

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No. 14-06

**SANTA FE DISCOUNT CRUISE PARKING, INC. d/b/a EZ
CRUISE PARKING; LIGHTHOUSE PARKING, INC.; and
SYLVIA ROBLEDO d/b/a 81st DOLPHIN PARKING**

Complainants

v.

**THE BOARD OF TRUSTEES OF THE GALVESTON
WHARVES and THE GALVESTON PORT FACILITIES
CORPORATION**

Respondents

COMPLAINANTS' PROPOSED FINDINGS OF FACT

In accordance with the Amended Scheduling Order dated January 14, 2015, Complainants, hereby set forth their proposed findings of fact pursuant to 46 C.F.R. 502.221.

1. Complainant Santa Fe Discount Cruise Parking, Inc. d/b/a EZ Cruise Parking (“EZ Cruise”) is a for-profit corporation organized and existing under the laws of the State of Texas, incorporated on December 2, 2003. (Complainants’ First Amended Verified Complaint at p. 2 (ALJ App. 1)).¹ EZ Cruise owns and operates a private parking lot facility located at 2727 Santa Fe Pl., Galveston, Texas 77550, approximately five (5) blocks from the Port of Galveston Cruise Terminal. EZ Cruise owns and operates (with commercially certified drivers where necessary) eight (8) shuttle buses to transport passengers with their luggage directly to and from the terminal. *Id.* at pp. 2-3. From 2006 through April of 2011, EZ Cruise maintained 320 parking spaces. From January of 2008 through April of 2011, EZ Cruise paid \$102,400.00 of the \$352,423.58 total Access Fees collected by the Wharves Board. (Galveston Wharves Historical Detailed Trial Balance, Access Fees (2008) at BOT 006374 – 76 (ALJ App. 35), Galveston Wharves Historical Detailed Trial Balance, Access Fees (2009) at BOT 007126 – 28 (ALJ App. 38), Galveston Wharves Historical Detailed Trial Balance, Access Fees (2010) at BOT 007895 – 97 (ALJ App. 41), Galveston Wharves Historical Detailed Trial Balance, Access Fees (2011) at 008617 – 18 (ALJ App. 44)). From May of 2011 through October of 2011, EZ Cruise maintained 220 parking spaces and paid \$10,560.00 of the \$42,850.00 total Access Fees collected by the Wharves Board. (Invoices – Galveston Wharves (EZ Cruise Parking) at BOT 016146 - 51 (ALJ App. 58); Galveston Wharves Historical Detailed Trial Balance, Access Fees (2011) at BOT 008618 – 19 (ALJ App. 44)). In November of 2011, EZ Cruise’s passenger parking capacity returned to 320 spaces, which remained the same until October of 2012. During that period, EZ Cruise paid \$30,720.00 of the \$127,750.00 total Access Fees collected by the Wharves Board. (Invoices

¹ The documents cited herein have been compiled into the accompanying Complainants’ Appendix. Page numbers in the Appendix are cited as (ALJ App. #).

– Galveston Wharves (EZ Cruise Parking) at BOT 016152 - 63 (ALJ App. 58); Galveston Wharves Historical Detailed Trial Balance, Access Fees (2011) at BOT 008619 (ALJ App. 44), Galveston Wharves Historical Detailed Trial Balance, Access Fees (2012) at BOT 009370 – 72 (ALJ App. 47)). From November of 2012 through June of 2014, EZ Cruise maintained a parking space count of 380 spaces and paid \$62,400.00 of the \$262,891.00 total Access Fees collected by the Wharves Board. (Invoices – Galveston Wharves (EZ Cruise Parking) at BOT 016164 - 87 (ALJ App. 58); Galveston Wharves Historical Detailed Trial Balance, Access Fees (2012) at BOT 009372 (ALJ App. 47); Galveston Wharves Historical Detailed Trial Balance, Access Fees (2013) at BOT 010134 – 37 (ALJ App. 50), Galveston Wharves Historical Detailed Trial Balance, Access Fees (2014) at BOT 010607 – 10 (ALJ App. 54)). Additionally, during that time period, EZ Cruise added “overflow” parking, adding 50 parking spaces for four months during the same time period. (Invoices – Galveston Wharves (EZ Cruise Parking) at BOT 016166, 016168, 016171, and 016174 (ALJ App. 58)).

2. Complainant Lighthouse Parking, Inc. (“Lighthouse”) is a for-profit corporation organized and existing under the laws of the State of Texas, incorporated on May 27, 2005. (Complainants’ First Amended Verified Complaint at p. 3 (ALJ App. 1)). Lighthouse owns and operates a private fully covered parking lot facility located at 309 29th St, Galveston, Texas 77550, approximately seven (7) blocks from the Port of Galveston Cruise Terminal. Lighthouse owns and operates (with commercially certified drivers where necessary) four (4) shuttle buses to transport passengers with their luggage directly to and from the terminal. *Id.* From 2006 through December of 2013, Lighthouse maintained 190 parking spaces. From January of 2008 through December of 2013, Lighthouse paid \$109,440.00 of the

\$691,827.58 total Access Fees collected by the Wharves Board. (Invoices – Galveston Wharves (Lighthouse Cruise Parking) at BOT 016705 – 77 (ALJ App. 141); Galveston Wharves Historical Detailed Trial Balance, Access Fees (2008) at BOT 006374 – 76 (ALJ App. 35), Galveston Wharves Historical Detailed Trial Balance, Access Fees (2009) at BOT 007126 – 28 (ALJ App. 38), Galveston Wharves Historical Detailed Trial Balance, Access Fees (2010) at BOT 007895 – 97 (ALJ App. 41), Galveston Wharves Historical Detailed Trial Balance, Access Fees (2011) at BOT 008617 – 19 (ALJ App. 44), Galveston Wharves Historical Detailed Trial Balance, Access Fees (2012) at BOT 009370 – 72 (ALJ App. 47), and Galveston Wharves Historical Detailed Trial Balance, Access Fees (2013) at BOT 010134 - 37 (ALJ App. 50)). From January of 2014 through April of 2014, Lighthouse maintained 207 parking spaces and paid \$6,424.00 of the \$64,420.00 total Access Fees collected by the Wharves Board. (Invoices – Galveston Wharves (Lighthouse Cruise Parking) at BOT 016778 – 83 (ALJ App. 141); Galveston Wharves Historical Detailed Trial Balance, Access Fees (2014) at BOT 010607 - 09 (ALJ App. 54)). From May of 2014 through June of 2014, Lighthouse maintained 220 parking spaces and paid \$3,520.00 of the \$29,667.00 total Access Fees collected by the Wharves Board. (Invoices – Galveston Wharves (Lighthouse Cruise Parking) at BOT 016782-83 (ALJ App. 141); Galveston Wharves Historical Detailed Trial Balance, Access Fees (2014) at BOT 010609 - 10 (ALJ App. 54)).

3. Complainant Sylvia Robledo d/b/a 81st Dolphin Parking (“81st Dolphin”), is a natural person who is a citizen and resident of the State of Texas. 81st Dolphin commenced doing business in May 2009. (Complainants’ First Amended Verified Complaint at p. 3 (ALJ App. 1)). In doing business as 81st Dolphin, Ms. Robledo individually leases and operates a private

parking lot facility located at 2801 Market St. Galveston, Texas 77550, approximately six (6) blocks from the Port of Galveston Cruise Terminal. 81st Dolphin leases and operates (with commercially certified drivers where necessary) three (3) shuttle buses to transport passengers with their luggage directly to and from the terminal. *Id.* at pp. 3-4. From 2006 through May of 2009, 81st Dolphin maintained 120 parking spaces. From January of 2008 to May of 2009, 81st Dolphin paid \$16,320.00 of the total \$158,276.52 the Wharves Board collected in Access Fees. (Galveston Wharves Historical Detailed Trial Balance, Access Fees (2008) at BOT 006374 – 76 (ALJ App. 35), Galveston Wharves Historical Detailed Trial Balance, Access Fees (2009) at 007126 – 27 (ALJ App. 38)). 81st Dolphin did not operate a parking lot from June to August of 2009. (Galveston Wharves Historical Detailed Trial Balance, Access Fees (2009) at BOT 007126 - 28 (ALJ App. 38)). From September of 2009 through December of 2013, 81st Dolphin maintained 50 parking spaces and paid \$20,800.00 of the \$512,081.06 total Access Fees collected by the Wharves Board. (Galveston Wharves Historical Detailed Trial Balance, Access Fees (2009) at BOT 007127 - 28 (ALJ App. 38), Galveston Wharves Historical Detailed Trial Balance, Access Fees (2010) at BOT 007895 – 97 (ALJ App. 41), Galveston Wharves Historical Detailed Trial Balance, Access Fees (2011) at BOT 008617 – 19 (ALJ App. 44), Galveston Wharves Historical Detailed Trial Balance, Access Fees (2012) at BOT 009370 – 72 (ALJ App. 47), Galveston Wharves Historical Detailed Trial Balance, Access Fees (2013) at BOT 010134 – 37 (ALJ App. 50)); *see also* (Invoices – Galveston Wharves (81st Dolphin) at BOT 015739 - 78 (ALJ App. 220)). From January of 2014 through July of 2014, 81st Dolphin maintained a total of 96 parking spaces and paid \$4,608.00 of the \$94,087.00 total Access Fees collected by the Wharves Board. (Galveston Wharves Historical Detailed Trial Balance, Access Fees (2014)

at BOT 010607 – 10 (ALJ App. 54); Invoices – Galveston Wharves (81st Dolphin) at BOT 015779 – 015785 (ALJ App. 220)). Currently, at maximum capacity, 81st Dolphin’s lot can accommodate approximately 135 vehicles. (Invoices – Galveston Wharves (81st Dolphin) at BOT 015736, BOT 015786 -88 (ALJ App. 220)).

4. Respondent The Board of Trustees of the Galveston Wharves (the “Wharves Board”) has been authorized by the City of Galveston to manage and control the Port of Galveston’s wharf and terminal facilities. GALVESTON, TEX., CHARTER, art. XII, §§ 1-2 (designating Galveston Wharves as a “separate utility” of the City of Galveston to be managed by the Board of Trustees of the Galveston Wharves) (ALJ App. 278). The City of Galveston is a municipality that owns and operates a port, and therefore, the State has accorded the Board of Trustees with the power to “construct, acquire, lease, improve, enlarge, extend, repair, maintain, replace, develop, or operate a port improvement or facility.” TEX. TRANSP. CODE § 54.003(a) (ALJ App. 283). In furtherance thereof, the Wharves Board publishes rules, regulations, and tariffs for the Port of Galveston. (Complainants’ First Amended Verified Complaint at p. 4 (ALJ App. 1)).
5. Respondent Galveston Port Facilities Corporation (“GPFC”) is a nonprofit corporation organized and existing under the laws of the State of Texas, incorporated on June 17, 2002. GPFC is a “local government corporation” charged with assisting the Board of Trustees with its governmental functions. TEX. TRANSP. CODE § 431.101(a) (ALJ App. 284). GPFC is organized and will be operated exclusively for one or more charitable purposes, within the meaning of Section 501(c)(3) of the U.S. Internal Revenue Code of 1986, as amended. (Articles of Incorporation of Galveston Port Facilities Corporation (ALJ App. 286); Depo. M. Mierzwa at 10:19 – 12:3 (ALJ App. 293)). GPFC functions independently as a tenant of

the Wharves Board and the Cruise Terminal's operator, and is responsible for any obligations that are owed to the cruise lines with respect to running the Cruise Terminal. (Depo. M. Mierzwa at 33:7 – 34:6 (ALJ App. 293)).

6. GPFC obtains revenue by collecting passenger wharfage, dockage, and cargo wharfage from cruise lines. GPFC's only source of revenue are the agreements it has with cruise lines. *Id.* at 15:8 – 19:13, 42:17 – 43:6, and 86:23-24. GPFC does not charge anyone fees to access the Cruise Terminal. *Id.* at 23:5 – 24:16 and 36:9-15.
7. The Wharves Board operates parking facilities which account for 68% of the parking spaces available for cruise passenger parking, not inclusive of hotels/motels that provide parking for cruise passengers. *Id.* at 141:8 – 142:7, 151:23 – 152:2.
8. Respondent GPFC performs the functions of a marine terminal operator. *Id.* at 16:2 – 17:12, 33:10-25.
9. The relationship between Respondent Wharves Board and Respondent GPFC is solely that of landlord and tenant and is not a partnership or joint venture. (Lease Agreement between The Board of Trustees of the Galveston Wharves and Galveston Port Facilities Corporation, dated December 23, 2007, at p.12, sec. 17.02 (ALJ App. 398); Depo. M. Mierzwa at 45:1-20, 83:3-6 (ALJ App. 293)).
10. Respondent GPFC pays rent to Respondent Wharves Board pursuant to a lease for the property it operates. (Depo. M. Mierzwa at 40:4-10 (ALJ App. 293)).
11. Mr. Michael Mierzwa is the port director for Respondent Wharves Board a/k/a The Board of Trustees of the Galveston Wharves a/k/a The Port of Galveston, and is the president of Respondent GPFC. *Id.* at 6:8-14, 21-25.

12. Mr. Mark Murchison is the director of finance for The Port of Galveston. In that position, Mr. Murchison is responsible for general ledger reporting, budgeting, financial reporting, accounts payable, accounts receivable, and payroll for The Port of Galveston. (Depo M. Murchison Depo at 5:14-22, 8:14-19 (ALJ App. 414)).
13. The Wharves Board's 2014 budget provided operating expenses for the Cruise Terminal of \$7.2 million, and cruise passenger revenue for same of \$5.7 million. (Audio Transcription of The Board of Trustees of the Galveston Wharves Special Finance Committee Meeting on 5/12/14, at 12:5-12 (ALJ App. 418)).
14. Respondents claim that the revenues of GPFC do not cover the expenses of Respondents' Cruise Terminal. *Id.*; Port of Galveston Analysis of Access Fees (ALJ App. 436); Depo. M. Mierzwa at 73:8-14 (ALJ App. 293)).
15. The Wharves Board charges "Access Fees" to fund the stated difference between GPFC's revenues and expenses. (Depo. M. Mierzwa at 68:11-19, 80:25 – 87:12, and 91:8-24 (ALJ App. 293)).
16. The Cruise Terminal is not operating at a loss. In presenting their analysis during their May 12, 2014 meeting showing a loss of approximately \$1,486,925, the Special Finance Committee did not include the Cruise Terminal's budgeted revenue from parking lots "A" and "B" in the amount of \$4,153,650. (Port of Galveston Analysis of Access Fees (ALJ App. 436)). The Cruise Terminal collects approximately \$9,894,883 in total annual revenues, and bears approximately \$7,228,158 in total annual expenses. *Id.*
17. The between 2006 and 2014, the Wharves Board determined the Access Fees to charge by considering the recorded number of accesses to the Cruise Terminal by all vehicles subject to Access Fees under the Tariff, with the exception of "Off-Port Parking Users." From that

data, the Wharves Board determines the anticipated revenue generated by the Tariff by those users. That number was then subtracted from the deficit represented by the difference between GPMC's revenues and the expenses of the Cruise Terminal. (Depo. M. Mierzwa at 68:21 – 69:18, 143:25 – 145:5 (ALJ App. 293)). The Wharves Board then divided the remaining portion of the deficit by the total number of parking spaces operated by the Wharves Board and certain "Off-Port Parking Users," including Complainants. The resulting number was the per-space, per-month Access Fee charged to Complainants. *Id.*

18. In December 2007, the Wharves Board promulgated Tariff Circular No. 6, which sets forth fees the Wharves Board charges for vehicular access to the Cruise Terminal. Those fees include—but are not limited to—Decal Fees and Access Fees. (Board of Trustees of the Galveston Wharves – Tariff Circular No. 6 (Item 111)(5th Revised Page 3-F and 3-G) (ALJ App. 444)).

19. The Wharves Board charges Cruise Terminal users Access Fees for bringing their vehicles onto the Port's property. (Audio Transcription of The Board of Trustees of the Galveston Wharves Special Finance Committee Meeting on September 22, 2014, at 8:18-19 (ALJ App. 534)).

20. Tariff Circ. No. 6 defined an "Off-Port Parking User" as "a commercial business entity which provides or arranges for one or more commercial passenger vehicles, courtesy vehicles, buses or shuttles, however owned or operated, to pick up or drop off passengers within a terminal complex of the Galveston Wharves in connection with the operations of a business of the user involving the parking of motor vehicles of any type at a facility located outside of the boundaries of property owned, operated or controlled by the Galveston

Wharves.” (Board of Trustees of the Galveston Wharves – Tariff Circular No. 6 (Item 111)(5th Revised Page 3-F) at 3-I (ALJ App. 444)).

21. A hotel that parks cruise passengers’ vehicles for a fee and arranges for transportation to drop off and pick up those passengers at the Cruise Terminal without paying Access/Trip fees, meets the definition of an “Off-Port Parking User.” (Depo. M. Mierzwa at 173:3-12 (ALJ App. 293); *see also* Board of Trustees of the Galveston Wharves – Tariff Circular No. 6 (Item 111)(5th Revised Page 3-F) at 3-I (ALJ App. 444)). When local hotels/motels engage in parking cruise passengers’ vehicles, they are “no different than a parking lot.” (Audio Transcription of The Board of Trustees of the Galveston Wharves Special Finance Committee Meeting on September 22, 2014 at 19:18-20 (ALJ App. 534)).
22. Local hotels/motels provide parking for cruise passengers vehicles and transportation to and from the Cruise Terminal for cruise passengers. (Galveston.com – Hotel Advertisements for Cruise Parking (ALJ App. 510); Hotelnparking.com – Roadway Inn Galveston Cruiseport, TX Advertisement (ALJ App. 514); Audio Transcription of The Board of Trustees of the Galveston Wharves Special Finance Committee Meeting on 5/12/14, at 20:5-7, 21:6-9, 24:12-14, and 27:12-20 (ALJ App. 418); Depo. M. Mierzwa at 165:6 - 168:20 (ALJ App. 293); Letter from Candlewood to Mierzwa, 9/7/12 (ALJ App. 767)).
23. The number of parking spaces being utilized for cruise passenger vehicles in local hotel/motel parking lots was not considered in determining access fees. (Depo. M. Mierzwa at 151:23 – 152:2 (ALJ App. 293)).
24. The Wharves Board does not want to charge local hotels/motels in the same manner as they charge Complainants. (Board of Trustees of the Galveston Wharves – Special Finance Committee Meeting Notes, dated, Monday, May 12, 2014, at p. 4 (ALJ App. 515)).

25. Despite local hotels/motels meeting the Tariff's definition of "Off-Port Parking Users," and the express applicability of the 2006 and 2014 Tariff to local hotels/motels, local hotels/motels have not been charged Access Fees as required of "Off-Port Parking Users." (Depo. M. Mierzwa at 173:3 – 174:7 (ALJ App. 293)).
26. The access fees imposed by the Wharves Board from December 17, 2007 through July 1, 2014 were as follows: (1) Bus, commercial passenger vehicle, or courtesy vehicle with seating capacity of greater than fifteen persons: \$50.00 per Access/Trip; (2) Commercial passenger vehicle, courtesy vehicle, shuttle or limousine with seating capacity of fifteen persons or more: \$20.00 per Access/Trip; (3) Commercial passenger vehicle, courtesy vehicle, or shuttle with seating capacity of up to fourteen persons: \$10.00 per Access/Trip; (4) Limousine or taxi and taxicabs with seating capacity of nine to fourteen persons: \$10.00 per Access/Trip; (5) Limousines with seating capacity of not more than eight persons: \$10.00 per Access/Trip; and (6) Taxi and taxicabs with seating capacity of not more than eight persons: \$0.00 per Access/Trip. (Board of Trustees of the Galveston Wharves – Tariff Circular No. 6 (Item 111)(5th Revised Page 3-F) at 3-F (ALJ App. 444); Depo. M. Mierzwa at 159:9 – 160:23, 161:18 – 163:2 (ALJ App. 293)).
27. Between January 1, 2008 and December 31, 2013, no vehicle subject to the Tariff was charged an Access Fee greater than \$10.00. (Certificate of Summary (ALJ App. 768); Summary – Cruise Terminal Users Invoiced for Access Fees (ALJ App. 769) [the preceding summary is based on the following documents: (Commodore Access Fees (BOT 015921 – BOT 15950) (ALJ App. 771), County Inn Access Fees (BOT 015951 – BOT 15982) (ALJ App. 801), Marriott Access Fees (BOT 015983 – BOT 16004) (ALJ App. 833), Fertitta Access Fees (BOT 016196 – BOT 16262) (ALJ App. 855), Galveston Beach Hotel Access

Fees (BOT 016263 – BOT 16273) (ALJ App. 922), Hampton Inn Access Fees (BOT 016274 – BOT 16321) (ALJ App. 933), Holiday Inn Access Fees (BOT 016322 – BOT 16379) (ALJ App. 982), Holiday Inn (Sunspreet Resort) Access Fees (BOT 016380 – BOT 16441) (ALJ App. 1039), Galvez Hotel Access Fees (BOT 016442 – BOT 16557) (ALJ App. 1101), Inn at the Waterpark Access Fees (BOT 016558 – BOT 16568) (ALJ App. 1217), Island Breeze Shuttle Access Fees (BOT 016569 – BOT 16579) (ALJ App. 1228), LaQuinta Hotel Access Fees (BOT 016580 – BOT 16686) (ALJ App. 1239), Moody Gardens Access Fees (BOT 016798 – BOT 16916) (ALJ App. 1346), San Luis Hotel Access Fees (BOT 016922 – BOT 17038) (ALJ App. 1465), Tremont Hotel Access Fees (BOT 017039 – BOT 17144) (ALJ App. 1582), The Woodlands Access Fees (BOT 017180 – BOT 17185) (ALJ App. 1688), AAA Corporation Access Fees (BOT 017186 – BOT 17190) (ALJ App. 1694), Abiding Limo Access Fees (BOT 017191 – BOT 17193) (ALJ App. 1699), Action Limo Access Fees (BOT 017194 – BOT 17201) (ALJ App. 1702), AFC Corporate Transportation Access Fees (BOT 017202 – BOT 17205) (ALJ App. 1710), AIM Limo Access Fees (BOT 017206 – BOT 17210) (ALJ App. 1714), Airport Transportation Access Fees (BOT 017211 – BOT 17212) (ALJ App. 1719), American Standard Limo Access Fees (BOT 017213 – BOT 17214) (ALJ App. 1721), American Transport Access Fees (BOT 017215 – BOT 17222) (ALJ App. 1723), Avanti Transport Access Fees (BOT 017223 – BOT 17227) (ALJ App. 1731), Best Limo Access Fees (BOT 017228 – BOT 17230) (ALJ App. 1736), Big Star Custom Coach Access Fees (BOT 017233 – 172236) (ALJ App. 1739), Blackhorse Limo Access Fees (BOT 017233 – BOT 17236) (ALJ App. 1741), Black Tie Limo Access Fees (BOT 017237 – BOT 17239) (ALJ App. 1745), C&S Executive Transport Access Fees (BOT 017240 – BOT 17243) (ALJ App. 1748), Carey Worldwide Services, Inc. Access Fees (BOT

017244 – BOT 17247) (ALJ App. 1752), Cheap Town Car Limo Access Fees (BOT 017248 – BOT 17251) (ALJ App. 1756), Cherry Limo Transportation Access Fees (BOT 017252 – BOT 17254) (ALJ App. 1760), Clark’s Travel Access Fees (BOT 017255 – BOT 17257) (ALJ App. 1763), Clear Lake Shuttle Bus Access Fees (BOT 017258 – BOT 17277) (ALJ App. 1766), Colony Limo Access Fees (BOT 017278 – BOT 17279) (ALJ App. 1786), Corporate Limo Access Fees (BOT 017280 – BOT 172281) (ALJ App. 1788), Cowtown Charters Access Fees (BOT 017282 – BOT 17292) (ALJ App. 1790), Daisy Tours & Conventions Access Fees (BOT 017293 – BOT 17296) (ALJ App. 1801), Devine Towncar & Limo Access Fees (BOT 017297 – BOT 17298) (ALJ App. 1805), Distinct Class Limo Access Fees (BOT 017299 – BOT 17303) (ALJ App. 1807), Enterprise Rent-A-Car Access Fees (BOT 017304 – BOT 17307) (ALJ App. 1812), Envoy Executive Limo Access Fees (BOT 017308 – BOT 17310) (ALJ App. 1816), Executive Transportation Access Fees (BOT 017311 – BOT 17313) (ALJ App. 1819), Extreme Elegance Access Fees (BOT 017314 – BOT 17316) (ALJ App. 1822), Finesse Transportation Access Fees (BOT 017317 – BOT 17318) (ALJ App. 1825), First Class Access Fees (BOT 017319 – BOT 17322) (ALJ App. 1827), Galveston Limo Access Fees (BOT 017323 – BOT 17336) (ALJ App. 1831), Garcia Garcia Access Fees (BOT 017337 – BOT 17338) (ALJ App. 1845), Gaten Adventures Access Fees (BOT 017339 – BOT 17340) (ALJ App. 1847), Gemini Limo Access Fees (BOT 017341 – BOT 17343) (ALJ App. 1849), Gotta Go Trailways Access Fees (BOT 017344 – BOT 17346) (ALJ App. 1852), Gulf Coast Limo Services Access Fees (BOT 017347 – BOT 17348) (ALJ App. 1855), Houston Executive Limo Access Fees (BOT 017349 – BOT 17350) (ALJ App. 1857), Houston Express Limo Access Fees (BOT 017351 – BOT 17354) (ALJ App. 1859), J&J Tours Access Fees (BOT 017355 – BOT 17358) (ALJ

App. 1863), Lonestar Executive Limo Access Fees (BOT 017359 – BOT 17362) (ALJ App. 1867), Lone Star Access Fees (BOT 017363 – BOT 17369) (ALJ App. 1871), Merlo’s Limo’s Access Fees (BOT 017370 – BOT 17377) (ALJ App. 1878), Onyx Limo Service Access Fees (BOT 017378 – BOT 17384) (ALJ App. 1886), Pride Limo Service Access Fees (BOT 017385 – BOT 17387) (ALJ App. 1893), Primavera Access Fees (BOT 017388 – BOT 17391) (ALJ App. 1896), R&R Partnership Access Fees (BOT 017392 – BOT 17396) (ALJ App. 1900), Reliance Limo & Town Car Access Fees (BOT 017397 – BOT 17399) (ALJ App. 1905), Royal Carriages Access Fees (BOT 017400 – BOT 17413) (ALJ App. 1908), South Houston Limo Access Fees (BOT 017414 – BOT 17419) (ALJ App. 1922), Select Corporate Access Fees (BOT 017420 – BOT 17422) (ALJ App. 1928), Shif Limo Access Fees (BOT 017423 – BOT 17424) (ALJ App. 1931), Sierra Trailways Access Fees (BOT 017425 – BOT 17428) (ALJ App. 1933), SMZ Transportation Access Fees (BOT 017429 – BOT 17433) (ALJ App. 1937), Space Town Transportation Access Fees (BOT 017434 – BOT 17437) (ALJ App. 1942), Superior Limo Access Fees (BOT 017438 – BOT 17439) (ALJ App. 1946), Totally Texas Limo Access Fees (BOT 017440 – BOT 17445) (ALJ App. 1948), Town Car Limo Access Fees (BOT 017446 – BOT 17447) (ALJ App. 1954), Transgate Limo Access Fees (BOT 017448 – BOT 17452) (ALJ App. 1956), Transportation Unlimited Access Fees (BOT 017453 – BOT 17455) (ALJ App. 1961), Western Motorcoach, Inc. Access Fees (BOT 017456 – BOT 17457) (ALJ App. 1964), Wynn Coaches Access Fees (BOT 017458 – BOT 17461) (ALJ App. 1966), Z Limo Services Access Fees (BOT 017462 – BOT 17470) (ALJ App. 1970)].

28. In lieu of the Access/Trip fee, the access fees imposed by the Wharves Board from December 17, 2007 through June 30, 2014 on “Off-Port Parking Users” was \$8.00 per month per

parking space located in the Off-Port Parking User's parking facility. (Board of Trustees of the Galveston Wharves – Tariff Circular No. 6 (Item 111)(5th Revised Page 3-F) at 3-F, n. D (ALJ App. 444)).

29. The Tariff effective between December 17, 2007 and June 30, 2014 expressly provided the methodology for determining annual increases to monthly Access Fees charged to Off-Port Parking Users based on consumer price index (C.P.I.) growth. *Id.* The Wharves Board failed to implement such increases in 2011, 2012, or 2013. (Board of Trustees of the Galveston Wharves – Tariff Circular No. 6 (Item 111)(5th Revised Page 3-F) at 3-F, n. D (ALJ App. 444); Complainants' First Amended Verified Complaint at p. 9 (ALJ App. 1)).

30. On April 22, 2013, the Wharves Board considered an interim report from an internal study team assembled to conduct research on how other ports handle the issue of assessing access fees to offsite operators, specifically in regard to the Port of Galveston's Access Fees that were (or were not) being charged to different private parking lot owners, hotels, and shuttle buses who enter into the Cruise Terminal. (Minutes of the Regular Monthly Meeting of the Board of Trustees of the Galveston Wharves, Monday, April 22, 2013, pp. 7 – 8 (ALJ App. 450)). In the meeting, Respondents' own internal team informed them that, although there was a policy for access fees in place (contained in the Tariff), procedures still needed to be implemented for purposes of its enforcement. *Id.* at p. 7. Further, it was also noted that “[t]he scope isn't really just for those who operate parking interests, but also those who operate limousines, buses, taxis and other shuttle services.” *Id.* (emphasis added).

31. The Wharves Board amended the Tariff on November 21, 2013, increasing Decal and Access Fees. (Board of Trustees of the Galveston Wharves – Tariff Circular No. 6 (Item 111)(6th Revised Page 3-F and 3-G), Notes C and D (ALJ App. 460)). This amended Tariff was never

implemented or enforced. (Complainants' First Amended Verified Complaint at p. 10 (ALJ App. 1)).

32. On May 12, 2014, the Special Finance Committee for the Wharves Board deliberated upon issues relating to cruise terminal parking, and placed two items on the agenda: (1) Parking Access Fees, and (2) Amendment to the Tariff. (Audio Transcription of The Board of Trustees of the Galveston Wharves Special Finance Committee Meeting on 5/12/14 (ALJ App. 418)). On May 19, 2014, the Wharves Board adopted an amendment to the Tariff, which increased Access Fees charged for access to the Cruise Terminal, effective July 1, 2014. (Minutes of the Regular Monthly Meeting of the Board of Trustees of the Galveston Wharves, Monday, May 19, 2014 (ALJ App. 472)).
33. Effective July 1, 2014, the access fees imposed by Respondent Wharves Board were as follows: (1) Charter bus owners and operators: \$60.00 Parking Fee; (2) Commercial passenger vehicle, courtesy vehicle, shuttle or limousine with seating capacity of fifteen persons or more: \$30.00 per Access/Trip; (3) Commercial Passenger Vehicle, courtesy vehicle, shuttle or limousine with seating capacity of less than fifteen persons: \$20.00 per Access/Trip; (4) Taxicabs with City of Galveston permit: \$0.00 per Access/Trip. (Board of Trustees of the Galveston Wharves – Tariff Circular No. 6 (Item 111)(7th Revised Page 3-F and 3-G); (ALJ App. 466)).
34. In lieu of the Access/Trip fee, effective July 1, 2014, “Off-Port Parking Users” were subject to a monthly Access Fee equal to the amount of \$28.88 per parking space located in the Off-Port Parking User’s parking facility. *Id.* at 3-F, n. D; *see also* Minutes of the Regular Monthly Meeting of the Board of Trustees of the Galveston Wharves, Monday, May 19, 2014 at p. 14 (ALJ App. 472).

35. The access fee changes that took effect on July 1, 2014 were projected to result in an increase of \$430,000.00 in Access Fees collected by the Wharves Board. (Minutes of the Regular Monthly Meeting of the Board of Trustees of the Galveston Wharves, Monday, May 19, 2014, at p. 14 (ALJ App. 472)).
36. The Wharves Board owns and/or operates sixty-eight (68) percent of the parking spaces available for cruise passengers. Complainant 81st Dolphin owns/operates three and one half (3.5) percent, Complainant EZ Cruise owns/operates eleven (11) percent, and Complainant Lighthouse owns/operates five and seven tenths (5.7) percent of the parking spaces available for cruise passengers. *Id.* at p. 11; *see also* Depo. M. Mierzwa at 141:8 – 142:7 (ALJ App. 293). In December of 2010, the Wharves Board entered into an Economic Development Agreement with Carnival Corporation (“Carnival”) and GPFC, whereby Carnival partnered with the Wharves Board in its cruise parking operation to increase its market share in exchange for twenty-five (25%) percent of revenues over \$2.5 million dollars. (Depo. M. Mierzwa at 58:21 – 61:12 (ALJ App. 293)).
37. Collectively, Complainants parking spaces for which they were subject to monthly Access Fees totaled approximately 778 parking spaces on July 1, 2014. (Complainants’ First Amended Verified Complaint (ALJ App. 1)).
38. At \$8.00 per parking space per month, the Access Fees for 778 parking spaces would be \$6,224.00 per month, or \$74,688.00 per year. At \$28.88 per parking space per month, the Access Fees for 778 parking spaces would be \$22,468.64 per month, or \$269,623.68 per year. The difference in those Access Fees equals \$194,935.68, or slightly over forty-five (45) percent of the projected increase in Access Fees collected by the Wharves Board following the July 1, 2014 implementation of the Tariff amendment. (Minutes of the Regular

Monthly Meeting of the Board of Trustees of the Galveston Wharves, Monday, May 19, 2014 at p. 14 (stating expected increase in Access Fees collected was \$430,000.00) (ALJ App. 472)).

39. One of the Wharves Board's considerations in adopting the Tariff amendment which became effective July 1, 2014 was to increase the Wharves Board's market share of cruise passenger parking. (Audio Transcription of The Board of Trustees of the Galveston Wharves Special Finance Committee Meeting on 5/12/14, at 32:17-20 (ALJ App. 418)).
40. Prior to adopting the Tariff changes that became effective on July 1, 2014, the Wharves Board conducted a study to determine what those changes should be. That study considered historical data of access to the Cruise Terminal by hotel/motel shuttles, "coach type buses," and similar companies accessing the Cruise Terminal. The study did not consider historical data of Complainants' access to the Cruise Terminal. The study did not consider the parking spaces utilized by hotels/motels to park cruise passengers' vehicle. (Depo. M. Mierzwa at 142:18 – 143:17, 145:25 – 146:13, and 151:23 – 152:2 (ALJ App. 293)).
41. The Wharves Board acknowledged that, as of September 22, 2014, they "still [had] enforcement issues" regarding Access Fees. (Audio Transcription of The Board of Trustees of the Galveston Wharves Special Finance Committee Meeting on 9/22/14, at 8:22 – 9:10 (ALJ App. 534)).
42. On September 22, 2014, the Wharves Board made a further Tariff change to become effective October 1, 2014, whereby the distinction of "Off-Port Parking Users" was removed, and Complainants would be charged a per Access/Trip fee instead of an access fee based on the number of parking spaces Complainants owned/operated. (Depo. M. Mierzwa at 153:21-25 (ALJ App. 293); Audio Transcription of The Board of Trustees of the Galveston Wharves

Special Finance Committee Meeting on September 22, 2014, at p. 12 (ALJ App. 534)). Prior to October 1, 2014, the Wharves Board historically has not charged Complainants per-trip Access Fees based upon their proportional volume of traffic in the Cruise Terminal like other Cruise Terminal users. (Depo. M. Mierzwa at 68:21 – 69:18; 141:8 - 142:7; 145:13 - 146:13 (ALJ App. 293)).

43. The Tariff promulgated by the Wharves Board prior to the September 22, 2014 amendment, which took effect on October 1, 2014, treated Complainants differently than other Cruise Terminal users subject to the Tariff. (Audio Transcription of The Board of Trustees of the Galveston Wharves Special Finance Committee Meeting on September 22, 2014, at p. 4 (ALJ App. 534); Audio Transcription of The Board of Trustees of the Galveston Wharves Special Finance Committee Meeting on 5/12/14, at 22:13-15 (ALJ App. 418)).
44. Prior to adopting the Tariff changes that became effective on October 1, 2014, the Wharves Board did not conduct a study to determine Complainants' proportional use of the Cruise Terminal. (Depo. M. Mierzwa at 155:1-5 (ALJ App. 293)).
45. Prior to adopting the Tariff changes that became effective on October 1, 2014, the Wharves Board considered “a very small sample size” and “felt” that charging an Access/Trip fee of \$20.00 per trip to Complainants would accomplish the Wharves Board's target revenue from Access Fees. *Id.* at 155:9 – 156:1, 157:13 – 158:2.
46. More cruise ships berthed at the Cruise Terminal in 2006 than in any year since. (Audio Transcription of The Board of Trustees of the Galveston Wharves Special Finance Committee Meeting on 5/12/14, at 9:18-24 (ALJ App. 418)).
47. The local hotel “Holiday Inn on the Beach” purchased a permit pursuant to the Tariff, for their fifteen (15) person capacity vehicle to transport cruise passengers that parked at the

hotel to and from the Cruise Terminal. (Holiday Inn on the Beach – Shuttle Permit Purchase (BOT 011964) (ALJ App. 548)). Between January 1, 2008 and June 30, 2014, Respondents recorded 213 accesses by this hotel to the Cruise Terminal. (Invoices – Galveston Wharves (Holiday Inn) at BOT 016355 – 016377 (ALJ App. 549)). Every documented access to the Cruise Terminal by “Holiday Inn on the Beach” during that time showed that hotel being charged an Access Fee of \$10.00 per Access/Trip. *Id.*

48. The local hotel “Moody Gardens, Inc.” purchased permits for six vehicles from the Wharves Board; five with a seating capacity of eighteen (18) persons, and one with a seating capacity of fifteen (15) persons. (Moody Gardens, Inc. – Shuttle Permit Purchase (BOT 012120) (ALJ App. 572)). Between January 1, 2008 and June 30, 2014, Moody Gardens, Inc. was documented as accessing the Cruise Terminal 3,511 times, and was charged an Access Fee of \$10.00 per Access/Trip. (Invoices – Galveston Wharves (Moody Gardens) (ALJ App. 573)).
49. For the months of May, June, September, and November of 2008, and February of 2009, only Claimants were charged Access Fees although fifty-five cruise ships called on the Cruise Terminal. (Galveston Wharves Historical Detailed Trial Balance, Access Fees (2008) (ALJ App. 35), Galveston Wharves Historical Detailed Trial Balance, Access Fees (2009) (ALJ App. 38)). During those months not one single entity was charged an Access Fee other than Complainants.² (Galveston Wharves Historical Detailed Trial Balance, Access Fees (2008) (ALJ App. 35), Galveston Wharves Historical Detailed Trial Balance, Access Fees (2009) (ALJ App. 38)).
50. Between January 1, 2008 and December 31, 2013, not a single limousine was charged an Access Fee. (Certificate of Summary (ALJ App. 768), Summary – Cruise Terminal Users Invoices for Access Fees (ALJ App. 769)). The first invoice after January 1, 2008 recording

² See Port of Galveston Cruise Calls (2006 – 2010) at pp. 746 - 47 (ALJ App. 744).

access to the Cruise Terminal by a limousine was issued to Avanti Transportation in April of 2014. (Invoices – Galveston Wharves (Avanti Transportation) at BOT 017224 (ALJ App. 1731)).

51. Once Respondents' enforcement of collecting Access Fees under the Tariff "picked up," a number of limousines and buses that accessed the Cruise Terminal before such enforcement became delinquent in their accounts and stopped coming to the Cruise Terminal. (Audio Transcription of The Board of Trustees of the Galveston Wharves Special Finance Committee Meeting on March 30, 2015, at 5:23-6:3 (ALJ App. 749)).
52. Between January 1, 2008 and June 30, 2014, the Wharves Board did not charge a single Access Fee greater than \$10.00. (Certificate of Summary (ALJ App. 768), Summary – Cruise Terminal Users Invoiced for Access Fees (ALJ App. 769)).
53. Respondents' 2006 record of access to the Cruise Terminal provides that, at that time, 81st Dolphin comprised approximately 8.8% of the total traffic subject to the Tariff that accessed the Cruise; EZ Cruise represented approximately 11.2%; and Lighthouse accounted for approximately 9.6% of same. (Depo. M. Mierzwa at 174:10 – 175:18 (ALJ App. 293); Port Tariff Charges for the Year 2006 (Access Fee Study) (ALJ App. 532)).
54. Respondents did not track Complainants' use of, or access to, the Cruise Terminal after 2006 until 2014. (Depo. M. Mierzwa at 145:25 – 146:13 (ALJ App. 293)).
55. In 2014, the Wharves Board recorded 274 limousine accesses to the Cruise Terminal. (Certificate of Summary (ALJ App. 768), Summary – Cruise Terminal Users Invoiced for Access Fees (ALJ App. 769)).
56. From January 1, 2008 through December 31, 2013, no buses were charged Access Fees as required by the Tariff. *Id.*

57. Galveston Seawall Motel, LTD d/b/a Comfort Inn & Suites, purchased a permit for one vehicle with a seating capacity of twenty-five (25) to access the Cruise Terminal. (Comfort Inn – Shuttle Permit Purchase (BOT 011946 - 47) (ALJ App. 651)). Between January 1, 2008 and June 30, 2014, Respondents recorded Galveston Seawall Motel, LTD d/b/a Comfort Inn & Suites accessing the Cruise Terminal 184 times and charged an Access Fee of \$10.00 for each of those accesses. (Invoices – Galveston Wharves (Comfort Inn) at BOT 015846 – 54 (ALJ App. 653)).
58. The San Luis Resort, Spa and Conference Center, a local hotel, purchased permits for four vehicles, one with a seating capacity of eighteen (25) persons, one with a seating capacity of fifteen (15) persons, and two with seating capacities of less than fifteen (15) persons. (San Luis Hotel – Shuttle Permit Purchase (BOT 011963) (ALJ App. 662)). Between January 1, 2008 and June 30, 2014, this hotel accessed the Cruise Terminal 8,167 times, each time being charged an Access Fee of only \$10.00. (Invoices – Galveston Wharves (San Luis Hotel) at BOT 016954 – 017031 (ALJ App. 663)).
59. Between January 1, 2008 and December 31, 2013, the Wharves Board recorded 283 accesses by buses to the Cruise Terminal. Twelve of those 283 were charged \$50.00 per Access/Trip, 271 were charged only \$10.00. (Clear Lake Shuttle Bus Access Fees at BOT 017260 – 69 (ALJ App. 1766), Royal Carriages Access Fees at BOT 017402 – 04 (ALJ App. 1908); *see also* Summary – Cruise Terminal Users Invoiced for Access Fees. (ALJ App. 769)).
60. In 2014, Respondents recorded 274 accesses to the Cruise Terminal by limousines. (Summary – Cruise Terminal Users Invoiced for Access Fees) (ALJ App. 769); *see also* Abiding Limo Access Fees at BOT 017192 – 93 (ALJ App. 1699), Action Limo Access Fees at BOT 017194 – 201 (ALJ App. 1702), AIM Limo Access Fees at BOT 017206 – 10 (ALJ

App. 1714), American Standard Limo Access Fees at BOT 017213 – 14 (ALJ App. 1721), Avanti Transport Access Fees at BOT 017223 – 27 (ALJ App. 1731), Best Limo Access Fees at BOT 017228 – 30 (ALJ App. 1736), Blackhorse Limo Access Fees at BOT 017233 – 43 (ALJ App. 1741), Cheap Town Car Limo Access Fees at BOT 017248 – 54 (ALJ App. 1756), Colony Limo Access Fees at BOT 017278 – 81 (ALJ App. 1786), Devine TownCar & Limo Access Fees at BOT 017297 – 303 (ALJ App. 1805), Envoy Executive Limo Access Fees at BOT 017308 – 16 (ALJ App. 1816), Galveston Limo Access Fees at BOT 017336 (ALJ App. 1831), Gemini Limo Access Fees at BOT 017341 – 43 (ALJ App. 1849), Gulf Coast Limo Services Access Fees at BOT 017347 – 54 (ALJ App. 1855), Lonestar Executive Limo Access Fees at BOT 017359 – 62 (ALJ App. 1867), Merlo’s Limo’s Access Fees at BOT 017370 – 87 (ALJ App. 1878), Reliance Limo & Town Car Access Fees at BOT 017397 – 99 (ALJ App. 1905), South Houston Limo Access Fees at BOT 017414 – 24 (ALJ App. 1922), Superior Limo Access Fees at BOT 017438 – 52 (ALJ App. 1946), Z Limo Services Access Fees at BOT 017462 – 70 (ALJ App. 1970)). Additionally, in 2014, the Wharves Board recorded 385 accesses to the Cruise Terminal. (Summary – Cruise Terminal Users Invoiced for Access Fees) (ALJ App. 769); *see also* AFC Corporate Transportation Access Fees at BOT 017203 – 05 (ALJ App. 1710), Clear Lake Shuttle Bus Access Fees at BOT 017270 - 77 (ALJ App. 1766), Daisy Tours & Conventions Access Fees at BOT 017294 – 96 (ALJ App. 1801), Finesse Transportation Access Fees at BOT 017318 (ALJ App. 1825), Galveston Limo Access Fees at BOT 017336 (ALJ App. 1831), Garcia Garcia Access Fees at BOT 017338 (ALJ App. 1845), Gaten Adventures Access Fees at BOT 017340 (ALJ App. 1847), Gotta Go Trailways Access Fees at BOT 017345 – 46 (ALJ App. 1852), J&J Tours Access Fees at BOT 017357 – 58 (ALJ App. 1863), Merlo’s Limo’s

Access Fees at BOT 017371 – 77 (ALJ App. 1878), Primavera Access Fees at BOT 017390 – 91 (ALJ App. 1896), Royal Carriages Access Fees at BOT 017405 – 13 (ALJ App. 1908), Transportation Unlimited Access Fees at BOT 017454 – 55 (ALJ App. 1961), Western Motorcoach, Inc. Access Fees at BOT 017457 (ALJ App. 1964), Wynn Coaches Access Fees at BOT 017459 – 61 (ALJ App. 1966)).

61. The Wharves Board justified the 261% increase in Complainants' Access Fees, which took effect on July 1, 2014, based on their desire to ensure “. . . the private parking lots [like Complainants'] pay a more fair share of the [\$1.5M] in expenses.” (Audio Transcription of Mierzwa Interview on 5/19/14, at p. 6 (ALJ App. 762)).
62. Respondents have historically failed to charge and/or collect Access Fees from a material percentage – if not a majority – of commercial vehicles that have accessed the Cruise Terminal since the 2006 Tariff came into force. (Certificate Summary Certificate Summary (ALJ App. 768), Summary - Cruise Terminal Users Invoiced for Access Fees (ALJ App. 769)); *see also* (Galveston Wharves Historical Detailed Trial Balance, Access Fees (2008) (ALJ App. 35); Galveston Wharves Historical Detailed Trial Balance, Access Fees (2009) (ALJ App. 38); Galveston Wharves Historical Detailed Trial Balance, Access Fees (2010) (ALJ App. 41); Galveston Wharves Historical Detailed Trial Balance, Access Fees (2011) (ALJ App. 44); Galveston Wharves Historical Detailed Trial Balance, Access Fees (2012) (ALJ App. 47) ; Galveston Wharves Historical Detailed Trial Balance, Access Fees (2013) (ALJ App. 50); Galveston Wharves Historical Detailed Trial Balance, Access Fees (2014) (ALJ App. 54); Clear Lake Shuttle Bus Access Fees at (BOT 017260 -69); and Royal Carriages Access Fees at (BOT 017402 -04).) Between January 1, 2008 and December 31,

2013, the Wharves Board did not charge a single limousine an Access Fee. (Invoices – Galveston Wharves (Avanti Transportation) (ALJ App. 1731)).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed this document on this **1st day of May, 2015**, and that a true and correct copy of the foregoing was served on all counsel of record *via* certified mail – return receipt requested and email, as indicated below:

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