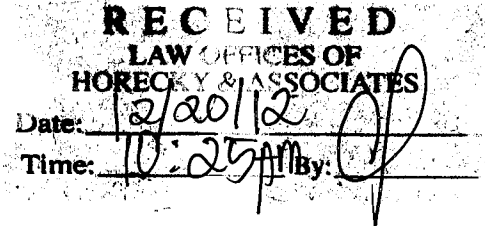


BEFORE THE PUBLIC UTILITIES COMMISSION

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”).

BACKGROUND

A. Enabling and Special Legislation

Public Law (“P.L”) 31-145 was enacted on November 21, 2011 and amended P.L. 30-57. Under this public law, PAG is required to obtain, through purchase or lease to own, at least two (2) gantry cranes by December 31, 2012.¹ In addition, the Guam Legislature specifically found that “the acquisition of the POLA Cranes by the Port has the potential to present a singularly unique opportunity and value to Guam given their presence on the rails,

¹ P.L. 31-145, Section 1, p. 3 (Nov. 17, 2011).

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record of operational reliability, and the elimination of disruption to ongoing operations.”² The law additionally required the PUC to perform its regulatory review and dispose of the matter in a timely and expeditious manner.³ As a result, PAG is under a statutory obligation to purchase, or lease to own, at least two (2) of the PoLA cranes.

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 recommendations contained in the August 27, 2012 Report of the Tariff Investigation filed by Slater Nakamura, L.L.C., as well as 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 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.

² *Id.* at Section 3, pp. 4-6.

³ *Id.* at Section 3, p. 6.

On September 12, 2012, ANZ transmitted a revised "Letter of Offer" to PAG 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.

On September 20, 2012, the Administrative Law Judge of the PUC (the "ALJ") filed an ALJ Report detailing his review of the ANZ Offer. In the Report, the ALJ recommended that the PUC authorize PAG to agree to the terms and conditions of the ANZ commercial loan contained and referenced in the Offer. The ALJ, however, also recommended that the PUC defer its approval of the ANZ loan until the ALJ had an opportunity to review the final loan documents.

In its September 25, 2012 meeting, the PUC authorized PAG to proceed with finalizing the ANZ loan documents. In its December 11, 2012 meeting, the PUC authorized the ALJ to proceed with his review of the final ANZ loan documents and to approve the ANZ loan should the terms and conditions of such loan documents appear fair and reasonable. The PUC also approved PAG's proposed crane surcharge, which is detailed in the December 11, 2012 PUC Order filed in PAG Docket 12-02. On December 17, 2012, PAG transmitted to the ALJ the Promissory Note, as well as the Loan and Security Agreement, in final form for the ALJ's review.

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."⁴

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, 2012.⁵ Public Law 31-145 additionally requires the PUC to perform its regulatory review and dispose of the matter in a timely and expeditious manner.⁶

B. Promissory Note, Loan and Security Agreement

The terms contained in the Promissory Note, and the Loan and Security Agreement, are substantively similar to the terms that were contained in ANZ's Offer, which was considered by the PUC on September 25, 2012. The essential terms and conditions contained in ANZ's Offer are reflected in the Promissory Note, and the Loan and Security Agreement. Accordingly, the PUC has already approved these essential terms and conditions as commercially reasonable and not burdensome.

As discussed above, the PUC authorized PAG to proceed with finalizing the ANZ loan documents; and authorized the ALJ to proceed with his review of the final ANZ loan documents, and to approve the ANZ loan should the terms and conditions of such loan documents appear fair, reasonable, and not burdensome.

⁴ Contract Review Protocol, PAG Docket 09-01, p. 1 (June 20, 2011).

⁵ *Id.* at Section 3, pp. 4-6.

⁶ *Id.* at Section 3, p. 6.

1. Promissory Note

Based on the Promissory Note, the \$12 million loan “shall bear interest at a fixed interest rate [of] three point four two percent (3.42%) per annum above the Federal Home Loan Bank of Seattle’s 15 Year Amortizing Rate at the time of funding (“Contract Rate”).” In addition, the Promissory Note provides that the principal “shall be amortized over a term of fifteen (15) years” and payable in one hundred and seventy-nine (179) equal monthly installment payments in the amount of \$101,262.00, with an irregular final payment. The Promissory Note also provides that in the event of a default, the default rate shall be four percent (4%) above the stated contract rate, and that ANZ shall have a security interest, and a continuing lien on, the PoLA cranes as collateral.

Based on the language contained in the Promissory Note, the interest rate appears to be approximately six percent (6%) as \$12 million amortized over fifteen (15) years is about \$101,262.00 per month. However, it also appears that the interest rate may be slightly less, depending on “the Federal Home Loan Bank of Seattle’s 15 Year Amortizing Rate at the time of funding.”

2. Terms of the Loan and Security Agreement

Based on Loan and Security Agreement, the following is a summary of the terms of the ANZ loan, most of which have already been considered and preliminarily approved by the PUC. First, the \$12 million shall be utilized for PAG’s purchase of PoLA Cranes 14, 16, 17, and Gantry Crane 3. The U.S. Department of Agriculture (the “U.S.D.A.”) has guaranteed the loan.

According to the Loan and Security Agreement, 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. In addition, the loan shall be secured by PoLA cranes 14, 16, 17, and Gantry Crane 3, and all secured property must be insured for: “physical damage”; “commercial general liability”; and “business interruption”, among others.

Furthermore, the loan requires that PAG “maintain the Equipment in good working condition, ordinary wear and tear excepted”; and that ANZ shall have the right to inspect the collateral, which includes records and the premises. PAG is additionally required to provide ANZ and the USDA, within one hundred and fifty (150) days of each fiscal year, with “detailed audited financial statements, including a balance sheet, profit and loss statement, cash flow statement, and surplus reconciliation”; as well as provide to ANZ and the USDA, within forty-five (45) days after the end of each quarter, with “detailed unaudited annual financial statements.” Moreover, pursuant to the terms of the loan, PAG must maintain a debt service coverage ratio of 1.30:1.


Other conditions include ANZ’s receipt of the USDA’s “Conditional Commitment for Guarantee” of the loan; PUC’s confirmation and approval of the Purchase Agreement; the PUC’s approval of a crane surcharge; a report by ANZ’s consultant confirming the expected remaining useful life of the Cranes is at least fifteen (15) years.

CONCLUSION

Since the ALJ has had an opportunity to review the final loan documents, the ALJ hereby finds that based on the documentation provided by PAG, the terms and conditions of the ANZ commercial loan, which are contained, and referenced, in the Promissory Note, as well as the Loan and Security Agreement, appear commercially reasonable and not burdensome. The essential terms and conditions contained in the Promissory Note, as well as the Loan and Security Agreement, do not differ significantly, and are similar to the terms and conditions contained in ANZ's Offer, which have already been considered and approved by the PUC.

Accordingly, based on the record established in the instant docket, and for the other reasons set forth herein, the ALJ hereby authorizes PAG to agree to the terms and conditions of the ANZ commercial loan, which are contained, and referenced, in the Promissory Note, as well as the Loan and Security Agreement.

Dated this 19th day of December, 2012.

DAVID A. MAIR
Administrative Law Judge

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