



The parties made certain further revisions in the Loan and Security Agreement, as well as the promissory Note, to incorporate the taxable interest rate and a repayment schedule based upon the August 17, 2010 Loan Commitment Letter. On August 27, 2010, PAG submitted to the PUC a revised Loan and Security Agreement and Promissory Agreement, and a UCC Financing Statement document (the "final" loan documentation).<sup>6</sup>

Jose B. Guevara, Financial Affairs Controller, has confirmed that the PAG Board of Directors has approved the Loan Commitment Letter dated August 17, 2010. In addition, the Board has informally approved the loan documentation by an email vote.<sup>7</sup>

#### *Review of Loan and Security Agreement*

At present, no "Contract Review Protocol" between PUC and the Port is in place. However, PUC Counsel and the PUC Consultants on Port matters are currently preparing a draft "Contract Review Protocol" for PAG contracts. When such Protocol is completed it will be submitted to the Port for comment. The final Protocol will be presented to the Commissioners for review and approval.

Even though no protocol is presently in place, PAG is now defined as a "public utility" for purposes of 12 GCA Chapter 12, Public Utilities Commission and the Guam Telecommunications Act of 2004.<sup>8</sup> 12 GCA §12004 provides that "The utility shall not, however, enter into any contractual agreements or obligations which could increase rates and charges prior to the written approval of the Commission." Even though no contract review protocol has been approved by the Commission, PAG is still required to seek approval of its final "Loan and Security Agreement" with the PUC.<sup>9</sup>

The final Loan and Security Agreement indicates that PAG purchased certain cargo handling equipment in 2009 and 2010: four (4) 2009 Hyster Top Lifters from Morrico Equipment and ten (10) 2010 Cargo Tech/Kalmar Ottawa Terminal Yard Tractors.<sup>10</sup> The purpose of the loan proceeds is to reimburse PAG for its expenditures of the

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<sup>6</sup> Email from Jose B. Guevara, PAG Financial Affairs Controller, to Fred Horecky, PUC Counsel, Port Docket 10-01, filed August 27, 2010.

<sup>7</sup> Discussion between Jose B. Guevara and PUC Counsel on August 30, 2010; email from Board Chairman Monte Mesa, dated August 30, 2010, confirming that Board has informally approved loan documentation.

<sup>8</sup> 12 GCA §12000 et. seq.

<sup>9</sup> 12 GCA §12004

<sup>10</sup> Final Loan and Security Agreement, p. 6; and SCHEDULE 1.

foregoing equipment.<sup>11</sup> The PAG Financial Affairs Controller has indicated to PUC Counsel that PAG was obligated to expend operations funds for the purchase of this necessary equipment. The loan is 90% guaranteed by the United States Department of Agriculture; it will be repayable over a 15 year period. The interest rate is calculated at 3.0% above the FHLBSEA 15 year amortizing fixed advance rate (currently 3.22%) Therefore, the present interest rate is 6.22%. The monthly payments will be approximately \$29,952.60.<sup>12</sup> The provisions of the Loan and Security Agreement and Promissory Note appear to be standard in terms of commercial loan documentation. PAG is required to give a lien and security interest in its equipment to ANZ Bank.

#### *Analysis and Recommendation*

PUC Counsel believes that the Loan and Security Agreement, along with the terms in the Loan Commitment Letter, are reasonable. The current interest rate of 6.22% compares favorably with other taxable loans recently negotiated by other government entities (i.e., the GWA \$25M and \$5M loans, with interest rates of 7.75%). PAG has demonstrated a need for the loan funds. Due to the purchase of the cargo handling equipment, the Port had to defer other capital projects, such as repair of the fuel pipeline connecting to the Mobil Tanks. Other small capital projects totaling \$200,000 were put hold. The Port has also received a COLA billing from the government in the amount of \$1.2M.<sup>13</sup>

It does not appear that the monthly amount of the principal and interest payments, approximately \$29,952.60, will increase PAG rates to consumers and the public. The \$3.5M loan is included in the preliminary financial projection that was submitted to PUC for the 3.4% increase in tariff rates in the financial feasibility rate increase schedule.<sup>14</sup> Counsel recommends that the PUC approve the basic terms and conditions set forth in the Loan Commitment Letter, as well as the final loan documentation. However, final approval by the PUC shall be conditioned upon submission of proof by PAG that the final loan documentation has been approved by the PAG Board of Directors, and execution of such documentation by all appropriate Port officials, including approval as to form by Port Legal Counsel.

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<sup>11</sup> Id.

<sup>12</sup> Loan Commitment Letter, p. 1.

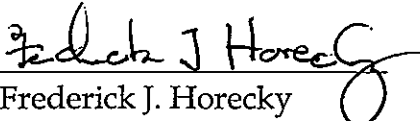
<sup>13</sup> Email from Jose B. Guevara, Financial Affairs Controller, to Fred Horecky, PUC Counsel, dated August 30, 2010

<sup>14</sup> Email from Jose B. Guevara, Financial Affairs Controller, to Fred Horecky, PUC Counsel, dated July 26, 2010.

PUC COUNSEL REPORT  
PAG Request for Approval of  
\$3.5M loan with ANZ Bank  
Port Docket 10-01  
August 28, 2010

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Dated this 28<sup>th</sup> day of August, 2010.

  
Frederick J. Horecky  
PUC Counsel