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STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
PILOTAGE RATE REVIEW BOARD

IN RE: APPLICATION OF FORT PIERCE
PILOTS ASSOCIATION FOR RATE INCREASE
IN THE PORT OF FORT PIERCE

**NOTICE OF INTENT TO APPROVE IN PART AND DENY IN
PART THE PORT OF FORT PIERCE PILOTAGE RATE INCREASE
APPLICATION FILED BY THE FORT PIERCE PILOTS ASSOCIATION**

Pursuant to the provisions of Section 310.151, Florida Statutes, the Pilotage Rate Review Board (Board) met in Stuart, Florida, on December 10 and 11, 2009, and via teleconference on January 11, 2010, to review the rate increase application filed by the Fort Pierce Pilots Association (FPPA).

THE PARTIES

FPPA, a Florida (partnership), is an association presently composed of the sole harbor pilot that performs the pilotage services at the Port of Fort Pierce. The FPPA's headquarters is located at 620 Colonial Drive, Vero Beach, Florida, 32962. The purpose of the FPPA is to provide pilotage services in the Port of Fort Pierce 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 FPPA is 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 Board.

On or about March 30, 2009, the FPPA filed its application to increase the pilotage rates it charges its customers in the Port of Fort Pierce. As provided in Rule 61E13-2.007, F.A.C., the Pilotage Rate Review Board convened its Investigative Committee, which made its initial visit to the Port on July 10, 2009. During the Investigative Committee process several interested parties, who were users of the pilotage services at the port, participated and made statements regarding the requested rate increase. The following interested parties appeared before the Investigative Committee and made comments in opposition to the requested rate increase:

Kenneth Roberts - Indian River Terminal, Consultant

Philip Stickley - Atlantic Caribbean Lines, Controller

Ken Shields - Atlantic Caribbean Lines, President

John McCulley - McCulley Marine Service, Owner

Charles Hiteshaw - Hiteshaw Trucking

Giselle Bombadiere - 3J's Quality Trucking

Bill Jones, Jr. - Dollar Bill Trucking

Subsequent to the Investigative Committee's review of the Port, the Committee rendered its findings to the Board on September 8, 2009, as required by Rule 61E13-2.007(4), F.A.C.

The following interested parties also appeared before the Board on December 11, 2009, and addressed the Board in regard to their opposition to FPPA's requested rate increase:

Ken Shields - Atlantic Caribbean Line, President

John McCulley - McCulley Marine Service, Owner

J. Michael Pennekamp - Attorney for Atlantic Carribean Line

Kenneth Roberts - Consultant, Indian River Terminal

Charles Hiteshaw - Hiteshaw Trucking

Giselle Bombadiere - 3J's Quality Trucking

Norman Ritter - 3J's Quality Trucking

David Thornton - Southeast Development and Transportation

Vernon Dixon - Dixon Trucking

Bill Jones, Jr. - Dollar Bill Trucking

Turning to the merits of the application, the Board reviewed the application itself; the statements of all the interested parties; and the 24 page Report of the Investigative Committee (Report) plus appended exhibits and transcripts. The Board also heard the testimony of the following individuals, who appeared on behalf of the FPPA: Captain Bill Wetzels; and Joseph D. Sachs, of Joseph D. Sachs, CPA, P.A. The following individuals also addressed the Board in support of the rate increase: Captain David Ulrich, Port Everglades Pilots Association, and Bill Roden, Palm Beach Harbor Pilots Association.

Richard Law CPA, and Cmdr. Galen Dunton, U.S.C.G (retired) presented the Report of the Investigative Committee.

THE STATUTORY FACTORS

The Board is charged with determining the rates of pilotage

based upon a list of factors set forth in Section 310.151(5),
F. S., which states as follows:

(5)(a) In determining whether the requested rate change will result in fair, just, and reasonable rates, the board shall give primary consideration to the public interest in promoting and maintaining efficient, reliable, and safe piloting services.

(b) The Board 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 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.¹

The Board 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 Board 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 Board accepts the Investigative Committee's application of the abovementioned data to the various factors set forth in Section 310.151(5), F. S., and the conclusions set forth in its reports.²

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

The Board accepts the findings of the Investigative Committee as reflected on page C-1 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

¹As the Board 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 Board's position that its authority extends to granting a rate decrease or increase, in whole or in part, or to deny the request completely.

²To the extent that the Board 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.

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.

The Board accepts the findings of the Investigative Committee, hereafter corrected, reflected on page C-2 of the Report of the Investigative Committee. At the Public Hearing, the Investigative Committee indicated that the correct figures for the pilots net income for years 2007 and 2008 are \$112,800.00 and \$92,700.00, respectively.

3. Reasonable operating expenses of pilots.

The Board accepts the findings of the Investigative Committee as reflected on pages C-2 and C-3 of the Report of the Investigative Committee.

4. Pilotage rates in other ports.

The Board accepts the findings of the Investigative Committee as reflected on pages C-4 through C-7 of the Report of the Investigative Committee.

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

The Board accepts the findings of the Investigative Committee as reflected on pages C-7 and C-8 of the Report of the Investigative Committee.

6. The prevailing compensation available to individuals in other maritime services of comparable professional skill and standing.

The Board accepts the findings of the Investigative Committee as

reflected on pages C-8 of the Report of the Investigative Committee with the following comments:

As was discussed in the Port Everglades Order, supra, the Board accepts the proposition that the prepilot career path is the same for persons who remain as senior bridge officers on American-flagged ships and for those who become pilots. As was noted in the Port Everglades Order, however, pilots are not employees but are rather professional consultants and self-employed business persons who take the risks and accept the benefits of such status.

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

The Board, thus, uses the range of masters' salaries as a range of "floors" on pilots' income to be applied depending on the amount of vessel traffic at a port, the characteristics of a port, and the need for pilotage services at a port. Thus, a pilot's berth at the major ports, such as the Ports of Tampa Bay, Port Everglades, Miami, Jacksonville or Palm Beach would be considered as akin to the most prestigious, responsible, and

highly paid masters' berths (Master, Mates and Pilots scale-c. \$220,000-\$230,000 per year) while lesser ports, with correspondingly lesser amounts of traffic and need for pilotage services, would have a lower "floor" for income.

Nonetheless, the Board also finds that the pilotage rates need to be sufficient to ensure that licensed pilots remain willing and financially able to serve the ports of this State. As reflected in the Report of the Investigative Committee, the current Pilot's schedule has grown to a full-time position, with no backup pilot available. Thus, the Pilot must rely on cross-licensed pilots from Palm Beach for backup, who currently earn substantially more at their home port. Accordingly, the Board finds that the rates must be increased sufficiently to continue to attract cross-licensed pilots to serve as back up at Fort Piers, and eventually, if traffic warrants, candidates for a deputy pilot position.

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 Board accepts the findings of the Investigative Committee as reflected on page C-9 of the Report of the Investigative Committee.

8. Projected changes in vessel traffic.

The Board accepts the findings of the Investigative Committee as reflected on pages C-9 and C-10 of the Report of the

Investigative Committee.

9. Cost of retirement and medical plans.

The Board accepts the findings of the Investigative Committee as reflected on page C-10 of the Report of the Investigative Committee. The currently serving Pilot has no insurance expense but this is a benefit the Pilot brings to the job, and which is given due consideration by the Board.

10. Physical risks inherent in piloting.

The Board accepts the findings of the Investigative Committee as reflected on page C-10 of the Report of the Investigative Committee.

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

The Board accepts the findings of the Investigative Committee as reflected on pages C-11 and C-12 of the Report of the Investigative Committee.

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

The Board accepts the findings of the Investigative Committee as reflected on page C-12 of the Report of the Investigative Committee.

13. The Consumer Price Index and Labor Costs.

The Board accepts the findings of the Investigative Committee as reflected on pages 30-31 of the Report of the Investigative Committee.

ANALYSIS AND DECISION

I. Pilotage Rate. The Board is authorized pursuant to Section 310.151(6), F.S. (2008), to "fix rates of pilotage." The Board is cognizant of the newly past and continuing significant nationwide economic downturn. It is understood that FPPA's revenues have suffered due to unilateral changes in pilotage rates paid by the port's primary user. Further, the Board believes that pilots should not be completely insulated by the effects of the current economic conditions.

Nonetheless, the Board is charged by statute with ensuring that the rates charged for pilotage services are fair, just, and reasonable. Such a determination must include an analysis of whether the rates are sufficient to maintain reliable, stable, piloting operations, for the pilot to earn a net income comparable to those in similar maritime services and to attract and maintain pilots to serve each of the State's deepwater ports.

Further, the pilots are charged with maintaining or securing adequate pilot boats, office facilities and equipment, and other equipment and support services necessary for a modern, dependable piloting operation. Although the Pilot currently has an arrangement with the Port's largest user regarding the use of a converted crew boat, the evidence presented to the Board shows that in some aspects this arrangement has been less than satisfactory. The Board opines that an increase in pilotage

rates sufficient to permit the Pilot to procure an adequate pilot boat and/or secure such services, is warranted.

The Port of Fort Pierce has not had a change in rates of pilotage services since 1980, over thirty (30) years ago. An application for a change of rates was filed in 2003. At that time, the Pilot and users agreed to leave the existing rates unchanged, with the port users providing pilot boat services at no charge. This unofficial agreement increased the effective rate to the Pilot by \$75.00, and the Board accepted this agreement and made no change to the official rates in 2003. In 2007, ACL gave notice that they no longer needed the Pilot for docking and undocking services, thus, they would be deducting the \$60.00 docking fee from the agreed-upon minimum fee per handle. ACL also began recalculating draft rates from the customary (for this port) practice of calculating draft to the next whole foot to only to the next tenth of a foot.

The current draft rates for Fort Pierce are tied for the lowest in the State. The current tonnage rate for Fort Pierce is the lowest in the State (.015/ton, compared with the next lowest port's .028/ton charge). These rates, coupled with the fact that the vast majority of handles involve minimum size vessels at the Port of Fort Pierce, results in the lowest average revenue per handle by far of the State's active ports. As described above, further uncontroverted evidence presented to the Board shows that

the Port's largest users have further unilaterally decreased the fee per handle by recalculating the draft charge and eliminating the modest docking fees from their charge.

Based upon these findings, the Board determines that the proposed three-year schedule of rate increases sought by the Pilot should not be granted in its entirety at this time. The Board finds that a more modest increase to account for the progressively higher operating costs, inflation, and to permit the Pilot to obtain or secure pilot boat services, will provide fair, just, and reasonable rates, and will continue to ensure that sufficient back-up pilots will be available to serve Fort Pierce. Accordingly, the Board approves the requested first-year schedule of increases only.

Therefore, based on the foregoing, the Board hereby orders that the rates of pilotage at the Port of Fort Pierce shall be increased to the following rates effective May 1, 2010:

1. A draft charge of \$26.60 per draft foot, measured up to the next 1/10th foot, with a minimum charge for ten (10) feet, *i.e.*, \$266.00;

2. A tonnage charge of \$.0600 per Gross Registered Ton (GRT) with a minimum charge for 2000 GRT, *i.e.*, \$120.00;

3. Docking/undocking fees are eliminated;

4. Shifting rates are increased as follows:

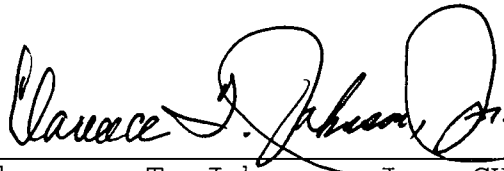
Same Slip - \$250.00;

Different Slip - \$386.00;

5. A towed barge charge of .0300 per GRT with no minimum charge.

Done and Ordered this 23RD day of MARCH, 2010.

PILOTAGE RATE REVIEW BOARD



Clarence T. Johnson, Jr., CHAIR

NOTICE OF HEARING RIGHTS

You may seek review of this Order, pursuant to Sections 120.569 and 120.57, Florida Statutes, by filing a petition with the Executive Director of the Board at Department of Business and Professional Regulation, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399, within twenty-one (21) days of receipt of this Order. If you dispute any material fact upon which the Board's decision is based, you may request a hearing before an administrative law judge pursuant to Section 120.57(1), Florida Statutes; your petition must contain the information required by Rule 28-106.201, F.A.C., **including a statement of the material facts which are in dispute.** If you do not dispute any

material fact, you may request a hearing before the Board pursuant to Section 120.57(2), Florida Statutes; your petition must include the information required by Rule 28-106.301, F.A.C.

Pursuant to Section 120.573, Florida Statutes, you are hereby notified that mediation pursuant to that section is not available.

Unless a proper WRITTEN request for a hearing is received on or before the above-stated deadline or if a request for hearing is made, but the request is subsequently withdrawn, the Pilotage Rate Review Board will act in accordance with the provisions of Rule 61E13-2.011, F.A.C., and this Order shall become final on April 21st, 2010.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been provided by U.S. Mail to: Captain William J. Wetzel, Fort Pierce Pilots Association, 620 Colonial Drive, Vero Beach, Florida 32962, on this 31st day of MARCH, 2010.

Brandon M. Nichols