PENSION BENEFIT GUARANTY CORPORATION

Approval of Variance From the Bond/ Escrow Requirement Relating to the Sale of Assets by an Employer Who Contributes to a Multiemployer Plan: P&O Ports Florida, Inc.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of approval.

SUMMARY: The Pension Benefit Guaranty Corporation has granted a request from the P&O Ports Florida, Inc. (“P&O Ports”) for a variance from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended, with respect to the Tampa Maritime Association-International Longshoremen’s Association Pension Plan. A notice of the request for a variance from the requirement was published on August 3, 2007 (72 FR 43297). The effect of this notice is to advise the public of the decision on the request.

ADDRESSES: The non-confidential portions of the request for a variance and any PBGC response to the request may be obtained by writing PBGC’s Communications and Public Affairs Department (CPAD) at Suite 1200, 1200 K Street, NW., Washington, DC 20005—4026, or by visiting or calling CPAD during normal business hours (202—326—4040).

FOR FURTHER INFORMATION CONTACT: Eric Field, Attorney, Office of the Chief Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005—4026, telephone 202—326—4020. (For TTY/TDD users, call the Federal Relay Service toll-free at 1—800—877—8339 and ask to be connected to 202—326—4020).

SUPPLEMENTARY INFORMATION:

Background

Under section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 (“ERISA” or “the Act”), a complete or partial withdrawal of an employer from a multiemployer plan does not occur solely because, as a result of a bona fide arm’s-length sale of assets to an unrelated party, the seller ceases covered operations or ceases to have an obligation to contribute for such operations, if the following conditions under section 4204(a)(1)(A)–(C) of ERISA are met:

(A) The purchaser has an obligation to contribute to the plan with respect to the operations for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) The purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller’s average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller’s required annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale. Additionally, under section 4204(b)(1), if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation (“PBGC”) to grant individual or class variances or exemptions from the purchaser’s bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the asset sale rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions.

Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 1155 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC’s electronic hearing docket which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal information, such as social security numbers, home addresses, or phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their works.

If a person other than Accurate NDE requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 20th day of February, 2008.

For the Nuclear Regulatory Commission.

Elmo E. Collins,
Regional Administrator.

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variance of the bond/escrow requirement under any of the tests established in the regulation (sections 4204.12 & 4204.13) is made to the plan in question. The PBGC will consider variance or exemption requests only when the request is not based on satisfaction of one of the three regulatory tests or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information within the meaning of section 552(b)(4) of the Freedom of Information Act, 5 U.S.C. 552.

Under section 4204.22 of the regulation, the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, based on the following reasons:

(1) The approval of a variance or exemption would more effectively or equitably carry out the purposes of Title IV of ERISA, and

(2) The approval of a variance or exemption would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and section 4204.22(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the Federal Register, and to provide interested parties with an opportunity to comment on the proposed variance or exemption. The PBGC received no comments on P&O Ports’ request for a variance.

Decision

On August 3, 2007, the PBGC published a notice of the pendency of a request by P&O Ports (the “Purchaser”) for a variance or exemption (“variance”) from the bond/escrow requirement of section 4204(a)(1)(B) of ERISA. Based on the facts of this case and the representations and statements made in connection with the request for an exemption, PBGC has determined that a variance from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of Title IV of ERISA and would not significantly increase the risk of financial loss to the Plan. Therefore, the PBGC hereby grants the request for a variance from the bond/escrow requirement.

The granting of a variance or an exemption from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). The determination of whether the transaction satisfies such other requirements is a determination to be made by the Plan sponsor.