

certain equipment, facilities, and capital improvement projects, such as the construction or rehabilitation of the following: (1) H Wharf and access road; (2) a new administration building; (3) one or more waterlines; (4) Equipment and Maintenance & Repair Building; (5) Warehouse 1; and (6) Golf Pier.² PAG submits that these improvements are necessary to increase efficiency and create additional cargo handling to accommodate the growth in population, tourism, and the military buildup.

C. \$72.6 Million

PAG submits that the proceeds of the 2018 Bonds will be used to fund certain capital improvements, refinance four (4) outstanding loans, fund a deposit to the 2018 Bonds debt service account, fund capitalized interest on a portion of the 2018 Bonds associated with PAG's capital improvement projects, and pay certain costs related to the issuance and sale of the subject bonds.³ Further, with respect to the retirement of four (4) outstanding loans, all four (4) loans will be repaid prior to, or simultaneously with, the issuance of the 2018 Bonds.⁴

PAG, therefore, submits that the application of the 2018 Bonds comprises the following: (1) \$16 million for the retirement of existing loans (which is the outstanding loan balance in July, 2018); (2) \$47,482,000 for deposit to construction fund; (3) \$5.6

² Petition by the Port Authority of Guam [for] Approval of the Issuance of Revenue Bonds ("Petition"), p. 1 (Apr. 19, 2018).

³ [Final Draft] of the 2018 Consulting Engineer's Report, WSP ("WSP Report"), p. 6-8 (Apr. 16, 2018).

⁴ WSP Report, p. 6-8.

million for a debt service reserve; (4) \$2,096,000 for capitalized interest; and (5) \$1,422,000 for the cost of issuance and underwriter discount.⁵

D. Public Law 34-70

In Public Law 34-70 (“P.L. 34-70”), the Guam Legislature (the “Legislature”) expressly found that “[t]he Port must increase capacity, execute infrastructure development, and undertake Port expansion to meet the community’s needs” in order for the Port to modernize. P.L. 34-70, Section 1, p. 2 (Dec. 7, 2017). Accordingly, the Legislature has expressly authorized the issuance of system revenue bonds:

(1) to provide funding for Capital Improvement Projects, which include the rehabilitation of “H” Wharf and Access Road, the replacement of the Administration Building, the relocation of waterlines, the repair of the Equipment Maintenance & Repair Building (EQMR) and Warehouse 1, and the repair of Golf Pier; and (2) to refinance all or portions of outstanding loans of the Authority.

Id.

Specifically, P.L. 34-70 has approved the issuance and sale of revenue bonds for the following:

(a) to finance certain Authority capital improvements, including, but not limited to: (1) local match for the Transportation Investment Generating Economic Recovery (TIGER) grant program funding for rehabilitation of “H” Wharf and access road in the approximate amount of \$14,200,000; (2) replacement of the Administrative Building in the approximate amount of \$17,500,000; (3) replacement and relocation of waterline(s) in the approximate amount of \$6,000,000; (4) repair and expansion of Equipment Maintenance & Repair Building (EQMR) in the approximate amount of \$3,628,800; and (5) repair of Warehouse 1 in the

⁵ WSP Report, p. 6-8.

approximate amount of \$2,000,000, and; (6) repair of Golf Pier in the approximate amount of \$2,000,000;

(b) to refinance all or a portion of the following outstanding loans of the Authority: (1) a loan in the original principal amount of \$12,000,000 from ANZ Guam, Inc., made in December 2012; (2) a loan in the original principal amount of \$10,000,000 from Bank of Guam made in April 2014; (3) a loan in the original principal amount of \$2,000,000 from the United States Department of Agriculture made in July 2015 (collectively, the “Prior Loans”);

(c) to fund capitalized interest with respect to the bonds;

(d) to pay any costs or expenses relating to the authorization, issuance, or sale of bonds in an amount not to exceed two percent (2%) of issuance . . .

(e) to fund a deposit to a debt service reserve fund in amount not to exceed Six Million Dollars (\$6,000,000) with respect to the bonds; provided, that the issuance, terms and conditions of the bonds *shall* have been approved by the Guam Public Utilities Commission; and further provided that such bonds *shall* have a principal amount not to exceed Seventy-two Million Six Hundred Thousand Dollars (\$72,600,000), *shall* have a final maturity not later than 2048, *shall* bear interest at such rate or rates, and *shall* be sold for such price or prices as *shall* result in a yield to the bondholders not exceeding six and one half percent (6.5%) per annum . . . and so long as that the present value of debt service on the bonds applied to refinance any or all of the Prior Loans in the aggregate shall be at least two percent (2%) less than the present value of debt service on the refinanced Prior Loans in the aggregate

Id., Section 4 (emphases in original).

Other salient features of the legislation include the following. PAG is required to set rates and charges that will yield annual revenues at least equal to: the annual principal payments and interest charges, and reserve fund requirements on all bonds; the annual system operation and maintenance costs; and the annual principal payments and

interest charges on all other outstanding indebtedness. 12 G.C.A. § 10204. No bond shall mature more than fifty (50) years after its date of issuance. 12 G.C.A. § 10217. Further, all bonds shall be secured by a statutory lien on revenues of the system, “which shall arise automatically without the need for any action or authorization.” 12 G.C.A. § 10221.

In addition, all proceeds from the sale of the bonds shall be deposited into a fund designated as the “Jose D. Leon Guerrero Commercial Port Construction Fund.” 12 G.C.A. § 10231. Also, all revenues received from the operation of the system shall be deposited into a fund designated as the “Jose D. Leon Guerrero Commercial Port Revenue Fund.” 12 G.C.A. § 10217. Finally, P.L. 34-70, Section 6, requires that quarterly written reports be submitted to the Speaker of the Guam Legislature regarding the status of capital improvement projects; including, but not limited to, CIP timelines, change orders, and costs.

E. PAG Board Resolution

Pursuant to Resolution No. 2018-01, the Board of Directors of PAG found that it was in the best interests of PAG to issue 2018 Bonds for the purposes of “financing and/or refinancing the acquisition, construction, improvement, equipping, maintenance, repair, renewal and/or replacement of certain Port property, facilities and equipment, refunding certain prior obligations of the Authority, paying related costs of issuance and funding a debt service reserve fund for the 2018 Bonds”⁶

Pursuant to the Resolution, the PAG Board approved the issuance of 2018 Bonds in an aggregate principal amount not to exceed \$72.6 million, with a maturity of no

⁶ Resolution No. 2018-01, Board of Directors of the Port Authority of Guam (“PAG Resolution No. 2018-01”), p. 1 (Apr. 19, 2018).

later than thirty (30) years, or 2048.⁷ It thereby further approved the issuance of these bonds to finance costs of the projects discussed above, as well as to refund other obligations related to these projects.⁸

Accordingly, the PAG Board also approved the Bond Documents, which include the General Indenture, the First Supplemental Indenture, the Continuing Disclosure Agreement, the Bond Purchase Agreement, the Preliminary Official Statement; and ultimately authorized PAG to execute such documents, subject to the approval of the PUC.⁹

F. GEDA Authorization

Based on the Guam Economic Development Authority's ("GEDA") Resolution No. 18-002, GEDA's Board of Directors determined that "it is in the public interest for the Authority to issue and sell the 2018 Bonds" for the purposes of "acquiring, constructing, improving, equipping, maintaining, repairing, renewing, replacing, reconstructing or insuring the port system . . . and for the purpose of refunding any such bonds or other prior obligations of the Authority" ¹⁰ Accordingly, GEDA approved PAG's issuance and sale of the 2018 Bonds, and further approved the General Indenture, the First Supplemental Indenture, the Bond Purchase Agreement, as well the Preliminary Official Statement.¹¹

⁷ PAG Resolution No. 2018-01, pp. 1-3.

⁸ PAG Resolution No. 2018-01, pp. 2-3.

⁹ PAG Resolution No. 2018-01, p. 2.

¹⁰ Resolution No. 18-002, Board of Directors of the Guam Economic Development Authority ("GEDA Resolution No. 18-002"), pp. 1-2 (Apr. 12, 2018).

¹¹ GEDA Resolution No. 18-002, pp. 1-3.

G. [Draft] Bond Purchase Agreement

The [Draft] Bond Purchase Agreement contains the terms and conditions of the bond sale, and provides a detailed list of the necessary documents to be submitted prior to, or at the time of, closing. It includes the required submission of a Preliminary Official Statement; and contains provisions regarding PAG's plan of financing, warranties and representations, to name a few.

H. General Indenture and Supplemental Indenture

The general Indenture is in the same form as other indentures approved by the PUC in the past, with the exception of the certain covenants specific to the Port. For instance, under the Indenture, the Port is required to promptly collect all rents and charges due for occupancy or use of the Port. In addition, the Port must obtain a consultant when it undergoes any review of its rents, fees and charges.

The proposed Supplemental Indenture is relatively similar in form to the Supplemental Indenture executed for other supplemental indentures reviewed by the PUC in the past. It contains provisions relating to creation of certain funds and accounts, such as a construction fund, and a bond reserve fund; and repayment of outstanding loans, and a capitalized interest schedule.

I. Continuing Disclosure Agreement

Pursuant to the Continuing Disclosure Agreement, PAG is required to provide an Annual Report, which includes the submission of audited financial statements and data, to a Dissemination Agent after each fiscal year. PAG is further required to give notice of any payment delinquencies, bankruptcy, or rating changes, among others.

J. Consulting Engineer's Report

Based on the WSP Report, the report indicates that PAG is issuing the 2018 Bonds to generally fund the following projects: (1) Hotel Wharf and Access Road Revitalization and Upgrades; (2) Golf Pier Repairs and Improvements; (3) New Administration Building; (4) Warehouse I Repairs and Upgrades; (5) Equipment Maintenance & Repair (EQMR) Building Repairs and Upgrades; and (6) Waterline Replacement and Relocation.¹²

In the WSP Report, WSP estimates that the cost for the Hotel Wharf and Access Road Revitalization and Upgrades project is \$23.77 million.¹³ WSP indicates that the facility is currently unusable, and that the wharf needs a new bulkhead with a modern mooring and fendering system, as well as approximately one-mile of roadway improvements along Highway 11.¹⁴

With respect to the New Administration Building project, WSP indicates that the existing building does not meet current code requirements, and that the top floors are considered inaccessible under the American with Disabilities Act of 1990.¹⁵ WSP indicates that this building has reached its design life expectancy.¹⁶ This project will replace the existing building entirely, at an estimated cost of \$17.5 million.¹⁷

¹² WSP Report, pp. 1-7 to 1-8.

¹³ WSP Report, p. 5-3.

¹⁴ WSP Report, p. 5-3.

¹⁵ WSP Report, p. 5-4.

¹⁶ WSP Report, p. 5-4.

¹⁷ WSP Report, p. 5-4.

With respect to the Waterline Replacement and Relocation project, WSP indicates that this project will include replacement of all existing waterlines and the relocation of a main line.¹⁸ WSP estimates this project to cost \$7.14 million.¹⁹ WSP indicates that, with respect to the EQMR Building Repairs and Upgrades, this project will involve restoring the structure to prevent risks to PAG's operations personnel, for example from falling concrete.²⁰ WSP estimates that this project will cost \$3.63 million.²¹

With respect to the Warehouse 1 Repairs and Upgrades, WSP maintains that the building requires continuous inspections of the concrete, followed by concrete spall repairs, to protect the integrity of the structure.²² This project will involve restoring the structure to prevent risks to PAG's operations personnel, Port tenants and users, for example from falling concrete, and at an estimated cost of \$3 million.²³

WSP indicates that, with respect to the Golf Pier Repairs and Improvements, this project involves repairs to the concrete pile caps and piles, upgrading the walking surfaces, installing catwalks to mooring dolphins, and replacing the security fence. WSP estimates that this project will cost \$2.44 million.²⁴

The WSP Report indicates that approximately 84% of PAG's operating revenue will be pledged to the payment of the 2018 Bonds, which include: cargo

¹⁸ WSP Report, p. 5-4.

¹⁹ WSP Report, p. 5-4.

²⁰ WSP Report, p. 5-5.

²¹ WSP Report, p. 5-4.

²² WSP Report, p. 5-5.

²³ WSP Report, p. 5-5.

²⁴ WSP Report, p. 5-6.

throughput revenue (excluding the Facility Maintenance Fee); equipment and space rentals (excluding certain marina fees); wharfage charges; and other operating including, including special services.²⁵ According to WSP, the following streams of revenue will not be pledged: (1) the Facility Maintenance Fee; (2) the Crane Surcharge; and (3) PAG's public marina revenues from the Agat Marina and the Gregorio D. Perez Marina in Hagatna.²⁶

In addition, WSP's analyses indicate that "[d]ebt service coverage is forecast to be very strong."²⁷ The WSP Report specifies that "[b]ased upon the financing assumptions provided by Citi and the operational analysis by WSP, debt service coverage for the 2018 bond issuance is forecast to far exceed the 1.25x minimum."²⁸ However, WSP has noted that purchases of additional gantry cranes would require future debt issuances.²⁹

CONCLUSION

Pursuant to 12 G.C.A. § 12105, PAG cannot enter into any contractual agreements or obligations which could increase rates and charges without the PUC's express approval. Additionally, pursuant to PAG's Contract Review Protocol, filed in PAG Docket 09-01 on June 20, 2011, all externally funded loan obligations and other

²⁵ WSP Report, p. 6-2.

²⁶ WSP Report, p. 6-3.

²⁷ WSP Report, p. 8-3.

²⁸ WSP Report, p. 8-3.

²⁹ WSP Report, p. 8-3.

financial obligations, such as lines of credit, bonds, etc., in excess of \$1,000,000, and any use of such funds, must be approved by the PUC.³⁰

The Administrative Law Judge (the “ALJ”) has reviewed the documents discussed in this Report. The ALJ finds that the terms and conditions contained in the bond documents appear reasonable, and do not appear to contravene the provisions and intent of P.L. 34-40. In addition, the proposed Indenture and Supplemental Indenture for the 2018 Bonds are relatively similar in form to other indentures approved by the Commission in the past. Further, the issuance of the 2018 Bonds, as discussed above, has been authorized by the Legislature, GEDA, and the PAG Board of Directors.

RECOMMENDATION

Based on the record before the Commission, therefore, the ALJ recommends that the PUC approve PAG’s petition to issue the 2018 revenue bonds in the amount indicated, and in accordance with the terms and conditions of the 2018 Revenue Bonds, and the corresponding bond documents. The ALJ has reviewed the proposed Order, and Order Approving Long-Term Debt, submitted by PAG, which have been revised and are attached hereto for the Commissioners’ consideration.

Respectfully submitted this 25th day of April, 2018.



JOEPHET R. ALCANTARA
Administrative Law Judge

P183014.JRA

³⁰ See Contract Review Protocol for Port Authority of Guam, PAG Docket 09-01, p. 1 (June 20, 2011).

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF GUAM**

REQUEST BY THE PORT AUTHORITY)
OF GUAM FOR APPROVAL OF THE)
ISSUANCE OF PORT REVENUE BONDS)
AND TO APPROVE ASSOCIATED)
DOCUMENTS)
_____)

PAG DOCKET 18-03

ORDER

On April 19, 2018, the Port Authority of Guam (the “Authority”) petitioned the Commission for authority to issue up to \$72,600,000 in revenue bonds for the purpose of financing and/or refinancing projects authorized to be financed thereby in accordance with Article 2, Chapter 10, Title 12, Guam Code Annotated (as amended from time to time, the “Act”).

The Commission has examined the petition and the findings and recommendations of its Administrative Law Judge (“ALJ”). After discussion at a duly convened meeting of the Commission, and upon the specific finding that the Authority’s petition is in the best interests of the Authority, the Commission, by vote by the Commissioners, hereby **ORDERS THAT** the order approving long term debt, in form attached (“Debt Order”), shall be and is hereby adopted by the Commission.

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 matter. Assessment of the PUC’s regulatory fees and expenses is authorized pursuant to 12 G.C.A. §§ 12103(b) and 12125(b), and Rule 40 of the Rules of Practice and Procedure before the PUC.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

Dated this 26th day of April, 2018.

JEFFREY C. JOHNSON
Chairman

ROWENA E. PEREZ
Commissioner

JOSEPH M. MCDONALD
Commissioner

FILOMENA M. CANTORIA
Commissioner

MICHAEL A. PANGELINAN
Commissioner

PETER MONTINOLA
Commissioner

ANDREW L. NIVEN
Commissioner

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF GUAM**

REQUEST BY THE PORT AUTHORITY)
OF GUAM FOR APPROVAL OF THE)
ISSUANCE OF PORT REVENUE BONDS)
AND TO APPROVE ASSOCIATED)
DOCUMENTS)
_____)

DOCKET 18-03

ORDER APPROVING LONG-TERM DEBT

Pursuant to Article 2 of Chapter 10, Title 12, Guam Code Annotated (as amended, the “Act”), the Jose D. Leon Guerrero Commercial Port, also known as the Port Authority of Guam (the “Authority”) is authorized to issue revenue bonds (“Bonds”) to raise funds for the purpose of acquiring, constructing, improving, equipping, maintaining, repairing, renewing, replacing, reconstructing or insuring the Port system, or any part thereof, or for the purpose of refunding any such bonds or any other prior obligations of the Authority, or for any combination of such purposes, in accordance with and subject to the requirements and limitations set forth in the Act, subject to the approval of the Legislature and the Board of Directors of the Guam Economic Development Authority (“GEDA”).

Pursuant to such authority the Authority has now applied to the Commission for approval of the issuance of one or more series of tax-exempt and/or taxable Bonds (the “2018 Bonds”) for the purposes set forth, and in an aggregate principal amount not to exceed \$72,600,000 under and subject to the applicable limitations of Public Law 34-70 (the “Bond Law”) adopted by the Legislature, and of such other terms and conditions pursuant to which such 2018 Bonds are to be issued pursuant to Resolution No 2018-01 adopted by the Board of Directors of the Authority on April 19, 2018, and pursuant to Resolution No. 18-002 adopted by the Board of Directors of GEDA on April 12, 2018.

The proposed form of an indenture, to be executed by the Authority, Bank of Guam, as trustee (the “Trustee”) and U.S. Bank National Association, as co-trustee (the “Co-Trustee”) pursuant to which the Bonds are proposed to be issued (the “General Indenture”) has been presented to the Commission, together with the proposed form of supplemental indenture to be executed by the Authority, the Trustee and the Co-Trustee, pursuant to which the 2018 Bonds are proposed to be issued (the “First Supplemental Indenture”). The current forms of the General Indenture and the First Supplemental Indenture are attached hereto as Exhibit A.

The Commission, having duly considered the application of Authority and the information presented on Authority’s behalf, and having determined that the issuance of the 2018 Bonds for such purposes is just and reasonable, orders as follows:

1. The issuance of the 2018 Bonds and the execution and delivery of the General Indenture and First Supplemental Indenture pursuant to which the 2018 Bonds are to be issued are hereby approved. Significant modifications or amendments of the terms and conditions of the 2018 Bonds set forth in such documents from the form attached as Exhibit A shall be subject to prior Commission review and approval prior to the issuance of the 2018 Bonds. The Authority shall have the responsibility of bringing any such significant modification or amendment affecting terms and conditions of the issuance of the 2018 Bonds to the Commission's attention; provided, however, that, at the request of the Authority, the Commission's administrative law judge is hereby authorized to provide such review and approval of any modifications or amendments to the forms of General Indenture and First Supplemental Indenture, or to determine and confirm that the form of General Indenture or First Supplemental Indenture to be executed and delivered by the Authority does not contain any such significant modification or amendment from the forms of such documents included as Exhibit A hereto.

2. As provided in the Bond Law, the principal amount of 2018 Bonds that may be issued may not exceed \$72,600,000. The 2018 Bonds shall have a final maturity not later than 2048, and shall bear interest at such rate or rates, and shall be sold for such price or prices as shall result in a yield to bondholders not exceeding six and one-half percent (6.5%) per annum (treating payments and receipts under any interest rate hedging contracts as if they were payments to and receipts from the bondholders). In accordance with the Bond Law, the present value of debt service on the 2018 Bonds applied to refinance any or all of the Prior Loans (as such term is defined in the Bond Act) in the aggregate shall be at least two percent (2%) less than the present value of debt service on the refinanced Prior Loans in the aggregate, using the yield on the refunding bonds as the discount rate, and shall be issued and sold in the manner, for the purposes and subject to the requirements and limitations provided in the Bond Law and the Indenture.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

Long Term Debt Order – Docket 18-03
Request by the Port Authority of Guam for Approval of the Issuance
of Port Revenue Bonds and to Approve Associated Documents
Page 3

Dated this 26th day of April, 2018.

JEFFREY C. JOHNSON
Chairman

ROWENA E. PEREZ
Commissioner

JOSEPH M. MCDONALD
Commissioner

FILOMENA M. CANTORIA
Commissioner

MICHAEL A. PANGELINAN
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Commissioner

Long Term Debt Order – Docket 18-03
Request by the Port Authority of Guam for Approval of the Issuance
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Page 4

EXHIBIT A

[Forms of General Indenture and First Supplemental Indenture]