



**BEFORE THE PUBLIC UTILITIES COMMISSION**

**IN RE:      REVIEW OF SLE LOAN      )  
              WITH BANK OF GUAM      )  
  )  
\_\_\_\_\_ )**

**PAG DOCKET 14-01  
  
ORDER**

**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 December 3, 2013, whereby PAG requests review and approval of the \$10 million Bank of Guam loan to be used to fund certain Service Life Extension (“SLE”) repairs, the acquisition of cargo handling equipment, as well as upgrades to its Financial Management System (hereinafter referred to as the “Bank of Guam Loan”).

**DETERMINATIONS**

On March 20, 2012, PAG’s Board of Directors authorized PAG to initiate, with the Guam Economic Development Agency (“GEDA”), the procurement of financial funding for PAG’s SLE repairs for PAG’s wharfs and for an amount not to exceed \$10 million.<sup>1</sup> On September 14, 2012, GEDA issued an RFP; and on November 6, 2012, GEDA issued the Notice of Award to Bank of Guam.<sup>2</sup>

On January 22, 2013, Bank of Guam informed PAG that one condition for approval of the loan was for PAG to waive its sovereign immunity.<sup>3</sup> Thereafter, PAG, Bank of

<sup>1</sup> PAG Resolution No. 2013-07, p. 1 (July 25, 2013).

<sup>2</sup> PAG Resolution No. 2013-07, p. 1 (July 25, 2013).

<sup>3</sup> PAG Resolution No. 2013-07, p. 1 (July 25, 2013).

Guam, GEDA, and the Honorable Senator Tom Ada produced Bill No. 86-32, which authorized PAG to waive its sovereign immunity.<sup>4</sup> On June 28, 2013, Public Law 32-42 (“P.L. 32-42”) was enacted into law which authorized PAG to waive its sovereign immunity to satisfy a prerequisite for approval of the Bank of Guam loan.<sup>5</sup>

On July 25, 2013, PAG’s Board of Directors issued Resolution No. 2013-07, which approved the terms and conditions of the loan with Bank of Guam for the amount of \$10 million dollars, and thereby authorized PAG to petition the PUC for approval.

On July 19, 2013, PAG filed its Interim Tariff Petition (“Rate Petition”). On January 28, 2014, the Administrative Law Judge of the PUC (the “ALJ”) issued an ALJ Report detailing his findings and recommendations with respect to PAG’s Rate Petition.

In the January 28, 2014, the ALJ determined that the rate relief sought in this instance to help service the debt for such SLE repairs and purchases was reasonable and appropriate at this juncture since “[t]he Port is currently in relatively poor condition as a result of normal aging (facilities being for the most part over 50 years old) and less than sustainable investment in maintenance and improvement since the facility was turned over by the Navy in the late 1960s”<sup>6</sup>; and that the instant tariff increases will provide some relief to allow PAG to “move forward with known high priority front-end Modernization Program Investments (and related cash flow, loans, debt-service coverage ratio requirements) and avoid losing ground to inflation.”<sup>7</sup> The ALJ ultimately found that PAG’s tariff rate increase and adjustments are “just” and “reasonable” because such adjustments are necessary in order to enable PAG to “repay its

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<sup>4</sup> PAG Resolution No. 2013-07, p. 1 (July 25, 2013).

<sup>5</sup> PAG Resolution No. 2013-07, p. 1 (July 25, 2013).

<sup>6</sup> Rate Petition, Tab 5 (“Direct Testimony of Jeffrey Peck”), p. 3 (July 17, 2013).

<sup>7</sup> Petition, Tab 5 (“Direct Testimony of Jeffrey Peck”), p. 3 (July 17, 2013).

debts, finance its obligations, finance its capital improvement needs and cover all its operating expenses” pursuant to 12 G.C.A. §12017; and thereafter recommended that the PUC approve the rate increases that would help fund the subject loan.

On January 28, 2014, the ALJ filed an ALJ Report detailing his findings and recommendations with respect to the subject review of the Bank of Guam Loan. In the Report, the ALJ found that the terms and conditions contained, and referenced, in the Loan Agreement, and Promissory Note, along with the corresponding pledges discussed above, appear commercially reasonable and not unduly burdensome. Accordingly, based on the record established in the instant docket, the ALJ recommended that the PUC authorize PAG to agree to the terms and conditions of the Bank of Guam loan. However, the ALJ found that the issue of waiver of sovereign immunity had not yet been fully resolved through legislation, which was a prerequisite for approval of the Bank of Guam loan. As a result, since the issue of sovereign immunity was outstanding, the ALJ recommended that approval be conditioned on PAG’s submission of legislation resolving PAG’s sovereign immunity issue; and that the ALJ shall then certify compliance once PAG has filed a copy of such legislation with the PUC.

The Commission hereby adopts the findings made in the January 28, 2014 ALJ Report, and therefore, issues the following:

**ORDERING PROVISIONS**

Upon careful consideration of the record herein, and for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby ORDERS the following:

1. That PAG's Petition for approval of the Loan Agreement with Bank of Guam for the \$10 Million Loan is conditionally approved; approval is conditioned on PAG's submission of a copy of the legislation resolving PAG's sovereign immunity waiver issue;

2. That the ALJ shall certify compliance once PAG has filed a copy of such legislation discussed herein;

3. That PAG shall not have PUC authorization to execute the Loan Agreement with Bank of Guam for the \$10 Million Loan until such time as the ALJ has certified compliance with this Order;

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[SIGNATURES TO FOLLOW ON NEXT PAGE]

4. PAG is ordered to pay the PUC's regulatory fees and expenses, including and without limitation, consulting and counsel fees, and the fees and expenses associated with this docket. Assessment of the PUC's regulatory fees and expenses is authorized pursuant to 12 G.C.A. §§ 12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the PUC.

**SO ORDERED** this 30<sup>th</sup> day of January, 2014.

  
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**JEFFREY C. JOHNSON**  
Chairman

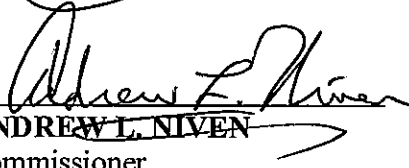
  
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**JOSEPH M. MCDONALD**  
Commissioner

  
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**ROWENA E. PEREZ**  
Commissioner

  
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**FILOMENA M CANTORIA**  
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**MICHAEL A. PANGELINAN**  
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**PETER MONTINOLA**  
Commissioner

  
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**ANDREW L. NIVEN**  
Commissioner