

RECOMMENDATION APPROVED;
RESOLUTION 22-9996 ADOPTED; AND
ORDER 22-7327 APPROVED;
BY THE BOARD OF HARBOR COMMISSIONERS



Executive Director's
Report to the
Board of Harbor Commissioners

April 28, 2022

Amber M. Klesges
Board Secretary

DATE: APRIL 20, 2022

FROM: CARGO MARKETING

SUBJECT: RESOLUTION NO. 22-9996 - APPROVE PERMANENT ORDER TO AMEND PORT OF LOS ANGELES TARIFF NO. 4, "GENERAL RATE INCREASE"

SUMMARY:

The California Association of Port Authorities (CAPA), of which the Port of Los Angeles (Port) is a member, adopted an annual general rate increase (GRI) methodology for tariffs based on the West Region Consumer Price Index for All Urban Consumers (CPI-U). The Bureau of Labor Statistics has identified a 7.1 percent increase in the CPI-U for the 12-month period ending December 2021. The Port through CAPA had a 5 percent GRI in calendar year (CY) 2004 and 2005. On May 16, 2013, the City of Los Angeles Board of Harbor Commissioners (Board) approved a 1.7 percent GRI, also following CAPA adoption, applicable to almost all rated tariff items of the Port Tariff No. 4 (Tariff No. 4), effective July 1, 2013. A Second and Third Temporary Order was approved by the Board. Ultimately, the City of Los Angeles City Council did not agendaize the GRI Permanent Order, and thus no further Temporary Orders were approved by the Board. Upon expiration of the last Temporary Order, rated tariff items reversed to pre-Temporary Order levels. On November 4, 2021, the Board approved Temporary and Permanent Orders amending Tariff No. 4 increasing petroleum products rates by 9.4 and 11.8 percent effective January 1, 2022, and deleting tariff items no longer relevant. Petroleum products rate increases are still pending City Council approval.

Staff is recommending approval of a GRI effective August 1, 2022, of 7.1 percent, applicable to Tariff No. 4 rated tariff items, excluding rated tariff items that currently have a scheduled rate increase. A separate action recommends a Temporary Order to make changes to Tariff No. 4 within the Board's authority to adopt rates for up to 90 days, with any rates to be effective beyond the 90 days requiring the Permanent Order and Ordinance to be approved by the City Council.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

1. Find that the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of the California Environmental Quality Act (CEQA) under Article III Class 1 (31) of the Los Angeles City CEQA Guidelines;

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2. Approve the amendment to Port of Los Angeles Tariff No. 4 increasing rates to Section Four "Dockage", Items 450 & 480; Section Five "Wharfage", Items 550-001 through 550-801; Section Nine "Container Cranes" Item 900; Section Eleven "Charges for Occupancy of Office Space, etc. In Transit Sheds and on Wharves and Wharf Premises", Item 1100; Section Twelve "Water and Electricity", Item 1200; Section Fifteen "Public Landings", Items 1525 & 1530; Section Eighteen "General Rules and Regulations – Miscellaneous", Item 1802; and Section Nineteen "Commercial Fishing Vessel", Items 1910 & 1930, subject to the California Association of Port Authorities' review and approval, and authorize the Executive Director to work with the California Association of Port Authorities to secure this approval or proceed to take independent action in accordance with the California Association of Port Authorities' procedure;
3. Adopt Permanent Order No. 22-7327 with an effective date of August 1, 2022, to amend Port of Los Angeles Tariff No. 4, increasing rates to Section Four "Dockage", Items 450 & 480; Section Five "Wharfage", Items 550-001 through 550-801; Section Nine "Container Cranes" Item 900; Section Eleven "Charges for Occupancy of Office Space, etc. In Transit Sheds and on Wharves and Wharf Premises", Item 1100; Section Twelve "Water and Electricity", Item 1200; Section Fifteen "Public Landings", Items 1525 & 1530; Section Eighteen "General Rules and Regulations – Miscellaneous", Item 1802; and Section Nineteen "Commercial Fishing Vessel", Items 1910 & 1930;
4. Direct the Board Secretary to transmit to the City Council for approval the Permanent Order and the Ordinance approving and authorizing the Amendments to Port of Los Angeles Tariff No. 4 pursuant to City Charter 653(a);
5. Direct the Board Secretary to transmit to the City Clerk a Notice of Public Hearing for publication in accordance with the provisions of California Government Code sections 66018 and 6062a;
6. After the effective date of the Ordinance, transmit the Permanent Order and Ordinance to the Executive Director or his nominee for implementation and posting to the Port of Los Angeles website as regulated by the Federal Maritime Commission; and
7. Adopt Resolution No. 22-9996.

DISCUSSION:

Background and Context – In CY 2004 and 2005 CAPA member ports imposed a 5 percent GRI. CAPA member ports opined that over the years, previously implemented GRIs have not kept pace with inflation. At the June 28-29, 2012 CAPA Advisory Committee meeting, direction was given to the CAPA Tariffs and Practices Committee to implement an annual CPI-U based GRI system. The GRI system was to consider the following items:

- Applicable to existing and new tariffs
- Based on the CPI-U
- Effective Date: July 1, 2013
- No adjustments below zero

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- Applicable to all CAPA member ports
- Member ports would be able to exercise selective hold-downs and independent action

The Bureau of Labor Statistics has identified a 7.1 percent increase in the CPI-U for the 12-month period ending December 2021. On May 16, 2013, the Board approved a 1.7 percent GRI applicable to almost all rated tariff items of Tariff No. 4, effective July 1, 2013. A Second and Third Temporary Order was approved by the Board. Ultimately, the City of Los Angeles City Council did not agendize the GRI Permanent Order, and thus no further Temporary Orders were approved by the Board. Upon expiration of the last Temporary Order, rated tariff items reversed to pre-Temporary Order levels. On November 4, 2021, the Board approved Temporary and Permanent Orders amending Tariff No. 4 increasing petroleum products rates by 9.4 and 11.8 percent effective January 1, 2022, and deleting tariff items no longer relevant. Petroleum products rate increases are still pending City Council approval.

Although Tariff No. 4 covers more than 100 items, Item 550-001 is arguably the most important; this is wharfage on Merchandise Not Otherwise Specified (NOS). The NOS rate applies to commodities that are not specifically listed in the Tariff No. 4, but more importantly any percent increase of Item 550-001 in Tariff No. 4, NOS rate, effective August 1, 2022, would apply, but not necessarily immediately impact rates at five of the seven container terminal permits at the Port. Container terminal permits whose compensation schedule is tied to the NOS rate are:

- APM Terminals Pacific, LTD
- China Shipping Holding Company, LTD
- Everglades Company Terminal, Inc.
- Everport Terminal Services, Inc.
- Yusen Terminals, Inc.

Container terminal permits, as do other permits, include a scheduled compensation review process. The scheduled compensation adjustment can be a fixed value or a percentage increase based on a CPI.

Tariff items and/or permits not subject to the proposed GRI effective August 1, 2022:

- Everport Terminal Services, Inc.'s (ETS) permit would not be impacted in the first year of implementation of this GRI. Any GRI would first be reduced by the CPI increases applied to ETS since the last tariff increase in 2005. Subsequent GRIs could affect ETS's permit if the CPI increase exceeds a 3 percent cap as stated in their permit.
- Fenix Marine Services' permit is subject to a GRI only when all other container terminal permits see increases in rates resulting from a GRI
- TraPac Inc. (TraPac)'s permit includes a schedule rate increase. TraPac's annual storage and demurrage is not subject to a GRI as well.

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Other non-container business wharfage rates for break bulk, liquid bulk and auto terminals would be impacted by the GRI as well.

While NOS rate increases have tended to not keep pace with inflation since the mid 1970's, higher tariff increases were applied previously with the most significant tariff increases occurring from the mid 1960's to the mid 1970's. There were four rate increases during this decade ranging from 20 percent to 33 percent. On a CY basis, the NOS tariff increased 60 percent during calendar 1975 (a 20 percent increase in March followed by a 33.33 percent increase in June). On December 31, 1966, the NOS rate per revenue ton stood at \$0.80. The current rate is \$6.25 (a 681 percent increase).

Staff is recommending the Board approve the application of a 7.1 percent GRI based on the CPI-U to all rated items in Tariff No. 4 (Transmittals 1 and 2), except the following tariff items:

- Item No. 330 – Pilotage: Currently on a 5-year rate increase schedule (approved by the Board April 2021)
- Item Nos. 485, 600, and 605: These are part of a separate Cruise Passenger Fee/AMP fee/Emergency Lay-up rate schedule, and will be reviewed prior to the expiration of the Cruise Passenger Fee in September 2023
- Item No. 810 – Space Assignments: Rates were recently reset and increased based on a CPI level going forward (approved by Board in Oct 2020)
- Item No. 1300 – Parking Charges: Parking charges are on a separate fixed rate increase schedule.
- Item No. 2040 – Clean Air Action Plan Clean Truck Program fees and Rates set at specific amounts not intended to be influenced by economic indices.
- Item Nos. 2300-2340 – Incentives Programs set at specific amounts not intended to be influenced by economic indices.

Rate increases would take effect on August 1, 2022.

Need for Amendment – GRIs have not kept pace with inflation. The Port, through CAPA, imposed a 5 percent GRI in CY 2004 and 2005. A temporary GRI was implemented in 2013, but was not sustained due to a Permanent Order and Ordinance not being adopted by City Council. On November 4, 2021, the Board approved Temporary and Permanent Orders increasing petroleum products rates by 9.4 and 11.8 percent effective January 1, 2022. Petroleum products rate increases are still pending City Council approval.

Need for Approval – Los Angeles City Charter Section 653 requires the Board to approve any amendment by Order and approval of the City Council by Ordinance.

A separate action recommends Board adoption of a Temporary Order within its Los Angeles City Charter authority to approve changes to Tariff No. 4, to be effective for a period not to exceed 90 days. The Temporary Order, if approved, will be effective August 1, 2022, and expire 90 days after the effective date or upon execution of the Permanent Order (Transmittal 3) and Ordinance (Transmittal 4) by the City Council, whichever occurs first. This action for Board and City Council adoption of a Permanent Order and Ordinance are

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required under the Charter to make changes to Tariff No. 4 beyond the Temporary Order's 90-day effective period.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of a Permanent Order to amend Port of Los Angeles Tariff No. 4 to increase rated tariff items based on the CPI-U, which is an activity involving modification of any rate, fee, or charge for the use of existing municipal facilities and services involving negligible or no expansion of use. Therefore, the Director of Environmental Management has determined that the proposed action is categorically exempt from the requirements of CEQA in accordance with Article III Class 1 (31) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

If approved, the proposed Amendment for the GRI to Tariff No. 4 to all revenue generating tariff items, with exceptions, would result with an increase to operating revenue estimated at \$15.7 million for Fiscal Year 2022/2023.

CITY ATTORNEY:

The Office of the City Attorney has approved as to form and legality the proposed Permanent Order and Ordinance.

TRANSMITTALS:

- 1. POLA Tariff No. 4
- 2. Proposed CPI GRI Items
- 3. Permanent Order **22-7327**
- 4. Ordinance

FIS Approval: gjs (initials)
CA Approval: SO (initials)

ERIC CARIS
Director of Cargo Marketing

Michael DiBernardo
MICHAEL DIBERNARDO
Deputy Executive Director

APPROVED:

for EUGENE D. SEROKA
Executive Director