

Minutes of the Special Meeting of the Board of Commissioners of the Lake Charles Harbor and Terminal District held at 1:30 P.M., Wednesday, March 16, 2011, in the Board Room of the Port of Lake Charles located at 150 Marine Street, Lake Charles, Louisiana.

In attendance and constituting a quorum, were:

C. Wade Shaddock, Jr, President
Walt M. Sanchez, Vice President
Harry C. Hank, Secretary/Treasurer
Kay C. Barnett, Assistant Secretary/Treasurer
Elcie J. Guillory, Commissioner
John LeBlanc, Commissioner

Absent:

None

Also Present:

Bill Rase, Port Director
Michael K. Dees, General Counsel
Richert Self, Director of Administration and Finance
Donald Brinkman, Director of Engineering, Maintenance and Development
Dan Loughney, Director of Marketing and Trade Development
Todd Henderson, Director of Operations
Michelle Bolen, Executive Administrative Assistant

Mr. Shaddock called the meeting to order at 1:31 P.M. and asked Mr. LeBlanc to give the invocation. Mr. Hank led the Board and audience in the Pledge of Allegiance.

Mr. Shaddock made a statement reminding the Public of the Port's procedure for the Public to address an agenda item to the Board.

-
1. Submission 2011 – 014 authorizing a Fifth Amendment to Ground Lease Agreement with Lake Charles Cogeneration, LLC.
-

Ms. Barnett offered a motion to adopt Resolution to authorize a Fifth Amendment to Ground Lease Agreement with Lake Charles Cogeneration, LLC. Mr. LeBlanc seconded the motion and it carried unanimously.

-
2. Submission 2011 – 015 authorizing the Port Director to take any and all steps deemed necessary and appropriate to end, as of a future date to be fixed and determined by the Port Director, the current Unloading Agreement with Lake Charles Stevedores, Inc.; including but not be limited to the renegotiation with Lake Charles Stevedores, Inc. of the existing agreement; preparation, issuance and award of a request for proposal for unloading services; the possible payment to Lake Charles Stevedores, Inc. of any liquidated damages deemed by the Port Director to be owed and; further, taking such other action as may be necessary to develop and enter into revised or new unloading arrangements or agreements for City Docks terminal services and the operation of the automated facility on such terms and conditions deemed by the Port Director to be in the best interest of the District.
-

Mr. Rase gave an opening statement regarding the issue:

“In November of 2010, the Port Staff in the final formation of its budget for 2011 anticipated the expenditure of \$1,200,000 to replace the electronic equipment for the 2 spiralveyors at the 9a automated terminal facility. The Staff, at the request of and with the support of the Board, prepared an analysis of the financial impact this equipment has had and the tonnages developed. The automated terminal began working in late 2004. Identical copies of that report were supplied to each Port Board member, Lake Charles Stevedores -operator of the facility- and Port staff the week of February 21.

The past calendar year of 2010 was used as the model for the study since it included the most current tariff rates. Staff took the unusual step of using a blend of the most favorable revenue totals and limited and reduced expense items against those favorable revenues. Besides the revenue and tonnage elements the third restricting issue is the contract that governs the automated facility.

It needs to be said and clearly understood that neither the current Port Board, nor the Port Staff nor the Port Contractor had input into the formation, purchase or development of the facility or its operating contract.

The Port Board in place in 1997 made the decision to enter into a purchase, construction and operating agreement which remains in place at this time. The current Port legal staff which served the 1997 board, Mr. Mike Dees, prepared an agreement based on and at the direction of the 1997 Port Board.

The results of the 2010 study do not differ much from the findings of the December 2002 legislative auditor's report. The facility does not provide an acceptable return to the Port under the current conditions and arrangement.

Further investment by the Port is not recommended by Staff and the Port Staff recommends adoption of the resolution drafted for today's meeting and which is before you.

If you approve the resolution, I intend to move cautiously with the authority you grant me and – before doing anything else – I will first meet with Mr. Flanagan in hopes of reaching a new and more definite unloading agreement with terms that are necessary and appropriate for a viable operation of the 9A automated facility. The Board will be kept fully informed as I move through the process based upon the authority you grant me by the proposed resolution.”

Mr. Sanchez offered a motion to adopt Resolution 2011 – 015 to authorizing the Port Director to take any and all steps deemed necessary and appropriate to end, as of a future date to be fixed and determined by the Port Director, the current Unloading Agreement with Lake Charles Stevedores, Inc.; including but not be limited to the renegotiation with Lake Charles Stevedores, Inc. of the existing agreement; preparation, issuance and award of a request for proposal for unloading services; the possible payment to Lake Charles Stevedores, Inc. of any liquidated damages deemed by the Port Director to be owed and; further, taking such other action as may be necessary to develop and enter into revised or new unloading arrangements or agreements for City Docks terminal services and the operation of the automated facility on such terms and conditions deemed by the Port Director to be in the best interest of the District. Mr. Hank seconded the motion.

Mr. Shaddock recognized Mr. Tom Flanagan, Lake Charles Stevedores, to address the Board.

Mr. Flanagan presented an information sheet to the Board regarding the spiralveyor operations at City Docks.

He stated he approaches his business with a point of view of a partnership. They have a contract but they try to go beyond that contract. Their view of partnership is there is no holds bar. They do everything. It is known in the market place that they are advocates for the Port of Lake Charles and for business here. Everyday they put their company, reputation, equipment, personnel and integrity on the line to try to book cargo for this Port. He thinks that everyone - Port, ILA, Stevedores – is a testament to what partnership means. It is very important that the Board know that that is their approach to this business.

He discussed the information sheet and began with the history prior to 2003. The Port was subsidizing operations at City Docks through direct payments of approximately \$2 million a year. A new Board and staff came in about that time. Some on the Board will remember the situation where there were no jobs at City Docks. There were specials meetings on how to create jobs. When they stepped into the company and tried to re-align things there were law suits between the Port and Lake Charles Stevedores. There were bad labor relations.

There was no business, no jobs and a lot of problems. Within months of sitting down with Port Director, Adam McBride, they fashioned a turnaround agreement that was effective. They went from a situation that had no jobs and previously had subsidies. In 2008, they paid the Port and their customers paid the Port about \$2.8 million. They competed in the real world and restructured their labor contracts. They got the cost of doing business in the Port down. The Port and labor also contributed to that. They have put about 250 people to work in the last three years.

He stated he was not an accountant but thought the revenues they generated over three years is something in excess of over \$7 million to the Port. How the Port accounts for that and whether or not this office staff is applied to that he is not sure. He does know that if they were not here and if the revenue was not here a lot of the cost would still be here.

He thinks it's been a very strong partnership and they want to do everything they can to keep things going in a positive direction. This is just a business issue. He wants the Board to know that they are committed to resolving this business issue without litigation, without a great struggle or fight. He is willing to sit down with the Port Director and contribute to solve the problem.

Mr. Flanagan spoke about the spiralveyor equipment. He stated the spiralveyor is a central part of their efforts to attract agricultural business. Not every ship gets loaded with it, but almost every ship is in some way affected by it. If they can speed up one ship they can free up labor to put on another ship. All of this works together. He thinks it is a mistake in analysis if you just analyze the tons that just move over that spiralveyor. It has been broken down lately and he would address that later.

They work with customers. One is here today that books rice overseas. If they cannot load the ship at the price he wants at the speed that he needs, he cannot charter the ship and make the sale. He has been told by several customers that Lake Charles Stevedore's ability to do that gives them the ability to make sales that they would not ordinarily be able to make.

He asked the Board to try to understand that they see the spiralveyor not as a Dock 9 issue but an entire issue. It is a tool for generating business.

Mr. Sanchez asked Mr. Flanagan if he disputed the calculations that Port staff has shown in 2010 that approximately 20% of the cargo that could go through the spiralveyors and it is only 20%, actually did go through the spiralveyors.

Mr. Flanagan stated he was not looking at that page but he disagrees with the way the analysis was done.

Mr. Sanchez stated that was not his question. He recognizes that people can disagree on the analysis. We have it and that is really not an analysis. It is either a fact or it is not.

Mr. Sanchez asked if he agreed about only 20% the cargo went through the spiralveyor last year.

Mr. Flanagan stated he saw in the report 50 some odd thousand tons of cargo. He would not disagree with that. But if the equipment was working it could have been 200,000 tons. That is one of the things he was here to discuss.

He said they are in a make or break bid like every month. They are on pins and needles and they have bids out to sixty different mills across the United States and several different shipping lines and try to get cargo all over the United States to come through the Port. They have been successful at doing that.

He said the requirements of handling food cargo over the years have become more stringent. Inspectors are looking over their shoulder. Cleaning pallets and general cleanliness requirements are intense. A lot of these costs and all of the business risks for doing this – the Port used to pay hundreds of thousand dollars a year for demurrage a year – has been transferred to them, which they willingly accept but would like the Board to know that.

Mr. Flanagan stated that the handling of general cargo at City Docks has historically been the central focus of the Port's activity. As the Port has grown and grown and gotten into economic development with casinos, industrial development and leasing he thinks it is important the Port not lose focus on the central business it was started for, which is handling waterborne commerce.

He stated his customers tell him they are worried the Port is losing that focus. He worked very hard to get their support and get their business. He would hate to see the Port lose that focus and is concerned about it.

He stated he believes they need to be more competitive, not less, and they are considering doing an economic impact study on the number of jobs and how it affects the community. It might be informative for the Port.

Mr. Flanagan handed a survey of the spiralveyor equipment of the Port.

Mr. Shaddock stated the Board does not disagree with what he is saying. They need to go forward and work together and form a partnership. However he does not think this is the form right now for renegotiating over all the things that they have been working on for a number of years now. The Board has also not had a chance to read the handouts that were given tonight. One of the things they have been wanting for a number of years are some facts and figures and the Port's staff has given them some so they look forward to getting some more facts and figures from Mr. Flanagan. The Port does want to work with him.

Mr. Sanchez stated that if one looks at the auditor's report from 2002 and the analysis that the Port's staff did this year, financially they come up with similar conclusions. This was a 1997 Board project. They made the decision to invest this money and in 2002 the Legislative Auditor looked at it.

Mr. Sanchez read a quote from the report:

Management of the District failed to exercise sound business judgment and their fiduciary responsibility in properly evaluating and considering the financial feasibility of the semi-automatic bag handling facility project prior to starting the project and during the construction phase of the project. In addition, if and when this project becomes operational, the District's agreement with the stevedoring company for the handling of cargo through the semi-automatic bag handling facility may result in operating costs exceeding the related revenue making it financially impractical to continue those operations. Sound business practices as well as the requirement for fiduciary responsibility over public funds dictate that management obtain and consider all relevant financial factors before making decisions that significantly impact future operations."

Mr. Sanchez stated from what he understood, this facility became operational about 2005 and now they have several years of data.

Mr. Shaddock stated this was the Legislative Auditor that wrote that statement.

Mr. Sanchez stated the staff has gone through and done the financial analysis using, he believes from the review they put together. When there were questions about whether an assumption should be made that would be favorable to the stevedoring company or the Port, many or most of those assumptions have been favorable to the stevedoring company. They cannot come up with a way to make this contract, as it is currently crafted, financially viable for the Port. This is not a lack of commitment to the equipment or lack of commitment to this commodity. This issue is not that they want to get out the bag business, the issue is the Legislative Auditor and Port staff tells them that it is the contract with Lake Charles Stevedores, nothing else, that is making this financially not a viable operation. They have to exercise fiduciary responsibility. As of 2002, shame on somebody else, but now that this report has been brought to them and this information is showing that it is consistent, if they do not do something about this then shame on them.

He is glad to hear Mr. Flanagan wants to continue to work with the Port Director but this Board has to take action to address an issue which has been since 1997 or they will not be able to meet their own fiduciary responsibility. He hopes and expects the negotiations will be made in good faith but to characterize negotiating with him in good faith about a contract that no financial analyst finds to be fair to the Port has some kind of lack of commitment to customers or to this commodity. He does not think that is accurate. The Port needs to work out the differences with Lake Charles Stevedores or whoever it is that is going to be doing this processing. It is not a lack of commitment to the customers or commodity. They just have to do something with this contract.

Mr. Flanagan stated he understood that is what the Board wants to accomplish and he supports that. However, one thing the Board needs to understand, he had nothing to do with the 2002 situation and neither did this Board or staff. But the situation that exists today is not remotely close to that. In the first two or three points of his proposal was to make that point. They no longer receive direct subsidies to bring cargo into this Port. They are paying

monies to the Port. The Port may say they want more money, but they shifted from a subsidy, almost a \$5 million shift per year.

The company before them could not exist without that subsidy. The labor agreements could not exist without that subsidy. They cleaned that up. They have taken a big step in changing and cleaning up some of the stuff from the past.

Mr. Shaddock stated they do want to work together and move forward but at the same time they have a fiduciary responsibility to the citizens of the State of Louisiana. The facts show that the Port needs to do a better job. This is not fair to the Port. They need to renegotiate the contract.

Mr. LeBlanc asked if the maintenance on the spiralveyors was still around \$1.2 million.

Mr. Rase stated that was related to the electrical side of the spiralveyors but there are mechanical, structural and other issues come up in the future. They are about 20 years old. This last handout Mr. Flanagan gave them does show the condition they arrived in. They were redone by specialists. They need to get them upgraded back to their original state.

Ms. Barnett asked if one of the things they are trying to determine is exactly whose responsibility it is for the necessary improvements that need to be done to the equipment.

Mr. Rase stated that was correct.

Mr. Guillory asked if they had been trying to work out the contract previously, what made them feel like they can find a solution now.

Mr. Flanagan stated they could if everyone would be reasonable.

Mr. Shaddock recognized Mr. Hillery Langley, President ILA Local 1998, to address the Board.

Mr. Langley stated he was on the Board in 1997. He knows about the spiralveyors and Legislative Auditor's report. However, the legislative auditor is an accountant out there. He is not looking at what is providing jobs and what it does for the community.

He wanted say the Board has to do what it has to do. He understands that. He agrees with what the Board has to do and with the Port Director. Times change. In the shipping business things change every day. From 1997 to 2010 or 2011 a lot of things have changed. Almost a million tons of bagged goods moved through the Port at that time. Today there is 300,000 – 400,000 tons a year. There is more cargo that could be generated out of that facility. But, the facility needs to be upgraded. Mr. Flanagan has worked hard with labor to work on those commodities. There is no subsidizing like there was back then. The rates are lower. The millers depend on the Port to move their rice. They want to continue. The Port will move forward with other things but it has to have other commodities that run through it also, like commodities from the Midwest and veg oil.

He wanted to remind everyone the Port was put here to take care of the shipping community. He wants to make sure the Board will. He appreciates what they are doing.

Mr. Shaddock thanked him. He then asked for a vote on Resolution 2011 – 015. The Resolution passed unanimously.

3. Executive Session.

Mr. Shaddock asked for a motion to enter into Executive Session. Mr. Sanchez offered a motion to enter into Executive Session. Mr. Hank seconded the motion and it carried unanimously. The Board entered into Executive Session at 2:12 p.m. to discuss the following items:

- a. West Cameron Port Authority Litigation
- b. Discussion of Potential Litigation with F. Miller and Sons, LLC., et al
- c. Threatened Litigation with Alfred Palma, LLC. and Heyl & Patterson, Inc. concerning PLC-No. 05-CIP-38.
- d. PNK (Lake Charles), LLC vs. Lake Charles Harbor and Terminal District; 14th Judicial District Court; Parish of Calcasieu; State of Louisiana, Case No. : 2010-5508; Division: A

The Board returned from Executive Session at 2:30 p.m. No action was taken in Executive Session.

4. Other Matters which may properly come before the Board.

There being no further business to come before the Board, Mr. Shaddock asked for a motion to adjourn. Mr. Sanchez offered a motion to adjourn. Mr. Leblanc seconded the motion and it carried unanimously. The meeting adjourned at 6:54 p.m.

All discussions held on the above items were recorded on Compact Disc Number 1, and filed in the Executive Offices of the District.

Please note that when the votes are shown as unanimous, it is the policy of the Board that the President does not vote except in the event of a tie vote by the rest of the Board and/or unless otherwise indicated.

C. W. Shaddock, Jr., President

ATTEST:

H. C. Hank, Secretary/ Treasurer