



BEFORE THE PUBLIC UTILITIES COMMISSION

IN RE: REVIEW OF \$12 MILLION)
ANZ COMMERCIAL LOAN))
FOR PURCHASE OF THE)
POLA CRANES))
_____)

PAG DOCKET 12-01
ALJ REPORT

INTRODUCTION

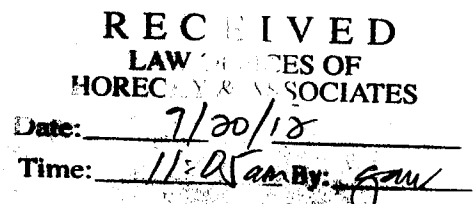
This matter comes before the Guam Public Utilities Commission (the "PUC") pursuant to the Petition filed by the Jose D. Leon Guerrero Commercial Port, Port Authority of Guam ("PAG") on September 14, 2012, whereby PAG requests review and approval of the \$12 million ANZ commercial loan related to the acquisition of Port of Los Angeles cranes 14, 16, 17, and Gantry Crane 3 (hereinafter referred to as the "PoLA Cranes") owned by Matson Navigation Company, Inc. ("Matson") and Horizon Lines, L.L.C. ("Horizon"). The instant docket involves PAG's original request for PUC approval of the Sales Agreement, and the Interim Maintenance Agreement, related to the acquisition of the PoLA Cranes.

BACKGROUND

A. Enabling and Special Legislation

On September 11, 2009, Public Law ("P.L.") 30-57 was enacted, which required PAG to purchase or lease to own "at least two (2) Gantry Cranes," "no later than December 31, 2012."¹ On March 11, 2010, P.L. 30-100 was enacted, which reiterated the requirement that

¹ P.L. 30-57, Section 4, p. 3 (Sept. 11, 2009) (italics in original).



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PAG “acquire, either through purchase or lease-to-own, *at least two (2) Gantry Cranes no later than December 31, 2012.*”²

On November 21, 2011, P.L. 31-145 was enacted, which amended P.L. 30-57. Under this public law, PAG was required to perform, among other terms, the following: obtain, through purchase or lease to own, at least two (2) gantry cranes by December 31, 2012.³ Public Law 31-145 additionally required the PUC to perform its regulatory review and dispose of the matter in a timely and expeditious manner.⁴

B. PoLA Crane Acquisition

On June 19, 2012, PAG filed a Petition requesting that the PUC approve the Sales Agreement and the Interim Maintenance Agreement related to PAG’s purchase of the PoLA Cranes. The Petition contained the proposed Sales Agreement between PAG, Matson and Horizon, the proposed Interim Maintenance Agreement between PAG and Matson, and was supported by resolutions issued by PAG’s Board of Directors, condition and evaluation reports related to the PoLA cranes, as well as a financial model depicting a crane surcharge to service the debt from the purchase of the cranes.

On August 27, 2012, the PUC approved the Sales Agreement and the Interim Maintenance Agreement. Pursuant to the ALJ’s recommendations contained in the August 27, 2012 ALJ Report, the PUC also ordered PAG to complete its development of its Structured Maintenance Program for its cranes; begin repairs to the PoLA cranes; develop a tariff that fully funds the acquisition, financing, and maintenance of the cranes; develop a projection for cargo

² P.L. 30-100, Section 2, pp. 2-3 (Mar. 11, 2010) (italics in original).

³ *Id.* at Section 3, pp. 4-6.

⁴ *Id.* at Section 3, p. 6.

throughput used to forecast revenues from the tariff; and file a report regarding the status, future plans, or demolition of PAG's Gantry Crane 2.

On September 12, 2012, ANZ transmitted a revised "Letter of Offer" to PAG (hereinafter referred to as the "Offer"), detailing the essential terms and conditions of the \$12 million loan secured for the purchase of the PoLA cranes. On September 14, 2012, PAG petitioned the PUC for review and approval of the ANZ commercial loan, as summarized in the Offer.

C. Regulatory Review

Under 12 G.C.A. §12004, the PUC must expressly approve any contractual agreements or obligations which could increase PAG's rates and charges. In addition, under PAG's Contract Review Protocol, "[a]ll externally funded loan obligations . . . in excess of \$1,000,000" "shall require prior PUC approval under 12 G.C.A. § 12004."⁵

DISCUSSION

A. P.L. 31-145

Public Law 31-145 clearly mandates that PAG obtain, through purchase or lease to own, at least two (2) gantry cranes by December 31, 2012.⁶ Public Law 31-145 additionally requires the PUC to perform its regulatory review and dispose of the matter in a timely and expeditious manner.⁷

⁵ Contract Review Protocol, PAG Docket 09-01, p. 1 (June 20, 2011).

⁶ *Id.* at Section 3, pp. 4-6.

⁷ *Id.* at Section 3, p. 6.

B. PUC's Findings on the PoLA Crane Acquisition

In its review of the Sales Agreement and the Interim Maintenance Agreement related to PAG's purchase of the PoLA Cranes, the PUC adopted the following findings: that the terms of the Sales Agreement and the Interim Maintenance Agreement were fair and reasonable; that the Guam Legislature has mandated that PAG must acquire at least two cranes by December 31, 2012; that the PoLA Cranes were in good condition, but that PAG must begin repairs indicated in its consultants' reports; that the value of the PoLA cranes was fair and reasonable; and that PAG's acquisition of three cranes was reasonable, which includes also the acquisition of Gantry Crane 3.

C. ANZ's Letter of Offer

ANZ transmitted the Offer to PAG setting forth the essential terms and conditions for the \$12 million commercial loan. The Offer itself, however, does not necessarily constitute ANZ's approval of the loan.

According to PAG, the "loan was awarded to ANZ bank since 2007 for the purpose of procuring gantry cranes." ANZ submitted its initial offer on July 26, 2012. Thereafter, PAG submitted a counteroffer to ANZ. Pursuant to the PAG's counteroffer, ANZ reduced the interest rate from 6.58% to 6%, which according to PAG results in a savings of \$700,000.00 and a reduction in an annual payment from \$1,261,736 to \$1,215,736.

D. Terms of the Offer

Based on the Offer, the following is a summary of the terms of the ANZ commercial loan. First, the \$12 million is for PAG's purchase of PoLA Cranes 14, 16, 17, and

Gantry Crane 3, with an interest rate of 6%. The U.S. Department of Agriculture (the "U.S.D.A.") shall act as a guaranty for 90% of the loan.

According to the Offer, the loan shall mature fifteen years from the date of closing, and thus shall be subject to a fifteen-year amortization. The monthly principal and interest payments will be approximately \$101,262.00 for the duration of the loan. The loan shall be disbursed in two payments of \$6 million to Matson and Horizon, pursuant to the Purchase Agreement.

The loan shall be secured by PoLA cranes 14, 16, 17, and Gantry Crane 3, and all secured property must be insured for "all usual risks including typhoon" in an amount no less than \$12 million. Furthermore, the loan requires that PAG shall provide an audited annual financial statement within 150 days after the end of each financial year; as well as a quarterly management-prepared financial statement within 45 days after the end of each quarter. PAG shall also provide ANZ with a letter at the end of each full financial year "certifying that the financial undertakings set out above have not been breached at any time during the period"; and "specifying the relevant ratios and amounts in dollars as at the last day of the period." Moreover, pursuant to the terms of the loan, PAG must maintain a debt service coverage ratio of 1.30:1.

Other conditions include confirmation from the U.S.D.A. that the "conditional commitments for guarantees for loans totaling \$12m remain current and are applicable to the proposed loan"; and confirmation from an appointed bank that "the anticipated useful life of the POLA cranes is sufficient to cover the proposed loan term."

In addition, the Offer is contingent upon ANZ's receipt of "a copy of the recently completed U.S. Department of Transportation Maritime Administration ("MARAD") report

MARAD

confirming . . . that the wharves where the POLA cranes are located are able to support the cranes for the duration of the loan.” Further, the loan requires execution of all security documentation.

PAG is prohibited from “further borrowing” prior to the PUC’s approval of PAG’s proposed surcharge without ANZ’s approval. Lastly, approval of the loan is conditioned upon the PUC’s approval of the proposed crane surcharge.

RECOMMENDATION

Based on the documentation provided by PAG, the ALJ recommends that the PUC authorize PAG to agree to the terms and conditions of the ANZ commercial loan, which are contained, and referenced, in ANZ’s Letter of Offer. However, the PUC should defer its approval of the ANZ loan until the ALJ has had an opportunity to review the final loan documents, for instance, the Promissory Note and other supporting documentation.

Public Law 31-145 clearly mandates that PAG obtain, through purchase or lease to own, at least two (2) gantry cranes by December 31, 2012.⁸ Indeed, the PUC has already determined that the terms of the Sales Agreement and the Interim Maintenance Agreement were fair and reasonable; that the value of the PoLA cranes was fair and reasonable; and that PAG’s acquisition of three cranes was reasonable, which includes Gantry Crane 3. Thus, PAG’s acceptance of the terms and conditions contained, and referenced, in the Offer, will allow PAG to perform its obligations set forth under P.L. 31-145. Moreover, the terms and conditions contained, and referenced, in the Offer appear commercially reasonable and not burdensome. Repayment of the loan is scheduled over a period of fifteen years, with a 6% interest rate.

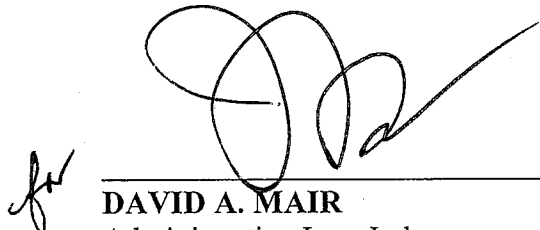
⁸ *Id.* at Section 3, pp. 4-6.

According to ANZ, the monthly principal and interest payments will be approximately \$101,262.00 for the duration of the loan.

The ANZ commercial loan is conditioned on the U.S.D.A.'s confirmation that its service as guaranty of the loan is current and applicable to the instant loan. The loan is also conditioned upon the PUC's approval of the proposed crane surcharge. On September 18, 2012, PAG filed its Petition for PUC approval of such crane surcharge. Thus, consideration of such surcharge shall come before the PUC within the coming months.

Accordingly, based on the record established in the instant docket, and for the other reasons set forth herein, the ALJ recommends that the PUC authorize PAG to agree to the terms and conditions of the ANZ commercial loan, which are contained, and referenced, in ANZ's Letter of Offer. However, the PUC should defer its approval of the ANZ commercial loan until the ALJ has had an opportunity to review the final loan documents.

Dated this 18th day of September, 2012.



DAVID A. MAIR
Administrative Law Judge

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