

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE: REQUEST BY THE PORT)
AUTHORITY OF GUAM TO OBTAIN A) PAG Docket 10-02
\$50M LOAN FROM THE USDA)
_____)

PUC COUNSEL REPORT

This matter comes before the Guam Public Utilities Commission [PUC] upon the request of the Port Authority of Guam [Port] for authorization to obtain a \$50M Loan from the United States Department of Agriculture Rural Development Direct and Guaranteed Loan Program.¹ As part of the Port's Phase 1-A of its proposed Modernization Plan, the Port intends to take out a loan of \$50 Million from the USDA. The loan consists of \$25 Million - Community Facilities Direct Loan and another \$25 Million - Community Facilities Guaranteed Loan.²

The Community Facilities Direct Loan will be issued to PAG by the USDA; the Community Facilities Guaranteed Loan will be issued by ANZ bank.³

The USDA has issued a "Letter of Conditions" to the Port which establishes certain terms and conditions for the \$50M Loan. The letter does not necessarily constitute loan approval, nor insure that funds will be available for the project.⁴ However, if the Port does not agree to the conditions, the USDA may discontinue the processing of the PAG loan application.⁵ The Port asks for preliminary approval from the PUC to proceed with the loan application and to agree to the terms and conditions in the "Letter of Conditions."

The Commercial Port is now defined as a "public utility" under the governing law of the PUC.⁶ In accordance therewith, the Port may not enter into *obligations*, such as

¹ PAG Request for Approval of USDA Letter of Conditions to PAG [from Port Financial Affairs Controller Jojo Guevara to PUC Counsel] [with attachments], Port Docket 10-02, filed November 18, 2010.

² Letter from Port General Manager Enrique J. S. Agustin to PUC Chairman Johnson, dated November 16, 2010.

³ Letter from USDA to PAG dated August 9, 2010 at p. 1. [hereafter referred to as "Letter of Conditions"]

⁴ Letter of Conditions at p. 1.

⁵ Id. at p. 2.

⁶ 12 GCA §12000(a).

loans, which could increase rates and charges prior to the written approval of the Commission.⁷

Recommendation

Counsel recommends that the PUC preliminarily authorize the Port to agree with the terms in the "Letter of Conditions" and to proceed in obtaining a \$50M loan from the USDA Rural Development Direct and Guaranteed Loan Program. However, once the loan documentation is completed (i.e., Promissory Note, Security Agreement, Assignment of Income, and Assignment of Tenant Leases), and the USDA and PAG have agreed to all applicable terms and conditions, the Port shall be required to secure approval by the PUC of such documentation and the precise terms and conditions (including interest rate, amortization, monthly payments, etc.) *before* PAG may incur such loan obligation.

The 2007 Commercial Port Master Plan Update provides a Plan for the Modernization of Port facilities that were designed and placed into service in 1969, and which have not undergone any capital improvement since that time.⁸ Phase 1A focuses on the procurement and commissioning of equipment, systems and construction of new terminal facilities and yard facilities. Phase 1B will focus on structural refurbishment of existing docks (F4, F5, F6).⁹ The Financial Plan for implementation of Phases 1A & B of the Port Master Plan is estimated to cost \$206M; of that amount, "[A]pproximately \$54.5M... will come from Port revenues, via a USDA Loan (20-yr. term, 4.75% interest rate)."¹⁰ In Public Law 30-57, the Guam Legislature specifically authorized the Port to indebt itself up to the amount of \$54.5M for the Port Modernization Program without the Legislature's approval. This amount is to be used exclusively in the implementation of the Master Plan.¹¹

In accordance with Public Law 30-57, the Guam Legislature has already authorized the Port to secure a loan from the USDA, and it has long been contemplated that such loans are a part of the funds to be used for the Port Modernization. Legislative authorization for the Port borrowing of such funds is a factor weighing in favor of PUC approval of the Port request to accept the "Letter of Conditions" and to proceed with the loan. Securing these loan funds is an integral part of the Port's modernization plans. Without

⁷ 12 GCA §12004.

⁸ Committee Report to Public Law 30-57, enacted on September 15, 2009.

⁹ Id.

¹⁰ Id.

¹¹ Public Law 30-57, Section 3.

the ability to secure the \$50M loan funds, the Port would be unable to carry out its necessary modernization plans.

The Terms and Conditions which USDA requires the Port to accept in the "Letter of Conditions" are commercially reasonable and not burdensome. They are standard government loan requirements designed to ensure repayment of a loan by PAG. Loan repayment is scheduled over a period of 40 years with an interest rate for "planning purposes" of 4.0% and a monthly payment of \$104,500.00. The interest rate will be the lower of the rate in effect at the time of loan approval or at the time of loan closing, which ever is less.¹² The Port is required to establish and fund monthly a debt service reserve fund equal to 10% of the monthly payment of each month over the life of the loan until the Port accumulates one annual installment.¹³

Other requirements which PAG must agree to include insurance and bonding, provision of independent audits, securing of professional legal and architect/engineering services, approval of construction documents, plans and specifications by USDA, and compliance with numerous other federal laws and obligations.¹⁴ Given that USDA contemplates loaning the Port \$50M, it is reasonable that USDA would seek to impose requirements that upon the Port to ensure the security of its loan funds.

It appears likely that assumption by PAG of a \$50M loan obligation will increase rates. The Port's consultant, Parsons Brinkerhoff, has previously found that, without annual tariff increases at some level, PAG will not be able to support a major borrowing, which is crucial to its buildup plan. PB submits that annual tariff increases will likely be needed.¹⁵ The Port's plan to provide sufficient revenues to support such borrowing will be addressed by its consultant, Cornell Group, in the rate study that is required to be filed with PUC by December 31, 2010 under Public Law 30-52.¹⁶ The Port has previously indicated that it plans to file a new rate case based upon the rate study. At such time, the PUC will have a full opportunity to determine if the Port's rates are sufficient to meet the debt service and other obligations incurred as a result of the \$50M borrowing.

¹² Letter of Conditions, p. 3.

¹³ Id. at p. 4.

¹⁴ Id. at pgs. 10.

¹⁵ Id. at p. 6.

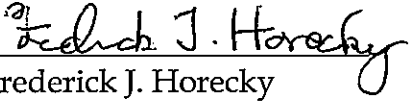
¹⁶ Public Law 30-52, enacted July 14, 2009.

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Conclusion

The Port should be authorized to agree to the terms and conditions in the USDA "letter of Conditions" and to proceed in obtaining a loan from the USDA Rural Development Direct and Guaranteed Loan Program. A proposed Order is submitted herewith for the Consideration of the Commissioners.

Dated this 19th day of November, 2010.



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