



BEFORE THE PUBLIC UTILITIES COMMISSION

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

**PAG DOCKET 14-01

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 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").

BACKGROUND

A. \$10 Million Commercial Loan

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.¹ On September 14, 2012, GEDA issued an RFP; and on November 6, 2012, GEDA issued the Notice of Award to Bank of Guam.²

¹ PAG Resolution No. 2013-07, p. 1 (July 25, 2013).

² PAG Resolution No. 2013-07, p. 1 (July 25, 2013).

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.³ Thereafter, PAG, Bank of Guam, GEDA, and the Honorable Senator Tom Ada produced Bill No. 86-32, which if passed would authorize PAG to waive its sovereign immunity.⁴ 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.⁵

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, and thereby authorized PAG to petition the PUC for approval.

B. PAG’s Interim Rate Petition

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.

DISCUSSION

A. 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.”⁶

³ PAG Resolution No. 2013-07, p. 1 (July 25, 2013).

⁴ PAG Resolution No. 2013-07, p. 1 (July 25, 2013).

⁵ PAG Resolution No. 2013-07, p. 1 (July 25, 2013).

⁶ Contract Review Protocol, PAG Docket 09-01, p. 1 (June 20, 2011).

B. Loan Agreement

Based on the Loan Agreement, the following is a summary of the terms of the Bank of Guam loan. The subject loan shall be for a maximum amount of \$10 million, and shall initially bear interest at a rate determined by the following:

[T]he greater of (a) the sum of the Federal Home Loan Bank of Seattle Long Term 5 Year Amortizing Fixed Rate as established and made in effect from time to time by the Federal Home Loan Bank of Seattle (“the Index”), as in effect on the date of such Loan is extended, plus a margin of Two and Fifty-Five Hundredths (2.55) percentage points per annum (“the Margin”) or (b) 3.75% per annum (“the Minimum Effective Rate of Interest”).⁷

This rate of interest shall then be adjusted by the Fifth Anniversary of the loan, which shall be determined by the following: “the greater of (a) the sum of the Index value in effect on such anniversary, plus the Margin, or (b) the Minimum Effective Rate of Interest.”⁸

PAG has further provided a sample payment schedule for repayment of the subject loan, based on an interest rate of 3.75%. According to this amortization table, PAG monthly payments for the loan are estimated at \$100,000 per month.

The Loan Agreement further provides that the transaction shall involve two loans. The first loan shall be used for funding the SLE repairs to F-5, F-3, F-4, or F-6 Berths or Wharfs (the “SLE Loan”).⁹ The second loan shall be used for either or both of the following: funding the cost of software acquisition for the purpose of upgrading PAG’s Financial Management

⁷ PAG Loan Agreement, p. 1.

⁸ PAG Loan Agreement, p. 1.

⁹ PAG Loan Agreement, p. 3.

System; and funding for the PAG's acquisition of a container handling top-lifter (the "Purchase Loan").¹⁰

According to the terms of the Loan Agreement, the "SLE Loan" will be secured by the Facility Maintenance Fee ("FMF") pledge; and both the "SLE Loan" and the "Purchase Loan" will be secured by the Revenue Pledge.¹¹

According to the conditions prior to disbursement, the Loan Agreement requires that "[a]ll necessary enabling legislation and regulatory approvals prerequisite to the lawful borrowing by the Authority hereunder, and to the making of the FMF Pledge and the Revenue Pledge ("the Pledges") and to the performance of this Agreement and of the Pledges by the Authority shall have been obtained, and appropriate evidence thereof shall have been given and satisfactory to Lender and its counsel."¹² In addition, PAG must furnish copies of the following: a resolution of the Board of Directors of the Authority authorizing the subject loans; opinions from PAG's legal counsel and the Attorney General of Guam; the PUC's order approving the loans and the pledges; along with other documents.¹³

With respect to the SLE Loan, disbursement shall be further conditioned on the following: PAG's execution and delivery of the Promissory Note for the SLE Loan containing the approval of the Governor of Guam; the execution and delivery of the FMF Pledge also containing the approval of the Governor of Guam.¹⁴ And as to the Purchase Loan, disbursement shall be further conditioned upon the following: the execution and delivery of a Promissory Note

¹⁰ PAG Loan Agreement, p. 3.

¹¹ PAG Loan Agreement, pp. 4-5.

¹² PAG Loan Agreement, p. 5.

¹³ PAG Loan Agreement, pp. 5-6.

¹⁴ PAG Loan Agreement, p. 6.

for the Purchase Loan containing the approval of the Governor of Guam; as well as the execution and delivery of the Revenue Pledge also containing the approval of the Governor of Guam.¹⁵

Moreover, the Loan Agreement indicates that PAG is responsible for the legal fees for the Lender related to the preparation, execution, delivery, filing, and recording of the agreement. The provision further provides that PAG shall also be responsible for the legal fees related to the enforcement of the agreement.

C. Promissory Note

The proposed Promissory Note contains the same rate interest scheme indicated in the Loan Agreement. In addition, the Promissory Note will indicate the schedule of payments for the \$10 million loan. The Promissory Note requires the approval of the Governor of Guam.

D. Facility Maintenance Fee Pledge and Assignment & Revenue and Pledge Assignment

Pursuant to the Facility Maintenance Fee Pledge and Assignment (“FMF Pledge”), PAG pledges as security for the SLE Loan certain “FMF Revenues,” which is defined as “all income, receipts, and receivables derived by the Authority from the Facility Maintenance Fee as duly established by the Authority with approval of the Public Utilities Commission of Guam”¹⁶ PAG has indicated that, depending on the amount PAG eventually borrows, it will additionally pledge as added security for the SLE Loan, and security for the Purchase Loan, certain Cargo Wharfage Revenues.

//

¹⁵ PAG Loan Agreement, p. 7.

¹⁶ Facility Maintenance Fee Pledge and Assignment, p. 2.

E. Legal Opinions

1. Draft Legal Opinion of Counsel to the Port Authority of Guam

Submitted with the Petition are draft legal opinions to be executed by PAG's legal counsel, as well as by the Attorney General of Guam. The draft Legal Opinion to be provided by PAG's legal counsel indicates that PAG is authorized to enter into the Loan Agreement, to borrow in accordance with such Loan Agreement, the Facility and Maintenance Fee Pledges, and the Revenue Pledge, and to perform its obligations under such agreements.

This Opinion further advises that PAG's Board of Directors has duly authorized the subject loan, including the other above-referenced agreements; and that all necessary approvals have been obtained from PAG, the Governor of Guam, the Guam Legislature, and the PUC. The Opinion also advises that PAG is not immune from any suit to recover upon, or enforce any provision concerning the Loan Agreement and its associated documents.

2. Draft Attorney General's Opinion

The draft Attorney General's Opinion similarly provides that PAG is authorized to enter into the Loan Agreement, to borrow in accordance with such Loan Agreement, the Facility and Maintenance Fee Pledges, and the Revenue Pledge, and to perform its obligations under such agreements. Additionally, the Draft Attorney General's Opinion indicates that PAG is not immune from any lawsuit related to the enforcement of the agreement associated with the subject loan, and that the Bank of Guam would not be limited in its amount recoverable from any action related to such enforcement.

//

F. Board Resolution

Pursuant to Resolution No. 2013-07, PAG's Board of Directors approved the terms and conditions of the loan with Bank of Guam for a maximum amount of \$10 million dollars, and thereby authorized PAG to petition the PUC for approval.

G. Waiver of Sovereign Immunity

Currently, P.L. 32-42 establishes 12 G.C.A. §10238, which provides that PAG “*shall not* be entitled to immunity from any suit or action in contract on any indebtedness authorized” under PAG’s enabling statutes.¹⁷ The law further provides that “immunity is waived as to the award of attorney fees in connection with any suit brought to enforce any right or obligation given under this Article, or in connection with the enforcement of the terms of any agreement or indenture that arises directly from the issuance of bonds or indebtedness authorized under this Article.”¹⁸

The ALJ, however, understands that there is pending legislation to clearly express and clarify that PAG is not immune with respect to any suit or action in contract on any authorized indebtedness, *and* that such immunity is further waived with respect to any award of attorneys’ fees and associated costs relating to the enforcement of such contracts.

H. ALJ’s Findings on the Interim 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

¹⁷ P.L. 32-42, p. 3 (June 28, 2013)

¹⁸ *Id.*

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”¹⁹; 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.”²⁰ 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 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.

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 \$10 Million Bank of Guam commercial loan, which are contained, and referenced, in the Loan Agreement and Promissory Note, discussed above, and which encompasses both the “SLE Loan” and the “Purchase Loan.” However, such PUC authorization should be conditioned on PAG’s submission of legislation that resolves PAG’s waiver of sovereign immunity.

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. Repayment of the loan is scheduled over a period of ten

¹⁹ Rate Petition, Tab 5 (“Direct Testimony of Jeffrey Peck”), p. 3 (July 17, 2013).

²⁰ Petition, Tab 5 (“Direct Testimony of Jeffrey Peck”), p. 3 (July 17, 2013).

years, with a variable interest rate. According to PAG, the monthly principal and interest payments are estimated at approximately \$100,000 per month for the life of the loan.

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 Bank of Guam loan. However, since the issue of sovereign immunity appears outstanding, approval should be conditioned on PAG's submission of legislation resolving PAG's sovereign immunity issue, which was a prerequisite for approval of the Bank of Guam loan. The ALJ shall certify compliance once PAG has filed with the PUC a copy of such legislation discussed herein.

Dated this 28th day of January, 2014.



JOEPHET R. ALCANTARA
Administrative Law Judge

P143007.JRA

Amortization Table

The amortization table at the end of this worksheet calculates the principal and interest payments, ending balance, and cumulative interest for any 48 consecutive payment periods of a loan.

- ◆ To use the table, change the values in the Initial Data section of the worksheet.
- ◆ To print the table, choose Print from the File menu. The print area is set to A1:G77.
- ◆ If you increase the term of the loan or the number of payments, you will need to add more payment periods to the table. Select cells A75:G77, then drag the Fill handle (+) into the cells below the table.
- ◆ Most formulas on this worksheet are contained in defined names. To see the names and formulas, choose Name from the Insert menu, and then choose Define. Select a name from the list ('Amortization Table!Interest, for example).

Initial Data

LOAN DATA

Loan amount: 10,000,000.00
 Annual interest rate: 6.00%
 Term in years: 10
 Payments per year: 12
 First payment due: 9/1/2014

TABLE DATA

Table starts at date: 9/1/2014
 or at payment number: 1

PERIODIC PAYMENT

Entered payment: 600.00
 Calculated payment: 600.00

The table uses the calculated periodic payment amount, unless you enter a value for "Entered payment."

CALCULATIONS

Use payment of: 600.00
 1st payment in table: 1

Beginning balance at payment 1: 10,000,000.00
 Cumulative interest prior to payment 1: 500.00

Table

Payment	Payment Date	Beginning Balance	Principal	Interest	Ending Balance	Cumulative Interest
1	9/1/2014	10,000,000.00	31,250.00	68,811.24	9,931,188.76	31,250.00
2	10/1/2014	9,931,188.76	31,034.96	69,026.28	9,862,162.48	62,284.96
3	11/1/2014	9,862,162.48	30,819.26	69,241.99	9,792,920.49	93,104.22
4	12/1/2014	9,792,920.49	30,602.88	69,458.37	9,723,462.13	123,707.10
5	1/1/2015	9,723,462.13	30,385.82	69,675.42	9,653,786.70	154,092.92
6	2/1/2015	9,653,786.70	30,168.08	69,893.16	9,583,893.54	184,261.00
7	3/1/2015	9,583,893.54	29,949.67	70,111.58	9,513,781.97	214,210.67
8	4/1/2015	9,513,781.97	29,730.57	70,330.67	9,443,451.29	243,941.24
9	5/1/2015	9,443,451.29	29,510.79	70,550.46	9,372,900.83	273,452.02
10	6/1/2015	9,372,900.83	29,290.32	70,770.93	9,302,129.91	302,742.34
11	7/1/2015	9,302,129.91	29,069.16	70,992.09	9,231,137.82	331,811.49
12	8/1/2015	9,231,137.82	28,847.31	71,213.94	9,159,923.88	360,658.80
13	9/1/2015	9,159,923.88	28,624.76	71,436.48	9,088,487.40	389,283.56
14	10/1/2015	9,088,487.40	28,401.52	71,659.72	9,016,827.68	417,685.08
15	11/1/2015	9,016,827.68	28,177.59	71,883.66	8,944,944.02	445,862.67
16	12/1/2015	8,944,944.02	27,952.95	72,108.29	8,872,835.73	473,815.62
17	1/1/2016	8,872,835.73	27,727.61	72,333.63	8,800,502.10	501,543.23
18	2/1/2016	8,800,502.10	27,501.57	72,559.67	8,727,942.42	529,044.80
19	3/1/2016	8,727,942.42	27,274.82	72,786.42	8,655,156.00	556,319.62
20	4/1/2016	8,655,156.00	27,047.36	73,013.88	8,582,142.12	583,366.98
21	5/1/2016	8,582,142.12	26,819.19	73,242.05	8,508,900.07	610,186.18
22	6/1/2016	8,508,900.07	26,590.31	73,470.93	8,435,429.14	636,776.49
23	7/1/2016	8,435,429.14	26,360.72	73,700.53	8,361,728.61	663,137.21
24	8/1/2016	8,361,728.61	26,130.40	73,930.84	8,287,797.77	689,267.61

	Month Year	Beginning Balance		Principal	Ending Balance	Cumulative Interest
25	9/1/2016	8,287,797.77	25,899.37	74,161.88	8,213,635.90	715,166.98
26	10/1/2016	8,213,635.90	25,667.61	74,393.63	8,139,242.27	740,834.59
27	11/1/2016	8,139,242.27	25,435.13	74,626.11	8,064,616.16	766,269.72
28	12/1/2016	8,064,616.16	25,201.93	74,859.32	7,989,756.84	791,471.65
29	1/1/2017	7,989,756.84	24,967.99	75,093.25	7,914,663.58	816,439.64
30	2/1/2017	7,914,663.58	24,733.32	75,327.92	7,839,335.67	841,172.96
31	3/1/2017	7,839,335.67	24,497.92	75,563.32	7,763,772.35	865,670.89
32	4/1/2017	7,763,772.35	24,261.79	75,799.45	7,687,972.89	889,932.67
33	5/1/2017	7,687,972.89	24,024.92	76,036.33	7,611,936.56	913,957.59
34	6/1/2017	7,611,936.56	23,787.30	76,273.94	7,535,662.62	937,744.89
35	7/1/2017	7,535,662.62	23,548.95	76,512.30	7,459,150.32	961,293.84
36	8/1/2017	7,459,150.32	23,309.84	76,751.40	7,382,398.93	984,603.68
37	9/1/2017	7,382,398.93	23,070.00	76,991.25	7,305,407.68	1,007,673.68
38	10/1/2017	7,305,407.68	22,829.40	77,231.84	7,228,175.84	1,030,503.08
39	11/1/2017	7,228,175.84	22,588.05	77,473.19	7,150,702.64	1,053,091.13
40	12/1/2017	7,150,702.64	22,345.95	77,715.30	7,072,987.34	1,075,437.07
41	1/1/2018	7,072,987.34	22,103.09	77,958.16	6,995,029.19	1,097,540.16
42	2/1/2018	6,995,029.19	21,859.47	78,201.78	6,916,827.41	1,119,399.62
43	3/1/2018	6,916,827.41	21,615.09	78,446.16	6,838,381.25	1,141,014.71
44	4/1/2018	6,838,381.25	21,369.94	78,691.30	6,759,689.95	1,162,384.65
45	5/1/2018	6,759,689.95	21,124.03	78,937.21	6,680,752.74	1,183,508.68
46	6/1/2018	6,680,752.74	20,877.35	79,183.89	6,601,568.85	1,204,386.03
47	7/1/2018	6,601,568.85	20,629.90	79,431.34	6,522,137.51	1,225,015.94
48	8/1/2018	6,522,137.51	20,381.68	79,679.56	6,442,457.94	1,245,397.62
49	9/1/2018	6,442,457.94	20,132.68	79,928.56	6,362,529.38	1,265,530.30
50	10/1/2018	6,362,529.38	19,882.90	80,178.34	6,282,351.04	1,285,413.20
51	11/1/2018	6,282,351.04	19,632.35	80,428.90	6,201,922.15	1,305,045.55
52	12/1/2018	6,201,922.15	19,381.01	80,680.24	6,121,241.91	1,324,426.56
53	1/1/2019	6,121,241.91	19,128.88	80,932.36	6,040,309.55	1,343,555.44
54	2/1/2019	6,040,309.55	18,875.97	81,185.28	5,959,124.27	1,362,431.40
55	3/1/2019	5,959,124.27	18,622.26	81,438.98	5,877,685.29	1,381,053.67
56	4/1/2019	5,877,685.29	18,367.77	81,693.48	5,795,991.81	1,399,421.43
57	5/1/2019	5,795,991.81	18,112.47	81,948.77	5,714,043.05	1,417,533.91
58	6/1/2019	5,714,043.05	17,856.38	82,204.86	5,631,838.19	1,435,390.29
59	7/1/2019	5,631,838.19	17,599.49	82,461.75	5,549,376.44	1,452,989.79
60	8/1/2019	5,549,376.44	17,341.80	82,719.44	5,466,657.00	1,470,331.59
61	9/1/2019	5,466,657.00	17,083.30	82,977.94	5,383,679.06	1,487,414.89
62	10/1/2019	5,383,679.06	16,824.00	83,237.25	5,300,441.81	1,504,238.89
63	11/1/2019	5,300,441.81	16,563.88	83,497.36	5,216,944.45	1,520,802.77
64	12/1/2019	5,216,944.45	16,302.95	83,758.29	5,133,186.16	1,537,105.72
65	1/1/2020	5,133,186.16	16,041.21	84,020.04	5,049,166.12	1,553,146.93
66	2/1/2020	5,049,166.12	15,778.64	84,282.60	4,964,883.52	1,568,925.57
67	3/1/2020	4,964,883.52	15,515.26	84,545.98	4,880,337.54	1,584,440.83
68	4/1/2020	4,880,337.54	15,251.05	84,810.19	4,795,527.35	1,599,691.89
69	5/1/2020	4,795,527.35	14,986.02	85,075.22	4,710,452.13	1,614,677.91
70	6/1/2020	4,710,452.13	14,720.16	85,341.08	4,625,111.05	1,629,398.07
71	7/1/2020	4,625,111.05	14,453.47	85,607.77	4,539,503.28	1,643,851.55
72	8/1/2020	4,539,503.28	14,185.95	85,875.30	4,453,627.98	1,658,037.49
73	9/1/2020	4,453,627.98	13,917.59	86,143.66	4,367,484.33	1,671,955.08
74	10/1/2020	4,367,484.33	13,648.39	86,412.85	4,281,071.47	1,685,603.47
75	11/1/2020	4,281,071.47	13,378.35	86,682.89	4,194,388.58	1,698,981.82
76	12/1/2020	4,194,388.58	13,107.46	86,953.78	4,107,434.80	1,712,089.28
77	1/1/2021	4,107,434.80	12,835.73	87,225.51	4,020,209.29	1,724,925.02
78	2/1/2021	4,020,209.29	12,563.15	87,498.09	3,932,711.20	1,737,488.17
79	3/1/2021	3,932,711.20	12,289.72	87,771.52	3,844,939.68	1,749,777.89
80	4/1/2021	3,844,939.68	12,015.44	88,045.81	3,756,893.87	1,761,793.33
81	5/1/2021	3,756,893.87	11,740.29	88,320.95	3,668,572.92	1,773,533.62
82	6/1/2021	3,668,572.92	11,464.29	88,596.95	3,579,975.97	1,784,997.91
83	7/1/2021	3,579,975.97	11,187.42	88,873.82	3,491,102.15	1,796,185.34
84	8/1/2021	3,491,102.15	10,909.69	89,151.55	3,401,950.60	1,807,095.03
85	9/1/2021	3,401,950.60	10,631.10	89,430.15	3,312,520.46	1,817,726.13
86	10/1/2021	3,312,520.46	10,351.63	89,709.62	3,222,810.84	1,828,077.75
87	11/1/2021	3,222,810.84	10,071.28	89,989.96	3,132,820.88	1,838,149.04

Amortization

