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

IN RE: APPLICATION FOR A CHANGE IN RATES OF PILOTAGE FOR PORT 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

PETITION FOR HEARING

COME NOW, Petitioners CROWLEY LINER SERVICES, INC. ("Crowley") and KING OCEAN SERVICES, LTD. ("King Ocean Services") and KING OCEAN AGENCY, INC. ("King Ocean Agency") (together "King Ocean") (Crowley and King Ocean collectively referred to as "Petitioners"), by and through the undersigned counsel, pursuant to Sections 120.569 and 120.57 of the Florida Statutes, file this Petition for Hearing and in support thereof state as follows:

I. The name and address of each agency affected and each agency's file or identification number, if known;

The name of the agency is the Department of Business and Professional Regulation, Board of Pilot Commissioners, Pilotage Rate Review Committee ("PRRC"). The address of the PRRC is 2601 Blair Stone Road, Tallahassee, FL 32399.

II. The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

Petitioners are represented by Jordan S. Cohen and Brandon J. Hechtman of Wicker Smith O'Hara McCoy & Ford, P.A., 515 East Las Olas Boulevard, Suite 1400 Fort Lauderdale, FL 33301, telephone number: (954) 847-4800, facsimile number: (954) 760-9353.

Petitioners are engaged in cargo shipping operations out of Port Everglades, and all of their respective vessels use pilots for ingress and egress into Port Everglades. Petitioners are obliged to pay for the pilots' services at the rate set by the PRRC. Further, Petitioners have long-term leases at Port Everglades, which property is accessed by sea via vessels subject to pilotage. If the rate of pilotage in the Notice takes effect, Petitioners will have to pay significantly more in pilotage and will therefore have to pay significantly more to access their property by sea. Thus, Petitioners will suffer injury in fact if the Noticed pilotage rates go into effect. Further, Petitioners' substantial injury is of the type or nature which the pilotage rate proceeding is designed to protect.

III.A statement of when and how the petitioner received notice of the agency decision;

Petitioners received the Notice of Intent to Modify the Port Everglades Rate of Pilotage ("Notice") on January 22, 2019 via email from Board of Pilot Commissioners personnel.

IV. A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

- a. Petitioners dispute the material fact that PEP incurred an average per-handle cost of \$721.
- b. Petitioners dispute PRRC's determination that FCCA is paying "too much" on a per-handle basis as a result of its members' business decision to operate fewer larger vessels is a "material fact" for consideration when determining whether the requested rates will result in fair, just, and reasonable rates.
- c. Petitioners dispute PRRC opting not to determine the values of the Pilots "pension fund."

V. A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

- a. Petitioners allege that the proper cost-per-handle in 2017 has yet to be determined (and can be determined only with the benefit of discovery at an administrative hearing) but is likely at most \$285; and that the PRRC and Port Everglades Pilots Association ("PEP") used inaccurate numbers to come up with the \$721 cost-per-handle. Alternatively, Petitioners allege that the total operating expenses of the pilots were no more than \$2,282,835, and that number should be used to determine the per-handle-cost of the pilots' services. For a more detailed explanation of Petitioners' position, see the attached Memorandum in Support of Petition for Hearing ("Memorandum").
- b. Petitioners allege that the cruise industry's business decision to build and operate fewer larger vessels cannot be a factor considered by the PRRC.

c. Petitioners allege that the PRRC must determine the value of the pilots' "pension fund" to render a competent finding.

VI. A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and

a. Florida Statute Section 310.151 requires the PRRC to determine "whether the requested rate change will result in fair, just, and reasonable rates." Fla. Stat. § 310.151(5)(a).¹ To do so, PRRC must consider "reasonable operating expenses of the pilots." *Id.* § 310.151(5)(b)3. PRRC cannot properly determine whether an applied-for rate is fair, just, and reasonable based on inaccurate information regarding the pilots' cost-per-handle. As set forth in the Memorandum, at least one Commissioner relied on the \$721 cost-per-handle when making the decision to approve the rate formula agreed to—but defectively submitted to PRRC in secret—by the Florida Caribbean Cruise Association ("FCCA") and PEP. Further, PRRC's Notice references the disparity between the current pilotage rate and the pilots' per-handle-cost. *See* Notice p. 12 (PRRC "notes that the existing rate has for several years been at or below costs for such carriers.").

b. The cruise industry's business decision to build larger vessels cannot be a factor considered by the PRRC under Fla. Stat. § 310.151.

¹ *See also id.* § 310.151(3) ("The [PRRC] shall investigate and determine whether the requested rate change will result in fair, just, and reasonable rates of pilotage pursuant to Rules prescribed by the [PRRC].").

c. In complying with its statutory obligations under Fla. Stat. § 310.151, the PRRC must determine the value of the pilots "pension fund" to render a competent finding.

d. In addition to the foregoing, PRRC has made a number of errors that Petitioners hereby seek to challenge at a hearing. As more fully discussed in the Memorandum, PRRC's errors include, but are not limited to, the following:

- i. PRRC violated Fla. Admin. Code r. 61G14-22.007;
- ii. PRRC lacked Jurisdiction to Alter Pilotage in Port Everglades due to its Failure to Comply with Rule 61G14-22.007;
- iii. PRRC violated Fla. Admin. Code r. 61G14-22.006;
- iv. PRRC violated Petitioners' Due Process and Equal Protection rights;
- v. The PRRC failed to comply with Fla. Stat. § 310.151 by failing to determine whether the applied-for rates would result in fair, just, and reasonable rates of pilotage; and
- vi. PRRC exceeded its authority under Section 310.151.

VII. A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

Petitioners' respectfully request the PRRC to vacate the Notice, direct the PEP and the FCCA to file revised applications, allow Petitioners to intervene in the proceedings and submit an alternative application (or other appropriate filing), investigate and hold hearings on the consolidated alternative and revised applications, and fix pilotage in Port Everglades in a manner consistent with the limited grant of legislative authority provided in Section 310.151.

WHEREFORE Crowley and King Ocean respectfully request a hearing on the foregoing matters and further relief the body deems necessary and just under the circumstances.

Date: February 11, 2019

/s/ Jordan S. Cohen

Jordan S. Cohen, Esquire

Florida Bar No. 551872

JCohen@wickersmith.com

Brandon J. Hechtman, Esquire

Florida Bar No. 88652

BHechtman@wickersmith.com

WICKER SMITH O'HARA MCCOY & FORD, P.A.

Attorneys for Crowley Liner Services, Inc. and King Ocean Services, Ltd.

515 East Las Olas Boulevard

Suite 1400

Fort Lauderdale, FL 33301

Phone: (954) 847-4800

Fax: (954) 760-9353

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served by hand delivery on this 11th day of February 2019, upon the following:

Krista Woodard
Executive Director
Board of Pilotage Commissioners
2601 Blair Stone Road
Tallahassee, FL 32399
Krista.Woodard@myfloridalicense.com

By: /s/ Jordan S. Cohen
Jordan S. Cohen, Esquire