

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 THE COMBINED
PORT AREA OF JACKSONVILLE AND FERNANDINA
FILED BY THE ST. JOHNS BAR PILOT
ASSOCIATION AND FERNANDINA PILOT, LLC.

CASE NO.: PRRC 2018 - 2

NOTICE OF INTENT TO MODIFY THE RATES OF PILOTAGE
FOR THE COMBINED PORT OF JACKSONVILLE AND FERNANDINA

Pursuant to the provisions of Section 310.151, Florida Statutes, and Rule 61G14-22, Florida Administrative Code, the Pilotage Rate Review Committee (Committee) met at a duly-noticed public meeting in Jacksonville, Florida on January 22, 2020, to review the rate modification application filed by the St. Johns Bar Pilot Association and Fernandina Pilot, LLC., (the Pilots).

Committee members present were Robert Benson, Sherif Assal, Capt. Carolyn Kurtz, Capt. Michael Jaccoma, and Ed Russo. Legal advisors to the Board were Donna McNulty, Special Counsel, and Marlene Stern, Senior Assistant Attorney General.

On January 17, 2020, Crowley Liner Services, Inc., Crowley Puerto Rico Services, Inc., and Crowley Caribbean Services, LLC (Crowley) filed a Motion to Dismiss or Alternatively to Stay the Rate Review Proceedings (Motion). Essentially, Crowley challenges the notices of hearings and alternatively asserts the proceedings should be stayed pending appeal of the Port Everglades rate review case. On January 21, 2020, the Pilots filed a Response in Opposition to Crowley's Motion contending that the Committee's notices were proper and in accordance with

Rule 61G14-22.007(5), Florida Administrative Code, and Section 310.151(3), Florida Statutes, and that Crowley's requesting of a stay of the proceedings is meritless. Upon review of the documents submitted, the arguments of Crowley and the Pilots, and discussion on the premises, Crowley's Motion was denied.

THE APPLICANT

St. Johns Bar Pilot Association and Fernandina Pilot, LLC, (the "Pilots"), is an association composed of present harbor pilots that is treated as a partnership for tax purposes and which performs the pilotage services at the combined port area covering the ports of Jacksonville and Fernandina, Florida. The Pilots' are located at 4910 Ocean Street, Jacksonville, Florida.

The purpose of the Pilots is to provide pilotage services at the Ports of Jacksonville and Fernandina in a safe and efficient manner and in compliance with the provisions of Chapter 310 Florida Statutes, the rules promulgated thereto, and any other provisions of law governing the provision of pilotage services. As such, the Pilots are entitled to charge pilotage rates as provided in Section 310.151, F.S., and, as further provided therein, to seek rate increases by filing an application with the Committee.

The Pilots submitted a revised application for a change in the rate of pilotage for the combined port area of Jacksonville and Fernandina dated October 1, 2019, replacing the application submitted September 2018. The last rate increase was January 2004 for the Port of Jacksonville and was January 2011 for the Port of Fernandina. In 2016, the Board of Pilot Commissioners combined the port areas of Jacksonville and Fernandina. In the application, the Pilots state that they seek the proposed rates to maintain the efficient, reliable, and safe piloting service that the Ports of Jacksonville and Fernandina currently receive, which Section 310.151, Florida Statutes, requires. The Pilots state that the proposed rates are based upon a vessel's draft, gross tonnage, length overall, and breadth overall, similar to the pilotage rate structure being

used in other major Florida ports, with more tiers. The Pilots assert that the ports have significantly longer pilotage routes than some of the other ports, so the requested rate has two additional tiers compared to other ports to address the additional transit time. Additionally, the proposed rates would make the rates for tugs and barges operating as composite units or towing on a hawser the same in both ports, and proposed rates for shifting are based on the actual mileage between berths or anchorages. Likewise, the proposed charges for detention, delay, standby, or cancellation would be the same for both ports and are consistent with rates in other ports that have recently received rate adjustments. The Pilots also propose a \$100 port control fee and a \$15 training and technology fee per vessel unit per inbound or outbound transit. The Pilots propose several Fernandina-specific docking and undocking rates. There are other ancillary proposed rates. Further, the Pilots propose that all rates and fees increase by 2.5% each year for 10 years starting on the anniversary date one year following the effective date of the order.

As provided in Rule 61G14-22.007 the Committee convened its Investigative Committee. During the Investigative Committee process, the Investigative Committee received no complaints from users of the port regarding the pilots' ability to timely respond to the needs of the port or the quality of their services nor did it receive any opposition to the application by the users of the port. The Investigative Committee further states that it did not receive any information from port authorities, terminal operators, or other users of the port, regarding the requested increase in rates of pilotage or whether the requested rates would affect competition with the nearby ports.

At the conclusion of the Investigative Committee's review, a report was prepared, including attached exhibits, and the findings rendered to the Committee as required by Rule 61G14-22.007.

Key assertions of the application and the specific modification requests may be found on

pages 1 through 6 of the report of the Investigative Committee and the application submitted, which are part of the record.

The Committee has reviewed the application, the Report of the Investigative Committee with appended exhibits, the various exhibits and documents submitted by the Pilots, any affected entity, and the public at large, as well as the comments and any supporting exhibits of the following individuals: Richard Law, CPA; Captain Galen Dunton; Capt. Nathan Daniel Cook, President of the St. Johns Bar Pilot Association; Captain William Hardee Kavanaugh, Jr. (Pilots); Captain Chris Mons (Pilots); Captain Joseph James Brown (Pilots); Alan Twaits, Crowley Maritime, and Terry Thorton, Carnival Cruise Line.

In response to the public comments during the January 22, 2020, meeting, the Pilots stated it prepared the application with the greatest care to comply with all the statutory criteria and stand by its application as is. The Pilots offered that it would not object if the Committee elected to delay implementation of the rate increases until July 2020 as to all port users without discrimination among different port users.

THE STATUTORY FACTORS

The Committee is charged with determining the rates of pilotage based upon a list of factors set forth in Section 310.151(5) which states as follows:

- (a) In determining whether the requested rate change will result in fair, just, and reasonable rates, the Committee shall give primary consideration to the public interest in promoting and maintaining efficient, reliable, and safe piloting services.
- (b) The Committee shall also give consideration to the following factors:
 1. The public interest in having qualified pilots available to respond promptly to vessels needing their service.
 2. A determination of the average net income of pilots in the port, including the value of all benefits derived from service as a pilot. For the purpose of this sub-paragraph, "net income of pilots" refers to total pilotage fees collected in the port, minus reasonable operating expenses, divided by the number of licensed and active state pilots within the ports.
 3. Reasonable operating expenses of pilots.
 4. Pilotage rates in other ports.

5. The amount of time each pilot spends on a actual piloting duty and the amount of time spent on other essential support services.
6. The prevailing compensation available to individuals in other maritime services of comparable professional skill and standing as that sought in pilots, it being recognized that in order to attract to the profession of piloting, and to hold the best and most qualified individuals as pilots, the overall compensation accorded pilots should be equal to or greater than the available to such individuals in comparable maritime employment.
7. The impact rate change may have in individual pilot compensation and whether such change will lead to a shortage of licensed state pilots, certificated deputy pilots, or qualified pilot applicants.
8. Projected changes in vessel traffic.
9. Cost of retirement and medical plans.
10. Physical risks inherent in piloting.
11. Special characteristics, dangers, and risks of the particular port.
12. Any other factors the Committee deems relevant in determining a just and reasonable rate.

(c) The Committee may take into consideration the consumer price index or any other comparable economic indicator when fixing rates of pilotage; however, because the consumer price index or such other comparable economic indicator is primarily related to net income rather than rates, the Committee shall not use it as the sole factor in fixing rates of pilotage.¹

The Committee finds that the data set forth in the Investigative Committee report fairly represents the state of shipping activity in the Port as well as accurately describes the operations of the Port and the activities of the pilots serving the Port. The Committee further finds that the financial data presented both as historical fact and as projections reasonably reflects the present and future financial state of pilotage charges, and the income derived therefrom, in the Port. The Committee accepts the Investigative Committee's application of the above-mentioned data to the various factors set forth in Section 310.151(5) and the conclusions set forth in its reports.²

¹ As the Committee opined in its decision on the requested rate decrease for the Port of Miami (PRRB Case No. 96-01 at page 8), it is the Committee's position that its authority extends to granting a rate decrease or increase, in whole or in part, or to deny the request completely.

² To the extent that the Committee has accepted the findings of the Investigative Committee in its Report, those findings should be read as though set out in full herein including any reference material contained in the appendices thereto.

As to the individual factors listed in Section 310.151(5), Florida Statutes, the Committee makes the following findings:

1. The public interest in having qualified pilots available to respond promptly to vessels needing their service.

The Committee accepts and adopts the findings of the Investigative Committee as reflected on page 7 of the Report of the Investigative Committee.

2. A determination of the average net income of pilots in the port, including the value of all benefits derived from service as a pilot. For the purpose of this subparagraph, "net income of pilots" refers to total pilotage fees collected in the port, minus reasonable operating expenses, divided by the number of licensed and active state pilots within the ports.

The Committee accepts and adopts the findings of the Investigative Committee as reflected on pages 8 through 10 of the Report of the Investigative Committee.

3. Reasonable operating expenses of pilots.

The Investigative Committee notes that the operating expenses of the pilots are reasonable and comparable to other large pilot organizations in Florida, and includes retirement, salaries, fuel costs, and other expenses in its report.

Upon review of the retirement section on page 11, the Committee modifies the third sentence of the third paragraph as follows: "Pilots over 60 years old are less agile, less flexible, and not as strong as younger pilots."

The Committee accepts and adopts the findings of the Investigative Committee as reflected on pages 10 through 12 of the Report of the Investigative Committee with the aforementioned modification.

4. Pilotage rates in other ports.

The Committee accepts and adopts the findings of the Investigative Committee as reflected on pages 13 through 17 of the Report of the Investigative Committee. The data in the Report

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indicates that both the existing and requested rates are substantially less those at than the competing ports.

5. The amount of time each pilot spends on actual piloting duty and the amount of time spent on other essential support services.

The Committee accepts and adopts the findings of the Investigative Committee as reflected on pages 17 through 19 of the Report of the Investigative Committee.

6. The prevailing compensation available to individuals in other maritime services of comparable professional skill and standing as that sought in pilots, it being recognized that in order to attract to the profession of piloting, and to hold the best and most qualified individuals as pilots, the overall compensation accorded pilots should be equal to or greater than the available to such individuals in comparable maritime employment.

The Committee accepts and adopts the findings of the Investigative Committee as reflected on page 20 of the Report of the Investigative Committee with the following comments:

The Committee has consistently established through various previous orders³ related to this and other ports that it accepts the proposition that the pre-pilot career path is the same for persons who remain as senior bridge officers on American-flagged ships and for those who become pilots.

In addition, Section 310.151(5)(b)6., sets the wage rate of “comparable professions” as the floor for pilot income not the ceiling. As was also noted in the Port Everglades (96-03) and Tampa (2008-01) Orders, the Committee has accepted that the wage rate of senior masters on American-flagged ships varies greatly and thus the Committee can find no specific number to use as the only acceptable “floor” for pilot compensation.

The Committee thus uses the range of masters’ salaries as a range of “floors” of pilots’

³ All references to prior orders of the Committee include Orders of the Pilotage Rate Review Board, the predecessor rate setting entity authorized under Chapter 310.131, Florida Statutes.

income to be applied depending on the amount of vessel traffic at a port, the physical characteristics of a port, the associated risks and complexities of handling vessels in a particular port, and the size of vessels handled. The Investigative Committee reports, based on testimony from previous rates hearings, that from 2014 to 2018 U.S. pilots earned an average \$410,000 to \$498,000 (testimony of Captain George Quick, Vice President of Master Mates and Pilots), and that a tabulation of pilot net income for 25 U.S. ports averages \$500,000 (Dibner Maritime Associates, LLC, 2017).

7. The impact the rate change may have on individual pilot compensation and whether such change will lead to a shortage of licensed state pilots, certificated deputy pilots, or qualified pilot applicants.

The Committee accepts and adopts the findings of the Investigative Committee as reflected on pages 21 and 22 of the Report of the Investigative Committee.

8. Projected changes in vessel traffic.

The Committee accepts and adopts the findings of the Investigative Committee as reflected on page 22 of the Report of the Investigative Committee.

9. Cost of retirement and medical plans.

The Committee accepts and adopts the findings of the Investigative Committee as reflected on pages 23 through 26 of the Report of the Investigative Committee.

10. Physical risks inherent in piloting.

The Committee accepts and adopts the findings of the Investigative Committee as

reflected on page 26 of the Report of the Investigative Committee. The Report of the Investigative Committee lists many of the inherent risks the profession of piloting carries. For example, boarding and disembarking a vessel is one of the most difficult and dangerous events of piloting. Violent and sudden thunderstorms, as well as sustained high winds which accompany fronts add to the difficulty of handling vessels. Also, with the Neo-Panamax vessels calling in the port, the need to board and disembark further offshore exists with Jacksonville looking at areas nearly 10 miles seaward of the sea buoy.

11. Special characteristics, dangers, and risks of the particular port.

The Committee accepts and adopts the findings of the Investigative Committee as reflected on pages 27 and 28 of the Report of the Investigative Committee.

Jacksonville and Fernandina encompass 67 nautical miles of pilotage waters, and both ports have large tidal and current conditions and are among the strongest in Florida ports. Among the details provided, the Report lists unusual hazards to navigation. Such unusual hazards in Jacksonville include a severe and dangerous set that can occur in the Bar Channels and the jetties, the less than 6 feet of clearance when cruise vessels pass through the Dames Point Bridge, and the narrowing of certain channels to 600 feet. Some of the unusual hazards in Fernandina include severe and dangerous cross currents at the jetties and along the Amelia River, and some of the strongest tidal currents and largest tidal range in Florida. Both ports deal with dense seasonal fog, heavy rain squalls throughout the year with prevalence in the summer months, and strong Nor'easters prevalent in the fall and winter causing dangerous boarding and disembarking conditions.

12. Any other factors the Committee deems relevant in determining a just and reasonable rate.

The Committee accepts and adopts the findings of the Investigative Committee as reflected on page 28 of the Report of the Investigative Committee.

13. The Consumer Price Index and Labor Costs.

The Committee accepts and adopts the findings of the Investigative Committee as reflected on pages 29 and 30 of the Report of the Investigative Committee.

ANALYSIS AND DECISION

The Committee is of the opinion that the rates of pilotage at the Combined Port Area of Jacksonville and Fernandina should be modified based upon the request for an increase by the St. John's Bar Pilot Association and Fernandina Pilot, LLC., the Investigative Committee Report, the Pilots' presentation, the statements of any affected entities, and past Committee precedent.

In general, the modified rates are necessary to maintain the efficient, reliable, and safe piloting service that the combined port area of Jacksonville and Fernandina currently enjoy. The proposed rate structure, similar to a version recently used in other major ports in Florida, is based upon a vessel's draft, gross tonnage, length overall, and breadth overall. The modified rates are necessary to more equitably distribute the costs of pilotage services at the ports among the various maritime consumers. The Pilots have not had an increase in rates since 2004 for Jacksonville and since 2011 for Fernandina. The Committee believes that these new rates ensure that the quality of the pilotage services at the combined port area of Jacksonville and Fernandina remain constant, the costs of the necessary services are more equitably distributed among the

shipping community and allow the Pilots to maintain an acceptable average income for the essential services they provide.

The Committee therefore determines that as of July 1, 2020, the rates of pilotage at the combined port area of Jacksonville and Fernandina shall be modified as follows:

1. The formula for calculating pilotage rates shall be:

(LOA Rate x LOA) + (Beam Rate x Beam) + (Draft Rate x Draft) + (GT Rate x GT)

- LOA = length overall; Beam = extreme beam; Draft = deepest draft; GT = Gross tonnage (1969 IMO Conv.)
- All linear dimensions shall be in feet and computed in half foot increments, or fractions thereof.
- Gross Tonnage rate is per 1,000 gross tons, or fraction thereof.

2. The initial rates in dollars per foot or per 1000 gross tons for arrivals or sailings shall be:

Vessels of GT	Up to 10,000 GT	10,001 to 40,000 GT	Over 40,000 GT	Over 40 ft. draft and over 80,000 GT
LOA Rate	\$0.75	\$1.00	\$1.25	\$1.50
Beam Rate	\$3.75	\$5.00	\$8.50	\$12.00
Draft Rate	\$22.50	\$25.00	\$30.00	\$40.00
GRT Rate	\$12.50	\$15.00	\$22.50	\$27.50

* Minimum pilotage charge of \$880 is based on minimums of: LOA = 300 ft., Beam = 50 ft., Draft = 18 ft., GT= 5,000

3. The pilotage rate for a barge-towed on a hawser, towed alongside or pushed (not a composite unit) is based on the sum of the LOA, Beam, Draft, and GT attributes of the towing tug and barge(s).
4. The pilotage rate for a tug pushing a barge in the notch as a composite unit is based on the barge's LOA, Beam, GT, and deepest Draft of the combined unit.
5. Pilotage rates for shifting vessels between berths and/or anchorages within the port landward of the COLREGS line:

Zone A (up to 1 mile)	¼ Standard Pilotage (\$450 minimum)
Zone B (over 1 mile and up to 4 miles)	½ Standard Pilotage (\$600 minimum)
Zone C (over 4 miles and up to 8 miles)	¾ Standard Pilotage (\$750 minimum)
Zone D (over 8 miles)	Standard Pilotage Rate; regular LOA, Beam, Draft, and GT rates apply
Zone E (Fuller Warren Bridge to Shands Bridge); in or out of Green Cove Springs, FL	Standard Pilotage Rate

6. Detention, Delay, Standby, or Cancellation of pilot not caused by local weather, medical emergency, or force majeure:

Detention of Pilot	\$150 per half hour or fraction thereof after first half hour, no maximum
Delayed arrival or sailing	\$150 per half hour or fraction thereof after first half hour, no maximum
Standby charge when pilot is on the bridge part of the bridge team as in, but not limited to, holding a vessel in stream, tending a vessel at anchor, making up a tow or breaking a tow	\$150 per half hour or fraction thereof, no maximum
Cancellation of pilot	If cancelled, detention rate of \$150 per half hour will be charged from the pilot call out, (2 hours before the ordered arrival time or 1.5 hours before the ordered sailing time), until notice of cancellation is received by the pilot dispatched to the vessel or by the pilot office

7. Additional fees shall be:

- a) Port Control Fee: \$100 per vessel handle per inbound or outbound transit;
- b) Training and Technology Fee: \$15 per vessel handle per inbound or outbound transit;

- c) In Fernandina a docking and undocking rate based on a vessel's LOA.
 - LOA less than 330 ft. = No Charge
 - LOA 330 ft. to less than 550 ft. = \$0.50 per ft. LOA
 - LOA 550 ft. and over = \$0.75 per ft. LOA;
- d) At the discretion of the pilots covering the ports of Fernandina and Jacksonville, an additional pilot may be assigned to any neo-panamax vessel, dead ship tow, or special circumstance vessel. The commensurate result being that said vessel will be charged two standard pilotage fees;
- e) Pilot kept on board vessel when vessel departs the port area = \$250 per day plus First-class return transportation;
- f) Payment is due upon invoicing. Balances beyond 45 days shall be considered in-arrears. Lines and agencies in arrears may be placed on a cash basis for future departures; and
- g) All rates and fees shall increase by 2.5% each year for 10 years starting on the anniversary date one year following **the date the rates become effective.**

DONE and ORDERED this _____ day of _____, 2020.

ROBERT BENSON, CHAIR
PILOTAGE RATE REVIEW
COMMITTEE

NOTICE OF HEARING RIGHTS

This Order will become final agency action if no request for a hearing is received by the Pilotage Rate Review Committee (PRRC) by any person whose substantial interests will be affected by this action **within twenty-one days after receipt or publication of this notice, or by close of business on June 1, 2020, whichever is later.** A person whose substantial interests will be affected may petition the PRRC for a hearing involving disputed issues of material fact before an administrative law judge pursuant to Section 120.57(1), Florida Statutes, by filing an appropriate petition with the Executive Director of the PRRC at the Department of Business and Professional Regulation, P.O. Box 5377, Tallahassee, Florida 32314-5377.

A petition for a hearing involving disputed issues of material fact must contain information required by Rule 28-106.201, Florida Administrative Code, *including a statement of all disputed issues of material fact*. The PRRC may refer a petition to the Division of Administrative Hearings for assignment of an administrative law judge only if the petition is in substantial compliance with Rule 28-106.201, Florida Administrative Code.

In the absence of such a petition or if the PRRC concludes that the petitioner has not raised a disputed issue of material fact and does not designate the petition for hearing, this Order shall become final agency action for purposes of Section 120.68, Florida Statutes.

In accordance with Section 120.573, Florida Statutes, mediation is not available.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been provided by **Certified Mail** to: **George N. Meros, Jr.**, Holland & Knight LLP, 315 South Calhoun Street, Suite 600, Tallahassee, Florida 32301; and inter-office mail to **Donna McNulty**, Special Counsel, Administrative Law Section, PL-01 The Capitol, Tallahassee, Florida 32399-1050 this _____ day of _____, 2020.