

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

**COMMITTEE ON OPERATIONS
MINUTES OF SPECIAL, INTERIM MEETING
Tuesday, June 14, 2011**

Port Newark – Port Newark Container Terminal LLC – Lease L-PN-264 – 3
Amended and Restated Lease Agreement – Railroad Operating Agreement –
Mediterranean Shipping Company – Port-wide Throughput Guaranty
Agreement

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**COMMITTEE ON OPERATIONS
MINUTES OF SPECIAL, INTERIM MEETING**

225 Park Avenue South

New York, NY

Tuesday, June 14, 2011

PRESENT:

Hon. David Samson, Chair
Hon. Stanley E. Grayson, Vice-Chair
Hon. Anthony R. Coscia
Hon. Jeffrey A. Moerdler
Hon. Raymond M. Pocino
Hon. Anthony J. Sartor
Hon. David S. Steiner

Committee Members

Christopher O. Ward, Executive Director
William Baroni, Jr., Deputy Executive Director
Darrell B. Buchbinder, General Counsel
Karen E. Eastman, Secretary

Susan M. Baer, Director, Aviation
Steven A. Borrelli, Assistant Director, Port Business Development, Port Commerce
Ernesto L. Butcher, Chief Operating Officer
Steven J. Coleman, Assistant Director, Media Relations
John C. Denise, Audio Visual Supervisor, Marketing
Daniel D. Duffy, Senior Business Manager, Office of the Secretary
Michael G. Fabiano, Chief Financial Officer
Michael A. Fedorko, Director, Public Safety/Superintendent of Police
Michael B. Francois, Chief, Real Estate and Development
Glenn P. Guzi, Senior External Affairs Representative, Government and Community Affairs
Linda C. Handel, Deputy Secretary
Christopher M. Hartwyk, First Deputy General Counsel
Andrew T. Hawthorne, Director, Marketing
Howard G. Kadin, Esq., Law
Louis J. LaCapra, Chief Administrative Officer
Cristina M. Lado, Director, Government and Community Affairs
Richard M. Larrabee, Director, Port Commerce
Jamie E. Loftus, Chief, Public and Government Affairs
Dennis Lombardi, Deputy Director, Port Commerce
Stephen Marinko, Esq., Law
Ronald Marsico, Assistant Director, Media Relations
Daniel G. McCarron, Comptroller
James E. McCoy, Manager, Board Management Support, Office of the Secretary
Anne Marie C. Mulligan, Treasurer

Monika A. Radkowska, Principal Board Management and Support Specialist, Office of the Secretary
Desiree Ramos, External Relations Client Manager, Government and Community Affairs
Gerald B. Stoughton, Director, Financial Analysis
Robert A. Sudman, Director, Audit
David B. Tweedy, Chief, Capital Programs
Sheree Van Duyne, Manager, Policies and Protocol, Office of the Secretary
Andrew S. Warshaw, Chief of Staff to the Executive Director
David M. Wildstein, Director, Interagency Capital Projects, Office of the Deputy Executive Director
Peter J. Zipf, Chief Engineer

In view of the absence of a quorum at today's special Board meeting, the Secretary reported that, pursuant to the Board's resolution of December 15, 1994, a special, interim meeting of the Committee on Operations was called to permit the Committee to act on the item for and on behalf of the Board.

The meeting was called to order in public session by Chairman Samson at 10:57 a.m. and ended at 11:03 a.m.

PORT NEWARK – PORT NEWARK CONTAINER TERMINAL LLC – LEASE L-PN-264 – AMENDED AND RESTATED LEASE AGREEMENT – RAILROAD OPERATING AGREEMENT

MEDITERRANEAN SHIPPING COMPANY – PORT-WIDE THROUGHPUT GUARANTY AGREEMENT

It was recommended that the Board authorize the Executive Director to enter into an amended and restated lease agreement with Port Newark Container Terminal LLC (PNCT) to provide for: (1) a phased expansion of PNCT's approximately 180-acre container terminal at Port Newark to approximately 287 acres; (2) the short-term letting of approximately 38 acres, consisting of a building and open area at the Elizabeth-Port Authority Marine Terminal (EPAMT), with the property to be replaced with approximately 23 acres of open area at Port Newark; (3) the restructuring of the rental terms of PNCT's existing lease, based on significant investment in the leasehold and cargo volume guarantees by PNCT and Mediterranean Shipping Company (MSC); (4) certain modifications to the corporate structure of the lessee, as outlined to the Board; (5) an extension of the term of the letting for up to a 20-year period, through November 30, 2050, subject to satisfaction by PNCT of a \$500 million capital investment requirement; (6) the Port Authority, at its sole discretion, to advance PNCT an amount of up to \$150 million, commencing January 1, 2016, to create a tenant capital improvement fund, with such funds to be repaid to the Port Authority, with interest; and (7) the Port Authority to relocate and reconstruct portions of Export Street, Calcutta Street and Starboard Street at Port Newark and relocate and reconstruct certain railroad tracks affected by the development of one of the parcels to be provided to PNCT for the expansion of its leasehold.

It was recommended further that the Executive Director be authorized to enter into a railroad operating agreement with PNCT for the operation and maintenance of the ExpressRail Port Newark intermodal rail facility (which currently consists of approximately 7.16 acres, and which the Port Authority would build out fully, in phases, to an approximately 22-acre intermodal rail facility), coterminous with the lease agreement.

It was recommended further that, in connection with the lease agreement, the Executive Director be authorized to enter into a Port-wide Throughput Guaranty Agreement (Contract of Guaranty) with MSC, providing for guaranteed escalating annual volumes of containers through the Port of New York and New Jersey (Port) from March 1, 2011 through November 30, 2030, with a payment backstop from PNCT.

PNCT has been a container terminal operator at Port Newark since December 2000. It currently leases an approximately 176-acre container terminal through November 2030, four acres of open area at Port Newark for chassis storage through August 31, 2015, and an approximately 7.16-acre interim intermodal rail facility, known as ExpressRail Port Newark, under an agreement that expired in December 2007. PNCT also utilizes approximately 35 acres of open area at the EPAMT under a space permit that expires on June 30, 2011.

In order for PNCT to make a significant investment in its leasehold and expand its current container terminal operation to accommodate the largest ocean carrier in the Port (MSC), PNCT requires an extension of the current lease agreement and a restructuring of its lease, adjusting the fixed rental component to be comparable with other container terminals and including an adjusted variable rental component that is guaranteed.

Under the proposed authorization, PNCT's 180-acre leasehold would be expanded in phases to an approximately 287-acre container terminal. Effective as of March 1, 2011, PNCT would lease approximately 38 acres of open area at the EPAMT, of which approximately 35 acres are currently occupied by PNCT under a space permit, on a short-term basis, which ultimately would be surrendered and replaced permanently with approximately 23 acres of open area at Port Newark, with delivery of the 23-acre site, or a substantially equivalent property, expected in the third quarter of 2013. Effective March 15, 2011, PNCT would be provided with an approximately 33-acre parcel at Port Newark, which it is currently utilizing under a right-of-entry agreement, for container terminal development and would be permanently added to the leasehold as the first phase of expansion. An additional 51 acres of property at Port Newark would be provided to PNCT in three phases, with the final phase to occur by January 1, 2019. PNCT would be required to develop the expansion parcels, which currently consist of warehouse facilities, associated open area, roadway and rail tracks, into a container yard.

PNCT would be required to invest \$500 million in capital improvements to the existing terminal and expansion parcels by November 30, 2029 in order for the lease to be extended for an additional 20-year period, through November 30, 2050, failing which the extension term may be shortened.

Under the lease, the Port Authority, at its sole discretion, would consider advancing PNCT an amount of up to \$150 million over a three-year period, commencing on January 1, 2016, to create a tenant capital improvement fund, which would be repaid by PNCT over a 20-year period at a financially self-sustaining interest rate to be determined. If no extension of the lease is granted, then PNCT would be required to pay the unpaid principal amount in full by November 30, 2030. If a reduced lease extension is granted that does not allow for the full 20-year repayment period, then PNCT would be required to pay any unpaid principal amount in full in the final year of the extension period.

The Port Authority would be required to relocate and reconstruct portions of Export Street, Calcutta Street and Starboard Street at Port Newark, which are included in one of the expansion parcels. The Port Authority also would relocate and reconstruct railroad tracks impacted by the development of the expansion parcels, to ensure proper access to adjacent tenants and public berths.

The total aggregate rental over the term of the proposed lease, through November 30, 2030, would be approximately \$522.7 million, an increase of approximately \$94.4 million from PNCT's current lease agreement. PNCT also would make a terminal throughput guarantee, to be calculated on a lease-year basis. The rental for any extension period on the main terminal area, approximately 260 acres, would be reset, based on then-existing market rates.

Pursuant to this proposed authorization, the Port Authority also would enter into a railroad operating agreement with PNCT for the operation and maintenance of the current interim ExpressRail Port Newark facility (consisting of approximately 7.16 acres), and ultimately the fully built-out permanent ExpressRail facility (to consist of approximately 22 acres), which agreement would be coterminous with the lease. Under the terms of the proposed lease agreement, the Port Authority would be required to provide PNCT with an operational rail flyover by December 31, 2012.

Finally, the Port Authority would enter into a Contract of Guaranty with MSC that would provide for guaranteed escalating annual volumes of containers through the Port from March 1, 2011 through November 30, 2030. MSC would pay to the Port Authority a port guarantee penalty, based on any shortfalls from such guaranteed annual volumes, to be calculated on an annual basis. If MSC did not pay any penalty based on such shortfall, PNCT would be obligated to pay the shortfall amount pursuant to its lease agreement.

Pursuant to the foregoing report, the Committee on Operations, acting for and on behalf of the Board pursuant to delegated authority, adopted the following resolution, with Commissioners Grayson, Pocino, Samson, Sartor and Steiner voting in favor; Commissioners Coscia and Moerdler recused and did not participate in the consideration of or vote on this item. General Counsel confirmed that sufficient affirmative votes were cast for the action to be taken, a quorum of the Committee being present.

RESOLVED, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to enter into an amended and restated lease agreement with Port Newark Container Terminal LLC (PNCT) covering the letting of approximately 287 acres at Port Newark for the operation of a container terminal, for a term of 19 years and nine months, effective as of March 1, 2011, with an extension period of up to 20 years, subject to PNCT's satisfaction of minimum capital investment requirements, substantially in accordance with the terms outlined to the Board; and it is further

RESOLVED, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to enter into a railroad operating agreement with PNCT for the operation and maintenance of the ExpressRail Port Newark intermodal rail facility, for a period coterminous with the term of PNCT's container terminal lease agreement, substantially in accordance with the terms outlined to the Board; and it is further

RESOLVED, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to enter into a Port-wide Throughput Guaranty Agreement with Mediterranean Shipping Company providing for guaranteed escalating annual volumes of containers through the Port of New York and New Jersey from March 1, 2011 through November 30, 2030, substantially in accordance with the terms outlined to the Board; and it is further

RESOLVED, that the form of all agreements in connection with the foregoing shall be subject to the approval of General Counsel or his authorized representative.

Whereupon, the meeting was adjourned.

Secretary