



The Commonwealth of Massachusetts

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NO. 2009-0504-3A

INDEPENDENT STATE AUDITOR'S REPORT ON
CERTAIN ACTIVITIES OF THE
FALL RIVER LINE PIER, INC.
JANUARY 1, 2007 TO DECEMBER 31, 2008

OFFICIAL AUDIT
REPORT
JULY 9, 2009

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The Fall River Line Pier, Inc., (FRLP) was created by Chapter 665 of the Acts of 1945 to establish, operate, and maintain a pier for the shipment of freight and merchandise by water. On November 19, 1946, FRLP was chartered as a not-for-profit corporation under the provisions of Chapter 180 of the Massachusetts General Laws to establish, operate, and maintain a pier in Fall River, Massachusetts. FRLP leases its premises from the Commonwealth of Massachusetts under a 50-year lease that began on March 24, 1964. The City of Fall River has assessed the value of FRLP's land and building at \$3,746,900 for fiscal year 2007.

According to the lease agreement between FRLP and the Department of Conservation and Recreation (DCR), which is designated as the Commonwealth's oversight agency, all FRLP budgetary matters, capital acquisitions, and improvements require the written approval of DCR. As most recently amended, the lease agreement states that the annual net operating surplus of FRLP, as determined by the State Auditor, is to be paid to the Commonwealth before December 31 of the following calendar year.

The objectives of our audit were to assess the adequacy of FRLP's management control system for recording, reporting, and monitoring its financial activities and safeguarding its assets. We also reviewed the status of prior audit results and assessed FRLP's compliance with applicable laws, rules, and regulations.

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1. PRIOR AUDIT RESULT UNRESOLVED: NET PROFITS TOTALING \$368,065 NOT TRANSFERRED TO THE COMMONWEALTH

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Our prior audit report noted that FRLP was not in compliance with the terms of its lease with the Commonwealth. Specifically, FRLP had not transferred net profits totaling \$207,672 to the Commonwealth as required by its lease. Our follow-up review revealed that this issue remained unresolved and that as of December 31, 2008, the total accumulated net profits due the Commonwealth had increased to \$368,065.

2. PRIOR AUDIT RESULT RESOLVED: ACCOUNTS RECEIVABLE TOTALING \$100,116 WRITTEN OFF WITHOUT APPROVAL

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Our prior audit report noted that FRLP had written off accounts receivable totaling \$100,116 without approval from DCR, contrary to its lease agreement with the Commonwealth, which stipulates that FRLP must seek approval from DCR for all budgetary matters, including writing off past-due accounts receivable. Our follow-up review determined that FRLP has developed an accounts receivable policy that requires FRLP to exhaust all collection procedures, seek board approval prior to writing off any receivable, and notify DCR of its action.

INTRODUCTION

Background

The Fall River Line Pier, Inc. (FRLP) was created by Chapter 665 of the Acts of 1945 to establish, operate, and maintain a pier for the shipment of freight and merchandise by water. On November 19, 1946, FRLP was chartered as a not-for-profit corporation under the provisions of Chapter 180 of the Massachusetts General Laws to establish, operate, and maintain a pier in Fall River, Massachusetts.

FRLP leases its premises from the Commonwealth of Massachusetts and is charged \$1 a year, according to the terms of a 50-year lease that began on March 24, 1964. The original lease included a rent schedule that totaled \$1 million and called for rent payments over 20 years. The original lease was periodically amended, and the latest amendment, dated June 16, 1981, provided for the transfer of FRLP's profits to the Commonwealth. Except for a provision allowing FRLP to establish a Stabilization Reserve Fund not to exceed \$20,000 (against which future operating losses are to be charged), the amended lease does not discuss any effect that operating losses exceeding \$20,000 would have on FRLP's payments to the Commonwealth.

The City of Fall River has assessed the value of the land and building leased to FRLP at \$3,746,900 for fiscal year 2007 (the most recent updated assessment). According to the FRLP lease agreement dated June 16, 1981, the Department of Conservation and Recreation (DCR), formerly the Department of Environmental Management, has been designated as the Commonwealth's oversight agency, and all FRLP budgetary matters and capital expenditures require written approval by DCR. According to the lease, the annual net operating profits of FRLP are to be paid to the Commonwealth on or before December 31 of the following year. Chapter 764 of the Acts of 1963 requires that the State Auditor perform an annual audit of FRLP's books, and the amended lease states that the net profit, as determined by the State Auditor, is deemed final.

Audit Scope, Objectives, and Methodology

In accordance with Chapter 11, Section 12, of the General Laws, we have conducted an audit of certain activities of FRLP for the period January 1, 2007 to December 31, 2008. The objectives of our audit were to assess the adequacy of FRLP's management control system for recording, reporting, and monitoring its financial activities and safeguarding its assets. We also reviewed the

status of the audit results contained in our prior report (No. 2007-0504-3A) and assessed FRLP's compliance with applicable laws, rules, and regulations.

Our audit was made in accordance with applicable generally accepted government audit standards for compliance audits and, accordingly, included such audit tests and procedures, as we considered necessary. To achieve our objectives, we:

- Reviewed and assessed FRLP's administrative and accounting procedures and controls.
- Reviewed budgets and financial reports that FRLP filed with DCR.
- Reviewed operations for compliance with applicable laws, rules, and regulations.
- Tested transactions pertaining to revenue collection, accounts receivable, disbursements, procurements, and payroll.
- Reviewed FRLP's progress in addressing the issues revealed in our prior audit report (No. 2007-0504-3A).

Based on our audit, we have determined that, except as noted in the Audit Results section of this report, during the period of our review, FRLP maintained adequate management controls and complied with applicable laws, rules, and regulations for the areas tested.

AUDIT RESULTS

1. PRIOR AUDIT RESULT UNRESOLVED: NET PROFITS TOTALING \$368,065 NOT TRANSFERRED TO THE COMMONWEALTH

Our prior audit report noted that the Fall River Line Pier, Inc., (FRLP) was not in compliance with the terms of its lease with the Commonwealth. Specifically, FRLP had not transferred net profits totaling \$207,672 to the Commonwealth as required by its lease. Our follow-up review revealed that this issue remained unresolved and that as of December 31, 2008, the total accumulated net profits due the Commonwealth had increased to \$368,065.

Chapter 665 of the Acts of 1945, which created FRLP, required FRLP to pay a defined rent during the life of the lease with the Commonwealth of Massachusetts. FRLP is charged rent of \$1 a year, according to the terms of its 50-year lease with the Commonwealth that began on March 24, 1964. The original lease included a rent schedule that totaled \$1 million and called for rent payments over 20 years. The original lease has been periodically amended, and the latest amendment, dated June 16, 1981, provided for the transfer of FRLP's profits to the Commonwealth by December 31 of the following calendar year. The lease states that the annual net profit is to be calculated by the State Auditor's Office. Our prior review determined that FRLP had excess profits totaling \$207,672, dating back to calendar year 1995, that had not been transferred to the Commonwealth. Our follow-up review determined that FRLP had not transferred to the Commonwealth its net profits of \$52,574 and \$107,819 for calendar years 2007 and 2008, respectively, increasing the total accumulated profits due the Commonwealth to \$368,065.

Although FRLP's lease allows FRLP to retain a portion of its operating surpluses for capital improvements, it does not allow depreciation and other non-cash expenses to be charged against surpluses. These expenses are not allowed because it was the Commonwealth, and not FRLP, that subsidized the original capital costs of building and equipment.

We determined that during calendar year 2007, FRLP had total operating revenues of \$492,430, total operating expenditures of \$503,189, and a net operating loss of \$10,759. After audit adjustments of \$63,333, the net profit for calendar year 2007 was \$52,574. In addition, we determined that during calendar year 2008, FRLP had total operating revenues of \$541,759, total operating expenditures of \$542,613, and a net operating loss of \$854. After audit adjustments of

\$108,673, the net profit for calendar year 2008 was \$107,819. FRLP is expected to comply with the terms of its lease and transfer to the Commonwealth the accumulated surpluses totaling \$368,065 for calendar years 1995 through 2008.

The Department of Recreation and Conservation's (DCR) oversight responsibilities include the review and approval of FRLP's annual operating budget, capital project budgets, and accounts receivable write-offs. We discussed FRLP's refusal to transfer its accumulated surpluses with DCR staff, who agreed that FRLP should transfer the accumulated surpluses as required by the lease. Moreover, in a letter dated August 6, 2003, DCR's Director of Waterways directed FRLP to transfer the accumulated surpluses within 45 days; however, FRLP did not comply with this request. When asked why FRLP did not recognize and pay its liability to the Commonwealth as required by its lease, FRLP's General Manager stated that FRLP's board makes all policy decisions, including those pertaining to capital improvements and transferring funds, and that the board could not reach a decision regarding this matter.

In its response to our prior audit, FRLP included correspondence between FRLP and DCR verifying that it has requested that DCR increase the Stabilization Reserve Fund from \$20,000 to \$50,000 and that FRLP be allowed to retain past accumulated net profits to cover the ever-increasing costs of capital improvements needed to repair and maintain the pier and related facilities.

Recommendation

FRLP should comply with all aspects of the lease agreement it has entered into with the Commonwealth. DCR, as the assigned agent of the Commonwealth, should ensure that the \$368,065 due the Commonwealth be paid in a timely manner as defined in the lease agreement.

Auditee's Response

In response to this audit results FRLP provided the following comments:

The Commonwealth of Massachusetts and Fall River Line Pier are in the process of amending the lease agreement. The Board of Directors will be meeting on July 7, 2009 to discuss and vote on amending the lease agreement.

The Fall River Line Pier, Inc. will then forward the vote to the Department of Conservation and Recreation.

Auditor's Reply

Until the Commonwealth agrees to amend the existing lease agreement, we continue to recommend that FRLP comply with all aspects of the existing lease agreement.

2. PRIOR AUDIT RESULT RESOLVED: ACCOUNTS RECEIVABLE TOTALING \$100,116 WRITTEN OFF WITHOUT APPROVAL

Our prior audit report disclosed that FRLP had written off accounts receivable totaling \$100,116 without approval from DCR, contrary to its lease with the Commonwealth, which stipulates that FRLP must seek approval from DCR for all budgetary matters, including writing-off past-due accounts receivable.

Our follow-up review determined that the FRLP has developed a policy pertaining to accounts receivable that requires FRLP to exhaust all collection procedures, seek board approval prior to writing off any receivable, and notify DCR of its action. We noted that, during the current audit period, there was only one partial write-down of a receivable, which had been ordered by the court, and that DCR was notified of the court action.