

Minutes of Port Commission Regular Meeting
October 19, 2023
In Person & Videoconference

A Regular Meeting of the Port Commission of Port Freeport was held October 19, 2023, beginning at 1:05 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.

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Commissioners present in person:

Mr. Ravi Singhania, Chairman
Mr. Rob Giesecke, Vice Chairman
Ms. Barbara Fratila, Secretary
Mr. Kim Kincannon, Asst. Secretary
Mr. Rudy Santos, Commissioner
Mr. Dan Croft, Commissioner

Staff Members Present:

Ms. Heather Cook, Legal Counsel
Ms. Phyllis Saathoff, Executive Director/CEO
Mr. Rob Lowe, Director of Administration/CFO
Mr. Jason Miura, Director of Business & Economic Development
Mr. Jason Hull, Director of Engineering
Mr. Al Durel, Director of Operations
Mr. Brandon Robertson, Director of Information Technology
Ms. Missy Bevers, Executive Assistant
Ms. Mary Campus, Controller
Mr. Don Mullett, Crane Maintenance Manager
Mr. Jesse Hibbetts, Operations Manager
Ms. Christine Lewis, Safety Coordinator
Ms. Hannah Fitzsimmons, Operations Specialist
Mr. Austin Seth, Operations Supervisor
Mr. Cecil Booth, Project Engineer
Ms. Tricia Vela, Public Affairs Assistant
Ms. Bailee Anderson, Accounting Analyst

Also, present:

Mr. Chris Moore, Texas Port Ministry
Mr. Paul Bridges, Paul Bridges & Associates
Mr. Scott Bowman, Ports America
Ms. Emily Hanson, The Facts
Mr. Jason Foltyn, HDR

1. CONVENE OPEN SESSION in accordance with Texas Government Code Section 551.001, et. seq., to review and consider the following:
2. Invocation – Mr. Chris Moore, Texas Port Ministry
3. Pledge of Allegiance – U.S. Flag and Texas Flag
4. Roll Call – Commissioner Singhanian noted that all Commissioners were present in the board room. He also noted that Heather Cook with Randle Law Firm was present and filling in for Mr. Randle.
5. Safety Briefing – Ms. Christine Lewis provided fire safety tips for the month of October. Ms. Lewis also noted staff has worked 1,753 days without injury.
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 were no public comments.
8. Public Testimony – There was no public testimony.
9. Approval of minutes from the Regular Meeting held September 28, 2023.

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

10. Receive reports from Executive 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.

A. Executive Director/CEO

Ms. Saathoff reported on a successful golf tournament held October 16 thanking staff and volunteers and the generosity of the maritime community for helping to make it a great event, noting the net proceeds will go to Texas Port Ministry to support their efforts to assist seafarers, truckers and workers at the Port. She also thanked Darlene Winkler for all her efforts in coordinating the event to make it successful. Commissioner Singhanian also commented on a successful event thanking Texas Port Ministry for being a good

partner to the Port and community. Ms. Saathoff also reported attending the National Waterways Conference Annual Meeting in Sacramento along with Commissioner Kincannon. She also attended the TxDOT Transportation Short Course in College Station where she participated on a panel. With regard to the Port's fiscal year end, staff is still working to finalize financials and bring them to the Commission in November. Overall, the Port had another good year with revenues trending along with budget and expenses under budget. The Port is in good financial condition leading into the new fiscal year. Vessel and cargo activity also had a good year for the inner harbor with fewer Ro/Ro ships, but the average vehicles carried per vessel was higher bringing the total vehicle count to just above prior year. Steel/Tenaris has moved about 8.8% higher than prior year, green fruit was up over 9% and general cargo up 8.8%. With regard to infrastructure, Berth 8 was completed in May and put into service and the rail expansion project was completed in the summer. The Port was awarded \$91 million in additional funding for the channel project which allowed the USACE to award the final construction contract on the channel project with Reach 4 completed in September, Reach 2 bend easing was completed and Reach 1 dredge work is currently ongoing offshore. The Port signed agreements with Volkswagen Group of America and Del Monte. Volkswagen's site construction is entering its final months with significant progress toward completion expected by year end and operations slated for February 2024. Del Monte's terminal improvements will initiate soon with operations commencing next fiscal year (mid-year). With these new customers, the Port will see approximately 8 more vessel calls per month, adding about 96 additional vessel calls into the inner harbor which is a 34% increase in inner harbor vessel activity and a 10% increase in port-wide activity overall. Ms. Saathoff noted that safety awareness has increased overall with employees seeing over 1,750 days without lost time injury and the work being done with the tenants and the reinstatement of walkabouts as well as the fire safety tabletop exercise held with area fire departments and emergency management groups, TDEM, USCG, Ro/Ro carrier representatives, stevedores, and Port partners. Security continues to receive clean security audits from CBP and Coast Guard. The finance department received the Annual Comprehensive Financial Report award (again) this past year which further exemplifies the quality of work the department puts out. Ms. Saathoff also acknowledged the IT department and their work to keep the Port up and running, keeping hackers and virus out, and continue to transition to new equipment. Operations is appreciated for all the work they do to take care of the customers to keep the business running. At this time, Ms. Winkler joined the meeting and Ms. Saathoff thanked her for all her efforts in executing a successful golf tournament with all her coordinated efforts for the event. Ms. Winkler thanked the support from community, sponsors, volunteers and staff for all their efforts. Ms. Saathoff also gave an update on NOAA's proposed regulations regarding critical habitat for the Rice's whale. The proposed critical habitat would run from the Florida Keys down to Brownsville, effecting every port in the Gulf. There are concerns because they are proposing vessels speed reductions to 10 knots at night in transiting the critical habitat and would also affect pilotage and pilot boats going out to meet vessels if they were reaching the critical habitat. Staff will continue to monitor.

B. Director of Engineering

Mr. Hull shared highlights from his written report which include photos from the Port-Wide Pavement Repairs project and current work in the Bend Easing for shoreline stabilization. He also noted that staff expects to go out to bid for Gate 12 in November.

C. Director of Operations

Mr. Hibbetts reported on vessel statistics noting there were 15 LNG vessels for the month, 9 Ro/Ro, 9 container vessels, 1 rice, 1 steel, 1 project cargo and four lay berths to equal 40 vessel calls. Overall, the Port did well for fiscal year end with LNG handling 124 vessels, 106 Ro/Ro, 110 container vessels, 32 steel and 2 limestone vessels. Additionally, Vulcan experienced an increase with over 2,092 railcars handled. Vehicles and containers also saw an increase. For the month of October, the Port has 17 LNG, 10 Ro/Ro, 8 container and 3 steel on the calendar as well as a month ahead in the automobile sector with the Port expecting close to 6,300 cars on the ground. Security hosted the first Ro/Ro Tabletop Exercise while safety continues to conduct monthly Walk Abouts. Staff also participated in tariff review, Breakbulk Conference, LSHSC meeting and continue to work with Paul Bridges on the purchase of cranes.

Ms. Hannah Fitzsimmons shared photos of the helicopter cargo that flew into the Port and was shipped out on a Ro/Ro vessel.

D. Director of Business & Economic Development

Mr. Miura reported that Tenaris is able to ship steel billets by rail. Mr. Miura has been invited to speak on Port Freeport activities at the Gateway to Americas Houston Region Conference. Additionally, he will also be speaking at the Brazoria County Transportation & Infrastructure Summit. Mr. Miura noted that staff will soon begin the process to seek a vendor to update the website.

E. Chief Financial Officer

Mr. Lowe stated that as is the norm, it takes a little longer to close-out September year end results but expects to present to the Commission at the November meeting. He also noted that Texas Port Ministry informed staff of their intent to exercise their first right to extend their lease. The lease will expire May 31, 2024, and includes two 25-year extensions.

11. Receive report from Commissioners on matters related to:

- A. October 12 Finance Committee Meeting – Commissioner Giesecke reported the committee discussed crane financing options.
- B. October 12 ESG & Sustainability Committee Meeting – Commissioner Fratila reported the committee discussed the processes already in place and how to move forward.
- C. October 12 OSS Committee Meeting – Commissioner Santos the committee reviewed and discussed proposals received for the Rail Switcher Operator. Operations staff also gave an update on the dynamics and progress of safety and operations at the Port as activity increases.
- D. Port Commission related meetings or conferences, Port presentations and other Port related matters.

Commissioner Santos reported attending the Breakbulk Conference and Customer Reception. He also attended the Brazoria County Courthouse Open House and the TxDOT Transportation Short Course.

Commissioner Fratila reported attending several meetings and events related to Friends of the River.

Commissioner Giesecke reported attending Freeport City Council meetings, Brazoria County Luncheon, Alliance Luncheon and BCCA Meeting.

Commissioner Kincannon reported attending the National Waterways Conference Annual Meeting along with Ms. Saathoff. He also attended the TxDOT Transportation Short Course, Finance and ESG Committee meetings, the Port Freeport Annual Golf Tournament and Highway 36A Coalition Meeting.

Commissioner Croft reported attending the State of the Community Luncheon, State of Higher Education Luncheon, Alliance Board of Directors Meeting and the Brazoria County Courthouse Ribbon Cutting.

Commissioner Singhania reported attending the ESG Committee Meeting.

12. Recognition of Phyllis Saathoff for acceptance of the Texas Transportation Institute Russell Perry Award.

Commissioner Singhania stated that this was a very big award honoring Ms. Saathoff and was presented at the TxDOT Transportation Short Course and was sponsored jointly by the Texas A&M Transportation Institute. The award is for outstanding leadership in maritime industry and transportation. Commissioner Singhania went on to say that each year, there are five awards presented with four of them going to TxDOT while the other goes to an outstanding leader. Commissioner Singhania applauded Ms. Saathoff for all the work she does and getting the Port in the forefront. Commissioner Santos added that this is a big honor for both Ms. Saathoff and the Port. Ms. Saathoff stated that she was very humbled to receive the award adding that the Port works together as team and how they engage with Port partners. A video of the award presentation was also shared with everyone.

13. Approval to pay legal bills submitted for the month of September 2023.

Mr. Lowe stated that legal bills are traditionally included with the financial package each month however since the financials are delayed a month, staff is requesting approval to pay the legal bills as a stand-alone item.

A motion was made by Commissioner Giesecke to pay the bills. The motion was seconded by Commissioner Santos with all Commissioners present voting in favor of the motion.

14. Approval of a Construction Contract with Noble Building & Development, LLC for the Administrative Building Repairs & Improvements, for an amount not to exceed \$293,715.00.

Mr. Hull stated that this project involves removing joint sealant in the building and replacing with new joint sealant throughout the building exterior. It also includes replacing doors on the 3rd floor and corroded door hardware. There were two bids submitted with the low bid submitted by Noble Building & Development in Angleton. Staff recommends approval of the contract in the amount of \$293,715.00. This project is a budgeted item.

A motion was made by Commissioner Santos to award the contract to Noble Building & Development for an amount not to exceed \$293,715.00. The motion was seconded by Commissioner Croft with all Commissioners present voting in favor of the motion.

15. Approval of a Professional Services Agreement with SteLar Consulting Services, LLC for the Cathodic Protection Docks 1, 2, 3, 5 & 7 project, for an amount not to exceed \$632,544.00.

Mr. Hull stated that agreement is for the design, bid package preparation, construction oversight and the commissioning of the impressed current cathodic protection system to protect the docks. This is a budgeted item. Construction is estimated at approximately \$6 million. This agreement is for the engineering, testing, commissioning and construction oversight of the project that staff will bring back for the actual repairs. The repairs will involve drilling deep well anodes into the soil throughout the Port with depths of the anodes varying. SteLar was selected based on their demonstrated qualifications and specialized service. The anodes will be larger than originally installed and will last approximately 10-15 years.

A motion was made by Commissioner Croft to approve the agreement. The motion was seconded by Commissioner Kincannon with all Commissioners present voting in favor of the motion.

16. Approval of a Professional Services Agreement with SAFEbuilt Texas, LLC for building code plan review and code inspections for the new Fruit Transfer Facility project, for an amount not to exceed \$50,000.

Ms. Saathoff explained that this was appropriate to approve at the time because of where staff is with lease negotiations and the need to get the plan review done efficiently. This will be executed once the commitment of full reimbursement is in place. Mr. Hull stated that this agreement is for plan review and building code inspections for one project for the fruit transfer facility. Staff recommends approval to authorize Ms. Saathoff to execute at the appropriate time.

A motion was made by Commissioner Santos to approve the agreement. The motion was seconded by Commissioner Giesecke with all Commissioners presents voting in favor of the motion.

17. Discuss and consider approval of a Crane Construction and Erection Agreement with Shanghai Zhenhua Heavy Industries Co., Ltd. (ZPMC) for the design, manufacture, supply, commissioning, transportation and site supervision of two (2) Ship-to-Shore Cranes for Port Freeport, Texas, USA.

Mr. Durel stated that staff is very close to finalizing all pieces of the agreement with the last few changes and corrections sent to ZPMC for review. The Port's legal team feels very confident in the most recent changes made and that ZPMC will agree. Mr. Durel introduced Paul Bridges to answer any questions or concerns related to the agreement. Mr. Bridges stated the remaining items are all related to the Crane Construction and Erection Agreement and include words that either ZPMC or the Port's legal team requested. The technical specifications are included in the agreement which staff has negotiated and brought pricing

down from where it started. Commissioner Croft inquired if there is anything in the contract dealing with currency exchange, whether or not the price is fixed over the course of construction. Mr. Bridges stated the contract is in U.S. dollars with a fixed amount. Commissioner Croft also asked about the performance bond. The payment and performance bond template were included in the commercial documents. Both staff and legal have reviewed and agree that what has been provided to them would provide the Port with a proper payment and performance bond as well as a maintenance warranty bond. Both will be reviewed by legal once signed documents are received by ZPMC. If the bonds aren't adequate (which are a requirement of this public contract), the contract will be null and void; however, staff will have the opportunity to go back to ZPMC and request a different bonding company should it not be a proper bond. Since the agreement was not available at the previous meeting, staff felt it necessary to bring to the Commission one more time to review the few changes made and authorize Ms. Saathoff to execute agreement upon receipt from ZPMC and review by legal counsel. Staff has worked very hard to give the Port the best cranes possible and are very similar to what is in place now which is where some of the changes have come into play. Staff has used their knowledge gained over the last several with the current cranes to know and understand what's needed and what works. With these specifications, staff does not anticipate coming back to the Commission for any changes, modifications or extra work while they are built. Mr. Bridges also confirmed the cranes will be delivered to the Port substantially completed and ready to operate in 25 months. He further stated that final acceptance will include finalizing any minor punch list items that would not impact the safe operation of the cranes. The spare parts will be separate and not typically ordered with the original crane order to allow for a design review process. There will be parts that may change due to the difference in new design as far as technology as well as some parts that are no longer available. Staff will review and update the spare parts list, as necessary. This order will take place approximately 5 months in, after design review.

A motion was made by Commissioner Santos to approve the Crane Construction and Erection Agreement with ZPMC. The motion was seconded by Commission Kincannon with all Commissioners present voting in favor of the motion.

18. Adoption of a Resolution authorizing the utilization of capital reserves for capital improvements.

Mr. Lowe stated that the Port Commission passed a resolution on October 22, 2015, creating a reserve for capital improvements. Annual contributions from Port operating revenues have been made since and the current balance is \$17,548,246. The reserve can be utilized to fund Freeport harbor channel improvements, capital and maintenance dredging, dredge disposal area improvements, land purchases and any other Port capital improvement or capital maintenance items. Staff plans to bring a recommendation to issue \$25 million in revenue bonds to the Port Commission in November. The plan and modeling of the bonds was shared with the Finance Committee on October 12, 2023. Current plans would have a bond closing date in February 2024 and in the interim, staff is requesting the utilization of the capital reserve to advance funds up to the first two payments of the ship to shore gantry cranes for an amount not to exceed \$9,000,000. As part of the bond process, there will be an advance funding resolution allowing the port to reimburse the accounts for this spending once the bond proceeds are received. Staff will present a reconciliation of the capital reserve once the funding is received and reimbursed. He further stated that staff is trying to use what the Port's has in current resources and go to market a few months from now. A payment

structure was included in the agreement just reviewed and this will cover the first two payments, noting staff may not need the second one.

A motion was made by Commissioner Giesecke to adopt the resolution. The motion was seconded by Commissioner Santos with all Commissioners present voting in favor of the motion.

19. Adoption of a Resolution approving the acceptance of the Port's portion of proceeds received from high bidders on delinquent tax property held in trust by Brazoria County, Texas and authorizing the Chairman to join in conveyance to high bidders.

Mr. Lowe stated this is a single property approved unanimously by Commissioners Court, has no geographic bearing to the Port and recommends approval.

A motion was made by Commissioner Croft to approve the resolution. The motion was seconded by Commissioner Kincannon with all Commissioners present voting in favor of the motion.

20. Approval of Executive Director/CEO and Commissioners' travel for the month of October 2023.

Ms. Saathoff stated that this is for travel that took place previously in the month and noted she did stay an extra night since she was speaking the following day.

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

21. Discussion and approval of term limits framework.

Ms. Cook stated the Commission requested legal look at the language in Section 5002.051 that determines term limits for the Port Commission's administration. The current language provides the elected Board has six Commissioners serving staggered six-year terms and there are no term limits provided in the statute. The firm has provided suggested language based on previous conversations with the Commission. Current concerns are whether Commissioners currently serving have a vested interest in the way things were when they took position and if those rules change in the middle of serving those responsibilities. She shared the proposed language drafted based on recommendations by the Commission. Commissioner Giesecke stated that Subsection D needed clarification suggesting it read "Term limits shall not apply to appointments to fill an unexpired term in the case of a vacancy on the board." Commissioner Singhania further added that you don't want to lose the two-year staggered terms currently in place so appointment should be completing the full term for the vacancy person was appointed for. Ms. Cook stated the language was an attempt to accomplish that but will further clarify. Commissioner Santos asked if they add an age limit to the language. Commissioner Singhania did not agree with age limit adding that it should be more of a testament to their mental ability. Commissioner Fratila added that it should be up to the people who elect the Commissioners to determine whether they are competent, regardless of age. Commissioner Giesecke then stated at the last meeting, he felt the area that was still unresolved was whether the two terms served would be retroactive or

count current terms or any prior terms of sitting commissioners adding that Commissioner Fratila expressed concerns and legality of it. Commissioner Fratila stated that if the Commissioners take the step to establish term limits, the people voting are going to see that it's in place, and if someone were a habitual runner for the office, the people who elect that person would see the Commission has decided that term limits should apply, and the people will impose their own opinion that terms limits should apply whether they actual do or not adding that she has a lot faith in the people who elect. Commissioner Giesecke stated that his concern is if they don't make it retroactive, the perception will be the Commission is carving out a special exception for themselves what makes him want to make it retroactive to current and previous terms. Commissioner Fratila reminded the Commission that Mr. Randle stated at the last meeting there will be an opportunity to add notes in the history of the legislation to clarify that it is this Board, especially the newly elected were elected based on term limits and it would be disingenuous of them if they were elected without term limits. You have to rely on the integrity of the person running, especially if the new Commissioners that were elected on the basis of people wanting term limits. It would be very hypocritical of us to say we're going to put term limits on everyone else but ourselves. Commissioner Giesecke stated he's concerned about the appearance of hypocrisy, not when/if they run again but the act of moving forward with term limits that don't apply to them, but only look forward. Commissioner Fratila again reiterated that you have to rely on the integrity of the individual. Commissioner Singhania asked for clarification on why they not putting retroactive in the language. Ms. Cook stated that from a legal perspective when rules are in place, people accept their rules with those rules that are in place and constitutionally to apply new rules and make then retroactive can raise some questions and where you want to be very careful. There are some legal concerns about making it retroactive. Commissioner Giesecke inquired about the Port of Houston putting retroactive term limits in 2013 asking if there were any challenges with it. Commissioner Fratila responded stating they are not an elected body but appointed and some of those people that were appointed had served many, many years. It was a result of a Sunset Review where the Port of Houston and their procedures were subjected to a substantial review, and it was the recommendation after that review that they said these people should not be appointed for life and there was a house cleaning of the Port Commission, but they are not elected. It was a different way of choosing Commissioners and they wanted to address the concerns that many people had that some of those Commissioners had been there a very long time. After further discussion regarding the differences in appointed vs elected terms, public perception and the legality of adding retroactive language, Commissioner Singhania summed it up by stating that to be safe from the possibility of a legal challenge, we do not want to make it retroactive, adding that after the legislation is passed, current and future commissioners can run for two terms only. He further lined out what is proposed in three parts...

1. An appointee is allowed to serve out a full term and will not be counted against the two term limits.
2. The process for term limits of two terms will begin after the legislation has changed to reflect this.
3. Start the process to approach the legislator to have the language changed, for the 2025 legislative session.

A motion was made by Commissioner Giesecke to approve the term limits framework. The motion was seconded by Commissioner Kincannon with all Commissioners present voting in favor of the motion with a 6-0 vote.

22. 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).
 - 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.
 - i. Business and Economic Development Reports.
 - 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 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.
- D. Under authority of Section 551.076 (Deliberation of Security Matters) for discussion regarding:
 - 1. Discussion regarding issues related to the deployment, or specific occasions for implementation of security personnel or devices or security audit and services.
- E. Under authority of Section 551.074 (Deliberation of Personnel Matters) for discussion regarding:
 - 1. Deliberation regarding the appointment, employment, evaluation, reassignment, duties of a public officer or employee, including but not limited to: Executive Director/CEO.

23. RECONVENE OPEN SESSION:

24. Adjourn.

With no further business before the Commission, the meeting adjourned at 5:52 PM.