

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

<b>FILED</b>	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	2/13/2019
File #	

CASE NO.: PRRC 2014-2

IN RE: APPLICATION OF FLORIDA  
CARIBBEAN-CRUISE ASSOCIATION FOR A  
REDUCTION IN RATES OF PILOTAGE AT  
PORT EVERGLADES.

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**PETITION FOR HEARING**

Balearia Caribbean, Ltd ("Balearia"), by and through its undersigned attorneys, pursuant to sections 120.569, 120.57, and 310.151(4)(a) Fla. Stat., files this Petition for Hearing and in support thereof states as follows:

**PARTIES**

- (1) Balearia is a foreign corporation headquartered in Spain and is authorized to do business in the state of Florida as a daily passenger ferry vessel operating service between Fort Lauderdale and Grand Bahama. The address and phone number of Balearia, for purpose of this petition, is that of the undersigned attorneys.
- (2) The Pilotage Rate Review Committee, (the "Committee") established as part of the Board of Pilot Commissioners within the Department of Business and Professional Regulation under Chapter 310, Fla. Stat. and its address and telephone number is 2601 Blair Stone Road, Tallahassee, FL, phone (850)717-1401.
- (3) The function of the Committee is to investigate and determine whether pilotage rates or a requested rate change will result in fair, just and reasonable rates of pilotage pursuant to the rules adopted by the Committee. The Committee has authority to adopt rules pursuant to sections

120.536(1), 120.54 and 310.151(219(d), Fla. Stat., to implement the provisions of section 310.151 Fla. Stat.

#### **PURPOSE OF PETITION**

(4) The purpose of this petition is to challenge the proposed rate changes announced in the Committee's NOTICE OF INTENT TO MODIFY THE PORT EVERGLADES RATE OF PILOTAGE on January 18, 2019, and filed with the Department of Business and Professional Regulation Deputy Agency Clerk on January 22, 2019.

#### **NOTICE OF AGENCY DECISION**

(5) Balearia received notice of the Committee's actions pursuant to notice published in the Sun-Sentinel newspaper on January 24, 2019.

#### **SUBSTANTIAL INTEREST OF BALEARIA**

(6) Balearia obtained a complete copy of the **NOTICE OF INTENT TO MODIFY THE PORT EVERGLADES RATE OF PILOTAGE** from the Committee's website.

(7) Upon examination of the proposed rate changes Balearia determined that a rate change increase of approximately 300% would be imposed upon Balearia every time its ferry entered and departed Port Everglades. Accordingly, the substantial interest of Balearia is directly affected by the Committee's Notice of Intent to Modify the Port Everglades Rate of Pilotage.

Since, the substantial interest of Balearia will be affected by the intended Committee action, Balearia requests a hearing to challenge the validity of the rate increase. See: *Fairbanks, Inc. vs. State Department of Transportation*, 635 So. 2d 58 (Fla. 1<sup>st</sup> DCA 1994); *City of Sunrise vs. South Florida Water Management Dist.*, 615 So.2d 746 (Fla. 4<sup>th</sup> DCA 1993); *Washington County vs. NorthWest Florida Water Management Dist.*, 85 So.3d 1127 (Fla. 1<sup>st</sup> DCA 2012); *Fort*

*Myers Real Estate Holdings LLC, vs. Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering, 53 So.3d 158 (Fla. 1<sup>st</sup> DCA 2011).*

**MATERIAL FACTS IN DISPUTE**

(8) Balearia operates a ferry vessel between Port Everglades and Grand Bahama. Passengers from Grand Bahama board the ferry to come to Fort Lauderdale primarily for shopping on a daily basis. Such excursions generate substantial business for merchants in the Fort Lauderdale and surrounding areas. These passengers return to Grand Bahama the same day.

(9) No consideration was made by the investigative committee nor the Committee as to the effect the proposed pilotage rates have on the ferry service when taking into account the size and tonnage of the ferry and the frequency that it enters and departs Port Everglades every day.

(10) The instant rate review was initiated by the filing of an application for changes in rates for pilotage for Port Everglades by the Florida Caribbean Cruise Association to reduce the pilotage rates imposed on cruise lines. An alternative application for an increase in rates of pilotage for Port Everglades was filed by the Port Everglades Pilots Association. At the time of filing these applications there was a significant and very consequential difference in the proposed pilotage rates.

(11) At some point during the investigative process, and unbeknownst to other parties affected by the pilotage rates, the Florida Caribbean Cruise Association and the Port Everglades Pilots Association entered into an agreement as to an acceptable rate structure. The investigative committee, and ultimately the Committee, inappropriately considered the compromised rates in ultimately determining the proposed rate changes. No consideration was given to Balearia's ferry service and the frequency in which its vessel entered and departed Port Everglades. Instead the Committee accepted the mutually agreed upon rate structure proposed by the Florida Caribbean

Cruise Association and the Port Everglades Pilot Association without following the clear intent of the rules adopted by the Committee that would have required that the application process be restarted by the filing of new applications for rate changes by the Florida Caribbean Cruise Association and the Port Everglades Pilots Association. Under such circumstances, the rates ultimately proposed cannot be deemed fair, just, and reasonable under the circumstances and the due process and equal protection right of Balearia have been violated.

(12) The Committee has failed to determine the value of the pilots "pension fund". The Committee also recognized that over the last several years the maritime industry had invested in the acquisition of substantially larger vessels and that many of these larger vessels now call upon the Port Everglades. The Committee found the trend towards larger vessels to be a change in the general character of the cruise business model, that has resulted in a situation that fewer large vessels have generated a greater percentage of pilotage fees relative to the number of handles required vis a vis and the small cargo and day cruise industry. It was inappropriate for the Committee to recognize this so call change in the cruise business model in determining a just and reasonable rate as same unjustly penalized small cargo and the small day cruise industry, such as Balearia is ferry entering and departing Port Everglades daily. The proposed rates, under such circumstances, did not result in fair, just and reasonable rates of pilotage pursuant to chapter 310, Fla. Stat. and the rules promulgated by the Committee.

#### **ULTIMATE ISSUES OF FACT AND LAW FOR DETERMINATION**

(13) They failure by the Committee to consider the size and frequency of Balearia's vessel (ferry) entering and departing Port Everglades results in the failure of the pilotage rates proposed being just, fair and reasonable. Further the finding that the trend toward larger cruise vessels is a model within the cruise industry business that must be taken into consideration in determining

pilotage rates is an error. Likewise, the failure of the Committee to consider and factor in the value of the pilots "pension fund" was imperative to the rendering of a decision as to pilotage rates that are just, fair and reasonable.

**STATEMENT OF THE SPECIFIC RULES OR STATUTES BALEARIA CONTENDS**

**REQUIRE REVERSAL OR MODIFICATION OF THE COMMITTEE'S**

**PURPOSED ACTIONS**

(14) The Committee has failed to find pilotage rates that are fair, just and reasonable as required by section 310.151(3) and has inappropriately applied, or failed to apply, the criteria set forth in section 310.151(5) Fla. Stat. and Rule 61G14-22.007, Florida Administration Code.

**RELIEF SOUGHT**

(15) Balearia request that the Committee direct the applicants to file revised applications and, thereafter, allow Balearia to intervene in the proceedings and submit an alternative application or other documentation, and that the Committee thereafter fix pilotage rates that are fair, just and reasonable as applied to the small vessels that enter and depart Port Everglades daily.

WHEREFORE, Balearia request a hearing on the issues and facts presented and that the Committee grant such other relief that it deems necessary and just.

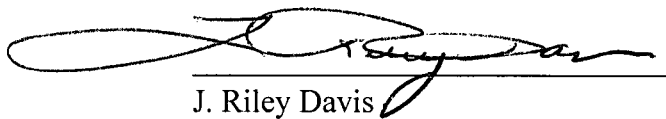
Respectfully submitted,



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Counsel for Balearia Caribbean, Ltd.

**CERTIFICATE OF SERVICE**

I, J. Riley Davis, hereby certify that the foregoing petition was hand delivered this 13<sup>th</sup>, day of February to Krista Woodard, Executive Director, Board of Pilotage Commissioners, Pilotage Rate Review Committee, Department of Business and Professional Regulation, 2601 Blair Stone Road, Tallahassee, FL 32399.



J. Riley Davis

**akerman**

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February 13, 2019

**VIA HAND DELIVERY**

Ms. Krista Woodard  
Executive Director  
Board of Pilot Commissioners  
Pilotage Rate Review Committee  
2601 Blair Stone Road  
Tallahassee, FL 32399

**Re: Application for Change in Rates of Pilotage for Port Everglades filed by the Florida Caribbean Cruise Association and Alternative Application for a Change in Rates of Pilotage for Port Everglades filed by Port Everglades Pilots Association**

**Case No: PRRC-2014-2**

Dear Ms. Woodard,

This firm represents Baleara Caribbean, Ltd., a daily passenger ferry vessel offering service between Fort Lauderdale and Grand Bahama entering and departing daily from Port Everglades.

I have attached a petition requesting a hearing regarding the recent Notice of Intent to Modify the Port Everglades Rate of Pilotage issued by the Pilotage Rate Review Committee in January, 2019.

Thank you for your consideration of this petition.

Sincerely,



J. Riley Davis

Enclosures

RECEIVED  
2019 FEB 13 PM 4:52  
DEPT OF BUSINESS AND  
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OPERATIONS-OSW