

Minutes of Port Commission Regular Meeting
August 10, 2023
In Person & Videoconference

A Special Meeting of the Port Commission of Port Freeport was held August 10, 2023, beginning at 1:03 PM at the Administration Building, 1100 Cherry Street, Freeport, Texas.

This meeting agenda with the agenda packet is posted online at www.portfreeport.com

The meeting will be conducted pursuant to Section 551.127 of the Texas Government Code titled "Videoconference Call." A quorum of the Port Commission, including the presiding officer, will be present at the Commissioner Meeting Room located at 1100 Cherry Street, Freeport, Texas. The public will be permitted to attend the meeting in person or by videoconference.

The videoconference is available online as follows:

Join Zoom Meeting

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Commissioners present in person:

Mr. Ravi Singhanian, Chairman
Mr. Rob Giesecke, Vice Chairman
Mr. Kim Kincannon, Asst. Secretary
Mr. Rudy Santos, Commissioner
Mr. Dan Croft, Commissioner

Commissioners & Staff Present by videoconference:

Ms. Barbara Fratila, Secretary
Ms. Phyllis Saathoff, Executive Director/CEO

Staff Members Present:

Mr. Grady Randle, Legal Counsel
Mr. Rob Lowe, Director of Administration/CFO
Mr. Al Durel, Director of Operations
Mr. Mike Wilson, Director of Economic Development & Freight Mobility
Mr. Chris Hogan, Director of Protective Services
Mr. Jason Hull, Director of Engineering
Mr. Jason Miura, Director of Business & Economic Development
Mr. Brandon Robertson, Director of Information Technology
Ms. Missy Bevers, Executive Assistant
Ms. Mary Campus, Controller
Mr. Austin Seth, Operations Supervisor

Ms. Christine Lewis, Safety Coordinator
Ms. Bailee Pavlovsky, Accounting

Also, present:

Mr. Mike Hayes, Texas Port Ministry
Mr. Paul Bridges, Paul Bridges & Associates
Mr. Peter Nemeth, Crain, Caton & James
Mr. Julio Gonzalez
Mr. John Hoss

1. CONVENE OPEN SESSION in accordance with Texas Government Code Section 551.001, et. seq., to review and consider the following:
2. Invocation – Mr. Mike Hayes, Texas Port Ministry
3. Pledge of Allegiance – U.S. Flag and Texas Flag
4. Roll Call – Commissioner Singhanian noted that Commissioner Fratila was participating via videoconference. All other Commissioners were present in the Board Room.
5. Safety Briefing – Ms. Christine Lewis provided a safety moment with regard to National Immunization Awareness for the month of August.
6. Call to identify and discuss any conflicts of interest that may lead to a commissioner abstaining from voting on any posted agenda item.

There were no conflicts noted by Commissioners.
7. Public Comment – There was no public comment.
8. Public Testimony – There were no public testimony.
9. Receive report from Executive Director/CEO and/or Port staff on activities and matters related administrative affairs, financial results, facility engineering matters, operations and vessel activity, port safety matters, port security matters, Port tenant updates, USCOE, and other related port affairs.

Ms. Saathoff reported that Bill Stone, Plant Manager for Phillips 66, will be visiting the Port August 16 and a group from TxDOT will be visiting August 21. The U.S. Army Corps of Engineers Stakeholder Forum will be held August 22 and 23. Staff also received notice that U.S.C.G. Captain Donohue will be visiting Freeport to meet with the Pilots and port staff September 12. Mr. Hogan gave a brief report on recent security matters regarding a breach in security and the positive response from staff to mitigate the issue. Ms. Saathoff also commended the operations staff for their preparedness on August 9 when water supply was shut off for a brief time due to a water leak. Staff was ready with special action resources available (if needed) to back up water with vessel operations. The City resolved the issue very quickly and backup was not needed.

10. Receive report and/or any business announcement from Commissioners.

There were no reports or announcements from Commissioners.

11. Receive update regarding procurement of Gantry Cranes.

Mr. Durel stated a few things have developed over the last week with regard to the availability of used gantry cranes. He introduced Paul Bridges with Paul Bridges & Associates (PBA) who gave the update. Mr. Bridges stated that the Port has received proposals for two new super post panamax sized cranes. PBA will present a recommended counteroffer to Port Freeport for use and to determine how to proceed. With regard to the used cranes, PBA has been presented with two used crane proposals, one on the East Coast and one from Spain. The existing contact from Tuxpan confirmed they would only have one crane available, therefore discussions with them have ceased. PBA has not received a purchase price from the East Coast or Spain, but PBA has estimated a range of pricing which includes refurbishment, relocation and possible modifications in order to reach the super post panamax geometry. The range for the used cranes that would only meet the existing crane size is \$5.3 million per crane, and up to \$12.5 million per crane to include modifications to reach the super post panamax. Mr. Durel explained the history of the Tuxpan cranes for the benefit of new Commissioners Fratila and Kincannon. Mr. Bridges also noted that transportation costs for used cranes are the major cost for this equipment, adding that initial cost estimation for the shipment of the used cranes would be approximately \$12 million for two overseas cranes and \$7-\$8 million for shipping of the East Coast cranes. Additionally, Mr. Bridges stated that the used cranes both have outreaches that would meet the super post panamax specifications provided for the new cranes however the height of the cranes would not meet the requirements specified and would have to be modified, noting that these cranes are 13-14 years old. Commissioner Giesecke inquired if the length of the super post panamax vessels are a concern for transiting through the channel. Mr. Hull stated it would be the pilots' call and what they are comfortable doing. Ms. Saathoff added that the number of tugs will also come into play and how many the pilots will want to put on the vessels. Commissioner Giesecke stated that with the cost of shipping alone for the used cranes (without the purchase price), it doesn't make sense to purchase used cranes. Commissioner Singhania inquired about the difference in pricing for used vs. new cranes stating that if it's reasonable money, he wants to see the port get the right cranes especially with the investment put into the channel. Mr. Durel pointed out that with the shipping costs and bringing the used cranes to where they need to be, the total cost is already close to what you would pay for new cranes, adding that staff still doesn't know the purchase price or what kind of condition the used cranes are in. Mr. Bridges reminded the Commission that the difference in pricing from the manufacturer for new panamax vs. super post panamax is \$880,000/crane, adding that in order to get the used cranes to that point would be a significant savings of cost to go with the new cranes. With new cranes, it is a 2-year time period before they arrive. With used cranes, they could be here within a year without refurbishment, plus an additional 6 months for refurbishment, however, the modifications most likely take place on the Port's dock so there would need to be space for that. Commissioner Santos confirmed that if staff stayed on course with purchasing new cranes, they would be delivered to the port ready to use in 24 months. Ms. Saathoff added that it is her recommendation to move forward with purchasing new cranes, as she is concerned with purchasing used cranes that are the same age as the current cranes. Additionally, having the modifications done on the used cranes drives up the cost, along with the age and technology, Ms. Saathoff feels it's best to move forward with

purchasing new cranes. After all Commissioners weighed in offering comments on the pros and cons of purchasing new cranes vs. used cranes, the Commission agreed that staff continue moving forward with purchasing new cranes as it makes more sense with this option with all considerations weighed by staff and PBA.

12. Approval of a Professional Services Agreement with Terracon Consultants for the Port Wide Pavement Repairs 2023 project, for an amount not to exceed \$26,832.00.

Mr. Hull stated this agreement is for the materials testing on the port wide pavement repairs that is ongoing, adding this PSA is awarded based on competency, demonstrated qualifications, scope of work and fee. Staff recommends approval.

A motion was made by Commissioner Santos to approve staff's recommendation. The motion was seconded by Commissioner Giesecke with all Commissioners present voting in favor of the motion.

13. Discussion regarding Tax Rate, Tax Rate Setting Process & Cash Flow Projection.

At this time, Commissioner Singhanian noted that the following discussion may overlap between items 13 and 14. Mr. Lowe agreed, adding that the bias for the current conversation is the topic of encumbering funds which was brought to him by Commissioner Giesecke and has been presented in the finance committee prior to this meeting. He began with an overview of the tax rate timing considerations stating the state statute requires the tax rate be adopted by September 29 with Brazoria County requesting this be done by September 20. The newspaper/website posting is required 7 days in advance of adoption with The Facts requiring a two-day notice. The Brazoria County Tax Assessor/Collector requires a few days' notice to prepare the worksheets to come up with what the numbers will be that will lead to the Commission making a proposal and then making notification to the Facts. As of today, staff has not returned tax worksheets to the County. Based on what decisions are made today, one of the following will take place...

- *If no funds are encumbered for the FY24 Debt Service payments.*
 - *Staff completes worksheet and submits to BC Tax Assessor/Collector on August 11th.*
 - *BC Tax Assessor/Collector computes NNRT, NNR M&O and VATR.*
 - *Port Commission proposes tax rate on August 24th.*
 - *Public posting made of proposed rates 7 days prior to adoption.*
 - *Port Commission adopts budget and rate on September 14th.*

- *If Port Commission passes resolution to encumber funds.*
 - *Port Commission passes resolution to encumber funds by August 10th.*
 - *Staff transfers funds to reserve account specific to GO Debt Accounts.*
 - *Staff completes worksheet and submits to BC Tax Assessor/Collector on August 11th.*
 - *BC Tax Assessor/Collector computes NNRT, NNR M&O and VATR.*
 - *Port Commission proposes tax rate on August 24th.*
 - *Public postings made of proposed rates 7 days prior to adoption.*
 - *Port Commission adopts budget and rate on September 14th.*

14. Discuss and consider encumbering funds for the purpose of reducing the portion of the 2023 property tax rate used to pay debt service for General Obligation Bonds (i.e. the I&S rate).

Mr. Lowe then presented the worksheets he prepared with updates made prior to the meeting. The new spreadsheet assumes a 2023 tax rate of \$0.01500. In 2024 the GO debt payment will be \$4,654,200 and collect about \$3,408,546 which means a \$1.25 million encumbrance would be required this year. If the Port encumbered \$1 million, the tax rate would go to about \$0.01600, noting the less funds you encumber, the higher the tax rate moves. Mr. Lowe built the spreadsheet with the assumption the Commission would not go above the No New Revenue Rate (NNRR) which is decided every year by the Commission. The bonds are sold with the knowledge of the investors that the Port has tax dollars backing the bonds. The process today is an annual process of encumbering funds, if they are available, and if the Commission so chooses. Commissioner Singhania clarified that if looking at 2025, without encumbering funds, there is a tax rate of \$0.02284. However, if you go to \$0.01500, you have to encumber approximately \$2 million. If the Commission decides not to encumber any funds, you can go to \$0.02284 without a public vote. Mr. Lowe also clarified this annual process for encumbering funds is just for the I&S rate. The decision made on the M&O rate and the overall tax rate will be based on what the Commission proposes on the tax rate in 2-3 weeks. Commissioner Giesecke noted that this worksheet assumes no M&O, adding that in 2026 if the Commission decide not to encumber any funds, the I&S rate would be \$0.02168, or it could encumber any number between \$6,205,750 and zero. Mr. Lowe agreed, stating that what the Commission chooses to do will determine what notice goes in the newspaper as to year over year taxes. Additionally, there is language the statute sets out that if you're proposing a rate that's less than a no new revenue it reads one way, if its more, it reads another way and if it's above the voter approval rate you have a whole other process but all simply to let the public know what the Port is doing as an entity. If the commission encumbered \$100,000 this year and the following year chose not to encumber any funds, you can do that. The tax rate would go back to what the I&S is, noting the key to it all is that the voters have already approved this with their approval of the \$130 million debt issuance in 2018. These are the associated payments with the debt the voters approved so this is why the port would not have to go back to the voters each year for approval. It's a matter of explaining to the public why the postings say we're raising more taxes than the year before by stating it's because last year the Port chose to encumber funds. After additional clarifications and discussion, Mr. Lowe shared a slide showing what the operating revenue, cash flow and capital needs would be through 2030 as well as the debt payment. Looking at 2024, (unapproved budget) it shows \$45.7 million projected in the revenue budget (to be approved). He then projected out, beginning in 2025, to show a full year of revenue with new tenants and an index growth and did the same with respect to expenses, showing \$15.7 million in available cash flow. Mr. Lowe stated the \$28 million for capital needs will change as the budget comes together, noting that the projects listed on the slide will not add up to that number; they are only what the major projects/initiatives are in order to give the Commission an idea of what cash flow is available vs. what the capital needs are. This combined with the approach taken regarding encumbering funds will determine if the capital projects are approved and/or if additional revenue debt is approved. Revenue debt is outside of the GO debt and based on operating abilities to repay the debts. With consideration for cranes and backland development, once the capital plan is approved this year, staff will most likely come back to the commission with a plan to finance these, if needed. The final spreadsheet shows the support for the previous sheet with the methodology behind the

exercise. Commissioner Giesecke pointed out that the growth in revenue projected is a very conservative number, assuming no new business is acquired in the next few years. He also noted the operating revenue is shown growing at less than 3%, the operating expenses are assumed to increase at 3.5% but when you look at 2027/2028, when the debt service payments level off, you still see the increase in net cash. Additionally, if revenue goes up 5% per year and expenses go up 5% per year from where we are now, we'll see about a \$1.5 million increase in net because expenses are very small compared to operating revenue. He further noted that when adding the numbers under capital needs, the number is \$129 million in capital needs. If you add the number for cash flow, you get \$156.7 million. This does not include the encumbered amount. If the Port encumbered \$1.25 million and stays with \$0.015 for the no new revenue rate, we would need to pull out about \$15 million so it would be about \$141 million in free cash over the next few years to pay for capital projects. He added that if the port has a long-time asset or long-term cash flow to pay the debt service, he's not opposed to debt under the right circumstances. He doesn't view this as an either/or proposition but feels the Port can do the real tax relief this year and still meet capital needs moving forward. He also thanked staff for putting the information together.

With that, Commissioner Giesecke made a motion to adopt a resolution encumbering \$1.25 million in funds to go into the I&S fund for this fiscal year. The motion was seconded by Commissioner Kincannon.

Commissioner Singhania then stated that regardless of what transpires today, he would like to see what staff thinks they can do to grow the revenue. Looking at the investments the Port has made and planning to make, there has to be some revenue that staff has in mind that could be generating more. He wants to see a plan of projection for revenue growth.

Commissioner Fratila commented that while she understands you want to see the growth and revenue projections, she takes a more conservative approach and is comfortable with the conservative numbers Mr. Lowe presented adding, she would be comfortable encumbering possibly \$1 million. Furthermore, she looks at this as we're doing it this year, it doesn't have to be done for future years but let's see how it works out this year with conservative estimates.

Commissioner Croft commented that he has asked for a breakdown of what these numbers really mean to taxpayers. If taking it down to 1.5 cents, for the average homeowner, if you apply this scenario and after deductions, it's still only getting to approximately \$375/year or \$30/month, noting this is the reality of the individual homeowner. At the same time, industry gets a disproportionate amount benefit from what the Port is doing. He's good moving in this direction but would also like to see the Port move towards some type of industrial agreement with the top Port industrial users. Currently, the taxable value which taxes are paid to the Port is \$5.2 billion, with it moving to at least \$12.2 billion in the foreseeable future because of the abatements. When you apply the numbers with growth, industry is getting a disproportionate benefit unless some type of alternative is proposed. He has no problem moving in the direction discussed provided there is some consideration towards a type of expense for those who benefit the most from the Port.

Commissioner Giesecke argued that it would be larger but not disproportionate, it's proportionate because industry would get the bigger benefit because industry is paying the larger share of the tax. Commissioner Croft clarified that when he says disproportionate,

he's talking \$30 per month vs. thousands per month for industry. Commissioner Giesecke added that it's perfectly proportionate because it's based on the valuation, noting that it becomes somewhat disproportionate because the homeowner gets the homestead and over 65 exemptions, noting the more you pay in tax the larger tax rate reduction you receive.

Commissioner Croft followed up stating that he would still like to see something presented and/or articulated to those people who sense they're going to get a type of windfall that will go to industry. Everyone benefits from the industry that's come in but if an industrial agreement type arrangement can be pursued, he would like to move on that.

Commissioner Kincannon commented that with a lower tax rate, it makes an argument for future abatements not very good.

Commissioner Santos commented that industry has been a great partner to the Port and asked if it was considered a capital need should the Port ever needed to do something with the friends of the river or if maintenance dredging agreements were included in the scenario with capital needs. Commissioner Singhania commented that he hopes this will be one of the subjects discussed at the strategic workshop in November and has asked Mr. Randle to revisit what the charter says the Port has to do. Commissioner Santos further commented that he's never done encumbrances before when building a budget, this was new to him. He agrees with Commissioner Fratila that we encumber now and reevaluate where we're at next year. He is also a conservative person and would like to see a \$1 million encumbrance.

Commissioner Singhania commented he doesn't agree that it gives a free ride to industry. The Port gives abatements for industry to come here in order to create jobs and economy. The commission can talk with industry about Commissioner Croft's suggestion of an agreement to see if it's something they're interested in but also wants to evaluate a year from now to see if there is any feedback from industry. He also agrees with Commissioner Fratila's suggestion of encumbering \$1 million and asked Commissioner Giesecke if he wanted to amend his motion.

After conferring with legal counsel on the proper way to change his motion, Commissioner Giesecke tabled his first motion.

A new motion was then made by Commissioner Giesecke to encumber \$1 million funds to the I&S fund for FY 2024. The motion was seconded by Commissioner Kincannon with all Commissioners voting in favor of the motion with a 6-0 vote.

Commissioner Singhania noted that he would like to see Commissioner Croft take the lead with talking with industry regarding a possible industrial agreement.

15. Receive comments from Grady Randle, General Counsel on non-committee members attendance/participation in committee meetings.

Commissioner Singhania began stating that in the past, it was an understanding from legal counsel that no more than three commissioners would attend a committee meeting. That practice has been in place; however, he was recently asked if other commissioners can attend committee meetings as a public participant. Mr. Randle explained that as long as you post

the committee meeting, you are good. The very conservative advice is to keep the number of commissioners under a quorum. The law allows a quorum to go to a committee meeting, however it is up to the Commission to decide on the policy. With regard to committee meeting executive sessions, other commissioners should not attend but it's up to the three members of the committee whether or not others should join. Commission Fratila commented that she was the one who wanted to attend the committee meeting simply because she wanted to have the information prior to this commission meeting. She sat in the audience to hear the presentation, not to participate. Commissioner Santos inquired whether or not it would be an issue if a commissioner could zoom into a meeting to listen. Mr. Randle stated that yes as long as the meeting is posted because you would have a quorum. Commissioner Santos added that he appreciates committee meetings, but he also feels that sometimes the commission puts staff through redundancy in preparation for a committee meeting and then bring same information to the commission, spending the same amount of time (or more) discussing. Commissioner Giesecke agreed with Commissioner Santos adding that he intends to avoid this situation with certain items as chairman of the finance committee. Commissioner Giesecke then commented on commissioners attending committee meetings, he would like to see a policy created stating that any other commissioners can attend and observe but not participate in discussion/deliberation, so there is no perception by the public that a commission meeting was being held. Commissioner Singhania agreed. Finally, Commissioner Fratila stated that she doesn't want to attend every committee meeting but felt the finance committee was important enough to hear noting that if she ever attended other meetings, she would always give the members a heads up that she wants to listen adding that coming in a new commissioner to a situation where new information was being proposed, she wanted to hear what the staff had prepared.

16. Discussion regarding delaying start time to 2:00 p.m. for the August 24, 2023 meeting.

Commissioner Singhania stated that he requested this item because a number of commissioners will be attending the chamber luncheon that day with State Representative Cody Vasut speaking and wants to allow everyone to attend the full meeting. He proposes delaying the meeting to 2:00 p.m.

A motion was made by Commissioner Santos to delay the start of the commission meeting August 24th to 2:00 p.m. The motion was seconded by Commissioner Croft with all Commissioners voting in favor of the motion.

17. EXECUTIVE SESSION in accordance with Subchapter D of the Open Meetings Act, Texas Government Code Section 551.001, et. seq., to review and consider the following:

- A. Under authority of Section 551.071 (Consultation with Attorney) for discussion regarding:
 - 1. Consultation with attorney under Government Code Section 551.071(1) (to seek or receive attorney's advice on pending or contemplated litigation or a settlement offer).
 - 2. Consultation with attorney under Government Code Section 551.071(2) (to seek or receive attorney's advice on legal matters that are not related to litigation).
- B. Under authority of Section 551.072 (Deliberation Concerning Real Property Matters) for discussion regarding:

1. Discussion regarding the potential exchange, lease, or value of real property located in Freeport, Texas, including but not limited to the area known as the East End of Freeport and bordered by or adjacent to the following streets: FM1495; East 2nd Street; Terminal Street and East 8th Street in Freeport, Texas.
2. The potential purchase, exchange, lease, or value of real property located at Port Freeport, including but not limited to the real property located at and contiguous to Berths 1, 2, 5, 7 and 8.
3. The potential exchange, lease, or value of real property located at Port Freeport, including but not limited to Parcels 14, 19, 27, 34 and property on Quintana Island.

18. RECONVENE OPEN SESSION:

19. Adjourn.

With no further business before the Commission, Commissioner Croft motioned to adjourn the meeting at 3:58 PM. Commissioner Giesecke seconded the motion.