

BEFORE THE PUBLIC UTILITIES COMMISSION

IN RE: PETITION FOR CRANE  
SURCHARGE BY PORT  
AUTHORITY OF GUAM )

PAG DOCKET 12-02

ALJ REPORT



INTRODUCTION

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This matter comes before the Guam Public Utilities Commission (the "PUC") pursuant to the September 20, 2012 Petition to Establish Crane Surcharge Rate (hereinafter referred to as the "Petition") filed by the Jose D. Leon Guerrero Commercial Port, Port Authority of Guam (hereinafter referred to as "PAG" or the "Port"). In the Petition, PAG requests that the PUC review and approve the proposed surcharge recommended by PAG related to the purchase, maintenance, and use of the Port of Los Angeles ("PoLA") cranes owned by Matson Navigation Company, Inc. ("Matson") and Horizon Lines, L.L.C. ("Horizon").

BACKGROUND

Prior to the filing of the subject Petition, PAG published the proposed crane surcharge in the Pacific Daily News on May 24, 2012 and June 28, 2012, and in the Marianas Variety on May 25, 2012, pursuant to 12 G.C.A. §12001.2. The announcements stated that "PAG is requesting that the PUC consider the establishment of a Crane Surcharge Fee of \$105.00 per loaded container and \$5.00 per revenue ton for non-containerized cargos."<sup>1</sup>

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, of up to \$125.00 per loaded container and \$5.00 per tonnage for non-containerized cargo, in order to fund

<sup>1</sup> See, e.g., PAG's Petition to Establish Crane Surcharge Rate ("Petition"), "Exhibit 9" (Sept. 20, 2012).

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the debt service, repairs, and maintenance for the PoLA cranes, as well as to establish a sinking fund to plan for any replacement cranes in the future.<sup>2</sup>

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 the PoLA cranes owned by Matson and Horizon. On August 27, 2012, the PUC issued an order approving the Sales and Interim Maintenance agreements. In the same order, the PUC also required PAG to "develop a tariff that fully funds the acquisition, financing, and maintenance resulting from the purchase" of the PoLA cranes. The PUC further ordered PAG to complete the development of its Structured Maintenance Program for its cranes; begin repairs to the PoLA cranes; develop a projection for cargo throughput used to forecast revenues from the tariff; and file a report regarding the status, future plans, or demolition of PAG's Gantry Crane 2.

On September 12, 2012, ANZ transmitted a revised "Letter of Offer" to PAG (hereinafter referred to as the "Offer"), detailing the essential terms and conditions of the \$12 million loan secured for the purchase of the PoLA cranes. On September 14, 2012, PAG petitioned the PUC for review and approval of the ANZ commercial loan, as summarized in the Offer.

On September 20, 2012, PAG filed the Petition requesting that the PUC approve the proposed surcharge recommended by PAG related to the purchase, maintenance, and use of the PoLA cranes. Thereafter, the Administrative Law Judge of the PUC (the "ALJ") engaged the consulting firm of Slater Nakamura, L.L.C. ("Slater Nakamura") to assist with the investigation of PAG's Petition and crane surcharge. Additionally, in its September 25, 2012 meeting, the PUC considered the ALJ's review of the ANZ loan documents related to the purchase of the

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<sup>2</sup> See Petition, "Exhibit 7" (PAG Board Resolution No. 2012-04A).

PoLA cranes, and thereafter preliminarily authorized PAG to proceed with finalizing the ANZ loan.

On October 26, 2012, Slater Nakamura transmitted its initial draft report on the rate investigation to PAG. In its October 30, 2012 meeting, the PUC amended its August 27, 2012 Order, and required that PAG “develop a tariff recommendation that would fully fund the acquisition, financing, and maintenance of PoLA cranes 14, 16, and 17, as well as Crane 3, and partially fund the replacement of at least one crane within 15 years.” On October 31, 2012, PAG transmitted its comments on the draft report to Slater Nakamura. On November 3, 2012, Slater Nakamura filed its final Report on its investigation of the proposed crane surcharge.

On November 16, 2012, the Honorable Senator Thomas C. Ada (“Senator Ada”) submitted Comments regarding the crane surcharge. On November 28, 2012, and November 29, 2012, the ALJ held duly-noticed public hearings in the villages of Hagåtña, Asan, and Dededo. On December 4, 2012, PAG filed a response to Senator Ada’s November 16, 2012 Comments. On December 5, 2012, Senator Ada transmitted to the PUC and the ALJ Supplemental Testimony regarding the surcharge.

## **DISCUSSION**

### **A. Enabling and Special Legislation**

Public Law (“P.L.”) 30-57 was enacted on September 11, 2009 requiring PAG to purchase or lease to own “*at least two (2) Gantry Cranes,*” “*no later than December 31, 2012.*”<sup>3</sup> On March 11, 2010, P.L. 30-100 was enacted, which reiterated the requirement that PAG acquire, “either through purchase *or* lease to own, of *at least two (2) Gantry Cranes,*” “*no later than December 31, 2012.*”<sup>4</sup>

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<sup>3</sup> P.L. 30-57, Section 4, p. 3 (Sept. 11, 2009) (italics in original).

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

On November 21, 2011, P.L. 31-145 was enacted, which amended P.L. 30-57. Under this public law, PAG is required to obtain, through purchase or lease to own, at least two (2) gantry cranes by December 31, 2012.<sup>5</sup> Under P.L. 31-145, the Guam Legislature specifically 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> The law additionally required the PUC to perform its regulatory review and dispose of the matter in a timely and expeditious manner.<sup>7</sup> As a result, PAG is under a statutory obligation to purchase, or lease to own, at least two (2) of the PoLA cranes.

**B. Regulatory Review**

Under Section 12004 of the Public Utilities Commission and the Guam Telecommunications Act of 2004, “[t]he Commission shall have regulatory oversight supervision of rates as set forth in this Chapter over each public utility and shall perform the duties and exercise the powers imposed or conferred upon it by this Chapter.” 12 G.C.A. §12004. “No rate change may be approved by the Commission unless it is affirmatively established, by a preponderance of the evidence, that a rate change is necessary.” *Id.* “The Commission shall conduct such investigation and hearings as to any such rate changes as it deems necessary.” *Id.*

Generally, “[a]ny rate change shall be considered by the Commission using standards and financial criteria consistent with generally accepted ratemaking practices of public utilities and in full consideration of the requirement to establish and maintain General Lifeline Rates.” *Id.* In addition, the PUC is authorized to “seek advice from an independent utility

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<sup>5</sup> P.L. 31-145, Section 1, p. 3 (Nov. 17, 2011).

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

<sup>7</sup> *Id.* at Section 3, p. 6.

expert, shall approve, disapprove, increase or reduce rates for each utility.” *Id.* Moreover, “[a]t any public hearing concerning the establishment or modification of any rate, the commission may consider any factual testimony and evidence presented by the general public.” *Id.*

Lastly, 12 G.C.A. §12015 provides that “[a]ll rates, charges, assessments, and costs made or charged by any public utility shall be just and reasonable and in conformance with public law, and shall be filed with the Commission; and no rate, charge or assessment cost shall be established, abandoned, modified, departed from or changed without a public hearing and the prior approval of the Commission.” 12 G.C.A. §12015(a).

**C. PAG’s Petition**

In the Petition, PAG requests that the PUC issue an order granting the following: (1) that the crane surcharge of \$105 be applied for each loaded container; (2) that this surcharge apply “to all first carriers bringing fully loaded containers to the Port”; (3) that the crane surcharge of \$5 be applied per revenue ton for “use of the cranes to handle non-containerized or breakbulk cargos”; (4) that the revenues of the crane surcharge be used to “support acquisition price, loan financing, insurance, operation, crane accessories and upgrades, implementation of a sustainable structured maintenance program (including parts room and spare parts inventory), and implementation of a long-term asset retirement, replacement and casualty management reserve.”<sup>8</sup>

**1. PAG Board Approval**

Pursuant to Resolution No. 2012-04A, attached as “Exhibit 7” to the Petition, PAG’s Board of Directors approved a crane surcharge, of up to \$125.00 for loaded container and \$5.00 per tonnage for non-containerized cargo, to fund the debt service, repairs, and maintenance

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<sup>8</sup> Petition, p. 2.

for the PoLA cranes, as well as to establish a sinking fund to plan for any replacement cranes in the future.<sup>9</sup>

## 2. Supporting Testimony

The Petition is supported by written testimony from PAG's management, namely: Mary C. Torres, General Manager; John B. Santos, Operations Manager; and Jose B. Guevara, III, Financial Affairs Controller.

Ms. Torres testified that "the proposed Crane Surcharge addresses the payback for the \$12 million debt, the costs to implement a structured maintenance plan, a spare parts inventory, and a long term asset replacement and a casualty management reserve."<sup>10</sup> Ms. Torres recommended that "the Port be ordered [to] create General Ledger revenue and expense accounts that directly link the Crane Surcharge monies to the Gantry Crane loan payments, insurance, a sustainable structured maintenance program, a spare parts inventory, and a long-term asset replacement and a casualty management reserve."<sup>11</sup>

Mr. Santos testified that "PAG handles 90% of all cargo coming into our island as well as the transshipping cargoes that pass through our port"; that PAG "is the major Transshipment Hub servicing vessels calling on FSM, CNMI, Marshall Islands, and Palau."<sup>12</sup> Mr. Santos' testimony indicated that "PAG Operations requires four working cranes on the rails" and that having four working cranes "gives the Port the operational and maintenance flexibility to maximize its resources"; and that "[s]ustainable structured maintenance will support the reduction and/or the elimination of potential disruptions while maintaining safe cargo handling productivity."<sup>13</sup>

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<sup>9</sup> See Petition, "Exhibit 7" (PAG Board Resolution No. 2012-04A).

<sup>10</sup> Petition, "Exhibit 1," p. 3.

<sup>11</sup> Petition, "Exhibit 1," p. 4.

<sup>12</sup> Petition, "Exhibit 2," p. 2.

<sup>13</sup> Petition, "Exhibit 2," p. 3.

Mr. Santos' testimony further indicated that "[c]ontainer handling productivity is directly related to the transfer functions of a container terminal, including the number of ship to shore crane, yard equipment such as Top-Loaders and Tractors and the productivity of the workers assigned to the dockside, yard and gate operations"; and that "[a]ny delays in operations will greatly impact the delivery of goods in a timely manner not only to our local and military consumers but also to our neighboring Islands."<sup>14</sup> Mr. Santos added that "[t]hese four cranes will enhance excess capacity for local, military and transshipment growth in our region and the seasonal surges that are endemic in containerized transport."<sup>15</sup>

Mr. Guevara testified that the crane surcharge "will support extraordinary acquisition and startup costs, and create sustainable, transparent, and targeted management of all gantry cranes in its inventory."<sup>16</sup> Mr. Guevara added that "[r]evenues from this surcharge will also be utilized to meet two other near-term requirements mandated by the legislature and PUC" which include "(1) acquiring the services of a Performance Management Contractor (PMC) to manage the performance, operation and maintenance of the acquired cranes and other Gantry cranes used in support of Port operations and (2) complying with the PUC Order resulting from the Crane Sales Agreement filing, to demolish and dispose of Gantry 2."<sup>17</sup>

Mr. Guevara further testified that PAG's financial goal is to be "fiscally solvent while being a good steward of all owned assets and while providing sustainable and improving services to its customer base on Guam and surrounding islands" and, therefore, securing "its status as an autonomous government agency working effectively and efficiently on behalf of the people of Guam."<sup>18</sup>

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<sup>14</sup> Petition, "Exhibit 2," p. 3.

<sup>15</sup> Petition, "Exhibit 2," p. 3.

<sup>16</sup> Petition, "Exhibit 3," p. 3.

<sup>17</sup> Petition, "Exhibit 3," p. 3.

<sup>18</sup> Petition, "Exhibit 3," pp. 6-7.

### **3. Supporting Financial Documents**

As part of the Petition, PAG also submitted financial schedules, which include revenue requirements, income statements, as well as container counts used to project the revenue base of the proposed crane surcharge, and a fifteen (15) year projection of revenues, expenses, and cash flow statements related to the cranes.<sup>19</sup>

#### **D. Slater Nakamura's Final Report**

Pursuant to a request by the PUC, Slater Nakamura conducted the rate investigation related to PAG's proposed PoLA crane surcharge. Slater Nakamura transmitted its initial draft report on the rate investigation to PAG on October 26, 2012, affording PAG an opportunity to review the findings and recommendations detailed in the investigation. Thereafter, PAG transmitted its comments to the draft report to Slater Nakamura. Slater Nakamura then filed its final Report on its investigation of the proposed crane surcharge on November 3, 2012.

In the Report, the consultants expressed that "[t]he task of the PUC and its consultant is to determine if a tariff or surcharge is 'just and reasonable.'" This examination also considered whether the proposed surcharge would generate sufficient revenue for PAG "to operate in a manner which will generate funding for maintenance, operations and replacement of its gantry cranes."<sup>20</sup> Another consideration was whether the surcharge would enable PAG to achieve its business objectives "while not adversely impacting the people and industry of Guam."<sup>21</sup>

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<sup>19</sup> Petition, "Exhibit 3," FAC-1; and p. 4.

<sup>20</sup> Report, p. 26.

<sup>21</sup> Report, p. 26.



## 1. Cargo Throughput Analysis

In the Report, Slater Nakamura first examined the cargo throughput potential of PAG “in order to arrive at a conservative baseline for revenue calculations.”<sup>22</sup> Based on this projection, the consultants then examined whether PAG “created a model that will support a sustainable maintenance, operations and replacement strategy coupled with a ‘just and reasonable’ surcharge.”<sup>23</sup> The consultants recommended “a conservative planning model that reflects lower demand.”<sup>24</sup>

### a. Containers

In its analysis, Slater Nakamura determined that “PAG should use an estimate of 44,400 containers as the forecast for the number of containers that will be processed in FY13 which will be subject to the container surcharge.”<sup>25</sup> The consultants found that PAG’s “proposed starting point” of 46,011 containers represented a forecast growth rate of 3.3% from FY2012 to FY2013.<sup>26</sup> The consultants maintained that such projected growth was “not within the planning assumptions used by PAG which were 1% growth per year.”<sup>27</sup> Accordingly, the consultants found PAG’s 3.3% forecast “unreasonable.”<sup>28</sup>

### b. Breakbulk

With respect to breakbulk cargo, the consultants found that “[b]ased upon the forecast from PAG, it is reasonable to assume that the breakbulk cargo throughput for FY13 will be close to the FY12 levels.”<sup>29</sup> The consultants noted, however, that “the accuracy of the

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<sup>22</sup> Report, p. 10.

<sup>23</sup> Report, p. 10.

<sup>24</sup> Report, p. 12.

<sup>25</sup> Report, p. 15.

<sup>26</sup> Report, p. 15.

<sup>27</sup> Report, p. 15.

<sup>28</sup> Report, p. 15.

<sup>29</sup> Report, p. 16.

breakbulk tonnage projections are not as critical to PAG as is the projected container movements” since “breakbulk revenues represent approximately 3%” of PAG’s cargo revenue.<sup>30</sup>

## 2. Cost and Revenue Analysis

In the Report, Slater Nakamura examined whether the crane surcharge proposed by PAG was adequate based on the projected revenue generated by PAG’s cargo projections.<sup>31</sup> The consultants submitted that based on PAG’s financial and cash flow projections, PAG will experience a negative cash flow until 2016 under PAG’s proposed surcharge and based on PAG’s throughput estimate.<sup>32</sup> The consultants maintained that under a \$125 surcharge rate, PAG’s cash flow in 2013 will be positive based on PAG’s throughput estimate; and under the consultants’ throughput estimate, the negative cash flow will be reduced to -\$75,800.<sup>33</sup> Slater Nakamura has illustrated the proposed surcharge impact as follows.<sup>34</sup>

Container Surcharge	Container Throughput	2013 Cash Flow
\$105	46,010	(\$672,229)
\$105	44,400	(\$812,470)
\$125	46,010	\$91,153
\$125	44,400	(75,800)

In the Report, Slater Nakamura contended that “[i]f the container rate is established at \$105 as proposed by PAG, the PAG’s business operations will be further impacted since PAG will need to cut expenses in other areas to support the cash flow deficit generated by

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<sup>30</sup> Report, p. 16.

<sup>31</sup> Report, p. 18.

<sup>32</sup> Report, p. 24.

<sup>33</sup> Report, p. 25.

<sup>34</sup> Report, p. 25 (Figure 11).

the crane operations.”<sup>35</sup> The consultants also identified that PAG’s operations could be “significantly impacted” should the PMC contract costs be “higher than anticipated or crane maintenance estimates are low”; or that PAG will experience “unplanned” maintenance.<sup>36</sup>

The consultants further submitted “it is likely that the POLA cranes will need to be replaced within the next 15-20 years” and that PAG’s “assumption that the cranes will be economically, functionally and structurally viable beyond 2027 is extremely risky.”<sup>37</sup> The consultants maintained that PAG’s proposed reserve fund “will cover only a small part of the replacement cost of the four cranes.”<sup>38</sup>

In sum, the consultants concluded the following. The consultants rejected PAG’s throughput model as being “overly ambitious.”<sup>39</sup> The consultants also determined that the operating costs of the four cranes have not been “appropriately forecast”; and that “[t]his uncertainty may require an amendment to both the tariff and the crane surcharge.”<sup>40</sup> The consultants further determined that the surcharge only accounts for the partial funding of replacing the cranes.<sup>41</sup> The consultants recommended that “PAG increase the container crane surcharge to a minimum of \$125 and consider replacing two cranes at a time” since “[t]wo cranes can be carried on one vessel.”<sup>42</sup>

Finally, the consultants rejected PAG’s proposed \$105 surcharge. The consultants expressed that the proposed surcharge “will not recover the costs of operations along with funding a significant percentage of the replacements costs of the cranes”; instead, the

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<sup>35</sup> Report, p. 25.

<sup>36</sup> Report, pp. 25-26.

<sup>37</sup> Report, p. 23.

<sup>38</sup> Report, p. 23.

<sup>39</sup> Report, p. 26.

<sup>40</sup> Report, pp. 26-27.

<sup>41</sup> Report, p. 27.

<sup>42</sup> Report, p. 27.

surcharge should be “at a minimum, equal to the existing Matson/Horizon surcharge.”<sup>43</sup> The consultants further expressed that the ideal surcharge would be \$140, yet recognized that “in this economic environment, increasing a surcharge would adversely affect the people of Guam.” As a result, the consultants maintained that “[s]ince the \$125/container surcharge has been in place on the majority of cargo since 2009; it is ‘just and reasonable’ that this surcharge be continued.”<sup>44</sup>

### 3. Areas of Risk

Slater Nakamura has identified several areas of risk.

#### a. Cargo Throughput Analysis

##### i. Cargo Throughput May Be Less than Forecast

The first area of risk identified by the consultants is that the cargo throughput may be less than what had been forecast. Slater Nakamura indicated this risk as a high level risk and noted that “[g]iven the unpredictability of the cargo throughput requirements, PAG will need to monitor this closely.”<sup>45</sup>

##### ii. Cargo Throughput May Be Greater

The consultants have also indicated that the cargo throughput may be more than what had been forecast. However, this risk was indicated as a low level risk, and that “[g]iven the excess capacity based upon the forecast, the impact on PAG should be minimal.”<sup>46</sup> The consultants asserted that should the cargo throughput exceed the forecast, this would simply afford PAG an opportunity to adjust the crane surcharge or accelerate replacement of the cranes.<sup>47</sup>

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<sup>43</sup> Report, p. 27.

<sup>44</sup> Report, pp. 27-28.

<sup>45</sup> Report, p. 31.

<sup>46</sup> Report, p. 32.

<sup>47</sup> Report, p. 32.

### iii. Funding

Another area of concern is that PAG may not be able to fully fund the debt and provide maintenance of the cranes.<sup>48</sup> This risk was indicated as a medium level risk.<sup>49</sup> Slater Nakamura remarked that “PAG will need to create a tariff funding model that will fund the debt, replacement costs for the cranes and the ongoing maintenance,” which should require annual review “to determine if adjustments to the tariff are required.”<sup>50</sup>

#### 4. Slater Nakamura’s Findings

Based on its investigation, Slater Nakamura reached the following findings. With respect to container throughput, Slater Nakamura found that PAG’s throughput projection for FY2013 did not “meet the planning assumptions stated by PAG.”<sup>51</sup> The consultants further found that many of the expenses are “not defined” and, accordingly, the consultants maintain that “the operating revenue and expense model will be subject to change.”<sup>52</sup>

Significantly, the consultants found that “[t]he requested surcharge of \$105 per container” would result in a “cash flow deficit for the first 2 years of crane operation even with the assumed container throughput growth of 3.3% from FY12 to FY13.”<sup>53</sup> The consultants determined that, based on the modeling of the container throughput, “a container throughput forecast for FY13 of 46,010 is high but 44,400 is ‘reasonable.’” The consultants further determined that, based on the revenue model using the container throughput at 44,400 containers for FY2013, “a container surcharge of \$125 per container” was “just and reasonable.”<sup>54</sup>

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<sup>48</sup> Report, pp. 32-33.

<sup>49</sup> Report, pp. 49-50.

<sup>50</sup> Report, pp. 49-50.

<sup>51</sup> Report, p. 29 (finding that a 3.3% growth is forecast for 2013, and the stated assumed growth is 1%).

<sup>52</sup> Report, p. 29.

<sup>53</sup> Report, p. 29.

<sup>54</sup> Report, p. 29.

The consultants added that, based on the projected container throughput at 44,400 for FY2013, “a surcharge of \$140 per container would be required for PAG to generate adequate revenues to cover the cost of operations”; and that “a surcharge of \$340 per container would be required to fully fund the replacement of four cranes by 2027.”<sup>55</sup>

The consultants additionally found that replacing four (4) cranes by 2027 would cost in excess of \$50 million based on an inflation rate of 3.1 percent; that purchasing one crane at a time would increase costs since the cost of shipping one crane is equal to the cost of shipping two cranes; and that, based on the \$125 surcharge and 44,400 container model for FY2013, PAG would be able to purchase a new crane by 2030, assuming costs remain as forecast.<sup>56</sup> The consultants also noted that if container throughput sustains an increase beyond the proposed model, and expenses remain within PAG’s projections, then PAG should request a reduction in the crane surcharge at such time.<sup>57</sup>

## **5. Slater Nakamura’s Recommendations**

Based on its investigation, Slater Nakamura issued the following recommendations. First, the consultants recommended that the PUC authorize a crane surcharge of \$105 “per each inbound, outbound and first carrier trans-shipment loaded/full container.”<sup>58</sup> Second, it recommended that the PUC also authorize a crane surcharge of \$5 per ton of non-containerized or break bulk cargos with the charge being capped at \$105 per unit/item.<sup>59</sup> Next, it recommended that the PUC authorize PAG to begin implementation of the crane surcharge on January 1, 2013.<sup>60</sup>

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<sup>55</sup> Report, p. 29.

<sup>56</sup> Report, p. 29.

<sup>57</sup> Report, p. 29.

<sup>58</sup> Report, p. 30.

<sup>59</sup> Report, p. 30.

<sup>60</sup> Report, p. 30.

In addition, Slater Nakamura recommended that the PUC “direct the PAG leadership to immediately begin the public announcement and discussion process to increase the surcharge from \$105 to \$125 per container”; and that PAG should file a petition for a \$125 per container surcharge petition by March 2013.<sup>61</sup> The consultants also recommended that the PUC “direct the PAG leadership to report annually on the variance between the revenues and costs that were forecast in their petition and as modified [in the Report]”; and that “[c]hanges in the surcharge rate should be adjusted in a timely manner to ensure that the costs of crane operations and debt amortization are properly offset by the surcharge.”<sup>62</sup>

The consultants further recommended that the PUC “direct PAG to use the FY13 baseline container throughput projection to be 44,400 containers and the breakbulk tonnage to be 42,010 tons.”<sup>63</sup> And finally, it recommended that the PUC also “direct that funds deposited in the crane reserve account be restricted for the purpose of future crane acquisitions or extraordinary corrective maintenance events.”<sup>64</sup>

#### **E. Senator Tom Ada’s Comments**

In his November 16, 2012 comments, Senator Ada recommended the following.

##### **1. Applicability of Surcharge**

First, Senator Ada noted that “[t]he phrase ‘first carrier trans-shipment loaded/full container’ needs clarification.”<sup>65</sup> Senator Ada recommended that the surcharge should be “applied to a loaded container whenever it is lifted onto or off a vessel, regardless of final destination.”<sup>66</sup> Accordingly, Senator Ada recommended that the PUC adopt a \$125 surcharge,

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<sup>61</sup> Report, p. 30.

<sup>62</sup> Report, p. 30.

<sup>63</sup> Report, p. 30.

<sup>64</sup> Report, p. 30.

<sup>65</sup> Senator Thomas C. Ada’s Comments Re: Crane Surcharge, Port Docket 12-02 (“Senator Ada’s Comments”), p. 1 (Nov. 16, 2012).

<sup>66</sup> Senator Ada’s Comments, p. 1.

which should be applied “to each lift performed on a container, i.e. ship-shore and shore-ship, to include transshipments, but excluding empty containers.”<sup>67</sup>

## 2. Baseline for Revenue

Senator Ada also recommended that, “[f]or purposes of determining revenues derived from the crane surcharge, the baseline throughput projection should be established at 44,400 containers and the break-bulk tonnage to be 42,010 Tons.”<sup>68</sup>

## 3. Sinking Fund

Senator Ada recommended that the “[r]evenues generated from throughput in excess of the baseline should be deposited in a Crane Replacement Sinking Fund.”<sup>69</sup>

## 4. \$125 Surcharge

Senator Ada further recommended that the PUC approve a surcharge in the amount of \$125. Specifically, Senator Ada maintains that “[i]f it has already been determined that the requested surcharge amount of \$105 will result in a cash deficit during the first two years, and it is not reasonable businesswise” and the consultants have already determined that “\$125 was ‘just and reasonable,’” then the PUC should adopt a \$125 surcharge.<sup>70</sup>

Moreover, Senator Ada asserted that “the PUC is not restricted in approving an amount different from the amount petitioned by PAG”; that “[t]he Commission . . . shall approve, disapprove, increase or reduce rates for each utility”; and that “[t]he Commission shall establish . . . reasonable rates and charges for services . . . at least adequate to cover the full cost of such service,” pursuant to 12 G.C.A. §§12001.2 and 12004.

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<sup>67</sup> Senator Ada’s Comments, p. 1.

<sup>68</sup> Senator Ada’s Comments, p. 1.

<sup>69</sup> Senator Ada’s Comments, p. 1.

<sup>70</sup> Senator Ada’s Comments, p. 2.



**F. Public Hearings**

Pursuant to 12 G.C.A. §12016, public hearings were held on November 28, 2012, and November 29, 2012, in the villages of Hagåtña, Asan, and Dededo. Five individuals provided public testimony during these times. Audio recording of these public hearings are on file with the PUC.

**1. Public Testimony of Senator Tom Ada**

On November 28, 2012, Senator Ada offered testimony regarding the surcharge. In particular, Senator Ada recommended in his testimony that “the surcharge amount of \$125 per loaded container be approved as part of the Port Docket 12-02.”<sup>71</sup> Senator Ada additionally testified that Slater Nakamura “found that the amount of \$105 which was originally petitioned by the board would result in a cash deficit at least for the first couple of years”; that Slater Nakamura also “found that the amount of \$125 surcharge per can would be just and reasonable and would be able to sufficiently cover its debt service requirements and operating and maintenance expenses for the crane”; and that “the Port concurs with the findings of Slater Nakamura.”<sup>72</sup>

Senator Ada further testified that “the \$125 surcharge should be applied to each lift performed on a container, ship-to-shore and shore-to-ship,” which would include “transshipments but of course excluding empty containers”; that it is “unclear whether the transship containers are actually assessed this container surcharge; and that “if it is not then the people of Guam will basically be subsidizing the movement of these containers to the outer islands,” which “would be unfair.”<sup>73</sup>

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<sup>71</sup> Audio CD, PAG Docket 12-02 (Nov. 28, 2012).

<sup>72</sup> Audio CD, PAG Docket 12-02 (Nov. 28, 2012).

<sup>73</sup> Audio CD, PAG Docket 12-02 (Nov. 28, 2012).

Senator Ada also testified that, “for purposes of determining revenues derived from the crane surcharge, the baseline throughput projection should be established at 44,400 cranes which was the forecast that Slater Nakamura was using and that the break bulk tonnage baseline should be 42,010 tons.”<sup>74</sup> Lastly, the Senator stated “the revenues generated from throughput in excess of the baseline should then be deposited in a crane replacement sinking fund.”<sup>75</sup>

## 2. Public Testimony of Senator B.J. Cruz

On November 28, 2012, the Honorable Senator Benjamin Cruz (“Senator Cruz”) also offered testimony regarding the surcharge. Specifically, Senator Cruz testified that since PAG represented that “\$105 was going to be sufficient to take care of paying off the loan and or servicing the loan, and providing for the sinking fund” then it “should be made to live with that representation and not be saved from their own misinformation or their own misguided information to the PUC that this is going to be a savings to the community.”<sup>76</sup> Senator Cruz asserted that PAG “shouldn’t be saved from their own devices” and that “they should have to suffer the consequences of it and face the consequences of not having enough money and being in deficit almost immediately.”<sup>77</sup>

Senator Cruz stated that “the decision by the PUC to approve the sale was misguided.”<sup>78</sup> Senator Cruz explained that Slater Nakamura’s initial report or draft report to the PUC was suggesting that they only needed two cranes to deal with the 44,000 cans that they were going to be off-loading and if they were two new cranes that were running constantly and didn’t need to be serviced you wouldn’t need a third or a fourth crane to be back up to cranes that

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<sup>74</sup> Audio CD, PAG Docket 12-02 (Nov. 28, 2012).

<sup>75</sup> Audio CD, PAG Docket 12-02 (Nov. 28, 2012).

<sup>76</sup> Audio CD, PAG Docket 12-02 (Nov. 28, 2012).

<sup>77</sup> Audio CD, PAG Docket 12-02 (Nov. 28, 2012).

<sup>78</sup> Audio CD, PAG Docket 12-02 (Nov. 28, 2012).

are constantly falling into disrepair which the Casper Philips report stated that one of the cranes was down for almost five months”; and therefore “it was a really bad decision by the PUC to approve the sale and for Slater Nakamura to change its draft recommendation to say, well maybe with the three we might be able to make it, and if today is only on the issue of the surcharge then the surcharge should be \$105 and it shouldn’t be saved from themselves by having \$125 being recommended.”<sup>79</sup>

Senator Cruz additionally testified that, with respect to the surcharge being assessed on foreign carriers, he did not believe that this point “was something represented to the PUC and should not be approved by the PUC as a way that they boot-strap themselves into making a bad deal good by now charging carriers who, had not previous to this date, been having to pay the \$125 since they off-load themselves with the cranes that they have on their own ships or use other cranes at the Port that they’re now going to be assessed as part of this \$105 or \$125 charge.”<sup>80</sup> Senator Cruz added that he was “opposed to any other surcharge than the \$105 that comes off the Matson ships” and that he was not under the impression that the surcharge was ever “intended to be imposed and charged to the foreign carriers who to date have not been paying the additional surcharge because that’s really going to affect all of us.”<sup>81</sup>

Senator Cruz explained, “I know that all of these members have heard me complain about the price of grapes” and that “at least if it came from Hong Kong or someplace else or Japan, if it came off a foreign carrier we didn’t have to pay the \$125 per can but in the ones that come off the American ships that we have to pay \$125 per can that’s something that will continue”; that “it’s going to make everything more expensive if now the \$105 fee be imposed on the Port carriers”; and that “unless someone can point out to me in the Petition that

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<sup>79</sup> Audio CD, PAG Docket 12-02 (Nov. 28, 2012).

<sup>80</sup> Audio CD, PAG Docket 12-02 (Nov. 28, 2012).

<sup>81</sup> Audio CD, PAG Docket 12-02 (Nov. 28, 2012).

the intent was to do that, I would oppose that the imposition or allowing that imposition of that charge against the foreign carriers.”<sup>82</sup>

### 3. Public Testimony of John B. Santos

On November 28, 2012, John B. Santos, PAG’s Operations Manager, offered testimony regarding the surcharge. In short, Mr. Santos testified that he was in favor of the surcharge being applied to both domestic carriers, as well as to foreign carriers.<sup>83</sup> Mr. Santos further testified that PAG did engage with the foreign carriers, and that the foreign carriers agreed that “when their vessels come in, their whole goal is to come in and get out.”<sup>84</sup> Mr. Santos additionally submitted that Gantry 2 and Gantry 3 cranes are currently used for the foreign carriers, and that when PAG obtains ownership of the PoLA cranes, the PoLA cranes will be used for the foreign carriers.<sup>85</sup> Mr. Santos additionally testified that he also was in favor of the surcharge being assessed on transshipment containers, but applied only to the first carrier, and not including empty containers.<sup>86</sup>

On November 29, 2012, Mr. Santos again testified that the surcharge should be applied to transshipment, but only to the first carrier.<sup>87</sup> Mr. Santos defined “transshipment” as instances where the container comes from the vessel, stays on the island, does not leave the gates, and then is loaded up to a seconded vessel.<sup>88</sup> Mr. Santos maintained that the charge should only apply to any “inbound full, import,” “local export,” and to “transshipment,” but “only to first carrier, not including empty containers.”<sup>89</sup>

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<sup>82</sup> Audio CD, PAG Docket 12-02 (Nov. 28, 2012).

<sup>83</sup> Audio CD, PAG Docket 12-02 (Nov. 28, 2012).

<sup>84</sup> Audio CD, PAG Docket 12-02 (Nov. 28, 2012).

<sup>85</sup> Audio CD, PAG Docket 12-02 (Nov. 28, 2012).

<sup>86</sup> Audio CD, PAG Docket 12-02 (Nov. 28, 2012).

<sup>87</sup> Audio CD, PAG Docket 12-02 (Nov. 29, 2012).

<sup>88</sup> Audio CD, PAG Docket 12-02 (Nov. 29, 2012).

<sup>89</sup> Audio CD, PAG Docket 12-02 (Nov. 29, 2012).

#### 4. Public Testimony of Jose B. Guevara, III

On November 29, 2012, Jose B. Guevara III, PAG's Financial Controller, provided testimony regarding the surcharge. Mr. Guevara testified that, with respect to a \$125 surcharge, PAG was concerned about public notice requirements since PAG originally published a \$105 surcharge; and that if PAG must publish another public notice indicating a \$125 surcharge, then PAG may potentially lose "two (2) months worth of crane surcharge revenue to finance the loan payments and maintenance cost needed for the cranes once we acquire the cranes."<sup>90</sup>

Mr. Guevara further testified that should the PUC order PAG to immediately implement a \$125 surcharge, then PAG would need some time to inform its customers of the higher rate. Specifically, Mr. Guevara maintained that "the shipping agents that PAG bills on vessel operations would normally request for a thirty (30) day notice of any new charge that PAG will implement to be able to recover the cost from their customers" and that these agents "in turn inform their customers of the new charge."<sup>91</sup> Accordingly, Mr. Guevara explained that "the shipping agents will require a new 30 day notice to inform their customers of the \$125 charge instead of \$105"; and that "PAG will need to implement the new rate in February and will lose one (1) month crane surcharge revenue which will amount to \$400,000."<sup>92</sup> Mr. Guevara added that "to avoid the loss of revenue to fund our loan payment and maintenance cost in the first month," PAG would request that "the \$105 surcharge be implemented in January, and once the proper notification has been done by the shipping agents to their customers, the rate of \$125 be implemented immediately."<sup>93</sup>

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<sup>90</sup> Audio CD, PAG Docket 12-02 (Nov. 29, 2012).

<sup>91</sup> Audio CD, PAG Docket 12-02 (Nov. 29, 2012).

<sup>92</sup> Audio CD, PAG Docket 12-02 (Nov. 29, 2012).

<sup>93</sup> Audio CD, PAG Docket 12-02 (Nov. 29, 2012).

Mr. Guevara additionally testified that PAG's transshipment throughput rate is charged on the first carrier, and that the second carrier, or the feeder vessel that carries the transshipment containers that will be loaded to proceed to its final destination, is not charged the transshipment rate.<sup>94</sup> Mr. Guevara submitted that the crane surcharge is consistent with this application.<sup>95</sup> In particular, Matson charges the first carrier once for transshipment loaded containers.<sup>96</sup> Mr. Guevara asserted that "transshipment is a sensitive issue that should be studied further to ensure that we do not lose this revenue to our neighboring islands."<sup>97</sup>

##### **5. Public Testimony of Mary C. Torres**

On November 29, 2012, Mary Torres, PAG's General Manager, offered testimony regarding the surcharge. Specifically, Ms. Torres stated that "this is the first time the Port will own the cranes and operate them, so certainly there is a little bit of room for adjustment as the realities play out"; and to reiterate that "\$125 is just and reasonable." Ms. Torres added:

"For the record though that when we did the original projections for the container reports, we were basing it on actual numbers that we were tracking for two years. And, in fact, the amount of 44,000, which is the baseline we're assuming right now, we've already exceeded that. We're tracking at 47,000. So although we are comfortable that our assumptions in the beginning were reasonable and a sensible number to base our assumptions on, we will nonetheless concede that, in the interest of being conservative and prudent, that we will acknowledge the lesser amount of 44,000 as the baseline."<sup>98</sup>

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<sup>94</sup> Audio CD, PAG Docket 12-02 (Nov. 29, 2012).

<sup>95</sup> Audio CD, PAG Docket 12-02 (Nov. 29, 2012).

<sup>96</sup> Audio CD, PAG Docket 12-02 (Nov. 29, 2012).

<sup>97</sup> Audio CD, PAG Docket 12-02 (Nov. 29, 2012).

<sup>98</sup> Audio CD, PAG Docket 12-02 (Nov. 29, 2012).

## **G. PAG's Response to Senator Ada's Comments**

### **1. Applicability of Surcharge**

With respect to Senator Ada's recommendation that the surcharge should be applicable to "a loaded container whenever it is lifted onto or off a vessel, regardless of final destination" and "to each lift performed on a container, i.e. ship-shore and shore-ship, to include transshipments, but excluding empty containers,"<sup>99</sup> PAG responded that it is adopting a policy of "limiting crane lift expenses for each full container to a one-time charge, irrespective of the number of lifts involved" based on issues such as cost of living in neighboring islands, the fixed nature of some of PAG's crane costs, and that other tariffs also apply to the handling of containerized cargo.<sup>100</sup>

Accordingly, PAG submitted that, as a compromise, it should be required to "report on an annual basis to PUC the variance between the revenues and costs that were forecasted" in the Petition.<sup>101</sup> PAG maintained that this would "determine whether the overall application of a crane surcharge rate should be adjusted to ensure that the costs of crane ownership and debt amortization are properly offset by the surcharge"; and that PAG should "review whether the operational and maintenance costs (such as man hours, parts, PMC fees, insurance, depreciation, fuel, other wharf fees, etc.) associated with each transshipment container, are appropriately captured and if not, determine whether a full or reduced container surcharge fee should be assessed for those transshipment containers being loaded onto the feeder

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<sup>99</sup> Senator Ada's Comments, p. 1.

<sup>100</sup> PAG's Response to Senator Ada's November 16, 2012 Comments ("PAG's Response to Senator Ada's Comments"), p. 1 (Dec. 4, 2012).

<sup>101</sup> PAG's Response to Senator Ada's Comments, p. 2.

vessel.”<sup>102</sup> As a result, PAG requests that the PUC approve the application of the surcharge to transshipment containers and assessed only to the first carrier and not the feeder vessel.<sup>103</sup>

## **2. Baseline for Revenue and Sinking Fund**

With respect to Senator Ada’s comments regarding the baseline throughput project and crane replacement fund, PAG agreed with Senator Ada on these issues.”<sup>104</sup>

## **3. \$125 Surcharge**

With respect to Senator Ada’s recommendation that the PUC should approve a \$125 surcharge, PAG submitted the following: it requests that “the PUC consider approving a 2-stage increase with the first stage approving a \$1 05 crane surcharge fee, effective January 1, 2013 and the second stage approving a delayed but automatic increase to \$125, effective March 1, 2013.”<sup>105</sup> PAG maintained that “[t]his delay to the second stage adjustment will allow shippers and their customers to plan in advance of the new rates taking effect.”<sup>106</sup>

## **H. Senator Tom Ada’s Supplemental Comments**

In his December 5, 2012 Supplemental Testimony, Senator Ada maintained that the PUC should “consider that at least a portion of the surcharge be assessed to account for the additional wear and tear from the transshipment lifts.”<sup>107</sup> Senator Ada explained that “[t]he additional lift required on the transshipped container however, will contribute to the wear and tear of the cranes and will accelerate the due date of the scheduled preventative maintenance/service” and that “the number of transshipped containers passing through the Port is

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<sup>102</sup> PAG’s Response to Senator Ada’s Comments, p. 2.

<sup>103</sup> PAG’s Response to Senator Ada’s Comments, p. 2.

<sup>104</sup> PAG’s Response to Senator Ada’s Comments, p. 2.

<sup>105</sup> PAG’s Response to Senator Ada’s Comments, p. 1.

<sup>106</sup> PAG’s Response to Senator Ada’s Comments, p. 1.

<sup>107</sup> Senator Thomas C. Ada’s Supplemental Testimony Re: Crane Surcharge, Port Docket 12-02 (“Senator Ada’s Supplemental Testimony”), p. 1 (Dec. 5, 2012).



not insignificant.”<sup>108</sup> Accordingly, Senator Ada recommended that “at the very least, the ‘repair & maintenance’ component of the crane surcharge be applied to each transshipped container.”<sup>109</sup>

## **RECOMMENDATION**

### **A. Baseline Revenue Calculations**

With respect to the baseline revenue calculations, the ALJ finds that PAG is required to develop a projection for cargo throughput that can be used to forecast revenues from the crane surcharge. The ALJ further finds that Slater Nakamura’s recommendation that the baseline throughput projection should be established at 44,400 containers, and breakbulk cargo tonnage at 42,010 tons, is reasonable. The record reflects that PAG and Senator Ada agree with these baseline throughput projections. Thus, the ALJ recommends that the PUC should direct PAG to establish the FY2013 baseline container throughput projection at 44,400 containers and breakbulk cargo tonnage at 42,010 tons.

### **B. Crane Surcharge**

With respect to the crane surcharge, based on the evidence presented in this docket, the ALJ finds that a crane surcharge is necessary to “support acquisition price, loan financing, insurance, operation, crane accessories and upgrades, implementation of a sustainable structured maintenance program (including parts room and spare parts inventory), and implementation of a long-term asset retirement, replacement and casualty management reserve.”<sup>110</sup> In addition, the ALJ finds that a crane surcharge of \$125 for each inbound, outbound and first-carrier transshipment loaded/full container, and applied to both foreign and domestic carriers, is just and reasonable. Furthermore, the ALJ finds that a \$5 surcharge per ton

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<sup>108</sup> Senator Ada’s Supplemental Testimony, p. 2.

<sup>109</sup> Senator Ada’s Supplemental Testimony, p. 2.

<sup>110</sup> Petition, p. 2.

on non-containerized, or breakbulk cargo, with the charge capped at \$105 per unit/item, and applied to both domestic and foreign carriers, is also just and reasonable.

Accordingly, the ALJ recommends that the PUC authorize PAG to assess a crane surcharge of \$125, applied to both foreign and domestic carriers, for each inbound, outbound, as well as transshipment containers handled at the Port, which transshipment containers shall be assessed only on the first carrier and not on the feeder vessel. The ALJ further recommends that the PUC authorize PAG to assess a \$5 surcharge, applied to both foreign and domestic carriers, per ton on non-containerized, or breakbulk cargo, with the charge capped at \$105 per unit/item. For example, construction material weighing thirty (30) revenue tons shall be assessed a \$105 surcharge, instead of \$150.

**C. Interim Rate**

With respect to the implementation of the crane surcharge discussed above, based on the record in this docket, the ALJ finds that providing adequate notice to PAG's shipping agents and their customers regarding the \$125 surcharge is fair and reasonable. As a result, the ALJ recommends that the PUC should approve implementation of a \$105 interim surcharge, effective January 1, 2013, and terminating on February 28, 2013; as well as approve implementation of the \$125 surcharge, effective March 1, 2013, so as to afford the carriers adequate notice of the \$125 surcharge rate.

**D. Sinking Fund**

The ALJ further recommends that the PUC direct PAG to deposit 9.5% of the revenues from the crane surcharge into a crane replacement sinking fund, including all revenue generated in excess of the baseline projections discussed in Section A above. The funds deposited into this sinking fund shall be restricted for the purpose of future acquisition of cranes,

any loan payment due to default on any past due crane loan liability, or any extraordinary corrective maintenance events.

**E. Transshipment Rate Investigation**

With respect to the application of the crane surcharge on transshipment containers, the ALJ finds that the PUC should “consider that at least a portion of the surcharge be assessed to account for the additional wear and tear from the transshipment lifts,”<sup>111</sup> but that “transshipment is a sensitive issue that should be studied further to ensure that we do not lose this revenue to our neighboring islands.”<sup>112</sup> As a result, the ALJ recommends that the PUC direct PAG to study this transshipment issue, which shall include, at a minimum: a review of whether the operational and maintenance costs (such as man hours, parts, PMC fees, insurance, depreciation, fuel, other wharf fees, etc.) associated with each transshipment container, are appropriately captured; and, if not, determine whether a full or reduced container surcharge fee should be assessed for those transshipment containers being loaded onto a feeder vessel.”<sup>113</sup> The ALJ, therefore, recommends that the PUC require PAG to a report on such study by June 30, 2013.

**F. Annual Report**

With respect to annual reporting on the efficacy of the crane surcharge, the ALJ finds that PAG is required to develop a tariff to fully fund the acquisition, financing, maintenance, of PoLA cranes 14, 16, and 17, as well as Crane 3, and partially fund the replacement of at least one crane within 15 years. Accordingly, the ALJ recommends that the PUC direct PAG to file an annual report, the first report due by December 31, 2013, on the variance between the revenues and costs that were forecast in the Petition and as modified by

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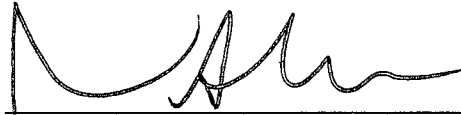
<sup>111</sup> Senator Ada’s Supplemental Testimony, p. 1.

<sup>112</sup> Audio CD, PAG Docket 12-02 (Nov. 29, 2012).

<sup>113</sup> PAG’s Response to Senator Ada’s Comments, p. 2.

Slater Nakamura in its Report, and determining whether the overall application of the crane surcharge should be adjusted to ensure that the costs of crane ownership and debt amortization are properly offset by the surcharge.

Respectfully submitted this 7<sup>th</sup> day of December, 2012.

A handwritten signature in black ink, appearing to read 'D. A. Mair', written over a horizontal line.

**DAVID A. MAIR**  
Administrative Law Judge

P124107.JRA

**BEFORE THE PUBLIC UTILITIES COMMISSION**

<b>IN RE:</b>	<b>PETITION FOR CRANE ) SURCHARGE BY PORT ) AUTHORITY OF GUAM )</b> <hr style="width: 100%;"/>	<b>PAG DOCKET 12-02  ORDER</b>
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**INTRODUCTION**

This matter comes before the Guam Public Utilities Commission (the "PUC") pursuant to the September 20, 2012 Petition to Establish Crane Surcharge Rate (hereinafter referred to as the "Petition") filed by the Jose D. Leon Guerrero Commercial Port, Port Authority of Guam (hereinafter referred to as "PAG" or the "Port"). In the Petition, PAG requests that the PUC review and approve the proposed surcharge recommended by PAG related to the purchase, maintenance, and use of the Port of Los Angeles ("PoLA") cranes owned by Matson Navigation Company, Inc. and Horizon Lines, L.L.C.

**DETERMINATIONS**

**A. Regulatory Review**

Under Section 12004 of the Public Utilities Commission and the Guam Telecommunications Act of 2004 (the "PUC and Telecommunications Act"), "[t]he Commission shall have regulatory oversight supervision of rates as set forth in this Chapter over each public utility and shall perform the duties and exercise the powers imposed or conferred upon it by this Chapter." 12 G.C.A. §12004. "No rate change may be approved by the Commission unless it is affirmatively established, by a preponderance of the evidence, that a rate change is necessary." *Id.* "The Commission shall conduct such investigation and hearings as to any such rate changes as it deems necessary." *Id.*

“Any rate change shall be considered by the Commission using standards and financial criteria consistent with generally accepted ratemaking practices of public utilities and in full consideration of the requirement to establish and maintain General Lifeline Rates.” *Id.* The PUC is authorized to “seek advice from an independent utility expert, shall approve, disapprove, increase or reduce rates for each utility”; and “[a]t any public hearing concerning the establishment or modification of any rate, the commission may consider any factual testimony and evidence presented by the general public.” *Id.*

Section 12015 of the PUC and Telecommunications Act mandates that “[a]ll rates, charges, assessments, and costs made or charged by any public utility shall be just and reasonable and in conformance with public law, and shall be filed with the Commission; and no rate, charge or assessment cost shall be established, abandoned, modified, departed from or changed without a public hearing and the prior approval of the Commission.” 12 G.C.A. §12015(a).

**B. Enabling and Special Legislation**

Public Law (“P.L”) 31-145 was enacted on November 21, 2011 and amended P.L. 30-57. Under this public law, PAG is required to obtain, through purchase or lease to own, at least two (2) gantry cranes by December 31, 2012.<sup>1</sup> In addition, the Guam Legislature specifically 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>2</sup> The law additionally required the PUC to perform its regulatory review and dispose of the matter in a

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<sup>1</sup> P.L. 31-145, Section 1, p. 3 (Nov. 17, 2011).

<sup>2</sup> *Id.* at Section 3, pp. 4-6.

timely and expeditious manner.<sup>3</sup> As a result, PAG is under a statutory obligation to purchase, or lease to own, at least two (2) of the PoLA cranes.

**C. PAG Board Approval**

Pursuant to Resolution No. 2012-04A, PAG's Board of Directors approved a crane surcharge, of up to \$125.00 per loaded container and \$5.00 per tonnage for non-containerized cargo, in order to fund the debt service, repairs, and maintenance for the PoLA cranes, as well as to establish a sinking fund to plan for any replacement cranes in the future.<sup>4</sup>

**D. PAG's Petition**

The Petition filed by PAG requested that the PUC issue an order granting the following: (1) that the crane surcharge of \$105 be applied for each loaded container; (2) that this surcharge apply "to all first carriers bringing fully loaded containers to the Port"; (3) that the crane surcharge of \$5 be applied per revenue ton for "use of the cranes to handle non-containerized or breakbulk cargos"; (4) that the revenues of the crane surcharge be used to "support acquisition price, loan financing, insurance, operation, crane accessories and upgrades, implementation of a sustainable structured maintenance program (including parts room and spare parts inventory), and implementation of a long-term asset retirement, replacement and casualty management reserve."<sup>5</sup> The Petition was supported by PAG Board Resolution No. 2012-04A, wherein PAG's Board of Directors approved a crane surcharge, of up to \$125.00 for loaded container and \$5.00 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 any

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

<sup>4</sup> *See* Petition, "Exhibit 7" (PAG Board Resolution No. 2012-04A).

<sup>5</sup> Petition, p. 2.

replacement cranes in the future.<sup>6</sup> The Petition was further supported by written testimony from PAG's management, namely: Mary C. Torres, General Manager; John B. Santos, Operations Manager; and Jose B. Guevara, III, Financial Affairs Controller. The Petition was also supported by financial schedules submitted by PAG, which included revenue requirements, income statements, as well as container counts used to project the revenue base of the proposed crane surcharge, and a fifteen (15) year projection of revenues, expenses, and cash flow statements related to the cranes.<sup>7</sup>

**E. Public Hearings**

Pursuant to 12 G.C.A. §12016, public hearings were held on November 28, 2012, and November 29, 2012, in the villages of Hagåtña, Asan, and Dededo. Five individuals provided public testimony during these times.

**F. Senator Tom Ada's Comments**

The record in this docket also reflects written comments submitted by the Honorable Senator Thomas Ada and PAG.

**G. Slater Nakamura's Report**

Pursuant to a request by the PUC, Slater Nakamura conducted the rate investigation related to PAG's proposed PoLA crane surcharge. Slater Nakamura transmitted its initial draft report on the rate investigation to PAG on October 26, 2012, affording PAG an opportunity to review the bases, findings, and recommendations detailed in the investigation. Thereafter, PAG transmitted its comments to the draft report to Slater Nakamura. Slater

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<sup>6</sup> See Petition, "Exhibit 7" (PAG Board Resolution No. 2012-04A).

<sup>7</sup> Petition, "Exhibit 3," FAC-1; and p. 4.



Nakamura then filed its final Report on its investigation of the proposed crane surcharge on November 3, 2012.

Based on its investigation, Slater Nakamura issued the following recommendations. First, the consultants recommended that the PUC authorize a crane surcharge of \$105 “per each inbound, outbound and first carrier trans-shipment loaded/full container.”<sup>8</sup> Second, it recommended that the PUC also authorize a crane surcharge of \$5 per ton of non-containerized or break bulk cargos with the charge being capped at \$105 per unit/item.”<sup>9</sup> Next, it recommended that the PUC authorize PAG to begin implementation of the crane surcharge on January 1, 2013.<sup>10</sup>

In addition, Slater Nakamura recommended that the PUC “direct the PAG leadership to immediately begin the public announcement and discussion process to increase the surcharge from \$105 to \$125 per container”; and that PAG should file a petition for a \$125 per container surcharge petition by March 2013.<sup>11</sup> The consultants also recommended that the PUC “direct the PAG leadership to report annually on the variance between the revenues and costs that were forecast in their petition and as modified [in the Report]”; and that “[c]hanges in the surcharge rate should be adjusted in a timely manner to ensure that the costs of crane operations and debt amortization are properly offset by the surcharge.”<sup>12</sup>

The consultants further recommended that the PUC “direct PAG to use the FY13 baseline container throughput projection to be 44,400 containers and the breakbulk tonnage to be

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<sup>8</sup> Report, p. 30.

<sup>9</sup> Report, p. 30.

<sup>10</sup> Report, p. 30.

<sup>11</sup> Report, p. 30.

<sup>12</sup> Report, p. 30.

42,010 tons.”<sup>13</sup> And finally, it recommended that the PUC also “direct that funds deposited in the crane reserve account be restricted for the purpose of future crane acquisitions or extraordinary corrective maintenance events.”<sup>14</sup>

#### **H. The ALJ Report**

On December 7, 2012, the ALJ filed an ALJ report detailing his review of the crane surcharge rate investigation, findings, and recommendations, based on the evidence presented in the record.

In particular, with respect to the baseline revenue calculations, the ALJ found that PAG is required to develop a projection for cargo throughput that can be used to forecast revenues from the crane surcharge. The ALJ additionally found that Slater Nakamura’s recommendation that the baseline throughput projection should be established at 44,400 containers, and breakbulk cargo tonnage at 42,010 tons, was reasonable; and that the record reflected that PAG and Senator Ada had agreed with these baseline throughput projections. Accordingly, the ALJ recommended that the PUC direct PAG to establish the FY2013 baseline container throughput projection at 44,400 containers and breakbulk cargo tonnage at 42,010 tons.

With respect to the crane surcharge, the ALJ found that a crane surcharge was necessary to “support acquisition price, loan financing, insurance, operation, crane accessories and upgrades, implementation of a sustainable structured maintenance program (including parts room and spare parts inventory), and implementation of a long-term asset retirement, replacement and casualty management reserve.”<sup>15</sup> The ALJ also found that a crane surcharge of

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<sup>13</sup> Report, p. 30.

<sup>14</sup> Report, p. 30.

<sup>15</sup> Petition, p. 2.

\$125 for each inbound, outbound and first-carrier transshipment loaded/full container was just and reasonable. Furthermore, the ALJ found that a \$5 surcharge per ton on non-containerized, or breakbulk cargo, with the charge capped at \$105 per unit/item, is also just and reasonable.

Accordingly, the ALJ recommended that the PUC authorize PAG to assess a crane surcharge of \$125 for each inbound, outbound, as well as transshipment containers handled at the Port, which transshipment containers shall be assessed only on the first carrier and not on the feeder vessel. The ALJ further recommended that the PUC authorize PAG to assess a \$5 surcharge per ton on non-containerized, or breakbulk cargo, with the charge capped at \$105 per unit/item.

With respect to the implementation of the crane surcharge, the ALJ found that providing adequate notice to PAG's shipping agents and their customers regarding the \$125 surcharge was fair and reasonable. The ALJ, therefore, recommended that the PUC approve implementation of a \$105 interim surcharge, effective January 1, 2013, and terminating on February 28, 2013; as well as approve implementation of the \$125 surcharge, effective March 1, 2013, so as to afford the carriers adequate notice of the \$125 surcharge rate.

Furthermore, the ALJ additionally recommended that the PUC direct PAG to deposit 9.5% of the revenues from the crane surcharge into a crane replacement sinking fund, which shall include all revenue generated in excess of the baseline projections recommended by Slater Nakamura. The ALJ recommended that the funds deposited into this sinking fund should be restricted for the purpose of future acquisition of cranes, any loan payment due to default on any past due crane loan liability, or any extraordinary corrective maintenance events. Accordingly, the ALJ also recommended that PAG be directed to create General Ledger revenue

and expense accounts that directly link the crane surcharge monies to the Gantry Crane loan payments, insurance, a sustainable structured maintenance program, a spare parts inventory, and a long-term asset replacement and a casualty management reserve.

With respect to the application of the crane surcharge on transshipment containers, the ALJ found that the PUC should “consider that at least a portion of the surcharge be assessed to account for the additional wear and tear from the transshipment lifts,”<sup>16</sup> but that “transshipment is a sensitive issue that should be studied further to ensure that we do not lose this revenue to our neighboring islands.”<sup>17</sup> Consequently, the ALJ recommended that the PUC direct PAG to study this transshipment issue, which should include, at a minimum: a review of whether the operational and maintenance costs (such as man hours, parts, PMC fees, insurance, depreciation, fuel, other wharf fees, etc.) associated with each transshipment container, are appropriately captured; and, if not, determine whether a full or reduced container surcharge fee should be assessed for those transshipment containers being loaded onto a feeder vessel.”<sup>18</sup> The ALJ recommended that the PUC require PAG to a report on such study by June 30, 2013.

Finally, with respect to annual reporting on the efficacy of the crane surcharge, the ALJ found that PAG was required to develop a tariff to fully fund the acquisition, financing, maintenance, of PoLA cranes 14, 16, and 17, as well as Crane 3, and partially fund the replacement of at least one crane within 15 years. The ALJ, therefore, recommended that the PUC direct PAG to file an annual report, the first report due by December 31, 2013, on the variance between the revenues and costs that were forecast in the Petition and as modified by

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<sup>16</sup> Senator Ada’s Supplemental Testimony, p. 1.

<sup>17</sup> Audio CD, PAG Docket 12-02 (Nov. 29, 2012).

<sup>18</sup> PAG’s Response to Senator Ada’s Comments, p. 2.

Slater Nakamura in its Report, and determining whether the overall application of the crane surcharge should be adjusted to ensure that the costs of crane ownership and debt amortization are properly offset by the surcharge.

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

### **ORDERING PROVISIONS**

Upon careful consideration of the record herein, the December 7, 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 the following:

1. PAG shall establish the FY2013 baseline container throughput projection at 44,400 containers and breakbulk cargo tonnage at 42,010 tons.

2. With respect to the surcharge on containers, PAG shall assess a \$105 interim surcharge, applied to both foreign and domestic carriers, effective January 1, 2013, and terminating on February 28, 2013, for each inbound, outbound, as well as transshipment containers handled at the Port, which transshipment containers shall be assessed only on the first carrier and not on the feeder vessel; after February 28, 2013, PAG shall assess a \$125 surcharge, applied to both foreign and domestic carriers, for each inbound, outbound, as well as transshipment containers handled at the Port, which transshipment containers shall be assessed only on the first carrier and not on the feeder vessel;

3. With respect to breakbulk, non-containerized cargo, PAG shall assess a \$5 surcharge per ton with the charge capped at \$105 per unit/item, effective January 1, 2013, and which shall be applied to both foreign and domestic carriers;

4. PAG shall deposit 9.5% of the revenues from the crane surcharge into a crane replacement sinking fund, which shall include all revenue generated in excess of the baseline projections recommended by Slater Nakamura; the funds deposited into this sinking fund shall be restricted for the purpose of future acquisition of cranes, any loan payment due to default on any past due crane loan liability, or any extraordinary corrective maintenance events;

5. PAG shall establish General Ledger revenue and expense accounts that directly link the crane surcharge monies to the Gantry Crane loan payments, insurance, a sustainable structured maintenance program, a spare parts inventory, and to the crane replacement sinking fund;

6. PAG shall prepare a study related to transshipment, which shall include, at a minimum: a review of whether the operational and maintenance costs (such as man hours, parts, PMC fees, insurance, depreciation, fuel, other wharf fees, etc.) associated with each transshipment container, are appropriately captured; and, if not, determine whether a full or reduced container surcharge fee should be assessed for those transshipment containers being loaded onto a feeder vessel; PAG shall file a report with the PUC regarding the results of its study by June 30, 2013;

7. PAG shall file an annual report, the first report due by December 31, 2013, on the variance between the revenues and costs that were forecast in the Petition and as modified by Slater Nakamura in its Report, and determining whether the overall application of the crane

surcharge should be adjusted to ensure that the costs of crane ownership and debt amortization are properly offset by the surcharge; and

8. PAG is ordered to pay the PUC's regulatory fees and expenses, including, without limitation, consulting and counsel fees and the fees and expenses associated with the instant rate investigation and 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 PUC.

**SO ORDERED** this 11<sup>th</sup> day of December, 2012.

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Jeffrey C. Johnson  
Chairman

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Joseph M. McDonald  
Commissioner

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Rowena E. Perez  
Commissioner

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Filomena M. Cantoria  
Commissioner

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Michael A. Pangelinan  
Commissioner

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Peter Montinola  
Commissioner

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