GUAM PUBLIC UTILITIES COMMISSION
SPECIAL MEETING
September 12, 2017
Suite 202, GCIC BUILDING, HAGATNA

MINUTES

The Guam Public Utilities Commission [PUC] conducted a special meeting commencing at 6:40 p.m. on September 12, 2017, pursuant to due and lawful notice. Commissioners Johnson, McDonald, Pangelinan, Montinola, and Cantoria were in attendance. The following matters were considered at the meeting under the agenda made *Attachment "A"* hereto.

1. Guam Waterworks Authority

The Chairman announced that this was a special meeting of the PUC for two matters on the agenda. He indicated that the first item was GWA Docket 17-10, Petition for Approval to Refund the Guam Waterworks Authority 2010 Bond Series, Consultant's Report, ALJ Report, and Proposed Order. ALJ indicated that the matter came before the PUC pursuant to GWA's application to refund the 2010 bond series. PUC has authority to review this matter since all financial obligations such as bonds and the use of such funds must be approved by the PUC. GWA submits that it is authorized under Public Law 33-69 to refund the 2010 bond series provided that the refunding produces at least a 2% present value savings. The underwriters indicate that refunding the GWA bonds would result in a 6.9% present value savings. The percentage of savings exceeds the statutory threshold.

GWA will later submit a petition concerning its intent for allocation of the savings from the refund. Under Public Law 32-69, GWA is authorized to issue and sell revenue bonds to refinance the outstanding revenue bonds as long as such bonds have a maturity not later than the final maturity of the prior bonds. The present value of debt service on the refinancing bonds must be at least 2% less than the present value of the debt service on the bonds being refinanced. The prior bond must be discharged concurrently with issuance of the refinancing bonds, and the prior bond must be payable from and secured by escrow established for such purpose.

The PUC Consultant Daymark Energy Advisors performed an independent review of GWA's petition and submitted its Report. Its key findings were as follows: First, GWA intends to refinance about $109M of its 2010 series bond. Gross savings on the debt will be $10.6M which will also be the estimated ratepayer benefit. Daymark indicated that the current estimate shows the market rallying with the net present value savings increasing to about $7.5M and 7.09%. The cost of the issuance would be about $1.6M. GWA has not indicated where the savings from the refunding will be allocated, and Daymark expressed concerns as to how the savings will benefit the ratepayers.

Daymark further determined that the proposed revisions within the bond documents were within the authority of GWA and complied with related legislation. The All-inclusive interest cost will not be known until the bond issues, which has the potential to be higher than estimates and would thereby directly affect savings. The most recent estimate of PV savings for GWA's refunding indicates favorable demand conditions from municipal bonds and potential for favorable after-effects resulting from a Federal Reserve position in September. The current market conditions appear favorable at the moment for bond refunding.

Based upon its analysis Daymark indicates that the proposed refunding would comply with existing regulations that permit GWA to issue refunding bonds. Daymark recommends that the PUC approve the petition. However Daymark recommended that the PUC direct GWA to continue monitoring financial markets so that, upon execution of the refund documents, ultimate savings will continue to comply with the statutory requirements. Daymark recommends that the PUC direct GWA to notify it within 60 days of refinancing of its intent and plan regarding the savings of the refinance. Based upon the record before the Commission and the independent review by Daymark, the ALJ recommends that the PUC grant GWA's request. The Commission previously reviewed the general indenture in 2005, and there are only very minor cosmetic revisions made to those bond documents. The Commission should approve the issuance as well as the form of the terms and conditions contained in the bond documents for the revenue refunding bonds.

Commissioner Montinola asked whether GWA wanted to say anything. CFO Greg Cruz indicated that GWA would field questions. Chairman Johnson indicated that at the PUC work session with GPA and GWA, it was suggested that the PUC should look at annual gross savings from bond refunding rather than the TIC, the All-In rate. The Chairman wondered if GWA would have any issue with PUC imposing a stipulation for bond refinancing concerning the amount of gross savings that would have to be achieved. He also asked how many times GWA examined the issue of refinancing. CFO Cruz indicated has seen savings from the refunding since July between 6.5 to 7%. The savings have gone from approximately $9+M up to $11M as of August. The market is stable. MMD and treasury ratios are what GWA presented to PUC during the work session. CFO Cruz indicated that today the debt ceiling for Govguam had been raised, which helps all of the municipalities in being able to borrow slugs. This will help on the yield on the escrow.

The Chairman asked if PUC placed a stipulation on a minimum annual savings to be incurred for the bond to be refinanced, would that be okay with GWA at this point. CFO Cruz indicated it would. Commissioner Montinola asked if $350,000 was reasonable. Mr. Carlson of BBMR asked if the minimum annual savings would only apply to this one refunding. The Chairman concurred. Commissioner Montinola indicated that the PUC just wants to make sure that the threshold makes sense. Commissioner Cantoria asked what the interest rate was on the existing bond. CFO

Cruz indicated the average coupon rate on the existing bond was 5.5. The All-In TIC on the existing bond during the first issue was about 6.9%. The All-In TIC with this refund is about 4.15%.

Commissioner Cantoria asked what the new rate was for refinancing. CFO Cruz indicated it was 5%. The existing bond was at 5.5%, the average coupon. Ms. Cantoria then indicated that the 2% difference had not been met as to savings. CFO Cruz indicated that from the cash flow stand point, there are annual savings comparing the old debt service to the new debt service of about half a million dollars annually. GWA would realize real cash flow savings if the market rates remain. The Chairman indicated it was actually the net present value savings that GWA is looking for the 2% minimum. CFO Cruz indicated that it was the 2% on the net present value. The Chairman indicated to Commissioner Cantoria that it was not really the interest rate on the coupon that GWA was looking at.

Lester Carlson of BBMR indicated that the savings were in the neighborhood of 7%. This exceeds the minimum floor imposed by the Legislature. The Chairman indicated the Legislature's requirement that there would need to be a minimum of the 2%. GWA would actually derive a 7% savings on the net present value. The Chairman asked what premium GWA was getting on the GWA bond refund. CFO Cruz indicated it was the $12M. The total amount of the refunding was $109M. The Chairman asked whether there was a specific date when GWA was targeting to go to market. GWA GM Bordallo indicated GWA was looking at pricing in October. Commissioner Pangelinan was concerned that a threshold might box GWA in too much. He asked if GWA was comfortable. GM Bordallo indicated that, as a floor, they were comfortable with that amount.

Commissioner Montinola made a motion to approve the GWA refunding Order, subject to a condition that the sale would be required to achieve annual savings above the $350,000 threshold. A discussion ensued concerning when GWA would go to market and the timing considerations. Mr. Carlson indicated that when there was a sufficient "book of business" and a collective consensus that is arrived, the trigger would be pulled and the first statutory retail period would occur here on Guam. On the second day investor sales would be allowed followed by the sales to the investors in the states. The sale date can be moved depending on market conditions. The appetite for tax exempt bonds remains very high. There are few issuers which hold Standard and Poor's rating of "A", which is the rating that GWA currently holds. Upon motion duly made, seconded and unanimously carried, the Commissioners authorized GWA to issue the refunding bonds if the gross annual savings of $350,000 is met, and adopted the Order made *Attachment "B"* hereto.

2. Port Authority of Guam

The Chairman announced that the next item on the agenda was PAG Docket 16-01, the Complaint by Cementon, LLC, ALJ Report, and Proposed Order. ALJ Alcantara

indicated that the matter came before the PUC pursuant to a complaint filed by Cementon Micronesia against the Port Authority of Guam. The hearing on the merits was held on two days April 19 and April 20, 2017. In 2008 Cementon began negotiating a lease agreement with the Port in order to begin building structures for its cement-importing business. On November 21, 2008, it entered into a lease agreement with the Port for the lease of a parcel of property known as Parcel 3-1. Pursuant to the lease, Cementon was permitted to construct, use and operate a cement-exporting facility on Parcel 3-1. Section 8 of the Lease Agreement provided that Cementon would pay the Port 100% of all charges incurring under the scheduled rates covering the use of wharfs, docks and other facilities owned, controlled, or operated by the Port.

In 2011 Cementon began construction of two Silos on Parcel 3-1. Its pipeline was also completed in 2012. However, since Parcel 3-1 has no wharf, Cementon needed access to one. Gulf Pier, the wharf adjacent to Parcel 3-1, is currently used by Mobil Oil Guam. There was some delay in laying the pipeline into Gulf Pier because Cementon first had to negotiate a user agreement with Mobil. In October 2013, with assistance from the Port, Cementon was permitted to lay pipes in Gulf Pier. Parcel 3-1 now contains two silos that are used for storage for Cementon's cement, as well as an administration building and main office. Cementon's pipes also connect from its facility to Gulf Pier. Cementon uses these pipes to offload cement from the vessels into the Silos. The user access agreement between Mobil and Cementon allow Cementon to access and utilize Gulf Pier in order to discharge its operations.

When ships arrive, the ships pump the cement through the pipe all the way to the silos' storage on Parcel 3-1. With respect to the wharfage and dockage fees, the Port's terminal tariff, which rates were recently reviewed and approved by this Commission, authorized an assessment of wharfage and dockage fees for cargo on vessels. All users of the Port except for Hansen pay wharfage fees. Based on the testimony at the hearing, wharfage is for all cargos coming or going over the wharf, in and out, and is used for the repair and maintenance of PAG's wharfs. Cementon pays a dry bulk rate fee. It pays its fee to its shipping agent Ambyth. The wharfage is paid prior to docking in order for the shipping agent to release the cargo upon arrival at the Gulf Pier. Cementon imports the same cement as its competitor Hansen. Both Cementon and Hansen obtain their cement from the same supplier from Taiwan, namely Asia Cement. They use the same ship to import cement to Guam.

Cementon alleged that the lease agreement violates both Federal and Guam law because it requires Cementon to pay the wharfage and dockage fees. The Port's imposition of the wharfage fees for Cementon's private use of Gulf Pier is alleged to violate 12 GCA § 10104(j), which statute authorizes PAG to impose a terminal tariff, as Gulf Pier is not a public facility of the Port. Cementon further argues that the Port's imposition of wharfage fees to Cementon's private use of Gulf Pier constitutes an unlawful taking under the Organic Act of Guam and the U.S. Constitution. Cementon also alleges that there is no justification in the law for the Port to charge wharfage and

dockage fees for Cementon's private use of Gulf Pier, and that the Port's wharfage charges imposed on Cementon are unreasonable/or unreasonably discriminatory. The assessment by the Port of wharfage fees against Cementon inequitably raises Cementon's prices and encourages anti-competitive practices.

With respect to whether the Port's imposition of wharfage fees for Cementon's private use of Gulf Pier violates 12 GCA § 10104(j), based upon the record, Gulf Pier remain a public facility of the Port. Cementon 's President, Dr. Johnson Ma, testified that Gulf Pier is Port property. Cementon's Administrative Manager, Michael Sarmiento, also did not dispute that the Port owned Gulf Pier. A March 20, 1990, Management Agreement between the Port and Mobil reflects that Mobil operates Gulf Pier on behalf of the Port. The user access agreement between Mobil and Cementon also expressly indicates that Mobil simply operates and maintains Gulf Pier. At the Port's request, Mobil agreed to make Gulf Pier available to Cementon. All of these provisions indicate that Mobil serves as a managing agent but that the ownership of Gulf Pier remains with the Port.

The evidence indicates that Gulf Pier remains public property of the Port, which justifies the Port's imposition of wharfage fees for shipments arriving on Gulf Pier. The ALJ disagrees that the wharfage fees assessed against Cementon constitute an unlawful taking. The ALJ believes that imposition of wharfage for Cementon's use of a Gulf Pier does not qualify as a "taking", because Gulf Pier remains a public facility of the Port. Also, imposition of wharfage for Cementon's use of its private pipeline does not qualify as a "taking." For a "taking" to occur, the property owner must suffer a physical invasion of its property or be prohibited from all economically beneficial or productive use of its property. Neither of these instances are present in this case. There is no evidence to support that the Port prohibited Cementon's use of its pipelines. There is also no evidence that the Port has either deprived or interfered with Cementon's economically beneficial use of its pipelines. It has been completely free to utilize its pipelines for the purposes of transferring cement.

The Port is authorized by the PUC to assess wharfage fees. All users except Hansen pay wharfage. Cementon was aware of its obligation to pay wharfage prior to the execution of the lease agreement. Section 8 of the original lease agreement required Cementon to pay 100% of the wharf's docks and other facilities owned, controlled, or operated by the Port. The lease agreement contained a provision that permitted Cementon to terminate the lease within 8 months of the commencement of the term of the lease in the event lessee is unable to obtain access to the use of the area known as Gulf Pier. The Port did not interfere with Cementon's expectations. As to the economic impact of the regulation, Cementon is not objecting to the amount of the wharfage being assessed, but the fact that wharfage is being assessed at all. It wants equality with Hansen.

However, in this case, there is no authority for the Port to waive Cementon's wharfage fees. Cementon argues that there is no justification in law for the Port to charge

wharfage for private use of Gulf Pier, and that the Port's wharfage charges were unreasonable and/or discriminatory. In Docket 17-01, the PUC authorized the Port to assess wharfage and dockage fees for both Mobil and Cementon, who share the use of Gulf Pier, are assessed wharfage fees. The assessment is not unreasonable or discriminatory. A court determined that Hansen should not pay wharfage fees because it built its own wharf and privately owns it. Cementon argues that the assessment of wharfage fees to it encourages anti-competitive practice. However, testimony indicated that Cementon does not pass the wharfage fees on to its customers. It is not clear on these facts how the wharfage fees encourage anti-competitive practices. The Port should implement such applicable rates fairly across the Port.

Unless a court of law exempts certain users from being assessed wharfage, all users should be treated equally under the current rates of the Port's terminal tariff. Based upon the administrative record, the ALJ recommends that the Commission find in favor of the Port and dismiss the complaint. The administrative cost should be split evenly among the Parties. Commissioner Montinola indicated that he agreed with the ALJ on his Order. Upon motion duly made, seconded and unanimously carried, the Commissioners found in favor of the Port, determining that the Port did not improperly assess wharfage fees against Cementon. Cementon's complaint was dismissed. The PUC adopted the Order made *Attachment* "C" hereto.

There being no further administrative matters or 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
6:30 p.m., September 12, 2017

AGENDA

1. Guam Waterworks Authority
   - GWA Docket 17-10, Petition for Approval to Refund the Guam Waterworks Authority's 2010 Bond Series and Issuing Documents, Consultant's Report, ALJ Report, and Proposed Order

2. Port Authority of Guam
   - PAG Docket 16-01, Complaint by Cementon Micronesia, LLC, ALJ Report, and Proposed Order

ATTACHMENT A

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE: PETITION FOR APPROVAL TO REFUND THE GUAM WATERWORKS AUTHORITY'S 2010 BOND SERIES AND TO APPROVE SUPPORTING DOCUMENTS	)	**GWA DOCKET 17-10**
	)	**ORDER**

On August 2, 2017, Guam Waterworks Authority ("GWA") petitioned the Guam Public Utilities Commission (the "Commission") for authority to issue bonds for the purpose of redeeming or retiring all or a portion of GWA's outstanding Water and Wastewater System Revenue Bonds, Series 2010 (the "Prior Bonds").

The Commission has examined the petition and the findings and recommendations of its regulatory consultant and Administrative Law Judge (the "ALJ"). After discussion at a duly convened Commission meeting on September 12, 2017 and upon specific findings and on motion duly seconded and carried by the undersigned Commissioners, the Guam Public Utilities Commission, hereby ORDERS that:

1. The order approving long term debt, in form attached ("Debt Order"), shall be and is hereby adopted by the Commission.

2. A portion of the proceeds of the long term debt authorized by the Debt Order is authorized to be used to redeem or retire the Prior Bonds, in whole or in part.

3. Within sixty (60) days after such bonds have been issued, GWA shall submit a petition indicating the manner by which any actual savings shall be allocated.

4. GWA 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

ATTACHMENT B

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.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

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SO ORDERED this 12th day of September, 2017.

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

P173022.JRA

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE: PETITION FOR APPROVAL TO REFUND THE GUAM WATERWORKS AUTHORITY'S 2010 BOND SERIES AND TO APPROVE SUPPORTING DOCUMENTS	))))))	**GWA DOCKET 17-10** **ORDER APPROVING LONG TERM DEBT**

On October 27, 2005, the Guam Public Utilities Commission (the "Commission") adopted an Order in Docket No. 05-10 (the "2005 Order") approving certain aspects of the proposal of the Guam Waterworks Authority ("GWA") to issue and sell long-term debt in the form of revenue bonds (the "Bonds") pursuant to Article 2 of Chapter 14 of Title 12 of the Guam Code Annotated (the "Act") for the purposes of financing certain additions and improvements to the water and wastewater systems of GWA (the "System").

The proposed form of an indenture pursuant to which the Bonds in one or more series were proposed to be issued (the "General Indenture") was presented to the Commission at that time. In accordance with the Act, the terms and conditions pursuant to which the Bonds were to be issued, and included in the General Indenture, were approved by the Commission pursuant to the 2005 Order.

GWA executed and delivered the General Indenture, dated as of December 1, 2005, and issued one series of Bonds on December 7, 2005, having the terms and issued for the purposes authorized and approved by Orders of the Commission heretofore adopted.

On October 29, 2010, this Commission approved an Order in Docket No. 10-03 approving the issuance and sale by GWA of long-term debt in the form of Bonds pursuant to the Act for the purposes of financing certain additions and improvements to the System.

GWA issued one series of Bonds on November 23, 2010, having the terms and issued for the purposes authorized and approved by Orders of the Commission heretofore adopted.

On November 18, 2013, the Commission approved an Order in Docket No. 14-01 approving the issuance and sale by GWA of long-term debt in the form of Bonds pursuant to the Act for the purposes of financing certain additions and improvements to the System.

GWA issued one series of Bonds on December 12, 2013, having the terms and issued for the purposes authorized and approved by Orders of the Commission theretofore adopted.

On June 26, 2014, the Commission approved an Order in Docket No. 14-05 approving the issuance and sale by GWA of long-term debt in the form of Bonds pursuant to the Act for the purposes of redeeming or retiring all or a portion of the outstanding 2005 Bonds and 2010 Bonds. GWA issued two series of Bonds on August 7, 2014, having the terms and issued for the purposes authorized and approved by Orders of the Commission theretofore adopted, including retiring the outstanding 2005 Bonds (and none of the 2010 Bonds were retired thereby).

On December 10, 2015, the Commission approved an Order in Docket No. 15-10 approving the issuance and sale by GWA of long-term debt in the form of Bonds pursuant to the Act for the purposes of financing certain additions and improvements to the System.

GWA issued one series of Bonds on February 24, 2016, having the terms and issued for the purposes authorized and approved by Orders of the Commission theretofore adopted.

GWA has now applied to the Commission for approval of the issuance of one or more additional series of Bonds (the "Revenue Refunding Bonds") in an aggregate principal amount sufficient to provide funds for the purpose of redeeming or retiring all or a portion of GWA's outstanding Water and Wastewater System Revenue Bonds, Series 2010 (the "Prior Bonds"), under the limitations provided in Section 4 of Public Law 28-71, as amended by Public Law 30-145, and by Public Law 32-069 (as so amended, the "GWA Bonds Law"), and of the terms and conditions pursuant to which such Revenue Refunding Bonds are to be issued.

The proposed form of supplemental indenture pursuant to which the Revenue Refunding Bonds are proposed to be issued (the "Supplemental Indenture") has been presented to the Commission (together with certain financial and other relevant information).

The Commission having duly considered the application of GWA and the information presented on GWA's behalf and having determined that the issuance of the

Revenue Refunding Bonds for such purposes is just and reasonable, it is ordered as follows:

1. The issuance of the Revenue Refunding Bonds and the terms and conditions pursuant to which the Revenue Refunding Bonds are to be issued are hereby approved; provided, however, that any material modification or amendment of the Supplemental Indenture shall be subject to the Commission's prior review and approval. GWA shall have the responsibility of bringing any such material modification or amendment to the Commission's attention.

2. The principal amount of Revenue Refunding Bonds that may be issued may not exceed an aggregate principal amount sufficient to provide funds for the redemption or retirement of all or a portion of the Prior Bonds, plus costs of issuance and of retirement or redemption, and of a debt service reserve fund deposit. As provided in the GWA Bonds Law, the Revenue Refunding Bonds shall have a final maturity not later than the final maturity of the Prior Bonds; the Revenue Refunding Bonds shall be issued and sold pursuant to the Indenture and in compliance with the Act; and the present value of debt service on the refinancing shall be at least two percent (2%) less than the present value of debt service on the Prior Bonds being refinanced, using the yield on the refinancing bonds as the discount rate. All obligations of GWA to pay debt service on, and the redemption price of, the Prior Bonds shall be discharged concurrently with the issuance of the refinancing bonds; and thereafter, the Prior Bonds shall be payable solely from, and secured solely by, an escrow established for such purpose in accordance with the Indenture.

3. Further, that any issuance of Revenue Refunding Bonds shall yield an annual savings of at least $350,000.

4. GWA 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 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.

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SO ORDERED this 12th day of September, 2017.

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

P173021.JRA

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

CEMENTON MICRONESIA, LLC,	)	**PAG DOCKET NO. 16-01**
	)	
Complainant,	)	
	)	
vs.	)	**ORDER**
	)	
PORT AUTHORITY OF GUAM,	)	
	)	
Respondent.	)	
	)	

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the "PUC") pursuant to the June 10, 2016 complaint filed by Cementon Micronesia, LLC ("Cementon") against the Port Authority of Guam (hereinafter referred to as the "Port" or "PAG").

BACKGROUND

On October 7, 2016, the Administrative Law Judge (the "ALJ") assigned to this docket held a Scheduling Conference with the parties. Both PAG and Cementon were present during the conference. At the Scheduling Conference, the ALJ discussed dates related to PAG's Answer to the Complaint, and any briefing, as well as tentative dates for a hearing on the merits. In addition, the ALJ requested that the parties file briefs concerning the issue of whether the PUC has jurisdiction to address the subject Complaint. On October 21, 2016, the parties submitted such briefs regarding jurisdiction with the PUC. On November 18, 2016, the ALJ issued a Decision and Order indicating that the PUC had jurisdiction over these proceedings.

On November 22, 2016, the parties submitted a stipulation requesting a continuance of the previously scheduled merits hearing. On November 30, 2016, the Port

ATTACHMENT C

requested that a merits hearing be scheduled during the second week of January, 2017. On December 13, 2016, the ALJ issued an Amended Scheduling Order indicating that a merits hearing would be scheduled for January 25, 2017. On January 10, 2017, the parties submitted another stipulation requesting continuance of the merits hearing. On January 13, 2017, the ALJ issued a Second Amended Scheduling Order indicating that a merits hearing woul be held on April 19, 2017. A hearing on the merits was held on April 19 and April 20, 2017. On August 30, 2017 the ALJ filed an ALJ Report detailing his findings related to Cementon's Complaint.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Parties

Cementon is a limited liability company, formed around 2008, in the business of importing cement.[1] The Port is a "public corporation and autonomous instrumentality of the government of Guam" that provides "for the needs of ocean commerce, shipping, recreational and commercial boating, and navigation of the territory of Guam." 12 G.C.A. § 10102.

2. November 21, 2008 Lease Agreement Between the Port and Cementon, and Subsequent Amendments

Back in 2008, Cementon began negotiating a lease agreement with the Port in order to begin building structures for its cement importing business.[2] On November 21, 2008, Cementon entered into a Lease Agreement with the Port, for the lease of a piece of property known as "Parcel 3-1."[3] Pursuant to the Lease Agreement, Cementon is permitted to construct, use, and operate a cement exporting facility on Parcel 3-1.[4] The lease was for an initial term of

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1 Tr., pp. 42-43 (Apr. 19, 2017).

2 Tr., pp. 48-49 (Apr. 19, 2017).

3 Cementon's "Exhibit B," p. 2.

4 Cementon's "Exhibit B," p. 2.

five (5) years, and provided for a monthly rent of $28,995 per month.[5] Section 8 of the Lease Agreement further provided that Cementon would pay to the Port one hundred percent (100%) "of all charges accruing under the schedule of rates covering the use of wharves, docks and other facilities owned, controlled or operated" by the Port.[6]

The lease was subsequently amended by the parties on August 21, 2009, to exclude certain rights of way from the calculation of the net area of the leased premises, and thereby reducing Cementon's rent of Parcel 3-1 to $19,847 per month.[7] The lease, again, was amended by the parties in July, 2010, to provide for a five-year extension of the term of the Lease Agreement, as well as to provide for three (3) five-year options for renewal the lease.[8]

3. Construction on Parcel 3-1

In 2011, Cementon began construction of two silos on Parcel 3-1, which it completed in 2012.[9] Cementon's pipeline was also completed in 2012.[10] However, there was some delay in laying the pipeline into Golf Pier.[11] Cementon first had to negotiate a User Agreement with Mobil Oil Guam Inc. ("Mobil"), since Mobil managed Golf Pier.[12] In October 2013, with assistance from the Port, Cementon was permitted to lay pipes in Golf Pier.[13] Cementon spent around $17 million for the construction of the silos and pipeline.[14]

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5 Cementon's "Exhibit B," pp. 1, 4.

6 Cementon's "Exhibit B," p. 5.

7 Cementon's "Exhibit C," pp. 1-2.

8 Cementon's "Exhibit D," p. 2.

9 Tr., p. 62, 64 (Apr. 19, 2017).

10 Tr., p. 67 (Apr. 19, 2017).

11 Tr., p. 67 (Apr. 19, 2017).

12 Tr., p. 68 (Apr. 19, 2017).

13 Tr., p. 77 (Apr. 19, 2017).

14 Tr., p. 111 (Apr. 19, 2017).

The leased property now contains two silos that are used for storage of Cementon's cement, as well as an administration building and main office.[15] Also, Cementon's pipes connect from its facility to Golf Pier.[16] Cementon uses these pipes to offload cement from the vessels into its silos.[17] The User Access Agreement between Mobil and Cementon allows Cementon to access and utilize Golf Pier in order to discharge its operations.[18] Cementon and Mobil work together to coordinate arrival of vessels to Golf Pier.[19] When ships arrive, the ship pumps the cement through the pipe, all the way to the silo storage.[20]

4. October 8, 2013 User Access Agreement between Mobil Oil Guam Inc. and Cementon

On October 8, 2013, Mobile and Cementon entered into an agreement that allows Cementon access to Golf Pier, for the express purpose of allowing Cementon to import and export non-petroleum products.[21] The User Access Agreement was conditioned on Cementon's installation of motor operated valves and pipelines.[22] Among other provisions, the User Access Agreement provided that Cementon would utilize its own personnel to receive is products at Golf Pier.[23] The User Access Agreement further provided that in the event it intended to construct improvements to Golf Pier, Cementon would first obtain the Port's consent.[24]

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15 Tr., p. 11 (Apr. 20, 2017).

16 Tr., p. 12 (Apr. 20, 2017).

17 Tr., p. 13 (Apr. 20, 2017).

18 Tr., p. 18 (Apr. 20, 2017).

19 Tr., p. 12 (Apr. 20, 2017).

20 Tr., p. 63 (Apr. 19, 2017).

21 Cementon's "Exhibit Q," pp. 1-2.

22 Cementon's "Exhibit Q," p. 2.

23 Cementon's "Exhibit Q," p. 3.

24 Cementon's "Exhibit Q," p. 4.

5. Wharfage and Dockage Fees

The Port's Terminal Tariff, which rates were recently reviewed and approved by this Commission, authorizes the assessment of wharfage and dockage fees for cargo on vessels. All users of the Port, except for Hansen, pay wharfage fees.[25] Wharfage is for "all cargos coming or going over [the] wharf, in and out," and which is used for "repair" and "maintenance."[26] Wharfage rates are based on the type of cargo.[27] The rates depend, for instance, on whether the shipment arrived in a container, or bulk, or break bulk.[28]

Cementon pays a "dry bulk rate" fee.[29] Cementon pays this wharfage fee to its shipping agent, Ambyth.[30] The wharfage is paid prior to docking in order for the shipping agent to release the cargo upon arrival at Golf Pier.[31] Mobil is also assessed wharfage.[32] Hansen does not pay wharfage because Hansen built its wharf.[33]

In 2014, Cementon received two shipments and paid approximately $48,000 in wharfage fees.[34] In 2015, Cementon received three shipments and paid approximately $70,000 in wharfage fees.[35] In 2016, Cementon received five (5) shipments and paid approximately $102,000 in wharfage fees.[36]

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25 Tr., pp. 124-125 (Apr. 20, 2017).

26 Tr., p. 128 (Apr. 20, 2017).

27 Tr., p. 125 (Apr. 20, 2017).

28 Tr., p. 126 (Apr. 20, 2017).

29 Tr., p. 129 (Apr. 20, 2017).

30 Tr., p. 21 (Apr. 20, 2017).

31 Tr., p. 21 (Apr. 20, 2017).

32 Tr., p. 139 (Apr. 20, 2017).

33 Tr., p. 137 (Apr. 20, 2017).

34 Tr., p. 22 (Apr. 20, 2017).

35 Tr., p. 21 (Apr. 22, 2017).

36 Tr., p. 22 (Apr. 20, 2017).

6. Cement

Cementon imports the same cement as its competitor, Hansen.[37] Both Cementon and Hansen obtain their cement from the same supplier from Taiwan, Asia Cement, and use the same ship to import it to Guam.[38]

7. Letters to the Port Regarding Hansen and Wharfage Fees

In 2015, Cementon learned that Hansen does not pay wharfage fees.[39] On August 10, 2015, Cementon wrote to the Port objecting to the increase in the tariff rates, as well as the Port's assessment of wharfage on Cementon.[40] Cementon maintained that it was "unfair and discriminatory" that Hansen was not paying wharfage.[41]

On February 29, 2016, Cementon again wrote to the Port objecting to the assessment of wharfage fees on Cementon, and requesting that the Port waive such wharfage fees.[42] On April 14, 2016, Cementon again wrote to the Port disputing the assessed wharfage.[43] On April 27, 2016, the Port wrote a letter to Cementon responding to Cementon's April 14, 2016 letter, indicating that it will assess a "dry bulk cargo rate" on Cementon, and that the issues related to Hansen are "unique to Hanson" and do "not apply" to Cementon.[44]

On June 9, 2016, Cementon indicated in a response to the Port's proposed amendment to the lease agreement, that it was requesting to amend the lease agreement to

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37 Tr., p. 81 (Apr. 19, 2017).

38 Tr., p. 81 (Apr. 19, 2017).

39 Tr., p. 89 (Apr. 19, 2017).

40 Cementon's "Exhibit J," p. 1.

41 Cementon's "Exhibit J," p. 1.

42 Cementon's "Exhibit K," p. 1.

43 Cementon's "Exhibit K," p. 1.

44 Cementon's "Exhibit M," p. 1.

eliminate Section 8, the provision that requires Cementon to pay wharfage fees. It again raised similar arguments contained in its prior letters to the Port, in particular, its complaint that Cementon is treated dissimilarly to Hansen with regard to wharfage.[45]

8. Cementon's Complaint

Cementon alleges in its Complaint that a lease agreement between Cementon and the Port violates both federal and Guam law because it requires Cementon to pay one hundred percent (100%) of all wharfage and dockage fees related to Cementon's use of Golf Pier.[46]

Specifically, Cementon maintains that "[t]he Port's imposition of wharfage fees for Cementon's private use of Golf Pier violates 12 G.C.A. § 10104(j), as Golf Pier is not a public facility of the Port."[47] In additional, Cementon further maintains that "[t]he Port's imposition of wharfage fees to Cementon for its private use of Golf Pier constitutes an unlawful taking under the Organic Act of Guam and the Fifth Amendment of the United States Constitution."[48]

Further in its Complaint, Cementon submits that "[t]here is no justification in the law for the Port to charge wharfage and dockage fees for Cementon's private use of Golf Pier" and that "[t]he Port's wharfage charges imposed on Cementon are unreasonable and/or unreasonably discriminatory."[49] Cementon also argues that the Port's assessment of wharfage

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[45] Cementon's "Exhibit M," pp. 1-2.

[46] Complaint by Cementon Micronesia, LLC, PAG Docket 16-01, pp. 3, 5-6 (Jun. 10, 2016) ("Cementon Complaint").

[47] Cementon Complaint, p. 5.

[48] Cementon Complaint, pp. 5-6.

[49] Cementon Complaint, p. 6.

fees against Cementon "inequitably raises Cementon's pricing and encourages anti-competitive practices."[50]

9. Jurisdiction

The PUC's enabling statutes, found at 12 G.C.A. § 12101 *et seq.*, provide the PUC with broad powers in regulating public utilities, like PAG.[51] The Guam Legislature delegated to the PUC "regulatory oversight supervision" "over each public utility." 12 G.C.A. § 12105(a). In aid of this regulatory authority, the PUC is empowered to "investigate and examine any rates and charges charged by any utility." 12 G.C.A. § 12105(c). And in furtherance of this regulatory authority, the PUC is additionally empowered to examine a utility's "compliance with contracts, covenants," as well as a utility's "compliance with all applicable territorial and federal laws and with the provisions of its . . . enabling legislation." 12 G.C.A. § 12106(a)(10) and (11); *See also* 12 G.C.A. § 12115.

Further, PAG's own enabling authority, found at 12 G.C.A. Section 10101 *et seq.*, expressly subjects PAG's implementation of its rates, which include wharfage and dockage fees, as well as "charges for the use and occupation of public facilities," to the "regulatory oversight supervision and approval" of the PUC. 12 G.C.A. § 10104(j).

Since this case arises out of a contract dispute concerning PAG's assessment of rates, particularly wharfage and dockage fees, the PUC has authority to exercise regulatory oversight supervision in this instance. Accordingly, the PUC has authority to investigate and

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[50] Cementon Complaint, p. 6.

[51] PAG is a public utility subject to the jurisdiction of the PUC. *See* 12 G.C.A. §12101(a).

examine PAG's assessment of the wharfage and dockage fees as it relates to its lease agreement with Cementon.

10. Whether Golf Pier is a Public Facility Subject to the Port's Wharfage Fees

Cementon maintains in its Complaint that "[t]he Port's imposition of wharfage fees for Cementon's private use of Golf Pier violates 12 G.C.A. § 10104(j), as Golf Pier is not a public facility of the Port."[52] Section 10104(j) specifically provides that the Port must "[e]stablish and modify from time to time, subject only to the regulatory oversight supervision and approval of the Public Utilities Commission, all rates, dockage, rentals, tolls, pilotage, wharfage and charges for the use and occupation of the public facilities or appliances of the Port, and for services rendered by the Port and to provide for the collection thereof." 12 G.C.A. § 10104(j).

Based on the record before this Commission, however, Golf Pier remains a public facility of the Port. In fact, Cementon's President, Dr. Johnson Ma, testified that Golf Pier is Port property.[53] Cementon's Administrative Manager, Michael Sarmiento, also did not dispute that the Port owned Golf Pier.[54] In addition, a March 20, 1990 Management Agreement between the Port and Mobil, including subsequent amendments, reflects that Mobil operates Golf Pier on behalf of the Port.[55] The User Access Agreement between Mobil and Cementon also expressly indicates again that Mobil simply operates and maintains Golf Pier pursuant to the Management Agreement between Mobil and the Port.[56]

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[52] Cementon Complaint, p. 5.

[53] Tr., pp. 129-130 (Apr. 19, 2017).

[54] Tr., pp. 25-26 (Apr. 20, 2017).

[55] Cementon's "Exhibit V."

[56] Cementon's "Exhibit Q," p. 1.

The record further reflects that it was at the Port's request that Mobil agreed to make Golf Pier available to Cementon.[57] The User Access Agreement also provides that in the event Cementon "intends to construct improvements to Golf Pier to facilitate its use of Golf Pier for the receipt of its product, [Cementon] shall obtain the prior written consent of PAG . . . ."[58] All these provisions clearly indicate that Mobil serves as a managing agent, but that ownership of Golf Pier remains with the Port. The record also clearly indicates that Cementon and Mobil both simply share the use of Golf Pier. [59] Accordingly, both Cementon and Mobil are assessed wharfage fees.[60]

In PAG Docket 17-01, the PUC authorized the Port to assess wharfage fees as part of its Terminal Tariff. Based on the record before this Commission, the evidence clearly indicates that Golf Pier remains public property of the Port. Golf Pier is not privately owned by any other entity. Accordingly, the Port's imposition of wharfage fees for shipments arriving at Golf Pier is lawful.

11. Whether the Wharfage Fees Assessed on Cementon Constitutes an Unlawful Taking

In its Complaint, Cementon submits that "[t]he Port's imposition of wharfage fees to Cementon for its private use of Golf Pier constitutes an unlawful taking under the Organic Act of Guam and the Fifth Amendment of the United States Constitution."[61] In its Hearing Brief, Cementon argued that "[t]he assessment of the tariff amounts to a taking because Cementon

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[57] Cementon's "Exhibit Q," p. 1.

[58] Tr., p. 19 (Apr. 20, 2017); Cementon's "Exhibit Q," p. 4.

[59] Tr., p. 31 (Apr. 20, 2017).

[60] Tr., p. 139 (Apr. 20, 2017).

[61] Cementon Complaint, pp. 5-6.

entered the Guam cement market expecting to be treated on an equal basis as Hansen."[62] At the April 19, 2017 hearing, Cementon further argued that "[t]he charging of wharfage fees for Cementon's private use of its own pipelines constitutes an unlawful taking such that Cementon should be subject to a wharfage fee."[63]

As discussed in the subsection above, Golf Pier remains a public facility of the Port, subject to a Management Agreement between the Port and Mobil; and that it was undisputed that the Port owned Golf Pier.[64] Mobil simply operates and maintains Golf Pier on behalf of the Port.[65]

With respect to Cementon's argument that charging "wharfage fees for Cementon's private use of its own pipelines constitutes an unlawful taking," this argument seems misplaced. The Takings Clause of the Fifth Amendment guarantees just compensation whenever private property is "taken" for public use. A & D Auto Sales, Inc. v. United States, 748 F.3d 1142, 1150 (Fed. Cir. 2014). A categorical regulatory taking occurs where regulations "compel the property owner to suffer a physical invasion of his property" or "prohibit all economically beneficial or productive use." A & D Auto Sales, Inc. v. United States, 748 F.3d 1142, 1151 (Fed. Cir. 2014) (citing Lucas v. S.C. Coastal Council, 505 U.S. 1003, 1015, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992)). Neither of these instances appears to be present in this case. The Port in this case has not prohibited Cementon's use of its pipelines. In addition, there is no evidence that the Port has either deprived, or interfered with, Cementon's economically beneficial use of

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62 Cementon's Hearing Brief, p. 13 (Nov. 15, 2016).

63 Tr., p. 17 (Apr. 19, 2017).

64 Cementon's "Exhibit Q," p. 1; Tr., pp. 129-130 (Apr. 19, 2017); Tr., pp. 25-26 (Apr. 20, 2017).

65 Cementon's "Exhibit Q," p. 1.

its pipelines. Cementon is completely free to utilize its pipelines for the purposes of transferring cement as it so desires.

It appears, however, that the taking alleged in this case is the Port's assessment of wharfage fees on Cementon's cement. Beyond the categories discussed above, courts engage in factual inquiries, which analyze the following: (1) "the character of the governmental action," (2) "the extent to which the [action] has interfered with distinct investment-backed expectations," and (3) "[t]he economic impact of the regulation on the claimant." Penn. Cent. Transp. Co. v. City of New York, 438 U.S. 104, 124, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978). Further, "the existence of a valid property interest is necessary in all takings claims." Wyatt v. United States, 271 F.3d 1090, 1097 (Fed. Cir. 2001). Balancing the facts of this case against these factors, it does not appear that Cementon's allegations qualify as a regulatory taking.

With respect to the character of the governmental action, as discussed above, the Port is authorized by the PUC to assess wharfage fees. Joann Conway, the Port's Acting Financial First Controller, testified that wharfage is for "all cargos coming or going over our wharf, in and out . . . that fee is supposed to be . . . for us to—used to repair our wharfs or keep up our wharfs. You know, maintenance and so forth. So that's what the fee was tied into."[66] It is undisputed that all users of the Port, with the exception of Hansen, pay wharfage.[67]

Further, there is testimony that every company, even though they have and use their own pipelines, pay wharfage.[68] In fact, wharfage would still be assessed even if it was vessel-to-vessel unloading on the wharf.[69] According to Ms. Conway's testimony, the reason

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66 Tr., p. 128 (Apr. 20, 2017).

67 Tr., pp. 124-125 (Apr. 20, 2017).

68 Tr., p. 145 (Apr. 20, 2017).

69 Tr., p. 146 (Apr. 20, 2017).

Hansen does not pay wharfage is because Hansen "built the wharf area where they're discharging."[70] Based on the above, the Port's imposition of wharfage fees for shipments arriving at Golf Pier does not constitute a regulatory taking.

With respect to "the extent to which the [action] has interfered with distinct investment-backed expectations," Cementon was completely aware of its obligation to pay wharfage prior to the execution of its lease. The record is clear that Section 8 of the original Lease Agreement required Cementon to pay one hundred percent (100%) "of all charges accruing under the schedule of rates covering the use of wharves, docks and other facilities owned, controlled or operated" by the Port.[71] Cementon was fully aware of this requirement, yet entered into the Lease Agreement anyway.[72]

Cementon was also fully aware, when it entered into the Lease Agreement, that it would need access to Golf Pier in order to operate, which is why it needed to negotiate with Mobil in order to secure that access to Golf Pier. The Lease Agreement, in fact, contained a provision that permitted Cementon to "terminate the lease within eight months of commencement of the term of the lease in the even lessee is unable to obtain access toward the use of the area known as Golf Pier . . . ."[73] Based on these facts, it is clear that the Port did not interfere with Cementon's expectations. Cementon was well aware of its circumstances prior to its entry into the Lease Agreement back in 2008. It was not until Cementon discovered in 2015 that a competitor, Hansen, was not being assessed wharfage did this controversy arise.

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[70] Tr., p. 137 (Apr. 20, 2017).

[71] Cementon's "Exhibit B," p. 5.

[72] Tr., p. 228 (Apr. 19, 2017).

[73] Tr., p. 124 (Apr. 19, 2017); Cementon's "Exhibit B," p. 11.

With respect to the "[t]he economic impact of the regulation on the claimant," wharfage for "dry bulk cargo" at the time was assessed at $4.25 per ton. In 2014, Cementon received two shipments and paid approximately $48,000 in wharfage fees.[74] In 2015, Cementon received three shipments and paid approximately $70,000 in wharfage fees.[75] In 2016, Cementon received five (5) shipments and paid approximately $102,000 in wharfage fees.[76] The issue in this case, however, is not the amount of wharfage being assessed on Cementon, but the fact that wharfage is being assessed at all.

The record is clear, based on the testimony provided, and based on numerous letters Cementon sent to the Port spanning several years, that it merely wanted equality with Hansen. Since 2015, Cementon has been opposing the Port's assessment of wharfage as "unfair and discriminatory."[77] Cementon has consistently argued that if Hansen pays no wharfage at all, then so should Cementon.[78] However, in this instance, there is simply no authority for the Port to waive Cementon's wharfage fees. Again, all users of the Port, except for Hansen, pay wharfage fees.[79] Wharfage is for "all cargos coming or going over [the] wharf, in and out," and which is used for "repair" and "maintenance."[80] Hansen does not pay wharfage because Hansen built its wharf.[81] Again, based on the discussions above, the Port's imposition of wharfage fees for shipments arriving at Golf Pier does not constitute a regulatory taking.

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74 Tr., p. 22 (Apr. 20, 2017).

75 Tr., p. 21 (Apr. 22, 2017).

76 Tr., p. 22 (Apr. 20, 2017).

77 Cementon's "Exhibit J."

78 Cementon's "Exhibit J."

79 Tr., pp. 124-125 (Apr. 20, 2017).

80 Tr., p. 128 (Apr. 20, 2017).

81 Tr., p. 137 (Apr. 20, 2017).

12. Whether the Port is Justified in Assessing Wharfage Fees for Cementon's Use of Golf Pier

Further in its Complaint, Cementon submits that "[t]here is no justification in the law for the Port to charge wharfage and dockage fees for Cementon's private use of Golf Pier" and that "[t]he Port's wharfage charges imposed on Cementon are unreasonable and/or unreasonably discriminatory."[82]

As discussed in subpart 5 above, wharfage is for "all cargos coming or going over our wharf, in and out . . . that fee is . . . used to repair [the] wharfs . . . ."[83] Pursuant to 12 G.C.A. §10104(j), the Port is tasked with establishing "all rates, dockage, rentals, tolls, pilotage, wharfage and charges for the use and occupation of the public facilities or appliances of the Port, and for services rendered by the Port and to provide for the collection thereof." Indeed, this Commission in PAG Docket 17-01 has authorized the Port to assess such wharfage and dockage fees.

Therefore, no matter how the cargo arrives at the Port, wharfage is assessed. It is undisputed that all users of the Port, with the exception of Hansen, pay wharfage.[84] In fact, both Mobil and Cementon, the two companies that share the use of Golf Pier, are assessed wharfage fees. Further, the record reflects that every company, even though they have and use their own pipelines, pay wharfage.[85] Indeed, wharfage would still be assessed even if it was vessel-to-vessel unloading on the wharf.[86] Since wharfage is assessed against all users, it cannot be said that this assessment of charges is unreasonable or discriminatory—every user, besides Hansen, is

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82 Cementon Complaint, p. 6.

83 Tr., p. 128 (Apr. 20, 2017).

84 Tr., pp. 124-125 (Apr. 20, 2017).

85 Tr., p. 145 (Apr. 20, 2017).

86 Tr., p. 146 (Apr. 20, 2017).

assessed the wharfage fees. The only reason wharfage is not assessed against Hansen is because it was determined by a court that Hansen should not pay wharfage because it built its own wharf and privately owns it.

13. Whether the Imposition of Wharfage Fees Encourages Anti-Competitive Practices

Cementon maintains in its Complaint that the Port's assessment of wharfage fees against Cementon "inequitably raises Cementon's pricing and encourages anti-competitive practices."[87] There was testimony that Cementon does not pass the wharfage fees onto its customers.[88] There was also some testimony regarding Cementon receiving rent deferment from the Port, for approxiately $300,000.[89] And there was testimony that Cementon has about twenty-six (26%) of the market share.[90] It is unclear on these facts how the wharfage fees encourage anti-competitive practices.

Again, all users of the Port, except for Hansen, pay wharfage fees.[91] No matter how the cargo arrives at the Port, wharfage is assessed. Wharfage is not assessed against Hansen is because it was determined by a court that Hansen should not pay wharfage because it built its own wharf and privately owns it. Indeed, it can be argued that should another company engage in the business of importing cement, it is likely that such a company would also be subject to wharfage fees.

Ultimately, the Port should not be in the business of implementing differing rates, or waiving such rates, based on the particular needs or profile of its users. The Port should

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87 Cementon Complaint, p. 6.

88 Tr., p. 103 (Apr. 19, 2017).

89 Tr., pp. 113, 115 (Apr. 19, 2017).

90 Tr., p. 50 (Apr. 19, 2017).

91 Tr., pp. 124-125 (Apr. 20, 2017).

implement such applicable rates fairly across the board. The only reason why Hansen is not assessed wharfage fees is that a court of law has made a determination based on the specific circumstances of Hansen's case, and its particular relationship with the Port. So unless a piece of legislation, or a court of law determines, and exempts certain users from being assessed wharfage, all users should be treated equally under the current rates of the Port's Terminal Tariff.

ORDERING PROVISIONS

Upon careful consideration of the record herein, and for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby ORDERS the following:

1. That Cementon's Complaint is hereby DISMISSED.

2. Cementon and PAG are ordered and directed to each pay one-half of the PUC's regulatory fees and expenses, including and without limitation, consulting and counsel fees, and the fees and expenses associated with the instant proceedings. 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 THE NEXT PAGE]

SO ORDERED this 12th day of September, 2017.

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

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