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Public Utilities Commission
GUAM

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

PETITION OF PORT AUTHORITY OF GUAM FOR RATE RELIEF	)	PAG DOCKET 13-01 ALJ REPORT RE: INTERIM RATE PETITION

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the "PUC") pursuant to the Interim Tariff Petition (hereinafter referred to as the "Petition"), filed by the Jose D. Leon Guerrero Commercial Port (referred to either "PAG," the "Port," or the "Authority") on July 19, 2013.

BACKGROUND

On May 20, 2013, PAG published its proposed rates reflecting increases to PAG's Terminal Tariff. On July 19, 2013, PAG filed its Interim Tariff Petition. Thereafter, the Administrative Law Judge of the PUC (the "ALJ") transmitted a copy of the "Rate Petition" to the firm of Slater Nakamura, L.L.C. ("Slater Nakamura"), the PUC's consultants for port authority matters. The ALJ requested that Slater Nakamura begin its review of the instant rate petition.

From September, 2013 through January, 2014, Slater Nakamura issued requests for information and PAG responded with documents and data. On January 20, 2014, Slater Nakamura provided the ALJ with its report on the rate investigation, which detailed its findings and recommendations. Pursuant to the Ratepayers' Bill of Rights, public hearings were held in the villages of Asan, Dededo, and Hagåtña on January 22, 2014 and January 23, 2014.

ORIGINAL

DISCUSSION

A. PAG's Interim Tariff Petition

The Petition is based on the testimony submitted by PAG General Manager Joanne M.S. Brown, Maria D. R. Taitano, Rudel Mangubat, and Jeffrey Peck of Parsons Brinckerhoff; and is further based on Resolution No. 18-FY2013, issued by PAG's Board of Directors. The Petition proposes a 5.65% increase across the board on its Terminal Tariff rates. PAG submits that the rate increase proposed in the Petition "is vital for the generation of sufficient revenues to cover operating costs of the Port Authority, and service the Bank of Guam loan required for planned improvements of the wharfs, the acquisition of cargo handling equipment and the Financial Management Systems Upgrade."[1]

Specifically, PAG maintains that "[t]he goal of the interim tariff adjustment is to ensure that sufficient revenues are available to keep up with inflation and to support the three near-term Port-financed components: First, the Wharf Service Life Extension (SLE) Project(s), which involves the repair of PAG Wharfs F3, F4, F5, and F6; second, the Financial Management System (FMS) upgrade, to improve the current System to include the purchase new system hardware; and third, the acquisition of a cargo handling Toplifter."[2]

PAG further indicates that "[t]he primary objective is to maintain an economically sustainable tariff that is equitable and reasonable for the Port as well as its users, consistent with the quality and level of service provided by the Port" and "is part of a long term plan that will allow the Port to keep pace with inflation and fund all necessary Port Modernization Program

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[1] Interim Tariff Petition, filed by the Jose D. Leon Guerrero Commercial Port ("Petition"), PAG Docket 13-01, p. 1 (July 19, 2013).

[2] Petition, Tab 2 ("Direct Testimony of Joanne M.S. Brown"), p. 3 (July 17, 2013).

investments, future crane replacements and all other sustainability investments needed to operate sufficiently as an efficient and solvent business through the 20-year planning horizon."[3]

1. **<u>PAG's Written Testimony in Support of the Petition</u>**

Joanne M.S. Brown, PAG's General Manager, testified that "[w]ith an interim tariff adjustment of 5.65%, the Port will be able to keep pace with inflation and fund the identified three short term components included in this petition. The approval of the interim tariff adjustment is a sustainability investment that is critically needed for PAG to operate self-sufficiently as an efficient and solvent business."[4]

Maria D. S. Taitano, PAG's Deputy General Manager, Finance and Administration, testified that based on the financial analysis of PAG's consultants, "an interim tariff adjustment of 5.65% will ensure the Port maintains a stable financial position regardless of short term fluctuations in cargo volume or other unforeseen disruptions to operations and revenue."[5] Ms. Taitano further testified that "[t]here are critical facilities at the Port Authority that are in dire need of repair. The most immediate area of concern is the wharf that needs to be upgraded to provide for operational efficiencies."[6]

Rudel Mangubat, PAG's Acting Engineer Manager, testified that PAG's "F-5 wharf was significantly damaged during the 1993 Guam earthquake, the existing wharf was constructed of steel sheet pile supporting a concrete coping beam with horizontal tie-backs."[7] Mr. Mangubat further testified that "[a]n underwater structural inspection of berth F-5 completed

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3 Petition, p. 1.

4 Petition, Tab 2 ("Direct Testimony of Joanne M.S. Brown"), p. 4 (July 17, 2013).

5 Petition, Tab 3 ("Direct Testimony of Maria D. R. Taitano"), p. 3 (July 17, 2013).

6 Petition, Tab 3 ("Direct Testimony of Maria D. R. Taitano"), p. 4 (July 17, 2013).

7 Petition, Tab 4 ("Direct Testimony of Rudel Mangubat"), p. 2 (July 17, 2013).

in December of 2010 found significant concrete spalling, cracking and delamination at piles, pilescaps, beams and bents."[8] Mr. Mangubat added that the "[m]ost recent inspection conducted in February 2012 exhibited sign of worsening condition as a result of continued chloride attack on the reinforcing steel."[9]

Mr. Mangubat further testified that "PAG container yard equipment average age is over ten years old"; and that "[c]ontinued maintenance and repairs to these old equipment is not financially feasible, since repair and maintenance cost more than the present value of the equipment."[10] Mr. Mangubat recommended that PAG "move forward with the repairs of Berth F-5, before the conditions worsen."[11]

Jeffrey Peck of Parsons Brinckerhoff, consultants for PAG, testified that "the tariff adjustment is necessary to both move forward with known high priority front-end Modernization Program Investments (and related cash flow, loans, debt-service coverage ratio requirements) and avoid losing ground to inflation."[12] Mr. Peck added that "[t]he Port is currently in relatively poor condition as a result of normal aging (facilities being for the most part over 50 years old) and less than sustainable investment in maintenance and improvement since the facility was turned over by the Navy in the late 1960s."[13] Mr. Peck expressed that the Port is "in the unenviable position of needing to make improvements while it is sorely in need of catch-up maintenance on aging buildings, utilities, pavements, and wharf facilities"; and that

[8] Petition, Tab 4 ("Direct Testimony of Rudel Mangubat"), p. 2 (July 17, 2013).

[9] Petition, Tab 4 ("Direct Testimony of Rudel Mangubat"), p. 2 (July 17, 2013).

[10] Petition, Tab 4 ("Direct Testimony of Rudel Mangubat"), p. 2 (July 17, 2013).

[11] Petition, Tab 4 ("Direct Testimony of Rudel Mangubat"), p. 2 (July 17, 2013)

[12] Petition, Tab 5 ("Direct Testimony of Jeffrey Peck"), p. 3 (July 17, 2013).

[13] Petition, Tab 5 ("Direct Testimony of Jeffrey Peck"), p. 3 (July 17, 2013).

"[t]hese competing interests put pressure on Port financial capabilities which in and of itself needs improvement through structured planning, better data capture and management, and institutionalized tariffs aligned with the true cost of doing business."[14]

2. Board Resolution

Resolution No. 2013-03, issued by PAG's Board of Directors, authorized PAG to petition the PUC for approval of an across the board 5.65% rate increase to be used to fund certain systems upgrades, as well as to fund certain wharf-stabilizing Service Life Extension projects.

B. Slater Nakamura Report

1. Analysis

a. PAG's Use of CPI

In the Report submitted by Slater Nakamura, the consultants determined that "[w]hile the CPI is one indicator of cost increases on Guam, PAG's use of the CPI as a basis for their tariff increase request is not a viable approach."[15] Instead, the consultants advise that the rate request "should be based upon a projection of revenue and expenses to determine if the PAG will be able to operate in a sound financial manner."[16] They further advise that they utilize CPI as a "single metric for determining if increases reflect the overall nature of the Guam economy."[17]

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[14] Petition, Tab 5 ("Direct Testimony of Jeffrey Peck"), p. 3 (July 17, 2013).

[15] Report of Investigation of PAG Interim Tariff Petition ("Slater Nakamura Report"), submitted by Slater Nakamura, L.L.C., p. 9 (Jan. 20, 2014).

[16] Slater Nakamura Report, p. 9.

[17] Slater Nakamura Report, p. 9.

b. Hawaii Rate Increases

In comparison to other ports, Slater Nakamura examined the rate increases implemented in the state of Hawaii, maintaining that the Hawaii Harbors Division seemed the most comparable to the Port.[18] The consultants indicated that with compounding, Hawaii implemented an increase in rates by over 62% between 2010 and 2013.[19] Based on this example, Slater Nakamura found that the rate increase sought in this instance is "just and reasonable."[20]

c. Whether the Increases Are Sufficient

In its report, Slater Nakamura advises that the instant rate relief did not appear to be sufficient to cover operating costs and capital investments.[21] Slater Nakamura contends that PAG has "lost revenue in transshipment, continues to defer maintenance, has absorbed losses from crane operations and has plans for an increase in staff salaries"; and "continues to forecast increases in throughput due to the military buildup."[22]

(i) Cargo Projections

The consultants further contend that cargo projections and resulting revenue projections are likely "overstated."[23] In particular, the consultants noted that vessel calls have decreased every year since 2007; and with the exception of 2010, revenue tons have also decreased.[24] In addition, the consultants further noted that Mariana Express Lines has reduced

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[18] Slater Nakamura Report, p. 10.

[19] Slater Nakamura Report, p. 10.

[20] Slater Nakamura Report, p. 11.

[21] Slater Nakamura Report, p. 11.

[22] Slater Nakamura Report, p. 11.

[23] Slater Nakamura Report, p. 12.

[24] Slater Nakamura Report, p. 11.

its transshipment containers from 150 per week to 30 per week, which potentially results in a revenue loss of $3.5 million a year.[25] They also noted that "there is no indication at this time that the population growth has returned to normal levels" and that it is "unlikely that a significant increase in U.S. military force presence will be seen in the near future."[26]

(ii) <u>Deferral of Maintenance</u>

Slater Nakamura maintains that "[b]ased on recent years, it appears that the PAG's revenues have not been sufficient to spend funds on reasonable O&M"; and that this has "resulted in the deferral of significant maintenance and repair projects."[27] The consultants contend that the cost of deferring maintenance results in an increase at "exponential rates."[28]

Accordingly, the consultants submit that PAG must "significantly increase revenues to cover reasonable maintenance costs"[29]; and should PAG resist "significantly" increasing its rates, "or make significant operational changes to reduce expenses, it will continue to experience significant financial problems and will incur substantially higher costs in future years for the deferred maintenance."[30]

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[25] Slater Nakamura Report, p. 11.

[26] Slater Nakamura Report, pp. 11-12.

[27] Slater Nakamura Report, p. 12.

[28] Slater Nakamura Report, p. 12.

[29] Slater Nakamura Report, p. 13.

[30] Slater Nakamura Report, p. 13.

(iii) **Business Decisions on Expenses**

With respect to PAG's consideration of upwardly adjusting salaries, Slater Nakamura maintains that "any increase in PAG expenses will further limit the PAG's ability to cover operating costs and maintenance of facilities."[31]

More still, the consultants believe that the cost of operations is being impacted by PAG's continued operation of unnecessary equipment.[32] In particular, Slater Nakamura contends that PAG "does not handle sufficient cargo volumes to support the operation of four cranes."[33] In addition, the consultants noted their concern that "separating the crane revenues and expenses from the revenue and expense projections in the Interim Tariff Petition does not give a true picture of the total general fund operating costs anticipated in future years."[34] Based on these conditions, Slater Nakamura maintains that "a tariff increase in the order of 12% may be required."[35]

2. **Slater Nakamura's Findings**

Based on its investigation, Slater Nakamura made the following findings. First, the consultants found that the requested increase to PAG's Terminal Tariff is "just and reasonable."[36] The consultants further found that PAG has deferred $7.26 million in

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[31] Slater Nakamura Report, p. 13.

[32] Slater Nakamura Report, p. 13.

[33] Slater Nakamura Report, p. 13.

[34] Slater Nakamura Report, p. 14.

[35] Slater Nakamura Report, p. 15.

[36] Slater Nakamura Report, p. 17.

maintenance on critical equipment and infrastructure.[37] The consultants also found that PAG "has not implemented previous recommendations from the Commission to increase tariffs."[38]

Additionally, Slater Nakamura found that PAG "has not taken steps to reduce operating expenses, including but not limited to reducing the number of cranes in operation despite direction from the Commission to consider this action."[39] Accordingly, it found that PAG "will continue to have difficulty funding operations and maintenance and will have minimum financial reserve (if any)."[40] Therefore, the consultants have determined that "PAG will continue to operate at a loss even with the tariff increase"; and that PAG has "overestimated cargo projections and has not adequately considered the expense associated with crane operations or deferred maintenance."[41]

Moreover, the consultants found that PAG utilized CPI data as a basis for its rate request[42]; and that "[t]he recent loss of $3.5M in transshipment revenue was not reflected in the financial analysis presented by PAG."[43]

3. Slater Nakamura's Recommendations

As indicated in the Slater Nakamura Report, the following recommendations were made. First, the consultants recommended the approval of the requested tariff rates.[44] The

37 Slater Nakamura Report, p. 17.

38 Slater Nakamura Report, p. 17.

39 Slater Nakamura Report, p. 17.

40 Slater Nakamura Report, p. 17.

41 Slater Nakamura Report, p. 17.

42 Slater Nakamura Report, p. 17.

43 Slater Nakamura Report, p. 17.

44 Slater Nakamura Report, p. 18.

consultants also recommended that PAG immediately seek approval of its Five Year Tariff adjustment plan, which should include reasonable cargo and revenue projections, and sufficient proposed tariff increases to cover operating expenses and capital needs.[45]

Next, the consultants recommended that PAG return to the Commission in June with a review of "the impact of the loss of transshipment revenue combined with a plan to replace the revenue or reduce expenses."[46] The consultants further recommended that PAG "review its plan to adjust salaries to the 50th market percentile to determine the impact on the financial stability of the Port" and that a report should be furnished to the Commission by June 2014.[47]

With respect to the instant rate relief, Slater Nakamura recommended that PAG eliminate the use of "CPI history" to develop its interim rate request, but instead should rely on "reasonable revenue and expense projections."[48] More still, the consultants suggested that PAG adjust the revenue and expense projections "based on the changes to the revenues and planned expense increases."[49] They further suggested that "[t]his revised projection should be presented to the Commission with a revised interim tariff" and that during this revision, the 5.65% tariff should be put in place.[50] Lastly, the consultants added that PAG should not separate its revenues and expenses related to crane operations from the overall revenue and expense table.[51]

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[45] Slater Nakamura Report, p. 18.

[46] Slater Nakamura Report, p. 18.

[47] Slater Nakamura Report, p. 18.

[48] Slater Nakamura Report, p. 18.

[49] Slater Nakamura Report, p. 18.

[50] Slater Nakamura Report, p. 18.

[51] Slater Nakamura Report, p. 18.

C. Public Hearings

At the public hearing conducted by the ALJ in the village of Asan on January 22, 2014, there was no testimony given by any member of the public. Present during this public hearing were members of PAG's management and staff. At the public hearing conducted by the ALJ in the village of Dededo on January 22, 2014, there was no testimony given by any member of the public. PAG's management and staff were present during this public hearing to answer questions from the public.

At the public hearing conducted by the ALJ in the village of Hagåtña on January 23, 2014, there was no testimony given by any member of the public. In attendance during this public hearing were: members of PAG's management and staff; and Commissioner Andrew L. Niven. No written testimony from the public has been submitted.

D. ALJ's Findings

The ALJ hereby makes the following findings based on: PAG's Petition; Resolution No. 2013-03 issued by PAG's Board of Directors approving the proposed terminal tariff rate increase; the written testimony from PAG management and Parsons consultants; the January 22, 2014 and January 23, 2014 public hearings; and the January 20, 2014 Report submitted by Slater Nakamura.

2. SLE Repairs, Cargo Handling Equipment, and FMS Upgrade

The ALJ finds that the SLE projects for repairs to PAG Wharfs F3, F4, F5, and F6 are reasonable, prudent, and necessary given the condition of the wharfs, as indicated in the record before the Commission. For example, PAG's Acting Engineer Manager testified that "[a]n underwater structural inspection of berth F-5 completed in December of 2010 found significant concrete spalling, cracking and delamination at piles, pilescaps, beams and bents"[52]; and that the "[m]ost recent inspection conducted in February 2012 exhibited sign of worsening condition as a result of continued chloride attack on the reinforcing steel."[53] Indeed, Mr. Mangubat also recommended that PAG "move forward with the repairs of Berth F-5, before the conditions worsen."[54] The record demonstrates that the Port is "sorely in need of catch-up maintenance on aging buildings, utilities, pavements, and wharf facilities."[55]

Further, the ALJ additionally finds that the purchase of new cargo handling equipment, as well as the Financial Management Systems upgrade, are reasonable, prudent, and necessary given PAG's need to replace old equipment and improve its current financial management system. The record reflects that PAG's "container yard equipment average age is over ten years old"; and that "[c]ontinued maintenance and repairs to these old equipment is not financially feasible, since repair and maintenance cost more than the present value of the equipment."[56] The record further reflects that PAG "needs improvement through structured planning, better data capture and management, and institutionalized tariffs aligned with the true cost of doing business."[57]

Accordingly, the ALJ further finds that the rate relief sought in this instance to help service the debt for such SLE repairs and purchases is reasonable and appropriate at this juncture since "[t]he Port is currently in relatively poor condition as a result of normal aging

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52 Petition, Tab 4 ("Direct Testimony of Rudel Mangubat"), p. 2 (July 17, 2013).

53 Petition, Tab 4 ("Direct Testimony of Rudel Mangubat"), p. 2 (July 17, 2013).

54 Petition, Tab 4 ("Direct Testimony of Rudel Mangubat"), p. 2 (July 17, 2013)

55 Petition, Tab 5 ("Direct Testimony of Jeffrey Peck"), p. 3 (July 17, 2013).

56 Petition, Tab 4 ("Direct Testimony of Rudel Mangubat"), p. 2 (July 17, 2013).

57 Petition, Tab 5 ("Direct Testimony of Jeffrey Peck"), p. 3 (July 17, 2013).

(facilities being for the most part over 50 years old) and less than sustainable investment in maintenance and improvement since the facility was turned over by the Navy in the late 1960s."[58] The instant tariff increases will provide some relief to allow PAG to "move forward with known high priority front-end Modernization Program Investments (and related cash flow, loans, debt-service coverage ratio requirements) and avoid losing ground to inflation."[59] The record demonstrates that the objective of the instant rate relief is to "ensure that sufficient revenues are available to keep up with inflation and to support the three near-term Port-financed components: First, the Wharf Service Life Extension (SLE) Project(s), which involves the repair of; second, the Financial Management System (FMS) upgrade, to improve the current System to include the purchase new system hardware; and third, the acquisition of a cargo handling Toplifter."[60]

3. Just and Reasonable Rates

Section 12015 of Title 12 of the Guam Code Annotated 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). Additionally, Section 12017 of the same Title provides that: "[t]he term just and reasonable as used in this Article is defined as that rate, charge or assessment cost which enables

[58] Petition, Tab 5 ("Direct Testimony of Jeffrey Peck"), p. 3 (July 17, 2013).

[59] Petition, Tab 5 ("Direct Testimony of Jeffrey Peck"), p. 3 (July 17, 2013).

[60] Petition, Tab 2 ("Direct Testimony of Joanne M.S. Brown"), p. 3 (July 17, 2013).

the public utility to repay its debts, finance its obligations, finance its capital improvement needs and cover all its operating expenses." 12 G.C.A. §12017.

Based on the standard expressed above, the ALJ finds that PAG's tariff rate increase and adjustments are "just" and "reasonable" because such adjustments are necessary in order to enable PAG to "repay its debts, finance its obligations, finance its capital improvement needs and cover all its operating expenses." 12 G.C.A. §12017. Further, as indicated in the Slater Nakamura Report, the requested increase to PAG's Terminal Tariff is "just and reasonable" in light of Hawaii's implementation of an increase in rates by over 62% between 2010 and 2013.[61]

CONCLUSION AND RECOMMENDATION

Based on the foregoing, the ALJ hereby recommends that the PUC approve the proposed increases to PAG's Terminal Tariff rates, which are indicated in "Appendix A" of the Slater Nakamura Report, titled "Recommended PAG Tariff Rate Table."

Additionally, based on the recommendations of Slater Nakamura, the ALJ further recommends that the PUC order the following. First, PAG should be required to revise its interim tariff petition to reflect the following: that PAG rely on reasonable revenue and expense projections, and not on CPI history, to develop its interim tariff request; and that PAG include the revenues and expenses related to crane operations to the table that indicates overall revenues and expenses. This revised interim tariff petition should be presented to the Commission as soon as possible, but no later than March 31, 2014. During this period, it is recommended that the 5.65% increase should be fully implemented.

[61] Slater Nakamura Report, p. 10.

Second, PAG should also seek approval of its Five Year Rate Plan as soon as possible. This rate plan should include reasonable cargo and revenue projections, reasonable expense projections, and sufficient proposed tariff increases to cover operating expenses and capital needs. Accordingly, PAG should be required to file a report with the PUC detailing the status of its Five Year Rate Plan by May 15, 2014.

Third, PAG should further be required to file a report with the PUC detailing its review of the impact of the loss of transshipment revenue, which should include a plan to replace such revenue or reduce PAG's expenses, by June 1, 2014.

Lastly, PAG should be required to file a report with the PUC detailing its review of the impact of adjusting salaries to 50th market percentile on PAG's financial stability. It is recommended that PAG file such a report by June 1, 2014. A proposed Order is submitted herewith for the Commissioners' consideration.

Dated this 28th day of January, 2014.

JOEPHET R. ALCANTARA
Administrative Law Judge

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