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Ray Tenorio
Lieutenant Governor

**MINUTES OF THE
REGULAR MEETING OF THE BOARD OF DIRECTORS
Thursday, June 23, 2011**

I. CALL TO ORDER

There being a quorum, the regular meeting of the Board of Directors was called to order at 11:50 a.m., Thursday, June 23, 2011. Present at the meeting were:

Daniel Tydingco, Chairman
Michael Benito, Vice Chairman
Jovyna Lujan, Board Secretary
Shelly Gibson, Board Member-Select
Pedro A. Leon Guerrero, General Manager
Atty. Mike Phillips, Legal Counsel

Absent was Board Member Eduardo Ilao and Ms. Anisia B. Terlaje, Deputy General Manager. Also present were Jimmy Camacho/Chris Borja-Senator Tom Ada's office; Rick Bordallo-Phillips & Bordallo Law Office; Mike Moody-Port Risk Manager and Port Management staff.

II. APPROVAL OF MINUTES

b. **May 26, 2011:** The Vice Chairman made a motion to approve the minutes of May 26, 2011 subject to correction. The motion was seconded by Ms. Lujan and was unanimously passed.

The Chairman advised that Member Gibson should be identified as 'Board Member-Select' until such time legislative confirmation is made.

III. OLD BUSINESS

1. **Financial Report:** The financial report for May 2011 was presented to the Board for information.

Report was made on the accounts receivable specific to those over 120 days at 32%, majority of which relates to Mobil at \$299K. Mr. Glenn B. Nelson, Commercial Manager said this matter is currently under legal review which consists of a working proposal, revisiting of the management agreement as well as the lease. Legal Counsel mentioned that an amendment to the sublease agreement should be available to the Board by the next meeting.

Mr. Jose B. Guevara, Financial Affairs Controller said the funding for the port modernization program is a total of \$19M plus, of that \$15,705,477.00 is federally funded and \$3,654,511.05 is through port funds. Ms. Lujan asked that a breakdown of these amounts be provided in fiscal years.

The Chairman asked when the preliminary budget for fiscal year 2012 will be available to the Board. Mr. Guevara said the target date is August 2011.

2. **Resolution No. 2011-06 – Tariff Regulations and Rates:** As presented in the previous meetings about Public Utilities Commission (PUC) having oversight of the Port through Public Law 30-52 relative to rate increases; implementation of interim rate at 3.4% since February 2010; acquiring consulting services of Cornell Group at \$200K to perform a tariff comprehensive review; completion of the base rate petition, it is now being requested for Board approval to allow management to proceed in its petition to the PUC to implement the regulations and rates recommended in the tariff study.

For information, Mr. Guevara said the PUC Consultant (Slater & Nakamura) Report on the interim tariff review, Port Docket 09-02 indicates that *“The Guam PUC accept the PAG request for an interim tariff increase as identified in Appendix B (3.4%) and authorize additional increases of up to 2.8% for 2011 and 2012 pending completion of the full tariff review.”*. After completion of the tariff study, Cornell determined the Port operating costs are likely to increase annually at the rate growth of the consumer price index which indicates the rate of inflation and may also serve as a proxy for economic growth. Based on a financial analysis of potential revenues and costs over a 20-year period and the resulting annual cash flow, it is estimated that container and general cargo tariffs at the Port will need to be increased by at least 3.95% in 2011 and each year thereafter to generate the cash required to operate the port effectively, achieve an adequate rate on investment, and satisfy the loan covenants of the commercial loan of \$63.5M. Aside from the modernization projects there are numerous capital improvement projects such as: repairs and maintenance of terminal yard, replacement cost of aging cargo handling equipments, repair of Tri-Star and Mobil pipelines, electrical upgrades, relocation cost of port offices and possible relocation of existing waterlines. Other projects include purchase of gantry cranes, terminal/gate operating system and financial management system. The Cornell Report further states: *“While the model was extended to 20 years, the accuracy of any port business projection, including the Port of Guam, diminishes after the first three years, and needs to be revisited and revised each year. The port must, without fail, review its financial condition, cash flow and tariffs each year and adjust the tariffs to ensure a positive cash flow after servicing its debt.”*

The Vice Chairman asked whether there are any concerns from the Port Users Group on the tariff regulations. Mr. Guevara said the major concern is parking of chassis and the other items are resolvable. In the event the PUC approves the petition, the users understand that a standard operating procedure would be established prior to implementation. Management has provided the proposed tariff report to the customers since its completion, announced the proposed rates in a general publication and the Port’s website, held individual meetings with the two largest carriers (Matson and Horizon) and made a presentation to the shipping agents

representing the Port Users Group. He said these parties favor the equalization of the rates, flat fee on transshipment and rate changes.

The Vice Chairman asked whether PUC would consider the possibility of approving a onetime flat rate increase temporarily to allow for more discussions on multiple increases into the future agreed upon by all parties. He understands the need to increase the tariff to support port endeavors and increase the revenue generation, but preferred to proceed in a unified voice. The Vice Chairman said the 3.95% proposed rate is based on what is anticipated cumulatively from now into the next couple of years. The Chairman expects the process to be that upon submitting the petition to PUC Board, it will be reviewed by the PUC Consultant, then the Administrative Law Judge and changes may very well be made. He asked the Vice Chairman whether the suggestion being made is for staff to modify its proposal. The Vice Chairman said he does not want to delay this process any further, but wondered what case can be presented to PUC to propose a onetime flat rate increase. Would it be to spend another \$200K consulting services for this flat rate; or can the Port simply petition PUC for a 5% increase across the board until a tariff is put together that can take this Port into the year 2020 because funding is not available. Mr. Guevara said PUC approves what is just and reasonable; however, based on the requirement, the Port is not able to petition a proposed rate increase that differs from what was originally published which is the 3.95%.

After discussion, the Vice Chairman said the tariff study recommends yearly increases, but clarified whether the only approval is the onetime increase and subsequent increases will require PUC approval. Mr. Guevara replied positively and said the Port is required to submit annual financials, capital improvement reports and then PUC will determine whether a rate increase is just and reasonable for that year. The Vice Chairman commented that he was more in favor with the 2.8% rate increase as proposed by Slater Report for reasons that current events have changed. Mr. Guevara understands the concerns of the Vice Chairman; however, reiterated that the publication requirements does not allow for changes to be made. Additionally, the Port was mandated by law to submit a comprehensive tariff study by December 2010 which then triggered a schedule deadline to publicize the proposed rate increase.

After discussion, the Vice Chairman asked whether changes can be made to the regulations in process or requires PUC attention. Although will look into the matter further, Legal Counsel said the role of PUC is specific to rate increases and all others is presumably in the power of this body. The Vice Chairman said it is known that there is a need for the rate increase, but if there is the ability to make changes to the regulations to allay the concerns of the users that would not negatively impact the Port, then he would be in favor of moving this process forward. Separate from the ability to change the tariff regulation, Legal Counsel observed that the issue at hand is that management is confined to the publication requirements and is not able to submit a proposal to PUC that differs from what has been properly noticed. The Chairman reiterated that although the Port submits its base rate petition to PUC, there is that possibility that changes are made after it is reviewed by PUC Consultant and the Administrative Law Judge.

The Vice Chairman made motion to approve Board Resolution No. 2011-06 relative to the approval of the tariff regulations and rates of the Port Authority of Guam, seconded by Ms. Lujan. Motion was unanimously approved.

Board Room - Air-Condition: The Chairman asked management to look into acquiring an air-con unit for the board room.

3. **Insurance Report:** The report for May 2011 was for Board's information.

Without objections, the Board recognized the presence of Mr. Mike Moody, Port Risk Insurance Manager. Mr. Moody said he is very active with the insurance renewals as it is that time of year and does not anticipate any difficulties in the insurance this year with the exception of possibly property insurance. About two-thirds of the wholesalers or reinsurance companies close the first quarter as significant losses due to tsunami that has exacerbated itself into the second quarter with the floods in the northern US and tornadoes, floods in Europe. The typical insurance carrier will sell the Port insurance and then reinsure or wholesale about 80% of that risk off to re-insurers. He said the Port should anticipate a 10% increase in property premiums this renewal in this region because of the earthquakes and typhoons. The goal is to keep the premiums as is or reduced next fiscal year. He said the application forms on schedules and equipment, revenue, crime have been forwarded to management, and will forward to AM Insurance for placement after his review.

The Vice Chairman asked if F5 pier is repaired using federal funds, would that reduce premiums. Mr. Moody replied positively. He shared that the former Board Chairman tasked him to look into the self-insuring, Owner's Controlled Insurance Program (OCIP), however, the more the port modernization implementation plan is reduced and the less money there is, does not feel that the insurable part of the project is going to be large enough to warrant an OCIP, there needs to be a certain amount of money in order to make this program pay off.

4. **Port Modernization Program – Implementation Plan:** The General Manager said a conference call was held this morning with PAG, Board & MARAD. MARAD had given their protocol manual which will be reviewed by management, PMT-EA, MARAD next week.

5. **Cabras Marine-Estoppel Agreement re Casamar Guam:** Legal Counsel said the firm is close to resolving this issue with Casamar. It is likely that Casamar will sell their interest to another company and in reviewing all the information that was provided from Port and Casamar, it is clear the lease is very pro-tenant and that actions of the Port at least through 2009 and based on his review confirmed the rent are as savor able as they read it to be. He said Casamar is offering the following:

- Go retroactive during the 10 years that it was not increased, which would be 2000-2009 period at the maximum 10% paid retroactively.
- Agrees to the maximum under the lease another 10% in 2010 that would bring the rent from \$38K to \$46K.
- And what counsel suggest is to ask for another 10% to bring it to \$50K.

- In return for that, to signing off an estoppel certificate that would likely allow the sell or transfer of that one asset and the corporation to go forward.

At that point in time, the new owner in establishing a relationship with the Port would look to amend the lease because the lease is primitive and as in this case it does not even require the Port to provide an estoppel certificate. Legal Counsel said there are many other provisions that would be very beneficial to any commercial venture that wants to go forward. It is both in the Port's interest and the new owners' interest to negotiate an amendment that brings that lease into the 21st century, but that is a separate discussion, concession, addition.

The Chairman asked whether there would be any legislative requirements for modification down the line. Legal Counsel said not with the current lease; however, depending on the content of the amendment and the agreement there may be. Casamar has a long term lease that was crafted in 1970 and is very favorable to the tenant. Ms. Lujan asked whether the new owners gave indication that they need all 5 acres. Legal Counsel replied negatively, but like the Mobil situation that is the gem. He recognizes the one argument under the lease concerning the rent dispute and although understands all the emotion involved because it is very pro-tenant, that is the way the lease was written. If the question is asked under that lease whether Casamar can get away without doing anything, the answer is yes because the way the lease is written. Although this is very pro-tenant in its broad scope, negotiations can be made where it brings the lease workable for both parties. Legal Counsel mentioned that the goal initially was to get more rent near the market value; but is not unfortunately.

The Vice Chairman asked for the term of the lease. Ms. Lujan understands it to be 7 options for 10 years. Putting the new company aside, Ms. Lujan expressed that in looking at what the Port is dealing with, there is this tenant that is somewhat in technical default; sitting in a property that is locked up and in a prime location that has potential to be good for the Port 20 to 30 years from now and was bothered by how that operation was closed for awhile. She said if the suggestion is to move forward with this that it be documented properly. Legal Counsel said the problem was not the intent, the problem is the lease, not the drafting, but the times and it was not stipulated as a condition. But if the condition is stipulate then it becomes part of the lease.

Ms. Lujan understands there was an appraisal performed on the property and felt that going from \$38K to \$500K a year was extreme. She had an opportunity to speak to Mr. Joe Cruz, Cabras and had made the suggestion on what is good middle ground. Legal Counsel said attempts were made to engage third party a number of times, but Casamar just wants to resolve this issue and then they would go out on the market albeit with maybe not a complete product. He reiterated that Casamar will pay the back rent for the one estoppel certificate and it is very likely that they would allow the sell to go through, then at that point the new owners' left with that current lease and could put it off until a problem comes up. Unfortunately though, it does not appear that they would turn over the land because it is a windfall.

Ms. Gibson said she would like to see as much money come from that property as possible. Legal Counsel said upon review of the lease, that purpose was taken into account unfortunately it is not a condition, so it does not rise to that level of a breach. The one provision

that had some vague language, the idea that it can exceed 10% is just not there. Ms. Lujan was hopeful that the new buyers would step up and recognize that this is a 5 acre prime marine waterfront property in an area that has a public port operating and in good faith would come and offer something that is fair. Legal Counsel said unfortunately Casamar is dealing with it in an overly simplified way.

After some discussion, Ms. Lujan said with counsel's recommendation and the view on how this matter is to move forward, she asked that counsel take the time to discuss those recommendations with the Commercial Manager. There were no objections.

6. **Policy Memorandum 92-03 Travel Rules & Regulations:** The Vice Chairman made motion to approve Policy Memorandum 92-03 Travel Rules & Regulations as revised, seconded by Ms. Lujan. Motion was unanimously approved.

7. **DOA-Autonomous Agency Infrastructure Collection Fund:** The General Manager said numerous discussions were held with the front office regarding the payment in lieu of taxes, and it was made known that the Port has been financially supportive to the government of Guam in the past. Management had presented an itemized financial report relative to the infrastructure fund to the Board at previous meetings and if all considerations were applied, resulted in the Port overpaying \$300K to the government of Guam. As the government was in dire need of financial assistance, further discussions ensued with the front office, Department of Administration, other autonomous agencies and it was then advised that each respective agency: Port Authority of Guam, Guam Power Authority and Airport re-evaluate its financials to determine whether it was able to support the government of Guam at \$700K each. He reminded the Board that this was prompted by Public Law 24-14 for autonomous agencies to transfer funds into the infrastructure collection fund of which the Port received an invoice totaling \$12,250,000.

The Chairman asked whether there will be any adverse impact to the Port's budget. Mr. Guevara said in review of the operating budget the line item identified to commit payment to the government of Guam on the infrastructure account for 2011 is from the Performance Management Contract budget at \$500K and the lapse fund from the Insurance at \$200K. He said there is no adverse change to the Port's financial plan. The Chairman understands that the \$700K to support the government of Guam is a onetime arrangement and that there will be efforts to repeal this public law.

The Chairman said reflecting back on the considerations (government services) from the itemized report, he asked whether management has engaged with those government agencies leasing port property and utilizing its utilities. The General Manager said management is working on this. The Chairman advised management to effectuate these arrangements with government agencies simultaneously to the \$700K disbursement. He asked when the disbursement is to be made. The General Manager said the autonomous agencies were advised by the end of this fiscal year. Based on this, the Chairman said this item will be revisited for board action at its September 2011 board meeting as the dynamics may change. There were no objections.

IV. NEW BUSINESS

1. **Letter from Committee on Transportation dated June 14, 2011 re Port Information Briefing:** The General Manager said the Port received a letter dated June 14, 2011 from Port Oversight Chairman Thomas Ada regarding an Information Briefing-Port Modernization Program that is slated for tomorrow, Friday, June 24, 2011 at 9:00 a.m., Legislative Public Hearing Room. Management has forwarded the power point presentation to Senator Ada's office.

2. **Establishment of DGM Positions:** The General Manager recalled back then in 1993 when he was General Manager that there were two deputy general managers, one for operations and the other for administration. He mentioned that the intensity of the Port has since evolved in all areas of the port, especially with the port modernization program, and felt it beneficial to the Port to allow for two deputy general managers: Administrative Services; and Port Operations, Maintenance and Compliance. Mrs. Francine T. Rocio, Personnel Services Administrator presented the Board with the Staff Report and said the establishment of the requested positions is allowed under the port's enabling legislation, Section 10111(c) of Title 12, GCA which states in part: *"Notwithstanding any other provision of law, the manager, assistant managers, the manager's secretary, the comptroller and assistant comptroller shall be within the unclassified service of the government of Guam and shall be hired, compensated and employed under the terms and conditions fixed by and at the pleasure of the Board."* She said basically what is being requested is to re-establish the positions and change the titles from 'assistant managers' to 'deputy general managers'. The Chairman asked why is there a need to re-establish the positions when it is permissible by law. Legal Counsel said the positions are being created to reflect existing titles even though the employment is allowable under the law, basically using the correct procedure. Mrs. Rocio mentioned that this request is being brought before the Board for consideration.

Ms. Lujan appreciates the Port is definitely busy; however in this report there is no mention of the Ernst & Young Report back in 2002 where it had an organizational structure recommended for the Board to adopt which accounts for the structure that exist today. She said the reason for raising this is because the administration leadership of the Port is a responsibility that was vested in the Corporate Services Manager position. She recalled these discussions taking place with the former Board as to the type of structure the Port needs to bring it through the modernization. Ms. Lujan expressed that by establishing these positions would add another \$100K to salary and benefits and found it to be concerning. She mentioned that the commitment of the previous Board was to bring this Port to the 50th market percentile so the employees can be compensated ideally on performance base and wage adjustments in accordance with the Searle Study. When the compensation study was first implemented at the 10th market percentile it was about \$2.4M and the idea was that as the volume of the Port would justify and the employees would rise to the level of performance, that adjustments would be made. She said potentially if an adjustment is made for next fiscal year would probably be at \$3M. Secondly, in the Searle Study the results of the reclassification studies were to be compiled to determine holistically which positions would be affected and to what degree of a financial impact it would bring. Based on this, Ms. Lujan commented that it seems as though this request would be redundant as

she felt this leadership role is already embedded and a position that exist in the staffing pattern. Unless, the Searle Study calls for a salary adjustment for the Corporate Services Manager position to be adjusted upward by virtue of that position's duties and responsibilities which brings to the point that there is really no need to introduce an additional upper management position. The Chairman asked that management prepare a write-up as to the need of these positions.

3. **APP 98th Annual Conference, July 17-20, 2011, Long Beach, CA:** The General Manager said the Port received an email first week of June 2011 from the Association of Pacific Ports requesting to assist APP in their July 2012 99th Annual Conference by co-hosting this event. It is APP's tradition to hold their conference at a location close to the port of their president which by next year would be Mr. James Matayoshi of the Port of Marshall Islands. However, as a concern that Marshall Islands may not be capable of holding such an event, APP felt that Guam would be an ideal location. He mentioned there is no financial obligation and the role of Port as co-host would be to assist in suitable hotel venues, tours and local speakers. The General Manager recalled back in 1994 when it was called Pacific Coast Association of Port Authorities (PCAPA) the president at that time was Ms. Frances Santos, so the event was held in Guam then; Port being the host.

The General Manager mentioned if the Board considers the Port to co-host this event, authorization is also being requested for three or four port participants to attend this year's APP 98th Annual Conference next month. The members support this opportunity for the Port as this is also good for the economy. However, in all likelihood it was mentioned that management should expect to expend some funds on this event, and to work closely with APP to determine what those might be.

The Vice Chairman made motion to approve travel authorization for four port participants to attend the APP 98th Annual Conference on July 17-20, 2011 in Long Beach, California. Motion was seconded by Ms. Lujan and was unanimously approved.

V. PUBLIC COMMENT

No public comments were made.

VI. EXECUTIVE SESSION

RECESSED: Meeting recessed at 2:10 p.m.

RECONVENED: The meeting reconvened at 2:20 p.m.

At this time, the Board went into executive session. Executive Session ended at 2:53 p.m. The Board is now back in regular meeting session.

Item addressed in executive session include Committee Report on Nepotism Allegation.

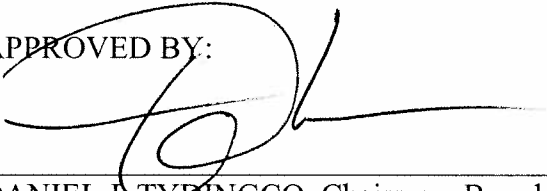
VII. ADJOURNMENT

There being no further business to discuss, it was moved by the Vice Chairman and seconded by Ms. Lujan to adjourn the meeting at 2:55 p.m. The motion was unanimously passed.



JOVYNA S.A. LUJAN, Board Secretary, Board of Directors

APPROVED BY:



DANIEL J. TYDINGCO, Chairman, Board of Directors

