

Minutes of Port Commission Regular Meeting
January 12, 2023
In Person & Videoconference

A Regular Meeting of the Port Commission of Port Freeport was held January 12, 2023, beginning at 2:35 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

<https://us02web.zoom.us/j/89972877898?pwd=RzJZdVZhbVNhNXRySEFPOW8wLzVUQT09>

Meeting ID: 899 7287 7898

Passcode: 855972

Dial by your location

+1 346 248 7799 US (Houston)

Meeting ID: 899 7287 7898

Find your local number: <https://us02web.zoom.us/u/kcqL0bhS7j>

Commissioners present in person:

Mr. John Hoss, Chairman
Mr. Rudy Santos, Vice Chairman
Mr. Dan Croft, Secretary
Mr. Rob Giesecke, Asst. Secretary
Mr. Ravi Singhania, Commissioner
Mr. Shane Pirtle, Commissioner

Staff Members Present:

Mr. Grady Randle, Legal Counsel
Ms. Phyllis Saathoff, Executive Director/CEO
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, Network Systems Manager
Ms. Missy Bevers, Executive Assistant
Ms. Mary Campus, Controller
Mr. Jesse Hibbetts, Operations Manager
Ms. Christine Lewis, Safety Coordinator
Ms. Tricia Vela, Public Affairs Assistant

Also, present:

Ms. Megan Mikutis, Randle Law Office
Mr. Joseph Waring, Freese & Nichols
Mr. Sergio Chapa, Poten & Partners
Mr. Rick Stephanow, Gulf LNG Services
Mr. Mike Hayes, Texas Port Ministry
Ms. Barbara Fratila
Mr. Sammy Chambless

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 Hoss noted that all Commissioners were present in the Board Room.
5. Safety Briefing – Ms. Christine Lewis provided a safety moment with regard to taking action and being prepared for emergency situations.
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 from Commissioners.

7. Public Comment – There were no public comments.
8. Public Testimony – There was no public testimony.
9. Approval of minutes from the Regular Meetings held December 8, 2022.

A motion was made by Commissioner Pirtle to approve the minutes as presented. The motion was seconded by Commissioner Croft with all Commissioners present voting in favor of the motion.

10. Receive report from Executive Director/CEO and/or Port staff on activities and matters related to COVID-19 health safety matters, 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 recently gave a Port update at a Highway 36A Meeting and shared the highlights stating 2022 was a really good year for the Port with good financial results and solid activity with some tenants doubling their normal amount of business, RoRo business continuing strong and container and green fruit remaining solid. She noted the Port was able to pick up and respond to unforeseen situations as with the supply chain prices with businesses shifting from normal vessel movements to sourcing materials from other places using barge and rail. What followed was an uncertainty with rail because of potential strikes,

causing the Port to pick up additional RoRo activity with customers shifting business to ocean going vessels. She commended staff for responding to its customers in making the adjustments happen to meet their needs. She noted the one downside to 2022 was Freeport LNG suffering an incident in the summer. While the facility is still offline, all reports indicate it will be back online soon with cargo exports to resume. She also noted the \$1.7 trillion Omnibus Appropriations package passed and signed by the President which included the community project that Congressman Weber included in the budget for the Freeport Harbor Channel Improvement Project (FHCIP) giving the Port an additional \$90.6 million. With the \$73 million received in the 2022 Corps Work Plan plus the carryover from other projects and earlier allocations, there should be sufficient funds to award a final contract for the FHCIP. She noted the bid package is currently at Division going through contracting review with staff expecting it back any time now but could move into February. Ms. Saathoff also reminded the Commission there have been two previous issuances on the 2018 bond authorization with staff working on a final bond package that will be going out first quarter. She also reported that state legislature is in session with the inauguration of the Governor on January 17, bill filing deadline March 10 and the session ending May 29. Ms. Saathoff has started receiving flagged bills for review from Carriage House Partners. She also noted that Congress is back in session in Washington, DC. There are several grant-funded packages now open for application. Staff will review for opportunities to seek additional grant funds should it match with Port projects. Additionally, staff and commissioners will be attending the AAPA POWERS Summit & Expo which is an environmental sustainability global look at things noting it is tied to funds allocated by federal government for environmental related projects in making us a greener more sustainable Port community. Commissioner Singhanian commented how wonderful it is the Port got the funding for the channel project noting that he appreciates efforts made to achieve this goal because when it started, staff did not know how much of the federal share the Port would receive. He also expressed thanks to Congressman Weber for his work and efforts as well. Lastly, Ms. Saathoff reported that the Velasco Drainage District (VDD) is currently seeking support to ask the legislature to fund the non-federal share to the Sabine to Galveston Project for the portion that it in Brazoria County. Ms. Saathoff gave background information on the project from its origination to the current status. VDD is asking Port Freeport along with Brazoria County and area industry to submit a letter of support to Senator Huffman. Ms. Saathoff noted that industry response has been very good with letters already reaching Senator Huffman. The Senator will be submitting an appropriations package next week so there is a sense of urgency to submit a letter. Ms. Saathoff went on to say the Port has previously supported VDD in their position and unless there is an opposition from the Commission, feels the Port should join the industry community to support VDD in their effort to get the non-federal share funded at the state level. After further discussion, Saathoff said she would send a letter of support to Senator Huffman and bring a resolution for adoption at the next Port Commission meeting. Ms. Saathoff also noted the U.S. Army Corps of Engineers will hold an informational session to discuss the project at the Lake Jackson Civic Center February 2, 2023, beginning at 4:00 p.m.

11. Approval of the financial report for the two-month period ending November 30, 2022.

Mr. Lowe gave a presentation regarding the financial results for the months of October and November.

A motion was made by Commissioner Croft to approve the financials as presented. The motion was seconded by Commissioner Singhania with all Commissioners present voting in favor of the motion.

12. Receive report on the San Bernard River project and status of future maintenance.

Ms. Saathoff began giving a historical prospective by sharing pictures of the San Bernard River (SBR) noting that in 2009 the mouth was dredged open and by 2011, saw closure again. The mouth was partially open after Harvey in 2017 and through RESTORE Act funds the mouth was dredged open in 2022. She then shared a current picture of the mouth showing the build-up again. The County continues to look at the project noting there is still RESTORE Act funds available and they are seeking permission from the General Land Office (GLO) to use the remaining funds for maintenance work on the mouth of the San Bernard. Because of changeovers at the GLO, there is a delay in moving forward while they reconnect with a new contact. Additionally, maintenance dredging will not occur immediately because VDD is trying to work with the Corps to get an agreement in place so that when the Corps is dredging the Intercoastal Waterway, they can also dredge the mouth of the SBR in order to reduce costs and guarantee the right size equipment is used and not have to contract the work directly. Ms. Saathoff noted that the Port has a Memorandum of Agreement in place with Brazoria County to cost share the maintenance dredging of the mouth of the SBR which is a 25-year agreement. The next earliest cycle the Port would be able to join in with the Corps would be their FY 2023-24 budget cycle. A meeting is scheduled between Col. Blackmon, the County and VDD to discuss an agreement. They also want to discuss a modification to the permit to change the design out to the Gulf which currently is a straight shot. The proposed modification would be to widen the mouth, flaring it out into the Gulf and removing more material to create a wider opening of flow into the Gulf. Another effort underway that would impact the mouth of the San Bernard is the study being conducted by the GLO, University of North Texas and Texas A&M Galveston to study the impacts of the removal of the West Gate on the Brazos River which isn't slated to be completed until May-June 2025. The next stakeholder meeting will be held in February 2023. Commissioner Pirtle commented there was already concern about sediment coming out of the Intercoastal Waterway, but you can see from the pictures the area continues to shift and change from the sediment. Commissioner Hoss recalled that they predicted the mouth would shift down the beach. Commissioner Croft recalled the GLO receiving money from a bond that the dredging company was paid (reimbursed) but the funds cannot be allocated towards a correction from a mistake that was made, noting that even though it was approved before, the process must start all over again. Commissioner Singhania attended a Friends of the River breakfast stating the County is pursuing other alternatives for getting money and a redesign of the mouth. Ms. Saathoff stated there may be maintenance dredging, but it would be based on the current design template without a permit modification. She also stated that members of the Friends of the River confirm the Port's agreement was still in place with the County asking if the Port was considering its obligations under the agreement in the budgeting process. Ms. Saathoff assured them it is discussed but would not be included in the current budget because there wouldn't be any maintenance dredging but would be made transparent in a future budget if it was appropriate. Lastly, Ms. Saathoff was invited to a Meet & Greet with the new Texas Land Commissioner Dawn Buckingham, January 19.

13. Approval of a Permanent Road Access Agreement and Right-of-Way with The Dow Chemical Company.

Mr. Hull stated that Dow Chemical owns a 50-foot pipeline strip of land adjacent to Terminal Street in the East End. The Port will need to cross that property for access related to the East End RIDER 37 Expansion and Gate 12 project. This item was tabled at the last meeting because it was still under legal review noting there is still one outstanding item explaining that legal is negotiating a longer period of time for Dow to notify the Port should they need to shut the Port's access off for maintenance repairs. Dow has not responded to the request. Mr. Hull stated that all other terms of the easement are in place and staff recommends approval of this document subject to non-material changes to the document.

A motion was made by Commissioner Pirtle to approve the easement subject to non-material changes. The motion was seconded by Commissioner Singhanian with all Commissioners present voting in favor of the motion.

14. Approval of a Professional Services Agreement with Freese & Nichols for the East End RIDER 37 Expansion and Gate 12 project.

Mr. Hull stated that this agreement is one agreement for two projects. The first project is the East End RIDER 37 Expansion project which will improve roads in the East End connecting FM 1495 to a new gate (Gate 12) which will serve the container terminal. It will also create a jug-handled connector from FM 1495 to Second Street and also create a cueing area along Fifth Street. This project is RIDER funded and will have a bid package that meets all of TxDOT requirements. The second project of the agreement is the Gate 12 project. This project is not RIDER funded and will have a separate bid package. Commissioner Singhanian asked staff to review the scope of the project as a refresher to the Commission. Ms. Saathoff stated this is not a final build-out of a gate, rather it is to get an initial gate infrastructure reoriented from coming off Second Street to an area off Broad Street to create the initial crossing, improve Terminal Street and Eighth Street for anticipated truck flow patterns and try to create a more efficient access into the container terminal based on current business and anticipated future business. Staff shared a drawing of the planned improvements for a visual of each portion of the projects discussed. Mr. Hull clarified this scope of work does not include the fiber optic communication for the warehouse. Staff will come back with a separate agreement for this piece in the future. Mr. Hull has reviewed the fees and recommends approval of the agreement.

A motion was made by Commissioner Santos to approve the agreement with Freese & Nichols for the East End RIDER 37 Expansion and Gate 12 project for an amount not to exceed \$1,546,852.00. The motion was seconded by Commissioner Singhanian with all Commissioners present voting in favor of the motion.

15. Approval of Executive Director/CEO and Commissioners' travel for the months of January, February and March 2023.

Staff shared a list of upcoming travel through the month of March. Commissioner Santos noted he will not be able to attend the POWERS Conference. Commissioner Hoss noted that all Commissioners will attend Brazoria County Day and three will attend Texas Ports Day at the Capitol. Ms. Saathoff noted a day may be added to the AAPA Legislative Summit for staff to possibly visit the Volkswagen facility in Baltimore. Commissioner Santos and Commissioner Pirtle noted interest in attending the NWC Legislative Summit.

Commissioner Singhania and Commissioner Santos noted interest in attending the AAPA Legislative Summit.

A motion was made by Commissioner Singhania to approve the travel. The motion was seconded by Commissioner Santos with all Commissioners present voting in favor of the motion.

16. Discuss and consider rules and procedures for conducting Port Commission meetings.

Mr. Randle began by addressing a question raised by Commissioner Singhania on whether or not the second half of Section 1.01(b) should be included... *unless otherwise specified or reduced because of a legal conflict of interest*. Mr. Randle has reviewed and in looking at Section 3.03(b)...it says it will *never be less than four (4) votes*. He stated it will always be four votes whether one member or two members have a conflict. If more than two members have a conflict, the conflict is waived by state law Section 171.004, and everyone will vote. He stated there is no conflict, that its reconcilable with 3.03 adding that 1.01(b) states the law and then its further defined in 3.03.

Mr. Randle then went over the following changes (in yellow) that were discussed at the previous meeting...

Section 1.02 Absence or Loss of a Quorum

(b) If the remaining Commissioners do not equal four (4), a quorum shall be considered lost if a Port Commissioner departs from the Port Commission Meeting or leaves the room in which the Port Commission Meeting is being held.

(c) A Commissioner who is attending via video is not considered present for establishing a quorum but may participate and vote in all Port Freeport business. If a member appearing by video is no longer visible and able to be heard, the Port Commission Meeting will be paused for a reasonable period of time to attempt to re-establish the connection. If the connection is not re-established after a reasonable period of time, the Port Commission Meeting will continue with those Commissioners in attendance.

Section 3.03 Counting Votes.

(b) *Abstention*. Should a Port Commissioner abstain from a vote required by law, then the majority vote required shall never be less than four (4) votes, provided that any abstention not required by law shall be counted as a vote against the matter under consideration. In accordance with Section 171.004 of the Local Government Code, in the event that there are more than two (2) abstentions as required law, then all Port Commissioners having such legal conflicts shall not be required to abstain from further participation in the matter, as a majority of the Port Commission is then composed of persons who have similar interests in the same official action.

(c) *Tied Vote*. In the event of a tie, a Motion always fails since an affirmative vote of at least four (4) Port Commissioners is required to pass any Motion unless otherwise provided herein.

(d) *Other Voting Requirements*. In all cases except otherwise provided herein, the minimum number of Port Commissioners required to vote for a Motion shall be four (4) Commissioners. In cases of vacancies on or appointments to the Port Commission, the minimum number of Port Commissioners required to vote for an appointment shall be three (3) Commissioners.

Commissioner Giesecke recalled the voting requirement was reduced to three solely in the appointment of a person to fill a vacancy on the Commission. Mr. Randle stated the first sentence says four, then if you have vacancies, its reduced to three. Commissioner Giesecke suggested adding the language *to fill a vacancy on the Commission* to the last sentence for clarification to read, *the minimum number of Port Commissioners required to vote for an appointment to fill a vacancy on the Commission shall be three (3) Commissioners.*

Section 3.09

(a) *Motion to Adjourn.* The Port Commission may adjourn if there is no objection made to adjournment. Upon such objection, a Motion to Adjourn requires a simple majority vote. If passed, this motion requires the Port Commission to immediately adjourn to its next regularly scheduled Meeting.

Commissioner Hoss suggested dropping the word “regularly” from the last sentence to read...*adjourn to its next scheduled Meeting.*

Commissioner Hoss also commented on 3.09(e)1 suggesting that the second sentence should read...*Even with a time limit, it requires a majority vote of the Port Commission,* rather than two-thirds vote for wording to remain consistent with the rest of the document.

Section 3.10

(c) *Motion to Modify or Suspend the Rules.* This Motion allows the Port Commission to modify or suspend these Rules for a particular purpose.

(d) *Motion to Adopt or Modify Policy.* This Motion allows the Port Commission to adopt or modify the policies of Port Freeport.

Commissioner Giesecke had one adjustment to the Rules of Order Resource Sheet (cheat sheet) stating that on the first page under Counting Votes - Abstention, it still has the language saying, “the majority votes shall be reduced by the Commissioners abstaining.” He suggested dropping the words “shall be reduced” since it will always be four votes.

With regard to the Election Policy, there was only one adjustment...

Section II (3)

i. *Tie Vote.* In cases of a tied vote, meaning that two or more candidates have received the same number of votes, a vote shall be taken again. In cases of a second tied vote, the tie shall be broken, and the office filled through the drawing of lots, meaning that the names of the candidates receiving the same number of votes shall be written on individual pieces of paper and one shall be selected at random (e.g., picked out of a hat). The candidate whose name was drawn shall then fill the position then being considered.

Commissioner Croft questioned if the validity of an item being passed is affected when you advertently violate one of the rules within the procedures. Mr. Randle stated it is not affected and it is specifically stated in the very first paragraph of the *Rules of Order*, next to the last sentence...

Parliamentary procedures provide a framework within which a governmental entity may propose, amend, approve, or defeat matters to the regulating body. While not required, the Port

Commission of Port Freeport believes that the adoption of these Port Freeport Rules of Order (these “Rules”) will help facilitate Meetings of the Port Commission, making such Meetings more efficient and providing security against procedural deficiencies while ensuring compliance with Chapter 551 of the Texas Government Code (i.e., the Texas Open Meetings Act). *These Rules do not affect the legality of any item passed on any agenda.* These Rules may be amended from time-to-time, upon action of the Port Commission, but should always be found to be based upon the following pillars:

A motion was made by Commissioner Pirtle to accept and approve all three documents as presented with corrections discussed. The motion was seconded by Commissioner Giesecke with all Commissioners present 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 551.087 (Economic Development Negotiations or Incentives):
 1. To discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations.
 2. To deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1).
 - C. 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 are 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, the meeting adjourned at 5:47 PM.