

Item No.: 9B_Supp
Date of Meeting: December 6, 2022

Terminal 30 Central Substation Dispute Proposed Settlement



THE NORTHWEST
SEAPORT ALLIANCE

SEATTLE + TACOMA

Presenter Name: Dana Henderson
Presenter Title: NWSA General Counsel

ACTION REQUESTED

Request Managing Members' of the Northwest Seaport Alliance (NWSA) authorization for the Chief Executive Officer to execute the proposed Settlement Agreement with SSAT regarding the Terminal 30 Central Substation Dispute in substantially the same form as presented.

Overview

- Lease at Terminal 30 places maintenance responsibility on tenant.
- On November 29, 2020, the central substation for Terminal 30 (“the Substation”) failed, causing a loss of power.
- At the time of the failure, the Substation had a remaining useful life of approximately 15 years, or 30% of its 50-year useful life.
- NWSA chose to replace the Substation, subject to a reservation of rights to seek contribution to all or part of the Substation from tenant SSA since experts concluded that the failure was due to lack of maintenance.

Overview

- NWSA also arranged for interim power, initially through portable generators and since then, through a longer-term temporary generator, which continues to serve Terminal 30.
- SSA covered fueling costs pending installation of a new replacement substation.
- The replacement substation is slated to be installed by Q2 2023.
- Aim in all of these steps was to keep the terminal from going dark; all efforts were subject to a reservation of rights to determine financial responsibility via dispute resolution.

Dispute and Dispute Resolution Steps

- NWSA and SSA were not able to find agreement on the parties' roles and responsibilities with regard to maintenance, repair, or replacement of the Substation.
- Dispute centered on interpretation of Lease, responsibility for this particular Substation, and past dealings regarding maintenance
- SSA sought reimbursement of the fueling costs necessitated by the generators (\$645k)
- NWSA sought SSA's payment for all temporary expenses (\$1.4 -\$1.8M) needed to maintain power at the terminal and for all or part of the replacement substation (\$5.49M)

Dispute and Dispute Resolution Steps

- SSA initiated dispute resolution proceedings in February of 2021.
- Because the parties were unsuccessful in subsequent efforts to reach a resolution, NWSA escalated the dispute resolution to arbitration.
- Both parties engaged in discovery and prepared the dispute for arbitration.
- Case tentatively settled first day of arbitration, subject to MM approval.

Value of Parties' Claims

NWSA:

Temporary expenses of between \$1.4 - \$1.8M (including soft and misc. expenses)

Replacement substation at \$5.49M

SSA:

Fueling Expenses of \$645k (disputed by NWSA)

Note: substantially prevailing party could make claim for attorneys' fees and legal costs (exposure on both sides, amount currently unknown)



Terms of Proposed Settlement

- \$3M to be paid to NWSA, subject to approval of the Managing Members, to be paid within 30 days.
- Resolves all issues that were or could have been brought between the parties in the Terminal 30 Substation dispute (including SSA's claims)

Proposed settlement has been signed by SSA and all communications have been clear that agreement is subject to Managing Member approval.

Notes on Proposed Settlement

- **Fully compensates for temporary expenses and pays a portion of the replacement substation.**
- **Avoids risk of an adverse finding in arbitration and associated risk of an attorneys' fee award.**
- **Should the MMs not approve settlement, SSA will carry the costs of re-setting the arbitration.**
- **NWSA also now owns a new substation.**
- Settlement does not prevent disputes from arising again, but NWSA has sent letters to all N Harbor tenants reminding of maintenance responsibility and reiterating role of Marine Maintenance as vendor of tenant .

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