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Public Utilities Commission of Guam

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE:	**PETITION FOR TARIFF RATE RELIEF BY THE PORT AUTHORITY OF GUAM**	**PAG DOCKET 11-01** **ORDER**

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the "PUC") pursuant to the June 28, 2011 Base Rate Case Petition (hereinafter referred to as the "Petition") filed by the Jose G. Leon Guerrero Commercial Port, Port Authority of Guam ("PAG"). In the Petition, PAG seeks to increase rates in its existing terminal tariff by 3.95%, as well as other tariff rate adjustments detailed therein.

DETERMINATIONS

1. On December 30, 2010, PAG filed a Final Report on the Comprehensive Tariff Study (hereinafter referred to as the "Cornell Report"), which was prepared by the Cornell Group, Inc. ("Cornell"), consultants for PAG, and contained a proposed terminal tariff. Pursuant to 12 G.C.A. §12001.2, PAG published the proposed rate increases of the proposed terminal tariff in the Pacific Daily News on January 28, 2011.

2. On June 20, 2011, the PUC by administrative order engaged the consulting firm of Slater Nakamura to assist with the rate investigation of PAG's Petition.

3. On June 28, 2011, PAG filed a Base Rate Case Petition, which petitioned the PUC to approve an increase of rates in PAG's terminal tariff by 3.95%, as well as other tariff rate adjustments detailed in the schedule attached thereto.

4. On September 28, 2011, Slater Nakamura transmitted to the Administrative Law Judge of the PUC (the "ALJ") its Report on the Tariff Investigation, which detailed its investigation on PAG's tariff rate increases.

5. On October 27, 2011, the ALJ met with the consultants from Cornell and Slater Nakamura, as well as PAG's management, to discuss the rate petition.

6. On October 27, 2011 and October 28, 2011, the ALJ held duly-noticed public hearings in the villages of Hagåtña, Asan, and Dededo.

7. On November 3, 2011, Slater Nakamura transmitted to the ALJ its revised Report on the Tariff Investigation.

8. On November 14, 2011, the ALJ filed an ALJ Report regarding PAG's June 28, 2011 Petition. Included in the ALJ Report were his findings and recommendations based on the following: PAG's June 28, 2011 Petition; the June 23, 2011 PAG Board of Directors' Resolution approving the proposed terminal tariff regulations and rate changes prepared and recommended by Cornell, which is attached to the Petition; the financial schedules also attached to the Petition; the written testimony from PAG management, staff, and Cornell consultants; the October 27, 2011 and October 28, 2011 public hearings; as well as the December 30, 2010 Report filed by Cornell and the September 28, 2011 and November 3, 2011 reports prepared by Slater Nakamura.

9. The ALJ found that PAG's Petition was based on the necessity for PAG to modernize its facilities in light of the impending military buildup since PAG's current physical condition was incapable of dealing with the projected increases in both break-bulk and containerized cargo,[1] that in order for PAG to deal with the projected cargo, the Port required expansion, and that the proposed tariff must be capable of generating sufficient revenue to cover operating costs, as well as service the loans required of a proposed capital expansion of the port.[2] The ALJ additionally found that PAG's modernization included an

[1] ALJ Report, PAG Docket 11-01, p. 19 (Nov. 14, 2011).
[2] *Id.* at 19-20.

estimated $200 million in capital improvement projects,[3] that PAG secured about $113.5 million in funding[4]; and that "PAG must generate additional revenue through tariff increases applied primarily to the cargo operations that benefit directly from the productivity and service improvements resulting from the construction of additional facilities."[5]

10. With respect to the proposed rates, the ALJ found that the tariff rate increases and adjustments were "just" and "reasonable" "based upon the current economic environment" and "prevailing market rates"; and, because such adjustments were necessary in order to enable PAG to "repay its debts, finance its obligations, finance its capital improvement needs and cover all its operating expenses" in preparation for the impending military buildup.[6]

11. The ALJ additionally found that PAG's cargo handling charges were just and reasonable since such charges are significantly lower than similar ports[7] and because "[c]onventional practice in the port industry suggests that Public Ports should target a return of between 10% to 12% on their capital investments"[8]; that "[a] rate increase of 3.95% will provide an acceptable IRR of 10.1% and adequate NPV of $33.3 million for the current level of investment"[9]; and that with the 3.95% rate increase, PAG would be able to comply with its loan covenants for the $63.5 million.[10]

12. The ALJ further found that PAG's chassis operation resulted in space

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[3] *Id.* at 20.
[4] *Id.*
[5] *Id.* (quoting Cornell's Comprehensive Review of Tariff (the "Cornell Report), p. 22 (Dec. 30, 2010)).
[6] *Id.* at 20-21.
[7] *Id.* at 21.
[8] *Id.* (quoting the Cornell Report, at 24).
[9] *Id.* (quoting the Cornell Report, at 25).
[10] *Id.* (quoting the Cornell Report, at 28).

constraints and lower productivity,[11] that PAG's proposed equalization of grounded and chassis was consistent with pricing for container operations at other ports, with Guam's rates costing less than ports in the East and Gulf Coasts in the U.S.,[12] and that the assessment of storage fees is standard for the industry.[13] Accordingly, the ALJ found that such equalization was just and reasonable.

13. The ALJ also found that PAG's proposed utility connection fees were just and reasonable based on the practices of other ports;[14] that PAG's proposed tariff equalizing its fees for departing/originating and arriving passengers is consistent with industry standards and thus just and reasonable;[15] and, that PAG's proposed rates for fuel throughput and bunkering were just and reasonable since such rates were still lower than other similar ports.[16]

14. The ALJ further found PAG's revisions to the terminal tariff were reasonable in order for PAG to respond to any unanticipated and unplanned situations[17] and agreed with PAG's simplification of the existing tariff by folding all the rates, fees, and charges into one, single document.[18]

15. In addition, the ALJ adopted the following findings stated in the Slater Nakamura Report: that no sensitivity analysis was presented by the PAG to evaluate the impact of recent events in both Japan and the United States that may further delay the build-up; that the costs of the required improvements to the marinas managed by PAG were not discussed in the capital improvement plan presented by PAG, nor were the costs

11 *Id.* at 21-22.
12 *Id.*
13 *Id.*
14 *Id.* at 22.
15 *Id.*
16 *Id.*
17 *Id.*
18 *Id.* at 22-23.

of these improvements included in the tariff increase presented by PAG[19]; that no financing plan was in place to support the completion of the remainder of Phase I or Phase II of the 2007 Port Master Plan; and, that PAG should consider a commodity-based tariff approach in designing future rate plans.[20]

16. Based on these findings, the ALJ recommended that the PUC approve the proposed tariff and labor rates indicated in the Slater Nakamura Report and that the PUC adopt the proposed tariff regulations contained the Cornell Report.

17. The ALJ also recommended that PAG return within six (6) months to file a five (5) year rate plan, which would detail any tariff rate increases for the next five (5) years.

18. The ALJ further recommended, based on the recommendations of Slater Nakamura, that the PUC also order the following: (1) that PAG conduct a sensitivity analysis to determine the impact of the recent events in Japan and the United States, along with the current throughput of materials on the ability of PAG to generate the revenue it needs to service its debts, and file a report on such sensitivity analysis within six (6) months of the PUC's approval of the instant rate Petition; (2) that PAG file a plan for the upgrade to the marina facilities within six (6) months of the PUC's approval of the instant rate Petition; and (3), that PAG file a financing plan for the completion of Phase I and Phase II of the 2007 Port Master Plan within nine (9) months of the PUC's approval of the instant rate Petition.

19. The ALJ additionally recommended, based on the recommendation of Slater Nakamura, that the PUC authorize the ALJ to conduct proceedings necessary to establish an appropriate debt service coverage ratio for PAG.

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19 *Id.* at 23.
20 *Id.*

20. The Commission hereby adopts the findings made in the November 14, 2011 ALJ Report and, therefore, issues the following:

ORDERING PROVISIONS

Upon consideration of the record herein, the November 14, 2011 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 that:

1. The proposed tariff and labor rates indicated in "Appendix A" of the Slater Nakamura Report (attached to the November 14, 2011 ALJ Report as "Exhibit A") are hereby approved.

2. The proposed tariff regulations contained in "Appendix A" of the Cornell Report (attached to the November 14, 2011 ALJ Report as "Exhibit B") are hereby adopted, and where the rates differ, the rates indicated in the Slater Nakamura Report shall apply.

3. Within six (6) months, PAG shall file a five (5) year rate plan, which shall detail any tariff rate increases for the next five (5) years; this filing shall also address the policy justification as to why outgoing container and petroleum wharfage rates are less than incoming container and petroleum wharfage rates.

4. Within six (6) months, PAG shall conduct a sensitivity analysis to determine the impact of the recent events in Japan and the United States, along with the

current throughput of materials on the ability of PAG to generate the revenue it needs to service its debts, and shall file a report on such sensitivity analysis.

5. Within six (6) months, PAG shall file a plan for the upgrade to the marina facilities.

6. Within nine (9) months, PAG shall file a financing plan for the completion of Phase I and Phase II of the 2007 Port Master Plan.

7. The PUC authorizes the ALJ to conduct proceedings necessary to establish an appropriate debt service coverage ratio for PAG.

8. PAG is further 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 conducting the rate relief investigation. Assessment of the GPUC's regulatory fees and expenses is authorized pursuant to 12 G.C.A. §§ 12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the GPUC.

SO ORDERED this 11th of January, 2012.

Jeffrey C. Johnson
Chairman

Joseph M. McDonald
Commissioner

Rowena E. Perez
Commissioner

Filomena M. Cantoria
Commissioner

Michael A. Pangelinan
Commissioner

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