BEFORE THE PUBLIC UTILITIES COMMISSION

IN RE: PETITION FOR CRANE SURCHARGE BY PORT AUTHORITY OF GUAM	))))	**PAG DOCKET 12-02** **ALJ REPORT RE: TRANSSHIPMENT STUDY**

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"), the PUC's December 11, 2012 Order approving the surcharge, and the May 1, 2013 letter, by the Honorable Senator Thomas C. Ada ("Senator Ada") to PUC Chairman Dr. Jeffrey Johnson, regarding the PAG transshipment study.

BACKGROUND

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 Port of Los Angeles ("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, and which was later amended to require 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 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. On December 11, 2012, the PUC approved a PoLA crane surcharge. In the same Order, the PUC required PAG to submit a number of deliverables, which included the submission of a study related to transshipment. The PUC required that the transshipment study "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 . . . ."

On May 1, 2013, Senator Ada, Chairman of the Committee on Public Safety, Infrastructure & Maritime Transportation, made a request with the PUC to require PAG to include in its transshipment study the cost of service associated with fuel that is off-loaded, and then back-loaded, to determine if the current fifty percent discounted fee is justified, and if not, "how the disparity should be rectified."

DISCUSSION

A. Report by Captain & Associates

Pursuant to the August 27, 2012 PUC Order, filed in PAG Docket 11-01, PAG was required to file a five (5) year rate plan that included the policy underpinning why outgoing petroleum wharfage rates were lower than incoming petroleum wharfage rates. On or about November 13, 2012, PAG filed a report prepared by Captain and Associates, consultants for PAG, which detailed its research on the prevailing industry and market analysis of PAG's "Bunker/Fuel throughput/Waste Oil fee structure with cause to prepare the policy justification as to why outgoing 'petroleum' wharfage rates are less than incoming 'petroleum' wharfage rates . . . ."[1]

At the outset, the Captain Report indicated that there appeared to be "no widely accepted approaches to estimate commercial port charges and fees,"[2] but that "some ports" operated "in a manner that intentionally subsidizes tenants in order to promote economic growth or job creation"; and that "[m]any newly constructed ports set fees based on a cost-recovery methodology," as in the case of Saipan.[3]

The Captain Report further noted that PAG's 50% discount for outgoing wharfage charges for petroleum products "has been in place for many years" and that there appeared to be no "policy related documentation for the discount."[4] However, the consultants speculated that such discount "may have been based on the discount in Honolulu, which has also reflected this discount for many years."[5] The consultants further

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1 Updated Consulting Report Regarding Wharfage and Fuel Storage Study for Port Authority of Guam ("Captain Report"), p. 1 (Oct. 31, 2012).

2 Captain Report, p. 2.

3 Captain Report, p. 2.

4 Captain Report, p. 3.

5 Captain Report, p. 3.

indicated that "[t]here is no adequate market data to support the 50 percent discount for export."[6]

The Captain Report expressed that "[a] termination of the 50 percent discount for export would result in a simplification of port tariffs, which would be more similar to more ports in the region that do not offer an export discount for petroleum exports."[7] Accordingly, the Captain Report recommended that PAG "review the impact of eliminating or changing the historic discount."[8]

B. Senator Ada's Request

In Senator Ada's letter dated May 1, 2013, Senator Ada expressed that, with respect to the transshipment study ordered by the PUC, such a study would "not evaluate the difference in rates assessed for fuel . . . ." In particular, Senator Ada expressed concern with the "disparity in the throughput charges between the fuel that is unloaded from a main tanker and later back-loaded onto smaller fuel tankers using the same pipelines and pumps." Accordingly, Senator Ada requested that the PUC require the Port to include in its transshipment study an analysis 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."

RECOMMENDATION

Based on a review of the record, the ALJ hereby finds the request by Senator Ada to be reasonable. Accordingly, the ALJ finds that PAG should include in its

6 Captain Report, p. 3.

7 Captain Report, p. 4.

8 Captain Report, p. 4.

transshipment study a review of the impact of eliminating or modifying the discount assessed for export Bunkering/Fuel Throughput/Waste Oil fee. This should include an analysis 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." As a result, the ALJ recommends that the PUC amend its August 27, 2012 Order, particularly ordering provision Number 6 as follows:

> 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.

A proposed Amended Order is attached herein for the Commissioners' consideration.

Respectfully submitted this 24th day of May, 2013.

for

DAVID A. MAIR
Administrative Law Judge

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