presents. I don't see it as a clean fee.

3 CHAIR: Procedurally, I think -- if I'm not
4 mistaken -- from Counsel's recommendation, we couldn't agree
5 with that anyway. We'd just be able to bring .7 in, you
6 know, as opposed to a variable fee. You couldn't have a
7 variable rider.

8 COMMISSIONER KURTZ: And it's unlikely, but what if
9 it went down?

10 CHAIR: Right. Then we'd be out of business.

11 COMMISSIONER KURTZ: Yeah. Just I see it's a
12 complication -- forget about the numbers, I just see it as
13 an unnecessary complication to the proposal. I'm not
14 comfortable with it.

15 CHAIR: Can we make a motion?

16 MS. STERN: If everybody has had their say in what
17 they feel like, yeah, that's fine, you can make a motion.
18 You can make a motion to accept the settlement agreement,
19 absent -- without the governance fee, if you want. That has
20 to be made clear in the motion.

21 COMMISSIONER ASSAL: But again, you had implied or
22 stated that you can't put in the governance fee based upon
23 fluctuations, as well.

24 MS. STERN: Absolutely. In my opinion, that would
25 -- that would not really be legal -- it wouldn't be legal.

1 That would not be proper rate setting.

2 COMMISSIONER ASSAL: I got you.

3 I make a motion to accept the FCCA and Canaveral
4 Pilot's --

5 CHAIR: Settlement agreement?

6 COMMISSIONER ASSAL: -- settlement agreement, minus
7 the board of governance fee.

8 CHAIR: I'll second that.

9 All those in favor?

10 COMMISSIONER ASSAL: Aye.

11 COMMISSIONER JACCOMA: Aye.

12 COMMISSIONER KURTZ: Aye.

13 CHAIR: Aye.

14 Okay. Well, I think we're done. Thank you for all
15 of your effort it took to put this through, along with the
16 staff and our investigative team, everybody else involved.

17 Congratulations, and we'll see you in another
18 30 years.

19 CAPTAIN BORGIE: Thank you, Mr. Chair. I
20 appreciate it.

21 CHAIR: Motion to adjourn.

22 COMMISSIONER JACCOMA: Second.

23 Aye.

24 CHAIR: Aye.

25 COMMISSIONER ASSAL: Aye.

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COMMISSIONER KURTZ: Aye.
(This meeting adjourned at 11:20 a.m.)

