



BEFORE THE PUBLIC UTILITIES COMMISSION

**IN RE: REQUEST FOR REVIEW)
AND APPROVAL OF)
NEW LEASE RATES BY)
PORT AUTHORITY OF)
GUAM)**

PAG DOCKET 17-02

ORDER

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC”) pursuant to the May 4, 2017 request of approval for new lease rates, filed by the Jose D. Leon Guerrero Commercial Port, Port Authority of Guam (“PAG” or the “Port”). PAG seeks PUC review and approval of new rates for office space, at \$1.97 per square foot; warehouse space, at \$0.92 per square foot; and open space, at \$0.56 per square foot.

On September 20, 2017, the Administrative Law Judge of the PUC (the “ALJ”) assigned to this matter filed an ALJ Report regarding the instant matter, which included his findings and recommendations based on the administrative record before the PUC. The ALJ found the following.

DETERMINATIONS

1. Public Law 30-19

Public Law 30-19 (“P.L. 30-19”) requires that “[a]t a minimum, once every three (3) years the Port shall conduct assessments of the value of Port real properties and other related facilities.” P.L. 30-19, p. 3 (Apr. 17, 2009). The statute further requires that PAG’s Board of Directors *shall* set rates “at a ten percent (10%) increase over the previously charged rate, *or* the amount determined by the recent assessment, whichever is greater.” *Id.* (emphases in original).

These rates “*shall* be the minimum amount charged by the Port for the leasing and use of Port property.” *Id.* at 4 (emphasis in original).

The statute provides that PAG is required to provide sixty (60) days notice to the public and to existing tenants of any lease and use rate adjustments; and, that upon expiration of this notice period, these rates “*shall* become effective immediately” and “*shall* apply to all new leases and use agreements and those existing leases and use agreements subject to adjustment of lease and use rates.” *Id.* (emphases in original).

2. Public Notice

On February 27, 2017, PAG published a Notice to the General Public in the *Guam Daily Post* indicating a ten percent (10%) increase to the existing rates.

3. Updated Appraisal and Consulting Report Regarding Market Rental Analysis of PAG’s Office, Warehouse, Open Yard, and Telecommunication Spaces

Based on the research conducted by Captain & Associates, the consultants concluded that the market rental per square feet of office space is \$1.48 per month; \$0.74 per square feet for warehouse space; and between \$0.25 and \$0.37 for open space.¹

With respect to office space, the consultants analyzed recent office lease transactions.² The consultants drew from comparables that included the Coast360 Building in Maite, the Agat Point Commercial Center in Agat, the RBC Business Center in Tamuning, and the Nanbo Guahan Building, just to name a few.³

¹ Updated Appraisal and Consulting Report Regarding Market Rental Analysis of PAG’s Office, Warehouse, Open Yard, and Telecommunication Spaces (“Captain Report”), pp. 60, 67-68.

² Captain Report, p. 55.

³ Captain Report, pp. 55-60.

With respect to warehouse space, the consultants analyzed transactions involving industrial space near the Port, as well as current listing of vacant industrial space.⁴ The consultants drew comparables from Hagatna to Dededo. Specifically, the consultants examined the Marine Drive Warehouse in East Hagatna, the Guerrero Road Warehouses in Harmon, the Agat Warehouse in Tamuning, and the Coronel Complex on Route 16, to name a few.⁵

For open space, the consultants examined recent land transactions, as well as property listings, involving industrial land near the Port.⁶ The Port's consultants noted that "[t]he existing policy for applying open yard rates for all locations, sizes and types of land should be reviewed and modified."⁷

4. PAG Board Approval

On February 13, 2017, PAG's Board of Directors issued Resolution No. 2017-01, which indicated that P.L. 30-19 authorizes PAG's Board of Directors to set lease rates at a ten percent (10%) increase over the previously charged rate.⁸ The Resolution further indicated that the assessment conducted by Captain & Associates, PAG's consultant, determined that PAG's existing rates were "above market."⁹ Moreover, that based on its analysis, Captain & Associates recommended that the rates remain unchanged or be lowered to reflect market levels.¹⁰

⁴ Captain Report, p. 61.

⁵ Captain Report, pp. 61-67.

⁶ Captain Report, p. 68.

⁷ Captain Report, p. 68.

⁸ Resolution No. 2017-01, p. 1 (Feb. 13, 2017).

⁹ Resolution No. 2017-01, p. 1.

¹⁰ Resolution No. 2017-01, p. 1.

According to the Resolution, the Board stated that it would defer to the PUC on the matter of “application of the mandated 10% escalation.”¹¹

CONCLUSION

It is clear that the Guam Legislature has given PAG’s Board of Directors broad authority to set lease rates for property at the Port. Indeed, the ALJ found that PAG is mandated, at a minimum, once every three (3) years, to conduct assessments of the value of Port real properties and other related facilities. The ALJ further found that PAG’s Board of Directors is statutorily mandated to either set a ten percent (10%) increase over the previously charged rate, or an amount determined by a recent market assessment, *whichever is greater*. In this instance, the ten percent (10%) increase over the previously charged rate is greater than the recent market assessment conducted by Captain & Associates.

Accordingly, based on the record before the Commission, and for the reasons set forth therein, the ALJ recommended that the PUC approve the following lease rates as petitioned by PAG: \$1.97 per square foot for office space; \$0.92 per square foot for warehouse space; and \$0.56 per square foot for open space. The Commission hereby adopts the findings made in the September 20, 2017 ALJ Report, and therefore, issues the following:

ORDERING PROVISIONS


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

¹¹ Resolution No. 2017-01, p. 1.

1. PAG's petition is hereby APPROVED; PAG is authorized to implement the following lease rates: \$1.97 per square foot for office space; \$0.92 per square foot for warehouse space; and \$0.56 per square foot for open space.

2. PAG is ordered to pay the PUC's regulatory fees and expenses, including and without limitation, consulting and counsel fees, and the fees and expenses associated with this rate investigation. Assessment of the PUC's regulatory fees and expenses is authorized pursuant to 12 G.C.A. §§ 12002(b) and 12024(b) (renumbered as 12 G.C.A. §§ 12103(b) and 12125(b)), and Rule 40 of the Rules of Practice and Procedure before the PUC.

SO ORDERED this 28th day of September, 2017.



JEFFREY C. JOHNSON
Chairman

ROWENA E. PEREZ
Commissioner



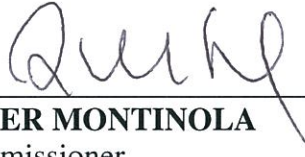
JOSEPH M. MCDONALD
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Commissioner



ANDREW L. NIVEN
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