

# PILOTAGE RATE REVIEW BOARD

## MEETING MINUTES

Holiday Inn Express  
7151 Okeechobee Road  
Ft. Pierce, FL 34949  
Tel: (772) 464-5000

July 17, 2003 – 12:00 P. M.  
Site Visit – Port of Ft. Pierce\*

\*NO BOARD BUSINESS WAS CONDUCTED

July 18, 2003 – 9:00 A. M.  
Official Board Meeting

### **Call to Order**

Mr. Swindell called the meeting to order at 9:08 A. M.

### **Roll Call**

Mr. Spence called the roll. The board members present included:

Robert C. Swindell, Chair  
Captain Alexander E. Tanos

Honorable Chris H. Bentley  
Anthony J. Scionti

Board member Manuel Alonso-Poch, Esq., was absent. Mr. Swindell stated that a quorum was present and he wished to continue business in anticipation of Mr. Alonso-Poch's later arrival.

Others present included:

Anthony B. Spivey, Executive Director  
Gregory Spence, Government Analyst  
John Rimes, Esq., Board Counsel  
Richard H. Law, CPA, Board Consultant  
Pamela Kieser, Court Reporter, Atlantic Reporting

Lloyd Bell, Port St. Lucie, FL  
Capt. Stephen Nadeau, Pres., [Florida State Pilots Association \(FSPA\)](#)  
Ken Shields, Atlantic Caribbean Line, Inc., Indian River Terminal  
Capt. Walter Ergle, Jr., Ft. Pierce Bar Pilots Association

Joseph D. Sachs, Joseph D. Sachs, CPA, P. A.  
J. Michael Pennekamp, Esq., Fowler, White,  
Burnett, P. A.  
Randy King, Pres., Atlantic Caribbean Line, Inc.,  
Indian River Terminal, King Maritime Group,

Vernon Dixon, Baker's Management Services, Ft.  
Pierce, FL

Capt. Bill Messer, Palm Beach Bar Pilots  
Association

### **Preliminary Discussion and Procedural Review – John Rimes, Esq., Board Counsel**

Mr. Rimes introduced the matter for the record and provided a procedural overview and procedural instructions to the board and all those in attendance. Highlights of Mr. Rimes' presentation included:

- ❖ Mr. Law will present his Investigative Committee Report and discuss the amendments to the initial rate increase application.
- ❖ The board conducted its site visit of the port on the previous day (Thursday, July 17, 2003).
- ❖ After Mr. Law's presentation, the applicant, the Ft. Pierce Bar Pilots Association will make its presentation to the board.
- ❖ Any responses from individuals or interested parties, in support of the application or, alternatively opposed to the application for rate increase, will be heard after the applicant's presentation.
- ❖ The applicant will then have an opportunity to respond to any comments made by any interested parties, or offer any rebuttal, during which time the board members may ask questions.
- ❖ The board will then discuss among itself and its counsel, the board's position on the application.
- ❖ Once the board has made a preliminary determination as to the disposition of the application (approved, approved in part, or denied), board counsel will then draft a proposed order which will then be made public and provided to the members of the board and any member of the public who wishes to have a copy.
- ❖ Subsequently, via telephone conference call the board will decide to accept the proposed order in full or, in part, which will be the finalized determination of the order which will then become effective on a certain date as ordered by the board.

Following Mr. Rimes' presentation, Mr. Swindell asked Mr. Law to begin his presentation.

### **Staff Presentation – Richard H. Law, CPA**

Mr. Law stated that the situation involving the Port of Ft. Pierce was "*unique and unlike any other rate application investigated in the state.*" Mr. Law provided an overview of the investigative process, which is comprised of thirteen (13) required elements or subject areas, pursuant to [Rule 61E13-2.015, Florida Administrative Code \(F. A. C.\)](#), and established in [Sections 310.151\(5\)\(6\), Florida Statutes, \(F. S.\)](#). The required elements or subject areas to considered include:

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 purposes 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.*
3. *Reasonable operating expenses of pilots.*
4. *Pilotage rates in other ports.*

5. *The amount of time each pilot spends on 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 that 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 board deems relevant in determining a just and reasonable rate.*
- (c) The board 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 board shall not use it as the sole factor in fixing rates of pilotage.*

Mr. Law directed the board's attention to the Executive Summary contained in his report. Mr. Law stated that the relevant factors contained in his report were not the typical required elements and advised the board to pay close attention to the details and information provided in his Executive Summary as they were "highly relevant." Highlights of Mr. Law's report included:

- ❖ The port is very low volume; presently only a single vessel calls on the port.
- ❖ Revenues in the port have been historically low; in 1994 pilotage revenues totaled \$29,000 and have reached a low of \$4,000 in 1999.
- ❖ The pilotage rates haven't been changed in the port since 1980 although they are similar to comparable ports (Panama City, Boca Grande).
- ❖ The rate increase application was encouraged by the Palm Beach Pilots Association who were also instrumental in completing the application.
- ❖ Competitive near-by ports include Cape Canaveral, West Palm Beach, and Port Everglades.
- ❖ Revenues are so low the pilot cannot afford to maintain a pilot boat.
- ❖ There's no Port Authority in Fort Pierce; and hence no "driving force" by the city, or county to develop the port.
- ❖ If not for the new terminal operators, Atlantic Caribbean Line, Inc. (ACL) and Indian River Terminal (IRT), the port would have been closed.
- ❖ The users of the port, ACL, supply the pilot boat currently in use.
- ❖ Capt. Ergle has been disabled from duty from about January 2002.
- ❖ The port has been voluntarily served by two (2) cross-licensed pilots from the Palm Beach Bar Pilots Association; Capts. Roden and Messer, who are not required to service the Port of Ft. Pierce.
- ❖ Mr. Law cited in his report that one of the primary factors driving the rate increase request, other than the fact that the port is low volume, is the fact that all of the vessels that call on the port are minimum sized vessels and generate little revenue for each handle.
- ❖ Captain Ergle is disabled and has yet to have his condition evaluated by the Board of Pilot Commissioners (BOPC).
- ❖ Captain Ergle has been requested to schedule a physical to determine his ability to carry out his duties as a state pilot; the physical has not been completed to date.

- ❖ If indeed Captain Ergle is deemed unfit to carry out his duties, the BOPC would need to declare an opening in the port.
- ❖ The port may have difficulty attracting a pilot to the port with such low revenues.
- ❖ Consideration to combine the Port of Ft. Pierce and West Palm Beach per [Rule 61G14-11.008\(5\), F. A. C.](#)
- ❖ Users of the port look to the BOPC to provide a state pilot if there is a need.
- ❖ ACL wants a pilot for the Port of Fort Pierce, and to pay fair pilotage rates commensurate with the handle time and pilot compensation for that port.
- ❖ Mr. Law cited several reasons why it was not beneficial to Capts. Roden and Messer to service the Port of Ft. Pierce; those reasons included:
  1. *Although the pilotage rates are close to those in West Palm, the travel time adds another 2.5 to 3 hours to the overall handle time.*
  2. *Since 90% of the vessels calling on the port since December 2002 have been the single Ro-Ro vessel (Christofer Dean), it is a minimum sized vessel with a minimum fee. If it was a larger vessel, it might guarantee a sufficient pilotage fee, which would cover the additional travel time.*
  3. *The income arrangement with the Palm Beach Pilots Association does not fairly compensate Captains Roden and Messer for their efforts to cover another port. No adjustments have been made to the on/off watch rotation in Palm Beach. If Captain Roden is called to cover a handle in Fort Pierce while he has an assigned handle in West Palm, he must first cover Fort Pierce and ask an off-duty pilot to cover his West Palm handle. He then owes that pilot a make-up handle when he is otherwise off duty. Meanwhile his net compensation for a four hour handle at Fort Pierce was only \$138 (\$260 one way pilotage fee, less \$75 pilot boat fee, less \$47 mileage at \$.36 per mile). For the \$138 additional income that Captains Roden and Messer earned for their extra duties at Fort Pierce, it is not worth the additional on-watch time they add to their already full time watch schedule.*

Mr. Law cited in his report, that the requested rate increase if approved, would according to Randy King, Pres., ACL, would "...likely put them out of business." Mr. Law also stated that he tried to encourage the pilots and the users of the port to reach an agreement in advance of this meeting where they could agree on the requested rates. The agreed upon rates included an immediate increase to \$350 per handle one way, with the agreement that they pay a fixed fee of \$75 for use of the pilot boat. The users of the port and the pilots did not agree on the further proposal of increasing the one way handle fee to \$450 one-year after the initial increase. The revised rate increase application proposed an increase of:

*Effective after the hearing:*

*Minimum Draft increased from 10 feet to 15 feet. Draft charge increased from \$12.50 to \$15.00 per foot.*

*Minimum GRT increased from 250 tons to 2500 tons. GRT charge increased from \$0.015 to \$0.05 per GRT.*

*Minimum ship charge would be:*

*15 feet x \$15 = \$225*

*2500 GRT x \$0.05 = \$125*

*Total \$350*

*Increase after one year from first increase:*

*Draft charge increased from \$15.00 to \$17.50 per foot. GRT charge increased from \$0.05 to \$0.075 per GRT.*

*Minimum ship charge would be:*  
*15 feet x \$17.50 = \$262.50*  
*2500 GRT x \$0.075 = \$187.50*  
*Total \$450.00*

Mr. Law stated that the costs of the pilot boat are significant factors:

- ❖ The vessel's current value is \$100,000.
- ❖ The annual operating costs are approximately \$50,000.
- ❖ At \$75 per handle it would take approximately 660 handles per year to recover operational costs. Presently the port volume is approximately 190 handles.
- ❖ Normally, the user of the port does not have to supply its own pilot boat.

Based on the amended rate request, Mr. Law's report indicated that the port's projected gross revenues:

- ❖ \$72,800 per year assuming 4 handles per week at \$350/handle.
- ❖ \$218,400 per year assuming 12 handles per week at \$350/handle.

In the second year:

- ❖ \$93,600 per year assuming 4 handles per week at \$450/handle.
- ❖ \$280,800 per year assuming 12 handles per week at \$450/handle.

The board inquired as to the number and frequency of movements occurring in the port; the accessibility of the port; the "realness" of the rates and if any demurrage was involved in the handling of vessels. Mr. Law stated that in the last 2-3 months there have been 2 sailing's per week, or 4 handles per month; the port is a longer trip to the Bahamas than West Palm; there's a lot of competitive pressure on the port and some of their business is being taken from West Palm; users of the port have adjusted their schedules to suit the pilot so no demurrage is involved.

### **Interested Parties Presentation**

During this portion of the meeting those interested parties who were present addressed the Board.

#### **Captain Walter "Butch" Ergle, Jr., Port of Ft. Pierce Bar Pilots Association**

Captain Ergle read a prepared statement into the record. Highlights of the statement included:

- ❖ Captain Ergle has been a pilot since 1975.
- ❖ Business at the Port of Ft. Pierce has always been unsteady and a seasonal endeavor.
- ❖ In the past the port has averaged twelve (12) large vessels calling during a normal season.
- ❖ The port used to service a steady cargo operation of bulk aragonite from the Bahamas. This operation has ceased during the past two years.
- ❖ At one time cement was imported from 1990 until 1997.
- ❖ A casino vessel that required a pilot ran in the port from 1991 until 1992.
- ❖ The port often gets vessels and barges that come in the port for lay up for repairs.
- ❖ The channel is narrow and shallow compared to other Florida coast ports. The channel depth is 28 feet and high water only adds an average of two feet to mean low water. The channel shoals up

and is not dredged by the Army Corps of Engineers on a regular basis. Because of the present shoaling, any vessel over 21 feet in draft will not be able to come in without having a restriction on it, if able to enter at all.

- ❖ While working at the Indian River Terminal, Captain Ergle fell and hurt his right arm and neck in January of 2002.
- ❖ He was able to work vessels until June of 2002 but has not returned to work since.
- ❖ At the time there were no vessels calling on the port and Captain Ergle had an operation on June 19, 2002.
- ❖ In November 2002, the new representatives of the Indian River Terminal contacted Captain Ergle, and indicated they wanted to start a weekly ro-ro operation in Ft. Pierce.
- ❖ Captain Ergle contacted the pilots in Palm Beach that are cross-licensed to see if they were going to be able to work the vessel. It was decided that an application for a rate increase had to be made.
- ❖ The Port of Ft. Pierce is a private port.
- ❖ There's no government agency there that is looking to increase economic growth in the port.
- ❖ The city and county are presently trying to improve the image of the city and have indicated that they would like to see the area re-developed into a yachting center rather than having commercial vessels sitting at the dock.
- ❖ As of now, the only piloting business at the port is a small ro-ro vessel running an average of two sailing's a week from the Indian River Terminal.
- ❖ Captain Ergle's father and stepmother are getting older and they need him to help with their medical problems. This has placed an additional burden on Captain Ergle while he's trying to take care of his own health.
- ❖ The Palm Beach Pilots offered to assist Captain Ergle by helping him fill out the application and had their CPA prepare the required reports for it.

### **Captain Bill Messer, Palm Beach Bar Pilots Association**

Captain Messer addressed the board providing background information about himself, Captain Roden and the Palm Beach Bar Pilots Association. Captain Messer also informed the board that Captain Roden could not be present this day as he was on vacation. Highlights of Captain Messer's presentation included:

- ❖ The rate increase is warranted in order to attract a permanent pilot at the Port of Ft. Pierce.
- ❖ Palm Beach Bar Pilots Association presently has five- (5) full time pilots; possibility of a future opening for a Deputy Pilot.
- ❖ Palm Beach Bar Pilots Association believes that using cross-licensed pilots to service the Port of Ft. Pierce is a temporary solution to a long-range situation.
- ❖ Palm Beach Bar Pilots Association believes that regardless of Captain Ergle's status an opening for a Deputy Pilot in Ft. Pierce will need to be declared.
- ❖ Transiting the channel is difficult for a large ocean going vessel and requires expert ship handling.
- ❖ The distance of the transit itself in Ft. Pierce is much greater from the dock to the sea buoy compared to Palm Beach.
- ❖ The Palm Beach Bar Pilots Association believe that the pilotage rate at the Port of Ft. Pierce needs to be at a level that will attract the best possible pilot candidate as a deputy pilot.

### **Joseph Sachs, Joseph D. Sachs, CPA, P. A.**

Mr. Sachs is the accountant for the Palm Beach Bar Pilots Association. Mr. Sachs addressed the board. Highlights of Mr. Sachs address included:

- ❖ A rate increase for the port hasn't been considered in over two (2) decades.
- ❖ The terminal operator has invested a tremendous amount of money in reviving the port's activity and in infrastructure and is continuing to do so.
- ❖ The Port of Ft. Pierce is going through a major change through the efforts of Mr. King.
- ❖ The success of the port will depend on many factors and is an uphill battle.
- ❖ The city and county want to turn the area north of the port into a yachting center.
- ❖ It takes three (3) plus years to seek, acquire and train a licensed pilot assuming one can be attracted to the port.
- ❖ Presently the port must rely on the owner of both the ship calling on the port and the terminal for a pilot boat.
- ❖ If the port growth succeeds the pilot will need to consider getting his own boat. The requested rate increase does not account for this expenditure.
- ❖ The pilots and operators of Indian River Terminal have negotiated a \$75 charge for use of the pilot boat. However, this agreement has not been finalized and the pilots and operators request the board consider a dollar for dollar surcharge fee on top of whatever rate increase is granted.
- ❖ There's no pilot office. Arriving vessels are contact by VHF radio from the pilot boat.
- ❖ The pilot is has been unable to get his own health insurance coverage or disability insurance.
- ❖ The pilot is has been unable to make retirement payments for over a year.
- ❖ The pilot himself is hoping to retire sometime in the future and should be entitled to some kind of retirement payment from a successor pilot.
- ❖ After the initial application for rate increase was made the owner of the terminal bought a vessel for transit to the Bahamas. A proposal was made to the terminal operator to lower their requested rates in the initial application for the next two- (2) years in effort to allow their business to develop. In 18 months after the implementation of the year 2 rate, if granted, the terminal operators would like the board to review the revenue in the port to see if the full requested rate or other adjustment would be necessary.
- ❖ The terminal operators feel that a two- (2) year increase is needed now. The terminal operators believe that the second year amount of \$450 minimum charge is a level that would bring respectable compensation based on three vessels calling on the port each week.
- ❖ The additional six- (6) months would allow more time to see what traffic level will develop and Captain Ergle's status.
- ❖ Use of cross-licensed pilots from Palm Beach is not a permanent solution.
- ❖ The terminal operator has made tremendous efforts in marketing to attract business and be competitive.
- ❖ A deputy pilot should be considered for the port.
- ❖ A permanent pilot will be needed in the anticipated event that ship movements increase.

**Captain Stephen Nadeau, President, [Florida State Pilots Association \(FSPA\)](#)**

Captain Nadeau addressed the board. Highlights included:

- ❖ The board should consider Captain Ergle's excellent service record in that he's never had an accident in 20 plus years of service.
- ❖ Captain Nadeau is in favor of the rate increase.
- ❖ Captain Nadeau encouraged the port to succeed and encouraged Captain Ergle to succeed.
- ❖ Captain Ergle's injury demonstrates that a port without proper income to a pilot causes financial and other harm to that pilot.
- ❖ The FSPA is working with Captain Ergle and pilots who show interest about cross-licensing someone else to assist temporarily.

- ❖ Ft. Pierce has always been a commercial port. It's unique because it's small and there's only one foreign port that can be competitive between Shreveport and the Bahamas.
- ❖ The pilots at Palm Beach have helped tremendously.
- ❖ The costs to prepare the financials is equivalent to eight (8) round trips in a port that only has two (2) round trips a week.
- ❖ Captain Ergle cannot leave town to go on vacation because he has no relief.

**Mike Pennekamp, Esq., Fowler, White, Burnett, P. A.**

Mr. Pennekamp represents Mr. King and ACL. Mr. Pennekamp addressed the board. Highlights included:

- ❖ Ft. Pierce is historically been a one captain, low-income port.
- ❖ Mr. Pennekamp recommended the board take no action on this application.
- ❖ Captain Ergle is presently suing IRT for his injuries.
- ❖ Consideration that the Board of Pilot Commissioners (BOPC) should have revoked Captain Ergle's license, or declared a Deputy Pilot opening for Ft. Pierce.
- ❖ Maintains that the BOPC is at fault and the DBPR/BOPC is in violation of [Section 310.071, F. S.](#), and [Rule 61G14-20.001, F. A. C.](#), for failing to act concerning Captain Ergle's ability to effectively perform his duties as a State Pilot.
- ❖ Mr. Pennekamp suggested there were other unique factors and contingencies relevant to the consideration of the rate increase application, including;
  1. The composition of the board.
  2. The board should consider future medical evidence concerning Captain Ergle's condition.
  3. Captain Ergle's failure to submit to an annual physical examination.
  4. Local pilot should be in place today.
  5. The hearing is taking place today because the Palm Beach Pilots are not being fairly compensated.
  6. The Palm Beach Pilots have helped because of their "goodwill" and "...*protecting the BOPC.*"
  7. The Palm Beach Pilots are in conflict with the interest of the BOPC, the Pilotage Rate Review Board (PRRB), the DBPR, IRT and ACL and Randy King.
  8. Requested rates would force ACL, out of business.
  9. ACL has changed its schedule to accommodate the pilot.
  10. ACL has incurred demurrage costs.
- ❖ Only way to increase competition is to increase volume.
- ❖ ACL now have the backing of local government.
- ❖ Urged the establishment of reasonable rates for the port.
- ❖ Reference to [Rule 61G14-11.008, F. A. C., Cross Licensing.](#)
- ❖ Consideration to combine the ports of Ft. Pierce and West Palm Beach.
- ❖ Reference to [Section 310.0015, F. S., Piloting regulation; general provisions.](#)
- ❖ Pilotage rates at other ports are higher to maintain infrastructure. Port of Ft. Pierce doesn't have infrastructure.
- ❖ Lack of a port authority is not significant.
- ❖ A Deputy Pilot can be in place in less than three (3) years.
- ❖ The PRRB is limited to setting a rate that will guarantee operation of the port.
- ❖ If the rates are not made comparable to the Port of Palm Beach, the Port of Ft. Pierce will go out of business.

The Board entered into discussion with Messrs. King, Shields and Pennekamp. The board asked about the proposal agreed to by ACL and the local pilot; ACL intent to argue the proposal before the board; the details of the proposal; the impact of the proposal in the short term and the long term and clarification of the projected monetary increases that would be financially detrimental to ACL. After discussion, Mr. Shields addressed the board.

**Ken Shields, ACL, Indian River Terminal**

Mr. Shields addressed the board. Highlights included:

- ❖ The owners of ACL have committed substantial assets in excess of \$10M in capital, equipment and investments and capital improvements at the Port of Ft. Pierce.
- ❖ ACL is not only an ocean carrier.
- ❖ A major component of the success of the port and their enterprise will be the ability to attract other outside users.
- ❖ Ft. Pierce is a small port that attracts small and medium sized vessels. A two or three fold increase in port pilot costs will result in a very big overall port cost for a small vessel.
- ❖ High port pilot costs could hinder ACL's ability to attract outside users to the port and to be competitive.
- ❖ ACL/IRT started with one vessel, the Christofer Dean, in mid-March that has made 34 trips to date.
- ❖ First year of operation with the one vessel will produce more port pilot revenue than the port has seen since 1997.
- ❖ Presently actively seeking other vessels, entertaining offers and entering negotiations with Mediterranean shipping companies.
- ❖ TAG Shipping out of Dania, FL has approached ACL/IRT.
- ❖ Other companies, terminal operators and shipping companies see ACL/IRT's geographic location and service costs as a major advantage.
- ❖ At the end of August the Christofer Dean is slated to begin making three trips per week and in the fall fully expect to make 4 trips per week.
- ❖ In three months of operation ACL/IRT have captured close to 15% of market share.
- ❖ The owners of ACL/IRT have committed to making this project work.
- ❖ Anticipate two major three-year projects starting in the Bahamas moving upwards of 15,000 containers each.

**Lloyd Bell, Ft. Pierce FL**

Mr. Bell addressed the board. Highlights included:

- ❖ Mr. Bell, a resident of Ft. Pierce, has owned 67 acres of property at the Port of Ft. Pierce for the 2.5 years.
- ❖ The port proper is 7.5 acres.
- ❖ 2800 ft. of deep-water frontage that's now being developed.
- ❖ Mr. Bell's initial intent was to revive for the Bahaman Islands a guaranteed port for the shipping of agricultural products.
- ❖ Great deal of local opposition to commercial development at the port.
- ❖ There are international interest concerning commercial development at the port.
- ❖ Mr. Bell is willing to release 52 of 67 acres for mega-yachts; 15 acres will be retained to operate container business.
- ❖ There are significant and substantial interests in commercial development of the port.

- ❖ Report that two separate a \$1M funds have been established overseas to prevent commercial development in the port and to stop the expansion of cargo shipping in the port.
- ❖ The port has to be competitive with the rest of the state and the world.
- ❖ There are foreign interests that want to make sure there is no cargo coming out of Ft. Pierce.
- ❖ The rate increase is not a limiting factor to the future growth of the port.
- ❖ Active promoting the servicing of aragonite, citrus, animal feed and other products out of the port.
- ❖ CSX Railroad and Florida East Coast Railroad have agreed to work with Mr. Bell on commercial development of the port.
- ❖ Vessels could start calling on the port within a year.
- ❖ Other companies such as Wal-Mart have committed to using the port to service its activities in Puerto Rico.
- ❖ The Economic Development Commission is working very actively because of the competitiveness of the port.

### **Vernon Dixon, Baker's Management Services**

Mr. Dixon addressed the board. Highlights included:

- ❖ Baker's Management Services, provide the trucking services for ACL/IRT.
- ❖ ACL/IRT have been a great asset to Mr. Dixon's employees and himself in establishing business at the port.
- ❖ ACL/IRT have provided additional trucking business to Baker's Management Services.
- ❖ ACL/IRT presence has helped local businesses.

### **Rebuttal**

Mr. Swindell invited persons to offer rebuttal at this time.

### **Captain Stephen Nadeau, President, [Florida State Pilots Association \(FSPA\)](#)**

Captain Nadeau addressed the board. Highlights included:

- ❖ The port seemed to have great potential for the future.
- ❖ Wanted to address some of the issued raised by Mr. Pennekamp.
- ❖ The DBPR/BOPC has been addressing the issue of Captain Ergle being incapacitated by his injury.
- ❖ The board has requested information from Captain Ergle.
- ❖ The board is concerned with taking action against someone who is injured until such time as the port is not being serviced and the port is still presently being serviced.
- ❖ The board has not looked at the need to assign a deputy pilot or full time pilot because it has not been requested.
- ❖ A minimum of a year would be required for a pilot to take the exam and then two years to train them.
- ❖ The training would have to be done by a local pilot who would have to be compensated.
- ❖ The board will address this issue on July 24-25, 2003 in Tallahassee, FL.
- ❖ Having a retired pilot come to the port would have no bearing on the rate.
- ❖ The real costs of demurrage would have to be evaluated on a case by case basis on the particular port.
- ❖ The additional crew costs are not a concern.
- ❖ If the ship is arriving earlier the costs of linesmen and boat handlers could be less because they could leave earlier.

- ❖ Other pilots that operate in the state do not own the pilot boat; the pilot boats are leased from someone else; \$75 pilot boat fee is a great rate.
- ❖ The issue of the lawsuit against Mr. Ergle's employer should be taken off the table.
- ❖ Concerning the issue of competition from the Port of Palm Beach, the minimum rates at Palm Beach were set specifically so that one small operator at Palm Beach would not be financially injured and that other vessels that called on Palm Beach could pick up the slack.
- ❖ The pilots at Palm Beach have had no intent other than assisting Captain Ergle and would like to be relieved from the burden and would like to see the situation improved.
- ❖ Concerning the constitution of the board, the FSPA has attempted to contact the Governor and encourage him to fill all of the boards vacancies as well as those of the BOPC.
- ❖ Captain Macmillan has no interest in assuming an active role at the Port of Ft. Pierce, apart from an emergency situation.
- ❖ The FSPA has been looking around for someone to help out because they do not want to see the port not served.

### **Surrebuttal**

#### **Mike Pennekamp, Esq., Fowler, White, Burnett, P. A.**

With Mr. Swindell's permission, Mr. Pennekamp offered surrebuttal. Highlights included:

- ❖ Mr. Pennekamp stated that he raised the issue of Captain Ergle's lawsuit because Captain Ergle thought the issue was important to the board.
- ❖ Albeit Mr. Pennekamp is not aware of what the DBPR/BOPC has done concerning Captain Ergle's situation, in the past 18-months Captain Ergle has not submitted to a physical examination in violation of Florida Statutes and Florida Administrative Code.
- ❖ The length of time required to have a new pilot in place will take as long as the DBPR/BOPC will allow it to take.
- ❖ Mr. Pennekamp, in speaking with Board Consultant Commander Dunton (USCG, Ret.), understood that Captain Leech could be operating at the port immediately.
- ❖ There are near term factors that could cause this board to delay its decision concerning the application.
- ❖ ACL understand that there are certain restrictions and constraints in requesting that Captain Ergle delay the application.
- ❖ ACL is at a make or break stage in their operations and this is not the time for the board to take action.
- ❖ There are additional costs to the crew in overtime.
- ❖ There are additional fuel costs incurred with any demurrage.
- ❖ There is a lack of information being presented to the board.

### **Deliberation and Determination of Request for Increase in the Rate of Pilotage – Board Member Discussion Only**

The board discussed among itself the testimony heard this day, the investigative committee report and the initial and revised rate increase application. During discussion several questions and issues were considered including:

- ❖ Is the pilot boat used for other uses?
- ❖ The \$35K subsidy (unrecovered costs) of the pilot boat is essentially an additional pilotage fee
- ❖ Minimum rates are higher than in adjacent ports.

- ❖ The facts of the activities in the port are highly fluid; no one knows what the activity will be in 6-12 months.
- ❖ Rate increase would be equivalent to an additional pilot salary of \$27,600/year, plus \$7,300 automobile usage allowance for transportation for those pilots from Palm Beach for 800 hours of work.
- ❖ Is a rate increase even appropriate?
- ❖ Consideration of the port operators investment.
- ❖ Consideration of the impact on Captains Roden and Messer.
- ❖ Consideration of Captain Leech's intentions.
- ❖ Consideration of establishing a dual-rate structure.
- ❖ Rates have to be certain and ascertainable.
- ❖ Captain Ergle controls the port and has the responsibility of selecting what pilot is used at what time, i.e., primary pilot versus cross-licensed pilot; the cross-licensed pilot can however decline to service the port.

After discussion.

MOTION: Mr. Bentley motioned to DENY the rate increase application.

SECOND: Mr. Scianti.

The board entered into discussion concerning the motion. Mr. Swindell suggested keeping the current rates, and to add a \$90 fee whenever a cross-licensed pilot is used. After discussion:

MOTION: Mr. Bentley motioned to AMEND his previous motion to include Mr. Swindell's suggestion of keeping the current rates, and add a \$90 fee whenever a cross licensed pilot is used, and agreed that the rate increase request could be revisited in 6-months time with the submission of certain specific information or certain specific circumstances; if in 6-months time the port has a new deputy pilot or current pilot is cleared to resume full duties, the surcharge fee is eliminated.

SECOND: Mr. Scianti.

The board entered into discussion concerning the amended motion. During discussion the board. Mr. Spivey cautioned that the board could be setting a precedent by taking this action and suggested the board consider denying the application in whole. Mr. Rimes advised the board that the applicant and interested parties were entitled to a decision today. Mr. Bentley stated the he was prepared to make a decision today and that he believed the board was prepared to make a decision today, although he was not sure that making a decision today would is necessarily in the best interest of the parties given the unique set o circumstances. Mr. Bentley inquired if the applicant had any objection to a recess of 3 to 6 months of this hearing? Mr. Rimes stated the party entitled to a decision was the applicant. Subsequent to this, Captain Ergle and representatives of ACL/IRT requested a recess so that they could discuss the board decision amongst themselves. Upon reconvening Mr. Rimes advised Captain Ergle that the Board could revisit the application in 6-months, or take action at this time which may result in a denial of the application. The Board agreed to revisit the application of January 30, 2004, for review of the updated information received from the Port of Ft. Pierce. Subsequent to this decision, Captain Ergle elected to WITHDRAW the application completely. Mr. Sachs stated the decision was made to withdraw the application and re-apply in 18-months. Mr. Spivey asked Captain Ergle to submit a letter

to the board office stating his intentions to withdraw the current application at this time and to re-apply in 18-months.

### **Other Business**

MOTION: Mr. Swindell motioned to have the BOPC extend special recognition to Captains Roden and Messer for going above and beyond the call of duty in servicing the port of Ft. Pierce.

SECOND: Mr. Bentley.

The board voted on the motion. The motion passed unanimously. Mr. Spivey, through the BOPC will issue a special proclamation to Captains Roden and Messer for their assistance in performing the cross-licensed duties at the Port of Ft. Pierce.

### **Adjournment**

The meeting adjourned at 1:45 P. M.