

COMMISSION CONSENT AGENDA

Item No: 2C

Meeting: 9/15/22

DATE: September 4, 2022
TO: Port Commission
FROM: Erin Galeno, Chief Financial and Administrative Officer
Sponsor: Heather Burgess, Port Legal Counsel
SUBJECT: Resolution 2022-15-PT – Appointing TEFRA Hearing Officer

A. ACTION REQUESTED:

Adopt Resolution 2022-15-PT appointing Executive Director Eric Johnson as TEFRA Hearing Officer.

B. BACKGROUND

The federal Tax Equity and Fiscal Responsibility Act of 1982 (“TEFRA”) and its implementing regulations (26 CFR § 1.147(f)-1 or IRC § 1.147(f)-1) require the Port of Tacoma to hold a public hearing as a form of public approval for certain types of tax-exempt private activity bonds.

During the recent COVID-19 pandemic emergency, the Internal Revenue Service (“IRS”) authorized required TEFRA public hearings to be held entirely virtually provided that there was a dial-in option available on a toll-free line to allow for public participation.

Traditionally, the Commission President has presided over the Port’s TEFRA public hearings, as the IRS regulations for conducting TEFRA hearings aligned with the requirements of the Open Public Meetings Act (“OPMA”) (RCW 42.30). During the COVID-19 pandemic, emergency proclamations allowed both Port Commission meetings and the TEFRA hearings to be conducted fully virtually. However, recent amendments to the OPMA (ESHB 1329) eliminate fully virtual meetings except in cases of declared emergencies where the meetings cannot be held safely.

Under Rev. Proc. 2022-20, the IRS noted that, “the experience using telephonic hearings during the COVID-19 pandemic has shown that telephonic access has, in fact, made it easier for the public to express its views regarding a proposed private activity bond issue,” and thus determined to allow TEFRA public hearings to be held telephonically indefinitely. However, the Commission President cannot preside over a fully virtual public hearing as provided for under the new TEFRA rules in compliance with the OPMA because a proceeding where a member of the governing body takes testimony or public comment is subject to the requirements of the OPMA, including having a physical location available for the public to attend.

26 CFR § 1.147(f)-1(d)(3) allows a TEFRA public hearing to be conducted by an individual appointed to perform that function. The proposed resolution appoints Executive Director Eric Johnson to conduct required TEFRA hearings so that such hearings can be completed virtually with telephonic public participation as allowed by the recently revised IRS rules.

C. NEXT STEPS

If the Resolution is adopted, Executive Director Eric Johnson will preside over future TEFRA public hearings.