

GUAM PUBLIC UTILITIES COMMISSION  
SPECIAL MEETING  
AUGUST 27, 2012  
SUITE 202, GCIC BUILDING, HAGATNA



**MINUTES**

The Guam Public Utilities Commission [PUC] conducted a special meeting commencing at 6:40 p.m. on August 27, 2012, pursuant to due and lawful notice. Commissioners Johnson, McDonald, Pangelinan, and Montinola were in attendance. The following matters were considered at the meeting under the agenda made *Attachment "A"* hereto.

**1. Approval of Minutes**

The Chairman announced that the first order of business was approval of the minutes of the meetings conducted on June 11, 2012, and July 20, 2012. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the minutes subject to correction.

**2. Ratification**

The Chairman announced that the next item for consideration by the Commissioners was GTA Docket 12-03, Joint Petition of Teleguam Holdings, LLC, and Guam Telecom LLC for Approval of the Interconnection Agreement. The Chairman indicated that there was not a quorum to address this issue, so it would have to be deferred until the next PUC meeting.

**3. Pacific Data Systems Inc.**

The Chairman announced that the next order of business was PDS Docket 12-01, PDS' Formal Complaint regarding GTA's rejection of Dark Fiber IOF Order, ALJ Report on Cost Allocation of PUC Expenses between the Parties, and Proposed Order. Counsel indicated that the parties had resolved their dispute and dismissed the complaint in this docket. However, they were unable to agree on how the PUC expenses would be allocated among the parties. The ALJ Report recommends that PDS would be responsible for expenses and costs related to the motion to disqualify that PDS had brought. In his prior Report on this matter, ALJ Mair had held that PDS should pay the costs related to the motion to disqualify.

As to expenses incurred as a result of the ALJ's substantive services in handling the dispute between the parties, the ALJ recommended that those expenses should be shared equally by the parties. These expenses is should be divided between the parties because PDS' dispute was a legitimate issue to bring under

the dispute resolution process. The Order prepared in the matter would allocate the cost for the motion to disqualify to PDS, and further divide the expenses related to the substance of the proceeding in a 50/50 allocation. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the recommended allocation in the ALJ Report and the Proposed Order. The Commissioners adopted the Order made *Attachment "B"* hereto.

#### **4. PTI Pacifica Inc.**

The Chairman indicated that the next matter for consideration was PTI Docket 12-01, 2012 Annual ETC Compliance Filing, Counsel Report, and USAC Certification. Counsel indicated that the Commission was very familiar with the USAC Certification process. PTI has certified that it will comply with the federal law and only use universal service funds for the purposes designated in the Federal Act. In accordance with the requirements, PTI has filed a detailed five-year "build-out" plan, indicating the improvements that it has made in its telecommunications services. The plan addresses improvements on a "site-by-site basis" referring to specific relay stations, repeaters, cell sites, etc.. PTI indicates what improvements have been made and will be made, and how universal service funds have been used for those purposes.

PTI has satisfied the requirements under the federal law: it offers the nine core services required by the Universal Support Fund. It provides E911 services, and has no unfulfilled requests for service within the last year. There have been approximately 40 complaints per thousand customers, which is up from last year. In general PTI has complied with the requirements. PTI has received substantial support funds which enable it to build out its facilities and provide benefits for the people. Good improvements have been made such as the implementation of a 3G microwave backhaul network and the installation of 4G long-term evolution base stations. Counsel recommends that the Commissioners approve the USAC Certification for PTI Pacifica. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the USAC Certification for PTI for this year, which Certification is made *Attachment "C"* hereto.

#### **5. Teleguam Holdings LLC**

The Chairman announced that the next item of business was GTA Docket 12-06, ~~Joint Petition for Approval of First Amendment to Interconnection Agreement,~~ PUC Counsel Report and Proposed Order. Counsel indicated that this was an uncontested matter where both GTA and PDS have requested that the Commission authorize the amendment of their Interconnection Agreement. Under the Federal Telecom Act Section 252, the PUC, as a "State" Commission, is required to approve interconnection agreements between the telecom companies. PDS and GTA only request one change to their ICA: a new section, 5.1.1.7, which

provides pricing for “virtual collocation rack space.” It establishes a new monthly recurring charge of \$1.05 per rack-unit ordered. The monthly fee is determined by multiplying the monthly recurring charge by the number of rack-units ordered. The provision of this service will satisfy one of the goals of the Guam Telecom Act to provide consumers with new telecommunications services. Finally, the proposed amendment does not discriminate against telecom parties not parties to the Interconnection Agreement. Counsel recommends approval of the Amendment. The Chairman stated that Commissioner Pangelinan was disqualified from participating in this item. Commissioners will have to deal with this matter at the next month’s meeting. Counsel suggested that the Chairman sign the order, and that it be brought back to the Commissioners for ratification.

## **6. Guam Power Authority**

The Chairman stated that the next item for consideration was GPA Docket 11-09, GPA Emergency Filing for Rate Design and Tariff Revisions, PUC Counsel Report, and Proposed Order. Counsel indicated that the issues in this docket are complex and arise out of the base rate case that GPA filed last year, and in which the Commission issued its May FY2012 rate decision. The basic problem relating to the rates involves “demand” charges. GPA now has a separate demand charge for certain customer classes based upon the concept that those classes of customers who utilize GPA services should have to pay the cost that GPA incurs in providing equipment and maintaining the system. The purpose of demand charges is to fairly allocate costs. The Commission’s rate decision approved that 30% of the tariff schedules identified rate requirement would be recovered through the demand charge. This affected Schedules J, P, K, and L.

When GPA implemented these demand charges, tremendous problems occurred with the J class customers. Commissioner McDonald was one the first person to bring this problem to the attention of the Commission at a public meeting a few months ago. The demand charges as implemented by GPA had created extremely onerous new billing situations for many of the demand customers. GPA then began to look for methods to ameliorate this problem. Now GPA is suggesting that the demand portion of the bill for demand customers be reduced from 30% to 10%. At the same time, GPA would readjust the tail block fee to make up for the difference in revenue requirements. This is a rate design issue that does not change the total amount of revenue that GPA obtains but just shifts the placement of the burden upon different classes of customers. GPA requests that the demand portion of the bill be reduced from 30% to 10%.

Also, the minimum demand level for Tariffs J and K should be decreased from 25 kW to 10 kW. In addition, GPA requests a change where customers can now be reclassified from a higher or lower tariff rate based upon six months usage

increase or decrease. GPA also desires to implement a separate tariff I for the independent power producers; such IPPs produce power on behalf of GPA, and it does not appear to be fair to charge them with the same demand charges.

Also, GPA requests the true-up of an issue from the prior rate case: the \$380,000 cost of service adjustment which would shift the burden for such amount from the civilian classes to the Navy. GPA has also proposed adjustments to the FY2010 test year billing determinants. Finally, GPA proposes reductions in some of the previously approved fees for meter installation charges, meter re-reads, re-inspection, energy analyzer fees, meter change-out calibration etc. The requested adjustments are all downward adjustments. Georgetown has filed a report; it believes that the proposed changes, while perhaps eventually desirable, need more examination and evaluation. GCG feels that at this point, the Commission is not prepared to accept GPA's proposal for increasing the demand portion of the bill in a 10-step process. More time is needed to examine this proposal. In addition, GCG feels that the proposed \$380,000 adjustment for Navy needs more examination.

Counsel discovered that Navy has not approved the adjustment yet, nor has it received GPA's data to support the adjustments. Changes in the time periods for reclassifying customers probably need more work too. The adjustment of the rules regarding classification of customers would be contrary to the idea of encouraging demand. In the proposed Order, GPA would be authorized to adopt the emergency rate changes to Schedules G, J, P, K, and L, including the alterations to the tail block rates. This would not be a final determination by the Commission, but could be examined further in Phase 2 of the rate case or in the next rate case.

The Order would implement the decrease of the minimum demand for Schedules J and K from 25 kW to 10 kW. It would approve the independent power producers schedule (Tariff I attached to the Petition). It would allow GPA to reduce the miscellaneous fees as indicated in Schedules A and B. It would defer the proposed six-month reclassification criteria for further examination by the PUC. It would also defer the \$380,000 cost of service adjustment pending further discussion. There would be a subsequent true-up of all customer billing accounts deferred during the May to September 2012 period. GPA General Manger Flores indicated that GPA was proposing a 10-year phase in of the demand charges. Georgetown Counsel Bill Blair indicated that the phasing period may be too long as there is a subsidy built in to the demand charges, an inner-class subsidy. Shifting a lot more of the demand to the Tail Block, this creates more volatility and more incentive for people to adjust their usage consumption rate. Such would throw off the assumptions that the rate was originally based upon.

The Chairman asked whether there was a lot of shifting from the J class down to the G class of the business community. GPA General Manager Flores indicated that 853 customers were reclassified down to the non-demand Tariff G. GPA also took steps to reclassify about 250 who met the 6-month criteria, but not necessarily the 12-month for downward classification. GPA has to go back and adjust its bills up to the J class until they satisfy the 12-month criteria for this ruling. The Chairman asked whether there were a lot of customers in between the 10 kW and the 25 kW differentiations. GM Flores indicated that there were quite a few. The Chairman asked whether the concerns of the business community were now at a more normal level than they were when this problem first arose. GM Flores indicated that it had calmed down. GPA created a special group just for communications and outreach. The group has contacted customers that and worked on their credits or debits, and reclassified some. There is an effort to educate customers with the new demand charge. Communications outreach is an aspect of the program.

Commissioner McDonald asked whether GPA had already reclassified customers that met the six-month criteria. GM Flores indicated that GPA had, but now it might have to go back and backtrack on some of them. Counsel Horecky suggested that the new rates are to be effective on October 1<sup>st</sup>, but PUC might wish to engage in further discussion with Georgetown to see if accommodation could be reached on those customers. Attorney Blair of GCG suggested that 12 months is the industry best practice. The whole purpose is to find a mechanism to recover more predictably its fixed costs. In response to the Chairman, Mr. Blair indicated that 12 months is the industry standard. Commissioner McDonald asked whether a customer could be reclassified upward with a three-month criteria. GM Flores indicated customers could be reclassified upwards based upon a three-month criterion for three consecutive months or six months in any year.

Commissioner McDonald then stated that he wished to accept GPA's proposed reclassification, a six-month reclassification. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the proposed Order implementing various emergency rate changes, with the modification that a six-month reclassification criterion for moving a customer either upward or downward from one rate schedule to another would be accepted. The Commissioners adopted the Order made *Attachment "D"* hereto.

## **7. Port Authority of Guam**

The Chairman announced that the next order of business was PAG Docket 11-01, Petition for Tariff Rate Relief, ALJ Report, and Proposed Order. Counsel indicated that the ALJ was recommending further modifications for deadlines on the submission of reports in the PAG Rate Docket. Previously, the Port had been

required to produce a five-year tariff rate plan, a management review/audit, a report on the upgrade of the Marina facilities, and the financing plan as to how Phase 1 and 2 of the modernization program would be met. The Commission had set deadlines for all of these reports on August 22 of this year, except for the financing plan which was due on November 22. The Port requested that the dates for submission of all of these reports be changed to October 22, 2012. The ALJ recommended that all of the reports could be filed on October 22, 2012, except the financing plan. The date for submission of the financing plan was already set as November 22, so the ALJ recommended that such date remain as is. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the amendment of the deadline schedule for PAG reports due in accordance with the schedule suggested by the ALJ. The Commissioners adopted the Order made *Attachment "E"* hereto.

The Chairman announced that the next matter for consideration was PAG Docket 12-01, Review of the POLA Sales Agreement and Interim Maintenance Agreement, PUC Consultant's Report, ALJ Report, and Proposed Order. Counsel indicated that a representative, Mr. Slater of Slater Nakamura was present tonight, so that questions may be referred to him. The basic recommendation of the ALJ Report is to approve the purchase plan sales agreement that the Port has submitted. The ALJ went through a lengthy analysis which started with an important consideration, the Enabling legislation. The ALJ indicated that Public Law 30-57 required the Port to purchase or lease-to-own at least two gantry cranes no later than December 31, 2012. The deadline on the purchase of the two gantry cranes was again repeated in Public Law 30-100, enacted in 2010.

Based upon the legislation, the ALJ found that there's a deadline to accomplish the securing of these cranes. Any option other than purchasing the on-island cranes would be difficult in terms of meeting the deadline if a bid for other cranes was required or there was a need to bring other cranes from off-island. The Legislature had also found in Public Law 30-145 that the acquisition of the POLA cranes by the Port has the "potential to present a singularly unique opportunity and value to Guam given their presence on the rails, record of operational reliability and the elimination of disruption of ongoing operations." The Legislature found that it would be prudent to explore acquisition of the POLA cranes through direct purchase or lease-to-own. And further to this exploration, acquisition should be authorized provided that this unique opportunity and value can be realized through independent assessment of material condition and fairly reasonable value and the follow-up with negotiations of acquisition terms uniquely and demonstrably favorable to Guam.

The ALJ Report examines the three criteria: value, material condition, and negotiation of terms. In Public Law 31-45, the Port was also mandated to procure

the services of a performance management contractor to manage the performance, operation and maintenance of the newly acquired POLA gantry cranes used in support of Port operations. The Legislation authorized the Port to purchase the cranes in an amount up to \$14.5M. An "Interim Maintenance Agreement" between PAG and Matson requires Matson to continue to maintain the cranes for the interim period before a performance management contractor is obtained by the Port. As required, the Port did obtain a survey of the condition of the cranes from Casper, Phillips & Associates. They found that the Matson cranes can be put in good enough condition and merit their direct purchase from Matson/Horizon, and that such purchase provides operational and economic advantages than from purchasing two new cranes through competitive bidding on the open market. The evaluation was that the cranes can be maintained and deficiencies can be corrected. Casper was confident that the cranes would serve the Port's needs through the current 20-year planning horizon if the cranes and supporting structures were well-maintained.

The ALJ suggests requirement for ongoing maintenance to be performed. Casper further indicated that, based upon the funding limitation of \$14M, there were a lot of questions as to whether the Port could secure a bid within the budget upon procurement for new or other cranes. Slater, Nakamura also learned that other new or used cranes on the off-island market were not within the \$14.5M budget. Ultimately, Slater, Nakamura concluded that the PUC should approve the purchase of the cranes. In response to the Slater, Nakamura Report, PAG indicated that they did need three cranes, and not two, to handle the load at certain times; i.e. a dual berthing situation, where two ships come in and require all of the cranes to be operative. There could also be a problem of reserve capacity when one crane breaks. Matson and Horizon rejected the possibility of only selling two cranes, indicating to PAG that it was a take-it-or-leave-it situation.

The Slater, Nakamura Report found that the sales agreement and interim maintenance agreement were fair and reasonable. It recommended that the PUC approve the contracts pursuant to the Contract Review Protocol. The ALJ Report and Slater, Nakamura Report concluded that it would be extremely difficult to purchase new cranes within the timeframe established by the Legislature. The ALJ also found that the cranes were in good enough condition. Casper said that the cranes could be put in good condition to merit their direct purchase from Matson/Horizon. The ALJ found that the value of the cranes was fair and reasonable. POLA cranes were the lowest cost of ownership for all of the different options. The ALJ also recommended that the Port be authorized to purchase cranes 14, 16, and 17, and that PAG should be required to complete its development of the structured maintenance program for all of its cranes. PAG should commence the repairs on the cranes indicated in Casper's condition

survey and as recommended by Slater, Nakamura. The Port should also develop a tariff to recover the costs for the purchase of the cranes.

Roger Slater of Slater, Nakamura, the PUC Consultant, testified that the acquisition of the cranes should be approved. The Port should be allowed to purchase all three of the cranes. Other cranes available in Virginia and elsewhere cannot be brought to Guam in a timely manner that meets the requirements of the legislation. The Port needs to buy the existing POLA cranes. The Chairman asked how the Port felt about the minimum number of cranes necessary for the conduct of its business, three or four. John Santos, Operations Manager of the Port Authority said that would be four. The Chairman asked when the maintenance process for these cranes would begin. The PAG Board Chairman Dan Tydingco indicated that that process was presently underway. But it will be insuring that the cranes are maintained properly. Commissioner Pangelinan asked whether of the Guam Senators present had comments on any legislation that allows other alternatives. It seemed to the Commissioner that there was no option other than to proceed with the purchase of the three cranes in order to comply with the law.

Senator Tom Ada agreed, given the present situation. Purchase by the Port of the three POLAs is probably the best situation. However, the Port needs to develop a replacement plan so that it can take out one crane at a time and start replacing them with newer cranes. Although there is excess capacity, the Port does not have much choice but to purchase the three cranes. Another piece here is basically approving the surcharge to service the debt and to provide capital for the maintenance of the cranes. Port Board Member Mike Benito said that the surcharge has been filed with the PUC. The Port will take on responsibility for charging vessels that come in, assuming that the PUC approves the rate surcharge intended for those tariffs to service the debt as well as cover for maintenance. A sinking fund will be established for capital improvements and additional equipment.

Senator BJ Cruz indicated that he has not been in favor of this purchase. If he had known that the decision rested upon the fact that the cutoff date was December 2012, he would have amended the deadline to 2014 when the lease was up. He believes it is a waste to put in cranes that are this old. The Senator believes that the Port had plenty of time to go out and look for new cranes. Now we are going to be stuck with buying three cranes that probably won't last as long as everybody thinks they will. Senator Ada clarified that the December 2012 deadline was based on the assumption that the Port was going to go out to buy new cranes. It was anticipated that the new cranes would be here by the time that the Matson license on the rails had expired. With proper maintenance, you can get these 30-year old cranes to continue to perform reliably. PAG Board Chair Tydingco pointed out that even if the Port did not buy the cranes, there is



still 24 months on the agreement. It would cost \$3 or \$6 Million over the next two years.

The Chairman indicated that the Port did not have money to buy new cranes. Port General Manager Mary Torres commented on the condition of the cranes. She indicated that operationally, the mechanics of the cranes are very good. Things are good enough to last at least 20 years. The Port's crane expert is now putting together a corrective maintenance program. The Port GM believes that the Port can support the debt for the cranes. Having of their capacity with four cranes will bring cost savings to the customer because the turnaround is more efficient. This efficiency will result in cost cutting. Commissioner McDonald asked, with the approval of the purchase, when does the Matson surcharge stop, immediately or in 2014? Board Member Benito indicated that the current surcharge would stop when the port tariff surcharge is approved. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the purchase of three POLA cranes and adopted the order made *Attachment "F"* hereto.

#### **8. PUC Website**

The Administrator Ms. Palomo reported that three different possible designs were presented for review and decision by the Commissioners for website layout. The Commissioners picked a certain design and then also indicated preferences for icons for the utilities: an old analog phone for telecom; a lightning bolt for power; a trashcan for Solid Waste. Legal Counsel reported that we are getting caught up on the "Agendas" and "Minutes" in the website. On the specific dockets, we are still quite a bit behind there. There has been some good progress, and the Administrator agreed. Commissioners Pangelinan and Montinola believe that we should be able to click on an "Orders" tab. A discussion ensued concerning how "Orders" will be presented on the website. Perhaps there could be a search function for Orders and sorting by date. A suggestion was also made for hyperlink to Orders from the minutes. Upon motion duly made, seconded and unanimously carried, the Commissioners adopted and approved the matters that had been agreed upon in the discussion.

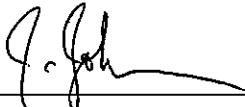
#### **9. Administrative Matters**

Counsel indicated that the Commission does now have a new Telecommunications Consultant, Slater, Nakamura & Co. LLC. Mr. Slater has already commenced working upon E911 procedures and methodologies. Mr. Pangelinan asked whether the contract was awaiting other agency signatures. Counsel explained that he had been advised by the Attorney General's Office that the PUC contracts do not need the other agency signatures. PUC should no longer forward its contracts to the Attorney General's Office, since PUC is an autonomous instrumentality. Counsel indicated that the AG indicated that

neither the Attorney General nor the Governor need to sign PUC contracts. Commissioner Pangelinan indicated that perhaps the contracts should be redone to remove the unnecessary signatures. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the Telecommunications Consultant Agreement between the PUC and Slater, Nakamura & Co. in RFP No. 11-02.

Counsel indicated that the Commissioners also needed to determine a regular PUC meeting time. Counsel suggested a regular meeting time for the last Tuesday of every month at 7 p.m. Upon motion duly made, seconded and unanimously carried, the Commissioners agreed that the regular meetings of the Guam Public Utilities Commission would be held on the last Tuesday of every month at 7:00 p.m.

There being no further business, the Commissioners moved to adjourn the meeting.

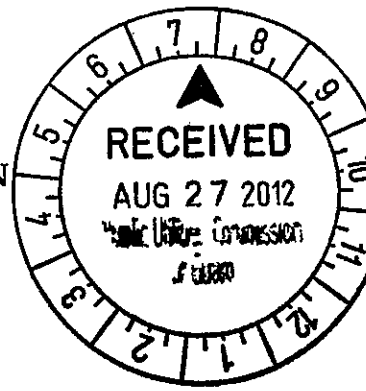
  
\_\_\_\_\_  
Jeffrey C. Johnson  
Chairman

**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION  
SPECIAL MEETING  
SUITE 202, GCIC BUILDING  
414 W. SOLEDAD AVE. HAGATNA, GUAM  
6:00 p.m., August 27, 2012**

**Agenda**

1. Approval of Minutes of June 11, 2012, and July 30, 2012.
2. Ratification
  - GTA Docket 12-03, Joint Petition of TeleGuam Holdings, LLC and Guam Telecom LLC for Approval of the Interconnection Agreement pursuant to Section 252 of the Telecommunications Act of 1996, PUC Counsel Report, and Order dated June 20, 2012.
3. Guam Power Authority
  - GPA Docket 11-09, GPA Emergency Filing for Rate Design and Tariff Revisions, PUC Counsel Report, Proposed Order
4. Pacific Data Systems Inc.
  - PDS Docket 12-01, PDS' Formal Complaint regarding GTA's Rejection of Dark Fiber IOF Order, ALJ Report on Cost Allocation of PUC Expenses between the Parties, Proposed Order
5. PTI Pacifica Inc.
  - 2012 Annual ETC Compliance Filing of PTI Pacifica Inc., PUC Counsel Report, USAC Certification
6. Port Authority of Guam
  - PAG Docket 12-01, Review of POLA Sales Agreement & Interim Maintenance Agreement, Report by PUC Consultants Slater Nakamura, ALJ Report, Proposed Order
  - PAG Docket 11-01, Petition for Tariff Rate Relief, ALJ Report, Proposed Order
7. PUC Website
  - Report by Administrator on progress of Ideal Advertising, website input catch up
8. Administrative Matters
  - Approval of Final Award and Contract for PUC Telecommunications Consultant with Slater & Nakamura Co. PUC RFP 11-02.
9. Other Business

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN RE: )  
PDS' FORMAL COMPLAINT ) PDS DOCKET 12-01  
REGARDING GTA'S REJECTION OF ) ORDER  
DARK FIBER IOF ORDER )  
\_\_\_\_\_ )

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ("PUC") upon the STIPULATION TO DISMISS DOCKET filed herein on July 27, 2012 by Pacific Data Systems ("PDS") and TeleGuam Holdings LLC ("GTA").<sup>1</sup>

BACKGROUND

2. In the STIPULATION, PDS and GTA agreed to dismiss the Complaint; however, the parties indicated therein that they had been unable to agree upon payment of the Commission's costs in this docket. GTA took the position that PDS should pay the costs in full; PDS' position was that the cost should be evenly split. The parties requested that this sole issue be considered by the Commission.<sup>2</sup>
3. The PUC, in its July 30, 2012 Order in this Docket, referred the issue of the proper allocation of Docket costs in this matter to the Administrative Law Judge.<sup>3</sup>

DETERMINATIONS

4. The Administrative Law Judge [ALJ] herein issued his Report dated August 18, 2012.<sup>4</sup>
5. The PUC adopts and approves said Report, including the findings, conclusions, and recommendations therein.
6. In his ALJ Report issued concerning the Motion to Disqualify, ALJ Mair recommended that "the PUC order PDS to pay the PUC's regulatory fees and expenses, including and without limitation, consulting and counsel fees, and the

<sup>1</sup> STIPULATION TO DISMISS DOCKET, PDS Docket 12-01, filed July 27, 2012; PUC Order, PDS Docket 12-01, dated July 30, 2012.

<sup>2</sup> Id.

<sup>3</sup> PUC Order, PDS Docket 12-01, dated July 30, 2012.

<sup>4</sup> ALJ Report, PDS Docket 12-01, dated August 18, 2012.

---

fees and expenses associated with PUC's consideration of the Motion to Disqualify."<sup>5</sup>

9. The PUC adopts the recommendation of ALJ Mair, which was further supported by ALJ Horecky that PDS should bear all PUC costs associated with the Motion to Disqualify.
10. In this case, PDS chose to bring a motion to disqualify. GTA in no manner initiated the motion or bore any responsibility for its filing. GTA only responded to the motion after ALJ Mair required PDS to serve GTA with the motion to disqualify.
11. In the PUC Rules Governing Regulatory Fees for Telecommunications Companies regulatory expenses in such proceedings, Rule 1.b.iii authorizes the PUC to allocate such costs and expenses "against such party or parties as the Commission deems appropriate."
12. In addition to the PUC costs related to PDS' Motion to Disqualify, PUC costs were incurred relative to ALJ Horecky's review of documents herein, conduct of a pre-hearing conference, and the preparation of Scheduling Orders etc.
13. For the PUC costs related to ALJ Horecky's substantive work on the issues in this Docket, ALJ Horecky recommends that such costs be shared equally by the parties.
14. PDS' complaint was a proper subject for resolution under the Commission's Interconnection Implementation Rules. The IIRs grant the PUC broad authority to resolve disputed issues arising under Interconnection Agreements of the parties.<sup>6</sup>
15. The expenses incurred by the PUC relating to ALJ Horecky' substantive work in this Docket herein should be equally shared by both GTA and PDS.

### **ORDERING PROVISIONS**

After careful review of the record herein, and the ALJ Report Regarding Allocation of Costs, for good cause shown, on motion duly made, seconded unanimously carried by the undersigned Commissioners, the Guam Public Utilities Commission hereby ORDERS that:

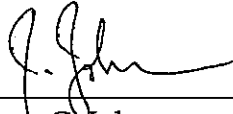
---

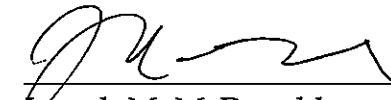
<sup>5</sup>ALJ Report, PDS Docket 12-01, issued June 11, 2012, at p. 12.

<sup>6</sup> Interconnection Implementation Rules, Docket 05-01, adopted August 13, 2007, Rule 4.

1. The PUC adopts and approves the ALJ Report filed herein.
2. PDS shall pay the amount of \$6,744.81 for costs incurred relative to ALJ Mair's services on the Motion to Disqualify.
3. PDS and GTA shall pay, in equal shares, the costs relating to ALJ Horecky's services. PDS shall pay the amount of \$936.25 and GTA shall pay the amount of \$936.25.
4. PDS is required to pay costs incurred in the total amount of \$7,681.06.
5. GTA is required to pay costs incurred in the total amount of \$936.25.
6. PDS and GTA, in the amounts previously ordered, shall pay for the PUC's regulatory fees and expenses incurred in this Docket, including, without limitation, consulting and counsel fees and expenses. Assessments of the PUC's regulatory fees and expenses is authorized pursuant to 12 GCA §12002(b) and 12024(b), 12104, 12103, the Rules Governing Regulatory fees for Telecommunications Companies, and Rule 40 of the Rules of Practice and Procedure before the PUC.

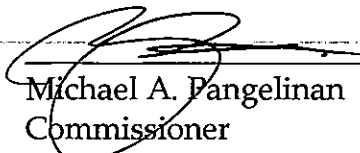
Dated this 27th day of August, 2012.

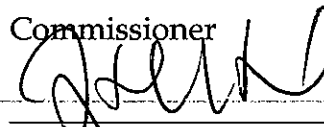
  
\_\_\_\_\_  
Jeffrey C. Johnson  
Chairman

  
\_\_\_\_\_  
Joseph M. McDonald  
Commissioner

\_\_\_\_\_  
Filomena M. Cantoria  
Commissioner

\_\_\_\_\_  
Rowena E. Perez  
Commissioner

  
\_\_\_\_\_  
Michael A. Pangelinan  
Commissioner

  
\_\_\_\_\_  
Peter Montinola  
Commissioner

**Guam Public Utilities Commission**



**To: Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554**

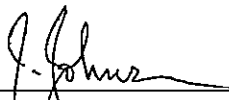
**Irene M. Flannery  
Vice-President - High Cost & Low Income Division  
Universal Service Administration Company  
2000 L Street, N.W. Suite 200  
Washington, DC 20036**

**RE: CC Docket 96-45 - "Use" Certification**

This is to certify that PTI Pacifica Inc. will use federal high cost support funds only for the provisioning, maintenance and upgrading of facilities and services for which the support is intended, consistent with section 254(e) of the Communications Act.

I am authorized to make this certification on behalf of the Guam Public Utilities Commission. This certification is for study area 669004 for the Territory of Guam.

Dated this 1st day of September, 2012.

  
\_\_\_\_\_  
Jeffrey C. Johnson  
Chairman  
Guam Public Utilities Commission

GTA DOCKET 12-06

## ORDER

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Joint Petition of GTA Telecom, LLC ["GTA"] and Pacific Data Systems Inc. ["PDS"] (Jointly "the Parties") for approval of the First Amendment to their Interconnection Agreement.<sup>1</sup>

2. On September 28, 2010, the PUC approved the Interconnection Agreement between GTA and PDS.<sup>2</sup>
3. The Parties submit the First Amendment to their Interconnection Agreement for approval by the PUC in accordance with the terms of Section 252(e) of the Telecommunications Act of 1996. They request that the PUC approve the Amendment pursuant to the requirements of Section 252(e).
4. The First Amendment to the Interconnection Agreement adds a new Section 5 to the "Pricing Attachment". Section 5.1.1.7, "Virtual Collocation Rack Space" provides a new Monthly Recurring Charge of \$1.05 per rack unit ordered.<sup>3</sup>
5. The description of the Virtual Collocation Rack Space will also be added to the Pricing Attachment Billing Unit to include the following: "a monthly relay rack rate

<sup>3</sup> Attachment A to the Joint Petition.



applies for the support of virtual collocation equipment. The monthly fee is determined by multiplying the MRC by the rack units ordered by PDS.”<sup>4</sup>

### **DETERMINATIONS**

6. GTA and PDS have mutually negotiated the First Amendment; said amendment does not appear to violate any provision of Section 252(e) of the Telecommunications Act of 1996.
7. The Agreement does not discriminate against a telecommunications carrier not a party to the Interconnection Agreement pursuant to the standards set forth in 47 USC §252[e][2][A].
8. Furthermore, the Agreement is consistent with the public interest, convenience and necessity. It clarifies arrangements for provision of collocation services by GTA to PDS. One of the goals of the Guam Telecommunications Act of 2004 is to provide the consumers of Guam with the introduction of new telecommunications services and products.<sup>5</sup>

### **ORDERING PROVISIONS**

After review of the Joint Petition, the proposed First Amendment, and the PUC Counsel Report, for good cause shown, the Guam Public Utilities Commission **HEREBY ORDERS** that:

1. The First Amendment to the Interconnection Agreement between GTA Telecom, LLC and Pacific Data Systems Inc., as filed with their July 19, 2012 Joint Petition, is approved.
2. All terms and conditions of GTA and PDS, as set forth in Attachment A to their Joint Petition, are also hereby approved. The parties shall comply with all duties and obligations thereunder in accordance with their Interconnection Agreement.
3. In the event that the parties revise, modify or further amend their Interconnection Agreement, as approved herein, the revised, modified or amended Interconnection

---

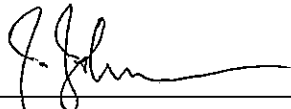
<sup>4</sup> Id.

<sup>5</sup> Guam Telecommunications Act of 2004, 12 GCA §12101(3).

Agreement shall be submitted to PUC for approval pursuant to 47 USC §252[e][1] prior to taking effect.

4. PUC reserves the jurisdiction and authority to enforce the Interconnection Agreement, to issue appropriate orders with regard thereto, and to hear and resolve complaints with respect to the Interconnection Agreement pursuant to PUC's existing authority.
5. GTA and PDS are ordered and directed to each pay one half of the PUC's regulatory expenses and fees in this docket.

Dated this 27<sup>th</sup> day of August, 2012.



---

Jeffrey C. Johnson  
Chairman



---

Joseph M. McDonald  
Commissioner

---

Rowena E. Perez  
Commissioner



---

Michael A. Pangelinan  
Commissioner

---

Filomena M. Cantoria  
Commissioner



---

Peter Montinola  
Commissioner

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:

GUAM POWER AUTHORITY'S 2011  
MULTI YEAR BASE RATE RELIEF  
FILING

GPA DOCKET 11-09

ORDER



INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission [PUC] Administrative Law Judge (ALJ) upon the Emergency Petition of Guam Power Authority ["GPA"] for Approval of Changes to Tariffs G, J, P, K and L to address Concerns Regarding Demand Charges.<sup>1</sup>

BACKGROUND

2. In its Base Rate Filing in November 2011, GPA included the implementation of demand charges for customer billings to more closely align costs attributable to such demand customers.<sup>2</sup>
3. By order dated May 7, 2012, at the conclusion of Phase 1 of the base rate case proceeding, the PUC authorized GPA to establish demand rates for the purpose of more closely aligning the revenue received from customers with the costs attributable to the customer class.<sup>3</sup>
4. Upon implementation of the new demand charges in May 2012, GPA determined that 1,538 customers were "extremely negatively impacted" by the implementation of the demand charges. GPA determined that 853 of those customers were in an inappropriate rate class, and GPA moved those customers into their appropriate rate class.<sup>4</sup>
5. In its Emergency Petition, GPA requests the following changes:
  - a. Effective October 1, 2012, the adoption of revised rates for tariff schedules G, J, P, K, and L; interim rates set demand charges to recover 30% of the tariff schedules' identified revenue requirement. GPA now proposes to set the demand charges

<sup>1</sup> GPA Emergency Petition for Changes to Tariffs G, J, P, K, and L to Address Concerns Regarding Demand Charges, GPA Docket 11-09, filed August 16, 2012.

<sup>2</sup> GPA Petition for Approval of Multi-Year Base Rate Relief, GPA Docket 11-09, filed November 3, 2011.

<sup>3</sup> PUC FY 12 Rate Decision, GPA Docket 11-09, dated May 7, 2012,

<sup>4</sup> GPA Emergency Petition, *supra*, at p. 1.

to recover 10% of the tariff schedules' identified revenue requirement. GPA further proposes that the "tail block" rates for each of these tariffs would be increased to offset the revenue lost by decreasing the demand charges.

- b. The decrease of the minimum demand level for Tariff J, K from 25 kW to 10 kW.
  - c. Modification of residential, commercial, and government tariffs to allow a customer to be reclassified from a higher or lower rate tariff based on usage in that rate class for at least 6 out of a 12 month period.
  - d. Implementation of a separate tariff for Independent Power Producers.
  - e. Approval of the proposed rate treatment of the \$380,000 cost of service adjustment determined in GPA's Supplemental Filing from the civilian to Navy class and a proposed treatment for handling the over/under-recoveries during the May-September 2012 period on the WCF Surcharges for Navy and civilian classes during October and November 2012.
  - f. Adoption of proposed adjustments for the FY 2011 Test Year Billing Determinants due to the re-classification of customers.
  - g. Adjustment of fees identified in revised Schedules A & B [attached to Emergency Petition] of meter installation charges, meter re-read fees, re-inspection fees, energy analyzer fees, meter change-out, test, calibration fees, etc.<sup>5</sup>
6. At the request of the PUC on August 16, 2012, the Georgetown Consulting Group, Inc. ["GCG"] prepared its Report in response to the changes requested in GPA's Emergency Petition.
  7. On August 24, 2012, GCG filed its Report.<sup>6</sup>
  8. The PUC adopts the statement of "Background" as set forth in the GCG Report.

---

<sup>5</sup> GPA Emergency Petition, GPA Docket 11-09, filed August 16, 2012, at pgs. 10 and 19 [Testimony of Randall V. Wiegand] and Rate Schedule "A" and Schedule "B" [Service Establishment Charges].

<sup>6</sup> GCG Report re: Review of Emergency Petition for Changes to Tariffs J, P, K and L to Address Concerns Regarding Demand Charges, GPA Docket 11-09, filed August 24, 2012.

### DETERMINATIONS

9. The PUC shares a number of the concerns raised by GCG in its Report. Many of the issues raised by GPA are not proper subjects of an "Emergency Petition" but should be addressed in a deliberate, orderly process. A number of the changes should have been addressed in the original base rate filing.
10. It is understandable that GPA seeks to address the large percentage billing increases that have resulted from the Interim Rates; however, the changes proposed are dramatic and the limited time for review does not allow the level of review and scrutiny typically undertaken by GCG and the PUC.
11. The measures and remedies ordered herein are all adopted as temporary and interim provisions and are subject to further revision and modification.

### ORDERING PROVISIONS

After review of the record herein, GPA's Emergency Petition, and the GCG Report, for good cause shown, on motion duly made, seconded and carried by the undersigned Commissioners, the Guam Public Utilities Commission **HEREBY ORDERS** that:

1. Effective October 1, 2012, GPA is authorized to adopt the proposed emergency rate changes to Schedules G, J, P, K, and L including setting the recovery of the demand component of such rates at 10% in lieu of the 33% included in the interim rates. The tail block rates for each rate schedule may be increased to offset the revenue lost by decreasing the demand charge. However, the PUC makes no determination of the 10 step increase process proposed by GPA. The PUC will review GPA's work papers supporting the development of such rates and make the final determination of these matters and applicable calculations at an appropriate time. The changes authorized herein are not "final" at the present time.
2. Effective October 1, 2012, the minimum demand level for Schedules J and K shall be reduced from 25 kW to 10 kW.
3. Effective October 1, 2012, implementation by GPA of a new Schedule I for Independent Power Producers is approved.
4. Effective October 1, 2012, the miscellaneous fees included in Schedule A & B shall be adjusted as recommended by GPA.

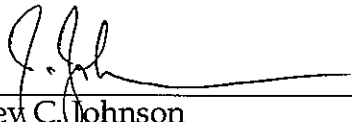
5. GPA's proposed six (6) month reclassification criteria for customers being allowed to move between different rate classes are approved.
6. The proposed rate treatment of the \$380,000 cost of service adjustment from the civilian to Navy class, determined in the supplemental filing, and the proposed treatment for handling the over/under-recoveries during the May-September 2012 period via the WCF surcharges for Navy and the civilian classes during October and November 2012, are, at present, deferred. Navy has not had a full opportunity to review the proposed changes or respond thereto.<sup>7</sup> At present Navy has not consented to said treatment. This matter can be further considered by the PUC.
7. GPA shall provide for Commission approval, no later than September 15<sup>th</sup>, a final plan for the true-up of all customer billing amounts deferred during the May-September 2012 period for customers for whom GPA estimates the bill impact exceeded 10% after the interim rates were implemented and the customer classification errors were corrected. Additionally, GPA should provide the Commission with a copy of the public information program it will implement to adequately inform consumers of the process that will be followed to implement the true-up of deferred billings.
8. As part of its Year 2 rate plan, GPA is required to present to the Commission:
  - a. Alternatives to its proposed nine year phasing in GPA's optimal plan of 50% Demand, 30% First Block and 20% Tail Block rates.
  - b. A revenue decoupling plan to reduce the revenue volatility associated with what will become upon the Commission's approval of the above recommendations GPA's heavily weighted Tail Block revenues.
  - c. An assessment of the impacts of these emergency rate design changes on its ability to retain large power customers.
  - d. Revised Schedule I rates aligned with the actual cost to serve this type of customer.

---

<sup>7</sup> Email from John Masterson, Navy Counsel, to PUC Counsel Fred Horecky, dated August 27, 2012.

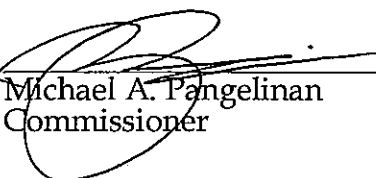
9. All of the Orders adopted herein are subject to revision and/or modification, as well as "true up", during Phase II of the proceedings or during Year 2 of the Rate Plan.
10. GPA is ordered to pay the Commission's regulatory fees and expenses, including, without limitation, consulting and counsel fees and the fees and expenses of conducting the hearing proceedings. Assessment of PUC's regulatory fees and expenses is authorized pursuant to 12 GCA §12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

Dated this 27<sup>th</sup> day of August, 2012.

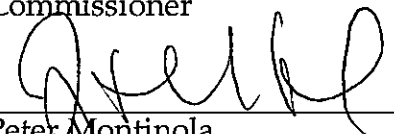
  
\_\_\_\_\_  
Jeffrey C. Johnson  
Chairman

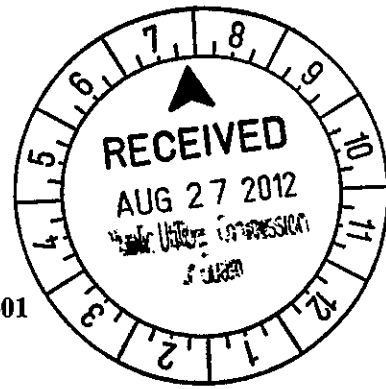
  
\_\_\_\_\_  
Joseph M. McDonald  
Commissioner

\_\_\_\_\_  
Rowena E. Perez  
Commissioner

  
\_\_\_\_\_  
Michael A. Pangelinan  
Commissioner

\_\_\_\_\_  
Filomena M. Cantoria  
Commissioner

  
\_\_\_\_\_  
Peter Montinola  
Commissioner



**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

<b>IN RE:</b>	<b>PETITION FOR TARIFF RATE RELIEF BY THE PORT AUTHORITY OF GUAM</b>	) ) ) ) ) _____)	<b>PAG DOCKET 11-01  ORDER</b>
---------------	--	---------------------------------	--

**INTRODUCTION**

This matter comes before the Guam Public Utilities Commission (the “PUC”) pursuant to a request by the Jose G. Leon Guerrero Commercial Port, Port Authority of Guam (“PAG”). The instant docket concerns PAG’s June 28, 2011 Base Rate Case Petition, which sought to increase rates contained in PAG’s terminal tariff.

**ORDERING PROVISIONS**

Upon consideration of the record herein, the August 20, 2012 ALJ Report, and for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby ORDERS that:

1. By October 22, 2012, PAG shall file a five (5) year rate plan, which shall detail any tariff rate increases for the next five (5) years; this filing shall also address the policy justification as to why outgoing container and petroleum wharfage rates are less than incoming container and petroleum wharfage rates.

2. By October 22, 2012, PAG shall file a plan for the upgrade of the marina facilities.

3. By October 22, 2012, PAG shall file a management audit, which shall include: (1) a staffing pattern analysis comparison with other ports of similar operations, including identification of required delegation of duties and procedural requirements (e.g., types of positions, number of personnel, job specifications and comparable salaries); (2) an evaluation of port and terminal functions and operations; (3) an analysis of terminal management techniques, warehousing system and purchasing and inventory control to

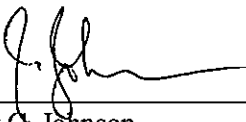


include spare parts inventory control; (4) an analysis of all material handling equipment operations including the training and certification requirements of personnel to operate the equipment and maintain it to the highest degree of reliability and dependability (preventative maintenance program); and, (5) recommendations with respect to improvement. The PUC reserves its right to require that PAG conduct a sensitivity analysis to determine the impact of the deferment of the U.S. military buildup, along with the current throughput of materials on the ability of PAG to generate the revenue it needs to service its debts, and thus file a report on such sensitivity analysis.

4. The deadline for PAG to file a financing plan for the completion of Phase I and Phase II of the 2007 Port Master Plan shall remain as November 22, 2012.

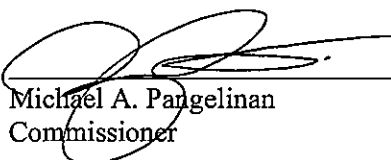
5. PAG is further ordered to pay the PUC's regulatory fees and expenses, including and without limitation, consulting and counsel fees, and the fees and expenses associated with this docket. Assessment of the PUC's regulatory fees and expenses is authorized pursuant to 12 G.C.A. §§ 12002(b) and 12024(b),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

**SO ORDERED** this 27<sup>th</sup> day of August, 2012.

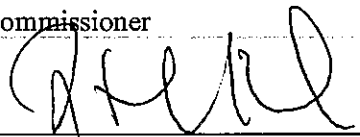
  
\_\_\_\_\_  
Jeffrey C. Johnson  
Chairman

  
\_\_\_\_\_  
Joseph M. McDonald  
Commissioner

\_\_\_\_\_  
Rowena E. Perez  
Commissioner

  
\_\_\_\_\_  
Michael A. Pangelinan  
Commissioner

\_\_\_\_\_  
Filomena M. Cantoria  
Commissioner

  
\_\_\_\_\_  
Peter Montinola  
Commissioner

P124063.JRA



BEFORE THE PUBLIC UTILITIES COMMISSION

IN RE: REVIEW OF POLA SALES )  
AGREEMENT AND )  
INTERIM MAINTENANCE )  
AGREEMENT )  
\_\_\_\_\_ )

PAG DOCKET 12-01

ORDER

**INTRODUCTION**

This matter comes before the Guam Public Utilities Commission (the “PUC”) pursuant to a Petition filed by the Jose G. Leon Guerrero Commercial Port, Port Authority of Guam (hereinafter referred to as “PAG” or the “Port”) on June 19, 2012, whereby PAG requested review and approval of the Sales Agreement, and the Interim Maintenance Agreement, related to the acquisition of certain Port of Los Angeles (hereinafter referred to as “PoLA” or “POLA”) cranes owned by Matson Navigation Company, Inc. (“Matson”) and Horizon Lines, L.L.C. (“Horizon”).

**DETERMINATIONS**

**I. Enabling and Special Legislation**

On September 11, 2009, Public Law (“P.L.”) 30-57 was enacted, which approved the implementation of “Phase I, First Stage 1-4 (2010-2012) and Second Stage I -B (2011-2013) of the Jose D. Leon Guerrero Commercial Port Master Plan Update 2007 Report.”<sup>1</sup> In addition, the public law established a debt ceiling of \$54,500,000 for the Port Modernization Program, to be used “exclusively in the implementation of the portion of this Master Plan.”<sup>2</sup> Moreover, the public law required PAG to purchase or lease to own “at least two (2) Gantry Cranes,” “no later than December 31, 2012.”<sup>3</sup>

<sup>1</sup> P.L. 30-57, Section 2, p. 2 (Sept. 11, 2009).

<sup>2</sup> *Id.* at Section 3, p. 3.

<sup>3</sup> *Id.* at Section 4, p. 3 (italics in original).

On March 11, 2010, P.L. 30-100 was enacted, which reiterated the requirement that PAG “acquire, either through purchase or lease-to-own, *at least* two (2) Gantry Cranes *no later than* December 31, 2012.”<sup>4</sup> On November 21, 2011, P.L. 31-145 was enacted, which amended P.L. 30-57. Under this public law, the Guam Legislature expressly found the following:

[T]here are five (5) cranes currently on the Port’s commercial docks, and that through a license agreement executed in December 2007 between the Port and Matson/Horizon, Inc. or its successor (the Carriers), three (3) of these cranes, referred to as POLA Cranes 15, 16 and 17, were purchased and refurbished by the Carriers and placed on the Port’s rails. Additionally, the Port currently maintains and operates two (2) older and smaller Gantry Cranes, referred to as Gantry 2 and Gantry 3, to service non-Matson/Horizon, Inc. or its successor vessels, and that due to their age and material condition are more expensive to maintain and provide less reliable service. Retirement of these cranes is overdue.<sup>5</sup>

The Guam Legislature additionally found that “the acquisition of the POLA Cranes by the Port has the potential to present a singularly unique opportunity and value to Guam given their presence on the rails, record of operational reliability, and the elimination of disruption to ongoing operations.”<sup>6</sup> Moreover, the legislature further found that “it would be prudent to explore acquisition of the POLA cranes through direct purchase or lease-to-own, and that further to this exploration, acquisition should be authorized, provided that this unique opportunity and value can be realized through independent assessment of material condition, and fair and reasonable value, and follow-on negotiation of acquisition terms is uniquely and demonstrably favorable to Guam.”<sup>7</sup>

---

<sup>4</sup> P.L. 30-100, Section 2, pp. 2-3 (Mar. 11, 2010) (italics in original).

<sup>5</sup> P.L. 31-145, Section 1, p. 2. (Nov. 21, 2011).

<sup>6</sup> *Id.* at Section 1, p. 3.

<sup>7</sup> *Id.*

Pursuant to P.L. 31-145, PAG was required to perform, among other terms, the following: obtain, through purchase or lease to own, at least two (2) gantry cranes by December 31, 2012; create a negotiating team authorized “to engage in the negotiations with the Carriers”; engage the services of an independent consultant to obtain an assessment of the condition and life expectancy of the PoLA cranes, provide an “as is” valuation assessment, and determine a range of fair and reasonable value of the PoLA cranes; review the acquisition terms, and ratify such terms.<sup>8</sup>

In addition, under the law, PAG also was required to procure the services of “a Performance Management Contractor (PMC) to manage the performance, operation and maintenance of the newly acquired POLA Gantry Cranes, and other Gantry Cranes used in support of Port operations.”<sup>9</sup> “During the interim period that the Port is procuring the PMC contract, the previous owners of the Cranes *shall* continue to provide maintenance of the cranes, on account of the Port.”<sup>10</sup>

## **II. PAG Board Ratification**

On June 5, 2012, PAG’s Board of Directors approved the Sales and Interim Maintenance agreements, by way of Resolution No. 2012-05. Additionally, by way of Resolution No. 2012-04A, PAG’s Board of Directors also approved a crane surcharge fee, of up to \$125 for loaded container and \$5 per tonnage for non-containerized cargo, to fund the debt service, repairs, and maintenance for the PoLA cranes, as well as to establish a sinking fund to plan for replacement cranes in the future.

---

<sup>8</sup> *Id.* at Section 3, pp. 4-6.

<sup>9</sup> *Id.* at Section 3, pp. 6-7.

<sup>10</sup> *Id.* (italics in original).

### **III. Petition for PUC Approval of Sales and Interim Maintenance Agreements**

On June 19, 2012, PAG filed a Petition requesting that the PUC approve the Sales Agreement and the Interim Maintenance Agreement related to PAG's purchase of certain PoLA cranes owned by Matson and Horizon. The Petition contained the proposed Sales Agreement between PAG, Matson and Horizon, the proposed Interim Maintenance Agreement between PAG and Matson, and was supported by resolutions issued by PAG's Board of Directors, condition and evaluation reports related to the PoLA cranes, as well as a financial model depicting a crane surcharge to service the debt from the purchase of the cranes.

### **IV. Slater Nakamura Report**

Pursuant to a request by the PUC, the consulting firm of Slater, Nakamura & Co., L.L.C. ("Slater Nakamura") reviewed the proposed acquisition of the PoLA cranes. On August 9, 2012, Slater Nakamura transmitted a draft of its report to PAG and the Administrative Law Judge of the PUC (the "ALJ") detailing its evaluation, assessment, findings, and recommendations related to PAG's acquisition of the PoLA cranes. On August 24, 2012, Slater Nakamura transmitted another draft of its report to the ALJ; and on August 27, 2012, it transmitted its final report (hereinafter referred to as the "Report") to the Chairman of the PUC, the ALJ, and PAG.

### **V. Slater Nakamura's Recommendations**

Based on Slater Nakamura's investigation, it issued the following recommendations. First, it recommended that the PUC authorize PAG's acquisition of PoLA cranes 14, 16 and 17.<sup>11</sup> Second, it recommended that the PUC direct PAG to repair PoLA cranes 14, 16 and 17, as well as Crane 3 to meet the recommendations indicated in the reports

---

<sup>11</sup> Report by of Slater, Nakamura & Co., L.L.C., p. 45 (Aug. 27, 2012).

by PAG's consultants.<sup>12</sup> Next, it recommended that the PUC authorize PAG to fund the demolition of Crane 2 from its \$14.5 million fund.<sup>13</sup>

In addition, Slater Nakamura recommended that the PUC direct PAG to develop a tariff recommendation that would fully fund the acquisition, financing, maintenance, and ultimate replacement of PoLA cranes 14, 16, and 17, as well as Crane 3, within 15 years.<sup>14</sup> It also recommended that PAG "develop a more accurate projection for cargo throughput that can be used to forecast revenues from tariffs."<sup>15</sup> And finally, it recommended that PAG consider "placing one crane in layup pending an increase in cargo throughput demand."<sup>16</sup>

#### VI. The ALJ Report

On August 27, 2012, the ALJ filed an ALJ Report concerning his review of the proposed acquisition of the PoLA cranes, findings, and recommendations, based on the evidence contained in the record. In sum, the ALJ found that the Sales Agreement and the Interim Maintenance Agreement were fair and reasonable, and therefore recommended that the PUC approve these contracts pursuant to 12 G.C.A. §12004 and PAG's Contract Review Protocol, PAG Docket 09-01.

In particular, the ALJ found that under P.L. 31-145, the Guam Legislature mandated PAG's acquisition of at least two (2) PoLA cranes by December 31, 2012, and that the legislature considered this acquisition as a "*singularly unique opportunity and value to Guam* given their presence on the rails, record of operational reliability, and the elimination of disruption to ongoing operations."<sup>17</sup> Based on the evidence in the record, the ALJ found

---

<sup>12</sup> Slater Nakamura Report, p. 45.

<sup>13</sup> Slater Nakamura Report, p. 45.

<sup>14</sup> Slater Nakamura Report, p. 45.

<sup>15</sup> Slater Nakamura Report, p. 45.

<sup>16</sup> Slater Nakamura Report, p. 45.

<sup>17</sup> P.L. 31-145, at Section 1, p. 3 (emphasis added).

that PAG satisfied the statutory requirements. In addition, the ALJ also found that the PoLA cranes are in good condition. Specifically, the ALJ found that “the POLA cranes will serve the Port’s needs through the current 20-year planning horizon if the cranes and supporting wharf structures are well maintained.”<sup>18</sup>

Moreover, the ALJ found that the value of the PoLA cranes were fair and reasonable, but recommended that PAG complete its development of a Structured Maintenance Program for all of its cranes, which it initiated with Parsons Brinkerhoff and sub-consultant Sarandipity, L.L.C. The ALJ also recommended that PAG begin repairs to the PoLA cranes indicated in Casper’s Condition Survey. Finally, the ALJ found that PAG’s acquisition of three cranes was not unreasonable under the circumstances.

Accordingly, with respect to the Sales Agreement, the ALJ recommended the following: that the PUC approve PAG’s acquisition of three PoLA cranes, specifically cranes 14, 16 and 17; that the PUC require PAG complete its development of a Structured Maintenance Program for all of its cranes, which it has initiated with Parsons Brinkerhoff and sub-consultant Sarandipity, L.L.C.; that the PUC require PAG to begin repairs on the PoLA cranes indicated in Casper’s Condition Survey, as recommended by Slater Nakamura; that the PUC direct PAG to develop a tariff that fully funds the acquisition, financing, and maintenance resulting from the purchase of such cranes; that the PUC require PAG to develop a projection for cargo throughput that can be used to forecast revenues from its tariff, as recommended by Slater Nakamura; and, finally, that the PUC require PAG file a report with the PUC regarding the status, future plans, or demolition of Gantry Crane 2.

Accordingly, the ALJ recommends that the PUC approve the form of the Sales Agreement contained in PAG’s Petition.

---

<sup>18</sup> ALJ Report, p. 25 (quoting Casper, Phillips & Associates’ Final Detailed Condition Survey, p. 4 (Jan. 5, 2012)).

With respect to the Interim Maintenance Agreement, the ALJ found that P.L. 31-145 mandated PAG to procure the services of “a Performance Management Contractor (PMC) to manage the performance, operation and maintenance of the newly acquired POLA Gantry Cranes, and other Gantry Cranes used in support of Port operations.” The ALJ further found that the public law also mandated that “[d]uring the interim period that the Port is procuring the PMC contract, the previous owners of the Cranes *shall* continue to provide maintenance of the cranes, on account of the Port.” Thus, the ALJ concluded that Matson was required to provide the interim maintenance services under the law; and as a result, recommended that the PUC approve the form of the Interim Maintenance Agreement contained in PAG’s Petition.

The Commission hereby adopts the findings made in the ALJ Report and, therefore, issues the following.

#### **ORDERING PROVISIONS**

Upon consideration of the record herein, the August 27, 2012 ALJ Report, and for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby ORDERS that:

1. The Commission approves the Sales Agreement and the Interim Maintenance Agreement, which are attached to PAG’s Petition.
2. PAG shall complete its development of a Structured Maintenance Program for all of its cranes, which it initiated with Parsons Brinkerhoff and sub-consultant Sarandipity, L.L.C.
3. PAG shall begin repairs to the PoLA cranes indicated in Casper’s Condition Survey, and file a report with the PUC detailing the progress of such repairs by June 15, 2013.



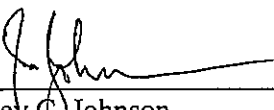
4. PAG shall develop a tariff that fully funds the acquisition, financing, and maintenance resulting from the purchase of such cranes.

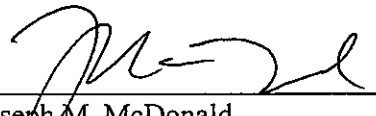
5. PAG also shall develop a projection for cargo throughput that can be used to forecast revenues from tariffs.

6. PAG shall file a report with the PUC regarding the status, future plans, or demolition of Gantry Crane 2 by February 15, 2013.

7. PAG is further 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.

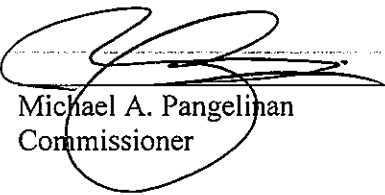
**SO ORDERED** this 27<sup>th</sup> day of August, 2012.


  
\_\_\_\_\_  
Jeffrey C. Johnson  
Chairman

  
\_\_\_\_\_  
Joseph M. McDonald  
Commissioner

\_\_\_\_\_  
Rowena E. Perez  
Commissioner

\_\_\_\_\_  
Filomena M. Cantoria  
Commissioner

  
\_\_\_\_\_  
Michael A. Pangelinan  
Commissioner

  
\_\_\_\_\_  
Peter Montinola  
Commissioner

P124064.JRA