

BEFORE THE PUBLIC UTILITIES COMMISSION

IN RE:	PETITION FOR CRANE) SURCHARGE BY PORT) AUTHORITY OF GUAM)	PAG DOCKET 12-02 AMENDED ORDER
---------------	---	--

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, 2012.¹ 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.”² The law additionally required the PUC to perform its regulatory review and dispose of the matter in a

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

² *Id.* at Section 3, pp. 4-6.

timely and expeditious manner.³ 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.⁴

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."⁵ 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

³ *Id.* at Section 3, p. 6.

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

⁵ Petition, p. 2.

replacement cranes in the future.⁶ 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.⁷

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

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

⁷ 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.”⁸ 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.”⁹ Next, it recommended that the PUC authorize PAG to begin implementation of the crane surcharge on January 1, 2013.¹⁰

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 2013.¹¹ 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.”¹²

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

⁸ Report, p. 30.

⁹ Report, p. 30.

¹⁰ Report, p. 30.

¹¹ Report, p. 30.

¹² Report, p. 30.

42,010 tons.”¹³ 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.”¹⁴

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.”¹⁵ The ALJ also found that a crane surcharge of

¹³ Report, p. 30.

¹⁴ Report, p. 30.

¹⁵ 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,”¹⁶ 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.”¹⁷ 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.”¹⁸ 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

¹⁶ Senator Ada’s Supplemental Testimony, p. 1.

¹⁷ Audio CD, PAG Docket 12-02 (Nov. 29, 2012).

¹⁸ 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, the May 24, 2013 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;

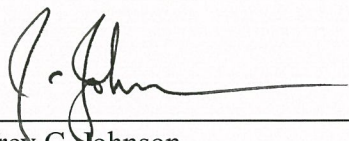
5. PAG shall establish General Ledger revenue and expense accounts that directly link the crane surcharge monies to the Gantry Crane loan payments, insurance, a sustainable structured maintenance program, a spare parts inventory, and to the crane replacement sinking fund;

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; the transshipment study shall also provide an examination of the cost of service associated with fuel that is off-loaded, and later back-loaded, to determine if the current fifty percent (50%) discount is justified, and if not, how the disparity should be rectified; PAG shall file a report with the PUC regarding the results of its study by August 30, 2013;

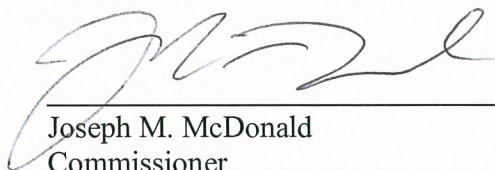
7. PAG shall file an annual report, the first report due by December 31, 2013, on the variance between the revenues and costs that were forecast in the Petition and as modified by Slater Nakamura in its Report, and determining whether the overall application of the crane surcharge should be adjusted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

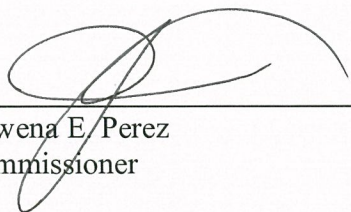
SO ORDERED this 28th day of May, 2013.




Jeffrey C. Johnson
Chairman



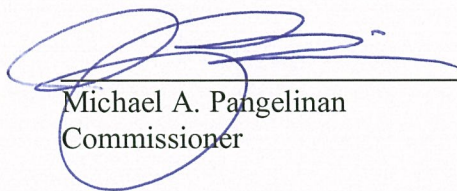
Joseph M. McDonald
Commissioner



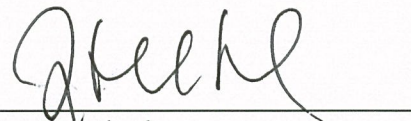
Rowena E. Perez
Commissioner



Filomena M. Cantoria
Commissioner



Michael A. Pangelinan
Commissioner



Peter Montinola
Commissioner

P134052.JRA