City of New York

OFFICE OF THE COMPTROLLER

Scott M. Stringer
COMPTROLLER

FINANCIAL AUDIT

Marjorie Landa
Deputy Comptroller for Audit

Audit Report on the Compliance of Port Imperial Ferry Corporation with Its Lease Agreement for Pier 79

FN18-140A

June 26, 2019

http://comptroller.nyc.gov

THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

June 26, 2019

To the Residents of the City of New York:

My office has audited the Port Imperial Ferry Corporation (PIFC) to determine whether PIFC properly reported all revenue, made accurate and timely payments, and complied with other major requirements of its lease agreement to operate and manage the West Midtown Ferry Terminal (the Terminal) and to provide commuter ferry services at Pier 79 (the Lease). The audit also examined whether the New York City Department of Transportation (DOT) and The New York City Economic Development Corporation (EDC) had proper oversight over the Lease.

The audit found that PIFC maintained the required insurance coverage and paid the applicable water and sewer charges on time in accordance with its Lease. However, PIFC underreported the revenue generated through its commuter ferry and terminal operations to the City, misclassified certain revenue, and did not pay the required rents on time. As a result, PIFC owed $70,769 in additional Percentage Rent as of February 28, 2019. The audit also found that EDC did not promptly and accurately calculate the rate increases on Base Rent, did not credit the correct accounts for certain payments PIFC made, incorrectly calculated late charges, and inappropriately waived $5,597 in Base Rent and late charges.

The audit makes six recommendations to PIFC and eight recommendations to EDC. The recommendations to PIFC include that PIFC should: remit $70,769 to the City; include all ticket revenue from ferry operation when calculating Percentage Rent; properly classify terminal revenue; accurately report all revenue received from the terminal operation; and ensure timely payments to the City. The recommendations to EDC include that EDC should: review and calculate the total amount PIFC owes for prior periods; ensure Base Rent increases are calculated promptly and accurately; ensure PIFC payments are credited to the appropriate account; and calculate late charges accurately.

The audit results have been discussed with PIFC, EDC, and DOT officials and their comments have been considered in preparing this report. PIFC's and EDC's complete written responses are attached to this report.

If you have any questions concerning this report, please e-mail my Audit Bureau at audit@comptroller.nyc.gov.

Sincerely,

Scott M. Stringer

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TABLE OF CONTENTS

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EXECUTIVE SUMMARY

On April 16, 2002, New York City (the City), through the New York City Department of Transportation (DOT), entered into a 10-year lease agreement (the Lease), which was subsequently renewed through October 23, 2025, with Port Imperial Ferry Corporation (PIFC), to operate and manage the West Midtown Ferry Terminal (the Terminal) and to provide commuter ferry services at Pier 79. Pursuant to the Lease, PIFC is required to remit to the City several types of rent payments relating to two of its activities—the commuter ferry operation and the terminal operation. If any of the rents are overdue, the City can assess late charges equal to the aggregate of $100 plus 2 percent per month (Late Charge Rate) on the overdue balance.

In addition to the rent payments, PIFC is required to submit to the City (1) a quarterly revenue statement (Revenue Report), signed and verified by a PIFC officer, and (2) an annual Revenue Report and certified financial statements, on a cash basis, within 120 days after the end of each lease year.

The New York City Economic Development Corporation (EDC) is the administrator of the Lease and as such bills and collects the fees due to the City. According to EDC's records, PIFC paid $870,046 in Base Rent and Percentage Rent during Calendar Years 2017 and 2018.

In this audit we examined whether PIFC properly reported all revenue, made accurate and timely payments, and complied with other major requirements of the Lease such as insurance coverage and payment of water and sewer charges. In addition, we examined whether DOT and EDC had proper oversight over the Lease.

Audit Findings and Conclusion

The audit found that PIFC maintained the required insurance coverage and paid the applicable water and sewer charges on time in accordance with its Lease. However, PIFC underreported the revenue generated through its commuter ferry and terminal operations to the City, misclassified certain revenue, and did not pay the required rents on time. In connection with those inaccuracies, underpayments, and late payments, we found that, as of February 28, 2019, PIFC owed a total of $70,769 to the City for additional Percentage Rent, overdue rents, and associated late charges.

Our audit also found that EDC: (1) did not promptly and accurately calculate the rate increases on Base Rent every fifth year as required under the Lease, and did not credit the correct accounts for certain payments PIFC made; (2) incorrectly calculated late charges; and (3) inappropriately waived $5,597 in Base Rent and late charges. As a result, at least $44,075 of the City's revenue, while ultimately received, was not received timely. In addition, EDC did not implement procedures to verify the accuracy of the reports submitted by PIFC. As a result, EDC was unable to determine whether the ridership information provided by PIFC was accurate.

Audit Recommendations

To address these issues we make six recommendations to PIFC and eight recommendations to EDC, as follows:

PIFC should:

- Remit $70,769 for additional Percentage Rent, overdue rent and late charges that it still owes the City for Calendar Years 2017 and 2018.
- Include ticket revenue generated from all of its commuter ferry routes departing from the Terminal, including Belford Route and the BFC commuter service routes, when calculating Percentage Rent for the commuter ferry operation.
- Properly classify terminal revenue in its general ledger in order to accurately calculate the Percentage Rent due.
- Accurately report all revenue received from the terminal operation when calculating the Percentage Rent.
- Include all additional rent payments received from its sub-leases for Pier 79 when calculating Percentage Rent due.
- Ensure timely payments to the City to avoid late payment charges.

EDC should:

- Ensure that PIFC remits the amount of $70,769 and all overdue rents, additional Percentage Rent and late charges to the City.
- Review and calculate the total amount PIFC owes the City from understated revenue for prior periods not covered in this audit in accordance with the Lease terms.
- Ensure Base Rent increases are promptly and accurately computed and billed to PIFC.
- Ensure that PIFC payments are credited to the appropriate account to properly reflect the payments received.
- Calculate late charges in accordance with the Lease requirements and ensure that PIFC remits the amounts as required by the Lease.
- Ensure that there is proper justification and authorization before waiving any fees and charges due to the City.
- Implement review procedures to verify the accuracy and completeness of the information contained in PIFC's Revenue Reports to ensure all revenue is included in accordance with the Lease.

- Review the terms of the Lease to effectively administer its requirements.

PIFC Response

PIFC generally agreed to implement the six recommendations addressed to PIFC. In its written response, PIFC stated, "[w]e have reviewed and made all necessary changes in both accounting and policies and procedures to insure all errors are avoided in the future calculations of the percentage rent."

EDC Response

EDC generally agreed with seven recommendations but disagreed with certain aspects of three of these recommendations. Specifically, EDC did not agree to collect the full amount of late charges assessed by the audit from PIFC; disagreed that it had incorrectly assessed late charges; and disagreed that it did not have justification for waving late charges and Base Rent. For the remaining recommendation, EDC stated that it disagreed with any assertion that it has not effectively administered the Lease.

As the lease administrator, EDC's responsibilities include the proper oversight of the Lease to ensure the accuracy of the revenue reported and remitted to the City. As identified in the audit, EDC did not implement sufficient procedures to ensure that revenue was accurately reported and remitted and, therefore, it did not properly oversee the Lease. Had EDC administrated the Lease in accordance with the actual requirements along with proper verification and reviewing procedures, the issues cited in this report would have been identified and addressed by EDC in a timely manner.

AUDIT REPORT

Background

On April 16, 2002, the City, through DOT, entered into a 10-year lease agreement with PIFC, d/b/a New York Waterway, to operate and manage the Terminal and to provide commuter ferry services at Pier 79. The lease term commenced on October 24, 2005, following the completion of construction at the pier.[1] After the initial lease term expired on October 23, 2015, PIFC exercised its option to renew the Lease for an additional 10 years commencing October 24, 2015.

PIFC operates eight commuter ferry routes at the Terminal, three of which are operated by its wholly-owned subsidiary, BillyBey Ferry Company, LLC (BFC).[2] The eight ferry routes are: Port Imperial/Weehawken; Edgewater Ferry Landing; Hoboken/14 Street; Lincoln Harbor/Weehawken (collectively, the Northern Routes); Belford/Harbor Way; Paulus Hook; Hoboken/NJ Transit Terminal; and Harborside (collectively, the Southern Routes).[3]

According to the terms of the Lease, PIFC is required to remit to the City various types of rent payments relating to two of its activities under the lease—the commuter ferry operation and the terminal operation.

Commuter Ferry Operation Rent

For the commuter ferry operation, PIFC is required to pay a $1 annual fee (Annual Rent) and a quarterly percentage fee (Percentage Rent) within 30 days after each calendar quarter ends, consisting of up to 4 percent of its Gross Ticket Sales above specified threshold amounts, specifically, 2 percent of Gross Ticket Sales in excess of $6.7 million, and an additional 2 percent for Gross Ticket Sales in excess of $10 million.[4]

Terminal Operation Rent

For the terminal operation, PIFC is required to pay (1) a monthly fixed fee (Base Rent), which is adjusted once every five years and is due on the first day of each month; and (2) quarterly Percentage Rent due within 30 days after each calendar quarter ends, calculated as follows:

- 20 percent of all landing fees, wharfage fees, dockage fees, license fees, and any other fee paid to PIFC for allowing any vessels access to or use of ferry slips or any other portion of the dock, pier, platform, or bulkhead at the Terminal;
- 50 percent of all revenue, paid to PIFC, from advertisements at the Terminal during the term of the Lease; and
- 10 percent of any and all gross revenues paid to PIFC in connection with any use, occupancy, right, privilege, concession, improvement, operation, activity, sale of any service or merchandise or food or beverage, game machines, ATMs, vending machines or pay telephones, including without limitation all security deposits applied by PIFC and

[1] Pier 79 was opened to the public, and the lease term commenced, on October 24, 2005.
[2] PIFC purchased BFC on December 8, 2016 from BillyBey Holding Company, LLC.
[3] Paulus Hook, Hoboken/NJ Transit Terminal, and Harborside are operated by BFC.
[4] Gross Ticket Sales is determined by adding the products obtained from multiplying the number of passengers departing the Terminal by the average ticket price for each route. The average ticket price is determined by dividing the total ticket sales by total passengers arriving and departing Pier 79 for each route.

all insurance proceeds paid to PIFC in lieu of the above and it shall include all cash credit sales.

Reporting and Lease Administration

In addition to the rent payments, PIFC is required to submit a quarterly Revenue Report, signed and verified by an officer of PIFC, to the City. The quarterly Revenue Report should include gross revenue information for the preceding calendar quarter, broken down into different revenue categories. After the end of each lease year, PIFC is also required to submit an annual Revenue Report and certified financial statements, on a cash basis, within 120 days. If any of the rents are overdue, the City can assess late charges at the Late Charge Rate on the overdue balance.[5]

EDC is the administrator of the Lease and as such bills and collects the fees due to the City. According to EDC's records, PIFC paid $870,046 in Base Rent and Percentage Rent during Calendar Years 2017 and 2018.

Objectives

1) To determine whether PIFC:

- properly reported all revenue, net of allowable deductions, in accordance with the Lease;
- made accurate and timely payments to the City; and
- complied with other major requirements of its Lease, such as insurance coverage and payment of water and sewer charges.

2) To determine whether DOT and EDC had proper oversight over the Lease.

Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, § 93, of the New York City Charter.

The scope period of this audit was Calendar Years 2017 and 2018 (January 1, 2017 through December 31, 2018). Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted.

Discussion of Audit Results

The matters covered in this report were discussed with PIFC, DOT, and EDC officials during and at the conclusion of this audit. A preliminary draft report was sent to PIFC, DOT, and EDC officials and was discussed at an exit conference held on May 14, 2019. On May 31, 2019, we submitted

[5] If the computed late charge exceeds the highest rate permitted by law, then the Late Charge Rate shall be equal to the highest rate permitted by law.

a draft report to PIFC, DOT, and EDC officials with a request for comments. We received written responses from PIFC and EDC officials on June 19, 2019.

In PIFC's response, PIFC generally agreed to implement the six recommendations addressed to PIFC. In its written response, PIFC stated, "[w]e have reviewed and made all necessary changes in both accounting and policies and procedures to insure all errors are avoided in the future calculations of the percentage rent."

EDC generally agreed with seven recommendations but disagreed with certain aspects of three of these recommendations. Specifically, EDC did not agree to collect the full amount of the late charges assessed by the audit from PIFC; disagreed that it had incorrectly assessed late charges; and disagreed that it did not have justification for waving late charges and Base Rent. For the remaining recommendation, EDC stated that it disagreed with any assertion that it has not effectively administered the Lease.

In its response, EDC states, "EDC's interpretation of the lease terms is that late fees are assessed on the amounts outstanding after the 10th of the month. This has been the understanding of the grace period since the lease inception. While the lease does state that amounts are due on the first of the month, it is silent on when late fees are to be applied given a stated grace period." EDC further states, "EDC always ensures there are valid reasons for crediting late fees." Lastly, EDC states that, "[w]e disagree with any assertion that EDC has not effectively administered this lease."

EDC acknowledges that the Lease states that the due date for rent is the first day of each month. The 10-day grace period EDC refers to as its practice, while not uncommon, is not explicitly provided for in the Lease. Thus, when PIFC did not pay on or before the due date, the rent becomes overdue and late fees apply. In regards to waiving the late fees, EDC did not provide sufficient documentation to justify any such waivers.

As the lease administrator, EDC's responsibilities include the proper oversight of the Lease to ensure the accuracy of the revenue reported and remitted to the City. As identified in the audit, EDC did not implement sufficient procedures to ensure that revenue was accurately reported and remitted and, therefore, it did not properly oversee the Lease. Had EDC administrated the Lease in accordance with the actual requirements along with proper verification and reviewing procedures, the issues cited in this report would have been identified and addressed by EDC in a timely manner.

FINDINGS

The audit found that PIFC maintained the required insurance coverage and paid the applicable water and sewer charges on time in accordance with its Lease. However, PIFC underreported the revenue generated through its commuter ferry and terminal operations to the City, misclassified certain revenue, and did not pay the required rents on time. The audit found that, for the scope period, PIFC owed a total of $89,654 to the City, as follows:

- $70,564 in additional Percentage Rent that we assessed for PIFC's underreported revenue for Calendar Years 2017 and 2018 (Appendix I);
- $16,332 in late charges, assessed from January 1, 2017 to February 28, 2019, (Appendix II); and
- $2,758 in overdue rents as of February 28, 2019.

On February 20, 2019, PIFC paid $18,885, a portion of the adjusted Percentage Rent that we assessed for Calendar Years 2017 and 2018, and accordingly, by our calculation, PIFC owes the City a balance of $70,769 as of February 28, 2019:[6]

Our audit also found that EDC: (1) did not promptly and accurately calculate the rate increases on Base Rent every fifth year as required under the Lease and did not credit the correct PIFC accounts for payments made; (2) incorrectly calculated late charges; and (3) inappropriately waived $5,597 in Base Rent and late charges. As a result, at least $44,075 of the City's revenue was not received timely. In addition, EDC did not implement procedures to verify the accuracy of the reports submitted by PIFC. As a result, EDC was unable to determine whether the ridership information provided by PIFC was accurate.

PIFC Owes the City $70,769

Based on our review, for Operating Years 2017 and 2018, PIFC owes the City an additional $70,769 as of February 28, 2019. Specifically, as of that date PIFC owed:

(1) $51,679 in additional Percentage Rent for revenue from (a) its Southern Routes that it incorrectly excluded, (b) its underreporting of Gross Ticket Sales from its Northern Routes, (c) misclassifying facilities usage fees and bus revenue as ferry service ticket revenue, and (d) underreporting revenue generated from the terminal operation in its Revenue Reports;

(2) $16,332 in late charges for not paying the various rents by their due date; and

(3) $2,758 for overdue rents.

[6] PIFC remitted the $18,885 referred to in the report to EDC on February 20, 2019, which reduced the outstanding balance of our assessment of the additional Percentage Rent owed by PIFC to $51,679. In addition, PIFC has agreed to pay the City an additional $4,297 for the Belford Route and $3,550 for the Vessel Charter landing rights, which are discussed in more detail in the body of the report.

PIFC Did Not Report over $1.4 Million in Gross Ticket Sales Received from Four Southern Routes

PIFC did not report Gross Ticket Sales from four Southern Routes in its Revenue Reports. As a result, it owes $25,658 in additional Percentage Rent relating to those routes. See Table I below for the additional Percentage Rent due for the four unreported commuter ferry routes.

Table I

Net Percentage Fees Due from Four
Excluded Commuter Ferry Routes
Calendar Years 2017 and 2018

Year	Additional Percentage Rent Due		Total Additional Percentage Rent Due
	Three BFC Routes*	Belford Route	
2017	$6,949	$2,061	$9,010
2018	$14,412	$2,236	$16,648
Total	**$21,361**	**$4,297**	**$25,658**

* Net of $32,662 in Percentage Rent already submitted to the City for BFC's landing fees.

Specifically, PIFC did not report $1,350,589 in Gross Ticket Sales generated through the three commuter ferry routes operated by its wholly owned subsidiary–BFC–for Calendar Years 2017 and 2018. As a result, PIFC owes $21,361 in additional Percentage Rent. PIFC claimed that BFC is a separate legal entity and has separate sets of books and records; therefore, PIFC only remitted 20 percent of the landing fees it said were charged to BFC.

However, PIFC's interpretation of the Lease contradicts the terms of the Lease, which requires PIFC to remit up to 4 percent of all revenue from its Gross Ticket Sales for the commuter ferry services, including ferry services provided by its affiliates. According to Article 1 of the Lease, Gross Ticket Sales is defined as follows:

> Percentage Rent paid for ticket sales and other passenger charges for **Ferry Lessee's Ferry Service** *[emphasis added]* shall include ticket sales and other passenger charges made both on and off the Terminal for any trip from the Terminal.[7]

Article 1 of the Lease also defines "Ferry Lessee's Ferry Service" as "Ferry Service provided by or for the Ferry Lessee, or by any principal(s) of Ferry Lessee, or an Affiliate of Ferry Lessee." Since BFC is an affiliate of PIFC, the Gross Ticket Sales generated from the three BFC commuter ferry routes should be included when calculating the Percentage Rent due from its commuter ferry routes.

[7] Ferry Service is defined as "the operation of vessels to and from the Terminal and fixed destination points principally for commuter service."

In addition, PIFC did not include $107,424 in Gross Ticket Sales generated from its route running between Belford and Pier 79 (Belford Route) for Calendar Years 2017 and 2018. According to PIFC officials, PIFC had incorrectly included the passenger count from the Belford Route in another Belford route operating from Pier 11, therefore, omitting the entire ridership and ferry ticket sales generated from the Belford Route in its Revenue Report submitted to the City for Pier 79. On February 15, 2019, PIFC revised the Revenue Reports for both Calendar Years 2017 and 2018 showing the adjustment by including the Belford Route. PIFC agreed to pay the City a total of $4,297 in Percentage Rent due from this route and will continue to include the Bedford Route in the future Revenue Reports for Pier 79.

PIFC Underreported the Ferry Ticket Revenue from the Northern Routes

PIFC underreported the ferry ticket revenue from the Northern Routes in the Revenue Reports submitted to the City. Our initial reconciliation of ticket sales for the sample month of October 2017 for the four Northern Routes revealed that PIFC's general ledger recorded $21,143 more in ferry ticket sales compared with the amount PIFC reported to the City. We asked PIFC to provide an explanation. PIFC provided additional documentation to show the difference was from transactions that were independent of its app-based sales, ticketing machine sales and "point of sale" ticketing systems, specifically, ticket sales for group events for which PIFC received ticket revenue. Subsequently, in February 2019, PIFC submitted a revised 2017 annual Revenue Report, increasing by $180,014 its reported Gross Ticket Sales that it had underreported for Calendar Year 2017, resulting in additional percentage fees due to the City in the amount of $7,201.

According to the Lease, Section 3.20(b)(ii), "Percentage Rent shall be payable based upon amounts actually received by Ferry Lessee. Amounts paid to Ferry Lessee shall include sales made for cash or credit (credit sales shall be included in gross receipts as of the receipt of payment for such sales)." However, PIFC had only reported sales through its web-based app, ticket machines and "point of sales" ticketing system but had omitted sales independent of these ticketing systems that were recorded as revenue from miscellaneous transactions in its general ledger. PIFC should have included all ticket sales recorded in its general ledger when reporting to the City to conform to the Lease requirement.

On February 2019, PIFC remitted $7,201 that was owed to the City.

PIFC Misclassified $246,247 in Revenue Received from Other Ferry Operators as Gross Ticket Sales

PIFC misclassified revenue it received in the amount of $246,247 from another ferry operator, NYCL Acquisition, LLC (NYCL) in a way that resulted in improperly reducing its payments to the City by $19,946. Specifically, NYCL paid a facility usage fee for each NYCL passenger passing through the Terminal and an incidental fee for each NYCL customer using the bus service at the Terminal. However, these fees were recorded as ferry ticket revenue for the commuter ferry service between Port Imperial/Weehawken and Pier 79 (Port Imperial Route) in PIFC's general ledger. Since these passengers were not using the PIFC's commuter ferry services, the facility usage fees and the bus usage fees should not have been included as ferry ticket revenue, which was used as the basis to calculate the Gross Ticket Sales. Instead, PIFC should report these fees as other revenue under the terminal operation and remit 10 percent of these fees to the City in accordance with Section 4.07(b)(iii) of the Lease, which requires PIFC to pay:

> 10% of any and all gross revenue (net of sales taxes paid thereon) accrued during the Term and paid to Terminal Lessee . . . in connection with any use, occupancy, right, privilege . . . at the Demised Premises.

PIFC's misclassification of revenue received from the use of the Terminal by passengers of other ferry operators as ferry ticket sales from commuter ferry services resulted in understating the total Percentage Rent due the City in the net amount of $19,946.[8]

PIFC Underreported Terminal Revenue to the City

PIFC did not report to the City at least $86,202 in revenue it received from the terminal operation for rental space, advertisement, landing fees, special events, and vessel-charter fees associated with landing rights and ticket-window usage fees. Specifically, PIFC excluded revenue received from:

- Rental space, totaling $33,541, consisting of three parts: (1) $24,000 from additional monthly rent for calendar years 2017 and 2018 that PIFC received from a sub-lessee to "defray operating costs, common area maintenance charges, and real estate taxes affecting the Property," as stated in the sub-lessee's agreement with the PIFC; (2) $12,491 in rental income from October 2017 to December 2017 from a ferry operator sub-leasing space at the Terminal; and (3) $2,950 that was overpaid for ATM rental space;
- Advertisement, totaling $14,311, for November 2017 and December of 2017;
- Vessel charter landing rights, totaling $17,750, and the use of the ticket window at the Terminal totaling $2,900;
- Landing fees of $16,400 from other ferry operators for September 2017 to December 2017; and
- Special events in the amount of $1,300 for June 2017.

Table II shows additional Percentage Rent that PIFC owes the City due to the net total underreported revenue based on agreements between PIFC and its clients, and on our comparison of the general ledger to the original Revenue Report.

[8] $4,679 in Percentage Rent was already remitted to the City by PIFC for the commuter ferry operation and so that amount was credited to come up with the net total amount due of $19,946.

Table II

Underreported Terminal Revenue for
Calendar Years 2017 and 2018

Types of Revenue	Underreported Revenue			Percentage Due to the City	Amount Due to the City
	2017	2018	Total		
Rental Space	$21,541	$12,000	$33,541	10%	$3,354
Advertisement	$14,311	-	$14,311	50%	$7,155
Landing Fees	$16,400	-	$16,400	20%	$3,280
Vessel Charter Landing Rights	$17,750	-	$17,750	20%	$3,550
Ticket Window Use	$2,900	-	$2,900	10%	$290
Special Events	$1,300	-	$1,300	10%	$130
Total	**$74,202**	**$12,000**	**$86,202**		**$17,759**

PIFC's underreporting of the abovementioned terminal revenue occurred through PIFC's noncompliance with Lease requirements, specifically PIFC's obligation to report all revenue generated from rental space, advertisement, landing fees, and use of the Terminal.

Of the total amount of $86,202 underreported Terminal Revenue, PIFC partially corrected its original reports and reported an additional $43,202, in its revised 2017 Revenue Report submitted in February 2019 and paid $11,684 to the City. No explanation was provided for this omission. Net of the revised submission and payment, PIFC still owes $6,075 to the City for the above-described underreported revenue.

PIFC Did Not Pay Rents When Due

PIFC did not pay rent when due during the audit scope period and as a result, in addition to the current Percentage Rent it currently owes, PIFC has an outstanding balance of Base Rent and Percentage rent due, along with late charges. As detailed in Appendix I, the currently total due to the City is $70,769.

Specifically, PIFC did not pay Base Rent and Annual Rents when due. In reviewing two accounts of PIFC's tenancy that EDC maintains on the Management Reports International software system, we determined that PIFC owes $2,758, as reflected in the two accounts as of February 28, 2019.[9] Based on our review of the account that recorded PIFC's Base Rent payments from January 1, 2013 through December 31, 2018, we found that all 72 monthly payments were made after the due date–the 1st of each month. According to the Lease, Section 4.07(a), "Base Rent shall be paid in monthly installments, payable in advance on the Commencement Date and on the first day of each calendar month thereafter."

Since PIFC did not pay the required rents on time and did not accurately calculate the Percentage Rent due, as discussed in the previous sections of this report, the City is entitled to assess late

[9] One account records the Annual Rent and Percentage Rent. The other account records the Base Rents.

charges based on the amount overdue. According to the Lease requirements for the terminal operation, Article 4, Section 4.07(i)(f),

> (a) any payment of Rental . . . is not received by Lessor on the day on which it first becomes due, . . . a late charge on the sums so overdue . . . calculated at the Late Charge Rate from the date such Rental first becomes due . . . to the date on which actual payment of the sums is received by Lessor, shall become due and payable to Lessor as liquidated damages for interest lost and the administrative costs and expenses incurred by Lessor by reason of Terminal Lessee's failure to make prompt payment.

Further, regarding the commuter ferry operation, Section 3.20(c) of the Lease states in part,

> [i]f any payment of Rental is not received by Lessor on the date on which it first becomes due, a late charge on the sums so overdue, calculated at the Late Charge Rate from the date such Rental first becomes due to the date on which actual payment of the sums is received by Lessor, shall become due and payable to Lessor as liquidated damages for interest lost and the administrative costs and expenses incurred by Lessor by reason of Ferry Lessee's failure to make prompt payment.

Based on our assessment (as shown in Appendix II), PIFC owes $16,332 in late charges for overdue rents for calendar years 2017 and 2018 only.[10]

EDC Did Not Properly Monitor the Lease Terms Relating to Rent Payments

EDC, as the administrator of the Lease, did not always exercise due diligence in ensuring that PIFC met its terms. Specifically, we found that EDC:

- under-calculated two five-year increases to the Base Rent and did not credit the correct PIFC account for payments made;
- miscalculated the late charge;
- waived $5,597 in Base Rent and late charges unilaterally without obtaining the City's authorization;
- did not implement procedures to verify the accuracy of the reports submitted by PIFC; and
- did not determine whether the ridership information provided by PIFC was accurate.

As a result, the City never received some of the revenue that it should have received from the Lease and in other instances it received Lease revenue after the due date.

[10] We calculated late charges on PIFC's cumulative outstanding balance, based on: (1) outstanding balances as of December 31, 2016 for Base Rent and Percentage Rent; (2) subsequent outstanding balances on Base Rent and Annual Rent amounts billed as stated in EDC's Tenant History Reports; (3) our assessed additional Percentage Rent due on unreported revenue (as a result of PIFC's underreporting); and 4) the dates and amounts of PIFC's payments made to EDC. Our total does not include $697 in late charges and Base Rent that EDC waived (discussed subsequently in this report) or late charges on the amounts by which EDC undercharged PIFC for Base Rent as a result of its incorrect calculation of the 5-year rent increases (discussed in a subsequent section of this report). In addition, to avoid charging PIFC the $100 flat-fee component of the late charges twice on any given outstanding balance, we excluded it from either the balance PIFC owed on the terminal operation or the balance it owed on the ferry operation, where its outstanding balance consisted of amounts owed on both of those activities, even though the Lease prescribes such late charges in two separate sections of the Lease—one for the terminal operation and one for the ferry operation—consisting of $100 plus 2 percent per month on all outstanding balances in *each* activity.

EDC Did Not Accurately Increase Base Rent When Required and Did Not Credit the Correct PIFC Account for Payments Made

Our review of EDC's tenant history report showed that from January 1, 2013 through December 31, 2018, EDC billed PIFC's Base Rent at an incorrect rate. Because EDC did not accurately calculate the two five-year rate increases that were due, respectively, on October 24, 2010 and October 24, 2015, EDC undercharged PIFC for Base Rent. EDC recalculated both of the specified increases on June 30, 2018. EDC's inaccurate billings that preceded those recalculations delayed the City's receipt of $44,075 in Base Rent due under the Lease and its loss of interest on that amount.

The Lease stipulates that the Base Rent will be increased every five years, as stated in Section 4.07:

> Terminal Lessee shall pay to EDC, on behalf of Lessor [the City], as Lessor's Administrator, or such other person as Lessor may designate in writing:
>
> <u>Base Rent</u>. Commencing as of the Commencement Date, and subject to the adjustments hereinafter provided for, annual rent for the Demised Premises (Base Rent) during the Term at the following rates:
>
> (i) For the five-year period commencing on the Commencement Date up to (but not including) the fifth anniversary of the Commencement Date, $150,000 per annum;
>
> (ii) For the five-year period commencing on fifth anniversary of the Commencement Date up to (but not including) the tenth anniversary of the Commencement Date the sum of $150,000 plus the an amount equal to the greater of (a) $15,000, or (B) the product obtained by multiplying (A) the percentage increase, if any, in the then Current Index over the Base Index, by (B) $150,000;
>
> (iii) For the five-year period commencing on tenth anniversary of the Commencement Date, and for each five successive period thereafter (including any such five year period occurring in any renewal term), the Base Rent for the immediately preceding five year period, plus an amount equal to the greater of (a) $15,000, or (b) the product obtained by multiplying (A) the percentage increase, if any, in the then Current Index over the Base Index, by (B) $150,000;
>
> (iv) However, in no event shall the Base Rent for any five year period (i) be reduced as a result of the foregoing adjustments below the Base Rent payable during the immediately preceding Lease Year, or (ii) be increased by more than 15% over the immediately preceding Lease Year.

Our review of EDC's Tenant History Report from January 1, 2013 to February 20, 2019 found that EDC initially undercharged PIFC with respect to the two five-year rate increases to the Base Rent and that it corrected those initial undercharges on June 30, 2018. Consequently, the City did not receive timely and accurate Base Rent payments totaling $44,075 as shown in the Table III below.

Table III

Adjustments to Base Rent Rate Increases

Required Rate Increase	Rate Increase Due Date per the Lease	Date EDC Adjusted for Correct Rate Increase	Years and Months Late	Amount Adjusted and Owed after the Due Date
First Five-Year Adjustment	10/24/2010	6/30/2018	7 years and 8 months	$11,167
Second Five-Year Adjustment	10/24/2015	6/30/2018	2 years and 8 months	$32,908
Total Late Adjustments				$44,075

EDC's Tenant History Report revealed that EDC calculated the first five-year rate increase to the Base Rent incorrectly. EDC subsequently corrected the error and retroactively billed the difference on June 30, 2018—7 years and 8 months after the fact. Similarly, for the second five-year increase—effective October 24, 2015—EDC, on May 1, 2016, calculated the increase incorrectly and thereafter corrected the error by recalculating the increase on June 30, 2018, 2 years and 8 months late.

In addition, we found that EDC did not credit the correct PIFC account for three payments totaling $45,000 EDC received from PIFC. An EDC official stated that when the lessee's payments do not clearly state the account number to which they should be credited, EDC will credit them to the account with the highest outstanding balance, which, according to the official, is what EDC did in this case.[11] However, copies of the three checks and accompanying documents that PIFC provided to us clearly indicated the account number for which the payments were made. Specifically, the three payment checks, each in the amount of $15,000 were annotated for Base Rent account #220-1 for the months of June 2018, July 2018, and August 2018. Nevertheless, for reasons that remain unclear, these payments were not reflected in EDC's Tenant History Report for Base Rent as of February 2019. As a result, the outstanding balance reflected in that report was incorrect.

EDC Assessed Late Charges Incorrectly

EDC did not accurately compute the late charges due for rent payments that were overdue. According to the Lease, if the rent payments become overdue, the City can assess a late charge, as liquidated damages for the interest lost as a result of the lateness and the administrative costs and expenses incurred by the City, equal to the aggregate of $100 plus 2 percent per month on the overdue balance until the payment is received by the City.

In reviewing EDC's records, including its Tenant History Reports for the Lease, we found that EDC's assessment of late charges was incorrect in two respects. First, rather than assessing a late charge on the date the payment became overdue, as the Lease stipulates, EDC granted a 10-day grace period before applying late charges for overdue Base Rent. Thus, if Base Rent was

[11] PIFC has at least five other accounts with EDC for other operations.

paid on the ninth day of the month, no late charge would be assessed; however, if the Base Rent was paid on the eleventh day of the month, EDC would assess the late charge for the entire month (including the 10-day grace period).[12] Second, rather than computing late charges on the cumulative balance of outstanding rent until payment was received, as provided by the Lease, EDC computed late charges separately for each month, on the outstanding amount owed for that month only. As a result of the two above-described misapplications of the Lease, EDC under-billed late charges for Base Rent and failed to assess any late charges for overdue Percentage Rent and Annual Rent, according to the figures posted in EDC's Tenant History Reports.

With respect to its granting a 10-day grace period to PIFC for Base Rent, EDC explained that it was EDC's practice to charge "customer accounts for late charges after the 10th of the month." Although that practice may appear reasonable as a business practice, the Lease approved and executed by the City requires Base Rent to be paid on the first day of each month and states that late charges can be applied when the rent becomes overdue. Moreover, inasmuch as EDC invoices PIFC by the 20th day of each month for the upcoming month's Base Rent, PIFC had more than sufficient notice to enable it to make timely Base Rent payments. By substituting its own practice regarding late charges for the specific terms established in the Lease, EDC in effect unilaterally and improperly waived or compromised the City's right to timely payment and interest.

EDC Waived $5,597 in Late Charges and Base Rent without Proper Justification

EDC waived a total of $5,526 in late charges that it had assessed, and $71 in Base Rent, without proper justification. Specifically, from April 2015 to July 2017, we found 5 occasions where EDC waived the late charges and Base Rent.[13] We asked EDC to provide the reason for waiving these fees, and EDC officials responded that, in November 2015, PIFC was seeking "to renew their lease and in order to do so, [EDC's] Asset Management wanted to bring their account up to date. As a result, the tenant paid all the rent amounts due and they were given a credit for the remainder of the unpaid late fees."

Inasmuch as the Lease concerns City property and revenue and is between the City, through a separate agency—DOT—and PIFC, any significant changes to its terms should be accomplished by amendments to the Lease approved through the appropriate City agencies and procedures rather than through waivers and accommodations that EDC makes unilaterally. It appears that EDC, as administrator of the Lease for the City, in this instance, at least, assumed the City's authority and responsibility by relaxing the Lease requirements that were negotiated and agreed between the City and PIFC.

EDC Did Not Verify Revenue Reports Submitted by PIFC for Accuracy and Completeness

EDC, as the administrator of the Lease, is responsible for ensuring that PIFC is complying with the terms of the Lease, including the requirement of accurate and timely reporting of all revenues generated at Pier 79. According to the Lease, Section 5.26,

> EDC will administer the respective Leases. Ferry Lessee and Terminal Lessee shall pay all rental and deliver any insurance, certificates, financial statements and

[12] Once it assessed a late charge, after the grace period, EDC assessed it for the entire month, including the grace period.

[13] Of the five occasions where EDC waived late charges and Base Rent, it waived two sums, totaling $697, during the two-year period our audit covered, and we did not include any of the waived amounts in calculating late charges that PIFC owes the City.

> certifications, and employment reports required under the Leases to EDC, and Ferry Lessee and Terminal Lessee agree to accept from EDC any notices of default, notices of termination, bills, invoices and other notices and demands executed and/or delivered by EDC as having fully authorized by Lessor and having the same force, effect and validity as if executed and/or delivered by Lessor.

However, EDC did not implement procedures to review and verify the data contained in PIFC's submitted Revenue Reports for accuracy and completeness. Specifically, we refer to the absence of EDC procedures to verify the accuracy of PIFC's reports related to the Percentage Rent for commuter ferry services, PIFC's misclassification of terminal revenue as ferry ticket sales, and its exclusion of revenue received from rental space, advertisement, vessel charters, the use of the Terminal, and special events. Consequently, in the absence of any review and verification of what PIFC reported, we found that revenue due to the City that should have been included in PIFC's reports was under-reported, as described in our findings above.

Furthermore, EDC did not monitor PIFC's financial activity related to its ferry and terminal operations, specifically, its acquisition of BFC and the effect of that acquisition with respect to the revenue that PIFC should have reported to EDC as Gross Ticket Sales. As mentioned previously, PIFC excluded from its Revenue Reports $1,350,589 in Gross Ticket Sales for BFC's three commuter ferry routes. As Lease administrator, EDC should have promptly communicated with PIFC concerning PIFC's obligation to report that revenue for the purpose of calculating Percentage Rent.

RECOMMENDATIONS

PIFC should:

1) Remit $70,769 for additional Percentage Rent, overdue rent and late charges that it still owes the City for Calendar Years 2017 and 2018.

   PIFC's Response*:* "PIFC is in the process of making payment of the outstanding amount due after making an adjustment for payments already made. PIFC already submitted 2 payments in the amount of $4,297 to cover the excluded Belford route ticket sales and it will include the ticket revenue in the future."

2) Include ticket revenue generated from all of its commuter ferry routes departing from the Terminal, including Belford Route and the BFC commuter service routes, when calculating Percentage Rent for the commuter ferry operation.

   PIFC's Response: "Upon further review of the lease, PIFC agrees that the affiliated entity that operates the southern routes should be paying percentage rent instead of landing fees. PIFC will pay $21,361 calculated by the auditors for 2017 and 2018 and it has made the necessary adjustments to insure they are included in the future."

3) Properly classify terminal revenue in its general ledger in order to accurately calculate the Percentage Rent due.

   PIFC's Response*:* "PIFC will properly classify terminal revenue in its general ledger in order to accurately calculate the percentage rent."

4) Accurately report all revenue received from the terminal operation when calculating the Percentage Rent.

   PIFC's Response*:* "PIFC will accurately report all revenue received from Terminal operation when calculating percentage rent."

5) Include all additional rent payments received from its sub-leases for Pier 79 when calculating Percentage Rent due.

   PIFC's Response*:* "PIFC made the necessary accounting adjustments to insure that all additional rent payments received from its subleases for Pier 79 are captured when calculating the percentage rent."

6) Ensure timely payments to the City to avoid late payment charges.

   PIFC's Response*:* "PIFC made adjustment to insure that all rents are paid on time and by the 1st of the month."

EDC should:

7) Ensure that PIFC remits the amount of $70,769 and all overdue rents, additional Percentage Rent and late charges to the City.

   EDC's Response*:* Although EDC agreed with this recommendation, it does not agree with the amount of late charges owed.

   "Per Appendix I, the total rent due from PIFC of $70,769 is made up of three categories:

   - Additional Percentage Rent Assessed totaling $51,679

- Outstanding Balances in Rent Accounts totaling $2,758 and
- Late Charges totaling $16,332

EDC agrees with the recommendations that PIFC owes the City $54,437 (51,679 + $2,758). The Outstanding Balance in Rent ($2,758), was paid on 4/25/2019 and $4,297 of the $51,679 was received on 03/01/19. EDC has billed the tenant the remaining Additional Percentage Rent Assessed ($47,382) and expects to collect this amount during the month of June 2019. The current outstanding late fee balance totals $420.63 which EDC will also collect in June."

Auditors' Comment*:* While EDC agrees that PIFC owes the City $51,679 in additional Percentage Rent and $2,758 in outstanding rents, EDC did not address the Late Charges, totaling $16,332 cited in the report. EDC's reference referring to a "late fee balance totals [of] $420.63" confirms that EDC is not using the correct method to calculate Late Charges prescribed in the Lease. EDC should ensure that it collects the total overdue amount of $70,769.

8) Review and calculate the total amount PIFC owes the City from understated revenue for prior periods not covered in this audit in accordance with the Lease terms.

EDC's Response*:* "EDC agrees with the recommendation and is currently reviewing revenue reporting back to 2013. Any additional amounts due will be identified and promptly collected."

9) Ensure Base Rent increases are promptly and accurately computed and billed to PIFC.

EDC's Response*:* "EDC had already corrected this discrepancy which was discovered through an internal periodic review of the billing increases of various tenants. This specific increase relates to a CPI based increase that the lease requires every 5 years. EDC reviewed this lease in June of 2018 and recalculated the amounts due. EDC received a payment of $44,075 in August 2018. EDC will continue to review all such base rent adjustments to ensure that any discrepancies are immediately identified, billed and collected."

Auditors' Comment*:* Although EDC corrected the Base Rent billed to PIFC on June 30, 2018, it failed to comply with the Lease to adjust and bill PIFC the correct Base Rent amount at the time it was due, thereby delaying the City's receipt of Base Rent in the amounts of $11,167 for 7 years and 8 months and $32,908 for 2 years and 8 months. Going forward, EDC should ensure the Base Rent is promptly and accurately adjusted, billed, and collected to comply with the Lease.

10) Ensure that PIFC payments are credited to the appropriate account to properly reflect the payments received.

EDC's Response*:* "EDC agrees with this recommendation. EDC maintains eleven (11) different tenant accounts with PIFC and the lack of billing information attached to payments has caused various payments to be credited to incorrect invoices. Going forward, PIFC has agreed to provide information with all payments sent to EDC in order to guarantee the proper accounts are credited in a timely manner."

11) Calculate late charges in accordance with the Lease requirements and ensure that PIFC remits the amounts as required by the Lease.

EDC's Response*:* "While EDC agrees that late charges should be calculated and collected in accordance with the lease, we disagree with the assertion that the same was not done for this lease. EDC's interpretation of the lease terms is that late fees are assessed on the amounts outstanding after the 10th of the month. This has been the understanding of the grace period since the lease inception. While the lease does state that amounts are due on the first of the month, it is silent on when late fees are to be applied given a stated grace period. There are also a variety [of] issues that occur in the payment application process that affects the timeliness of payment recording including misallocations, lock box errors and payments being applied to old balances. In EDC's review, there were instances where PIFC sent payments to EDC without backup and those payments were credited to one of the other eleven (11) PIFC accounts. Over the life of the lease to date, EDC has charged $34,333.51 in late fees to PIFC. For this process going forward, EDC has worked with PIFC to clarify the late charge language and has instructed on the specific payment identification information to be included with all future payments. In addition, EDC has recommended that PIFC make payments on or before the first of the month."

Auditors' Comment*:* We disagree that a 10-day grace period can be applied under the Lease based on the fact that the Lease "is silent on when late fees are to be applied." To the contrary, the Lease expressly states, "[i]f any payment of Rental is not received by Lessor on the date on which it first becomes due, a late charge on the sums so overdue, calculated at the Late Charge Rate from the date such Rental first becomes due to the date on which actual payment of the sums is received by Lessor, shall become due to the date on which actual payment of the sums is received by Lessor." In addition, the Lease specifies that "Base Rent shall be paid in monthly installments, payable in advance on the Commencement Date and on the first day of each calendar month thereafter." The Lease also specifies that "Percentage Rent shall be remitted in arrears by Terminal Lessee on a quarterly basis by the thirtieth (30^{th}) day of the calendar month immediately following the calendar quarter in which the Percentage Rent accrues." Our review of EDC's billing documentation revealed that EDC bills PIFC for Base Rent 10 days in advance, which allows EDC to collect and process Base Rent payment before the due date. However, it appears that EDC only calculated Late Charges on Base Rent on one month's outstanding balance and not on the cumulative total overdue balance.

EDC should ensure that it complies with the Lease by calculating Late Charges correctly and ensuring that PIFC remits the amounts as required by the Lease.

12) Ensure that there is proper justification and authorization before waiving any fees and charges due to the City.

EDC's Response*:* "While EDC agrees that proper justification and authorization needs to exist before waiving charges, we disagree with the assertion that this was not done in this case. EDC always ensures there are valid reasons for crediting late fees, i.e. subsequent evidence that the tenant paid on time, posting cash to older aged items first, errors in posting cash timely, negotiated settlements, etc. As noted in EDC's response above, there were instances where payments sent without backup were misapplied to one of PIFC's other accounts. In such cases, any related late fees would be reversed upon discovery of these cash application errors which were corrected in the tenant accounts. As an example, during the audit period, EDC provided support for a $21,034 rent credit for temporary loss of Con Edition service which was properly documented. EDC will strengthen established procedures to make sure all documentation for credits to customer accounts are properly documented, approved, stored and available for future review."

Auditors' Comment*:* Upon review of EDC's tenant history reports, EDC waived a total of $5,597 in Late Charges and Base Rent: $4,375 in 2015, $525 in 2016, $697.28 in 2017. EDC did not provide sufficient supporting documentation to justify waiving these charges.

The example EDC provided regarding the $21,034 in rent credit for Con Edison charges is not applicable to the $5,597 in waived Late Charges and Base Rent cited in this report.

13) Implement review procedures to verify the accuracy and completeness of the information contained in PIFC's Revenue Reports to ensure all revenue is included in accordance with the Lease.

EDC's Response*:* "EDC's Asset Management department has established a Standard Operating Procedure to ensure proper compliance for administration, collection and review of all tenant financial reports. PIFC's reports for the period under audit were supplied to the Comptroller's auditors."

Auditors' Comment*:* Although EDC may have established a Standard Operating Procedure to ensure proper compliance for administration, collection and review of all tenant financial reports, this procedure was not applied to the PIFC Lease. During the audit, we met with EDC officials that stated that the Tenant Financial System Standard Operating Procedures, implemented in December 2017 or thereabout, did not apply to the PIFC lease because it is a legacy lease. At the same meeting, EDC officials further stated that EDC does not conduct a verification of the Lease's revenue reports. Therefore, we urge EDC to implement review procedures to verify the accuracy and completeness of the financial information contained in PIFC's Revenue Reports.

14) Review the terms of the Lease to effectively administer its requirements.

EDC's Response*:* "We disagree with any assertion that EDC has not effectively administered this lease."

Auditors' Comment*:* As the lease administrator, EDC's responsibilities include the proper oversight of the Lease to ensure the accuracy of the revenue reported and remitted to the City. As identified in this report, EDC did not implement sufficient procedures to ensure that revenue was accurately reported and remitted and, therefore, it did not properly oversee the Lease. Had EDC administrated the Lease in accordance with the actual requirements along with proper verification and review procedures, the issues cited in this report would have been identified and addressed by EDC in a timely manner.

DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, § 93, of the New York City Charter.

The scope period of this audit covered Calendar Years 2017 and 2018 (January 1, 2017 through December 31, 2018).

We reviewed the Lease between PIFC and the City to understand its terms and requirements, as well as PIFC's contractual obligations. To obtain an understanding of PIFC's operation, its policies and procedures and internal controls over the rent payments due the City, we interviewed officials from PIFC's accounting and finance divisions. We also obtained an understanding of the various systems used by PIFC to record and report ticket sales for passengers departing and arriving the Terminal. In addition, we performed a walkthrough with officials at the Terminal to obtain an understanding of the commuter ferry service operation and terminal operation. Further, we interviewed DOT and EDC officials to obtain an understanding of their roles and responsibilities relating to overseeing PIFC's compliance of the Lease.

To determine the accuracy of the ridership information recorded in the deckhand logs, on October 17, 2018, we conducted a physical observation of the number of passengers departing from and arriving at the Terminal. We documented our results and compared them to PIFC's deckhand logs. To determine whether PIFC accurately remitted the fees due the City, we conducted a monthly trend analysis of the ridership and revenue for Calendar Year 2017 and judgmentally selected October 2017 for our initial review and analysis of ridership data as it was the highest revenue month for Calendar Year 2017. We obtained the October 2017 deckhand logs and compared all ridership data between the deckhand logs and the electronic files that recorded the daily ridership which PIFC used for reporting to the City. We then reviewed all ticket sales made during the month of October 2017 and reconciled the total ferry ticket sales from the point-of-sale system, ferry ticket vending machines, and mobile app to the total amounts reported in the general ledger and to the City. For the miscellaneous ticket revenue and adjustments, as requested PIFC officials provided supporting documentation and justifications for these transactions. We also reviewed and documented revenue from all routes that are considered "Ferry Lessee's Ferry Routes" in accordance with the Lease and evaluated the revenue report to determine whether all routes were accounted for in PIFC's Revenue Reports submitted to the City.

To determine whether PIFC reported all income in its general ledger from the terminal operation, we reviewed supporting documents for revenue from advertisement, rental income, landing fees, and other miscellaneous income for October 2017.[14] We then compared the revenue recorded in the general ledger to the amounts reported to the City in the Revenue Reports. For the charter vessel revenue, we judgmentally selected 4 out of 24 agreements (2 agreements with the highest revenue and 2 agreements with City agencies) in Calendar Year 2017 for our review and

[14] Supporting documents includes sub-lease agreements, landing fee invoices, advertisement agreement and reports submitted by the third-party vendors.

determined whether any revenue from these vessel charters should be reported as part of the terminal revenue under the Lease term.[15]

To determine whether PIFC complied with its insurance requirements, we reviewed the insurance certificates provided by PIFC and compared insurance coverage with the Lease requirements. To determine whether PIFC paid all water and sewer charges, we obtained and reviewed the water and sewer invoices and the payment records (i.e., canceled checks) for Calendar Year 2017.

The results of the above tests, while not statistically projectable to their respective populations, provided a reasonable basis for us to assess and to support our findings and conclusions about PIFC's and EDC's controls over the remittance of fees due the City.

[15] The four sampled vessel charter agreements represented 84.5 percent of the total charter vessel revenue.

APPENDIX I

Underreported Revenue and Related Percentage Rent Due for Calendar Years 2017 and 2018

Description of Revenue	Total Under-reported Revenue	Total Percentage Rent Due	Less: Credits for Landing Fees and Ticket Sales	Net Percentage Rent Due	Less: Amount Remitted on 2/20/19	Net Due to the City
Excluded BFC Southern Route Ticket Sales	$1,350,589	$54,023	**($32,662)**	**$21,361**		$21,361
Excluded Belford Route Ticket Sales	$107,424	$4,297		**$4,297**		$4,297
Total Southern Routes Underreported	**$1,458,013**	**$58,320**	**($32,662)**	**$25,658**		**$25,658**
Ticket Sales Northern Routes	$180,014	$7,201		**$7,201**	$7,201	$0
Total Northern Routes Underreported	**$272,332**	**$7,201**		**$7,201**	**$7,201**	**$0**
Misclassified Terminal Revenue	**$246,247**	**$24,625**	**($4,679)**	**$19,946**		**$19,946**
Rental Income - CAM	$24,000	$2,400		**$2,400**		$2,400
Rental Income - NYTH	$12,491	$1,249		**$1,249**	$1,249	$0
Rental by ATM	($2,950)	($295)		($295)	($130)	($165)
Total Rental Amount	**$33,541**	**$3,354**		**$3,354**	**$1,119**	**$2,235**
Advertisement	$14,311	$7,155		**$7,155**	$7,155	$0
Landing - Other Operators	$16,400	$3,280		**$3,280**	$3,280	$0
Landing - Vessel Charter	$17,750	$3,550		**$3,550**		$3,550
Vesel Charter Ticket Window	$2,900	$290		**$290**		$290
Special Events	$1,300	$130		**$130**	$130	$0
Total Underreported Terminal Revenue	**$86,202**	**$17,759**		**$17,759**	**$11,684**	**$6,075**
Total Additional Percentage Rent Assessed	**$2,062,794**	**$109,645**	**($37,341)**	**$70,564**	**$18,885**	**$51,679**
Plus: Late Charges				**$16,332**		**$16,332**
Plus: Outstanding Balances in Rent Accounts				**$2,758**		**$2,758**
Total Rent Due to the City				**$89,654**	**$18,885**	**$70,769**

Calculation of Late Charges for Rent Due to the City For Calendar Years 2017 and 2018

Transaction Date	Cumulative Outstanding Balance Forward	Balance Assessment: Base and Annual Rent	Balance Assessment: % Rent	Balance Assessment: Total Amount Due	Balance Assessment: Payment Amount	Balance Assessment: Cumulative Outstanding Balance	Late Charges Calculated	Late Charge Amount for the Month	Note
12/31/16	$5,927	$0	$0	$5,927	$0	$5,927			
01/01/17	$5,927	$15,000	$0	$20,931	$0	$20,931	$4		
01/13/17	$20,931	$0	$0	$21,091	($15,000)	$6,091	$160	$244	1
01/31/17	$6,091	$0	$0	$6,171	$0	$6,171	$80		
02/01/17	$6,171	$15,000	$19,833	$41,009	$0	$41,009	$4		
02/09/17	$41,009	$0	$0	$41,208	($19,833)	$21,375	$199	$334	1
02/13/17	$21,375	$0	$0	$21,434	($15,000)	$6,434	$59		
02/28/17	$6,434	$0	$0	$6,506	$0	$6,506	$71		
03/01/17	$6,506	$15,000	$0	$21,510	$0	$21,510	$5		
03/06/17	$21,510	$0	$0	$21,570	($12,171)	$9,399	$60	$156	1
03/20/17	$9,399	$0	$0	$9,490	($15,000)	($5,510)	$91		
03/31/17	($5,510)	$0	$0	($5,510)	$0	($5,510)	$0		
04/01/17	($5,510)	$15,000	$0	$9,490	$0	$9,490	$0		
04/04/17	$9,490	$0	$0	$9,504	($9,852)	($348)	$13		
04/10/17	($348)	$0	$0	($348)	($15,000)	($15,348)	$0	$13	1
04/24/17	($15,348)	$0	$0	($15,348)	($13,754)	($29,102)	$0		
04/30/17	($29,102)	$0	$0	($29,102)	$0	($29,102)	$0		
05/01/17	($29,102)	$15,000	$40,784	$26,681	$0	$26,681	$0		
05/15/17	$26,681	$0	$0	$26,922	($15,000)	$11,922	$241	$365	1
05/30/17	$11,922	$0	$0	$12,046	($25,654)	($13,608)	$124		
05/31/17	($13,608)	$0	$0	($13,608)	$0	($13,608)	$0		
06/01/17	($13,608)	$15,000	$0	$1,392	$0	$1,392	$0		
06/14/17	$1,392	$0	$0	$1,404	($15,000)	($13,596)	$12	$12	1
06/27/17	($13,596)	$0	$0	($13,596)	($21,485)	($35,081)	$0		
06/30/17	($35,081)	$0	$0	($35,081)	$0	($35,081)	$0		
07/01/17	($35,081)	$15,000	$0	($20,081)	$0	($20,081)	$0		
07/19/17	($20,081)	$0	$0	($20,081)	($15,000)	($35,081)	$0	$0	
07/24/17	($35,081)	$0	$0	($35,081)	($24,980)	($60,061)	$0		
07/31/17	($60,061)	$0	$0	($60,061)	$0	($60,061)	$0		
08/01/17	($60,061)	$15,000	$84,799	$39,737	$0	$39,737	$0		
08/03/17	$39,737	$0	$0	$39,765	($21,250)	$18,515	$28	$310	1
08/25/17	$18,515	$0	$0	$18,798	($25,020)	($6,222)	$283		
08/31/17	($6,222)	$0	$0	($6,222)	$0	($6,222)	$0		
09/01/17	($6,222)	$15,000	$0	$8,778	$0	$8,778	$0		
09/20/17	$8,778	$0	$0	$8,888	($15,000)	($6,112)	$110	$110	1
09/30/17	($6,112)	$0	$0	($6,112)	$0	($6,112)	$0		
10/01/17	($6,112)	$15,000	$0	$8,888	$0	$8,888	$0		
10/23/17	$8,888	$0	$0	$9,017	($39,327)	($30,310)	$130	$130	1
10/31/17	($30,310)	$0	$0	($30,310)	$0	($30,310)	$0		
11/01/17	($30,310)	$15,001	$85,300	$69,992	$0	$69,992	$0		
11/02/17	$69,992	$0	$0	$69,992	($20,376)	$49,616	$0	$999	1
11/30/17	$49,616	$0	$0	$50,615	$0	$50,615	$999		

Calculation of Late Charges for Rent Due to the City For Calendar Years 2017 and 2018

Transaction Date	Cumulative Outstanding Balance Forward	Balance Assessment					Late Charges Calculated	Late Charge Amount for the Month	Note
		Base and Annual Rent	% Rent	Total Amount Due	Payment Amount	Cumulative Outstanding Balance			
12/01/17	$50,615	$15,000	$0	$65,650	$0	$65,650	$35	$578	1
12/04/17	$65,650	$0	$0	$65,741	($15,000)	$50,741	$91		
12/05/17	$50,741	$0	$0	$50,776	($25,883)	$24,893	$35		
12/27/17	$24,893	$0	$0	$25,274	($15,000)	$10,274	$380		
12/31/17	$10,274	$0	$0	$10,309	$0	$10,309	$36		
01/01/18	$10,309	$15,000	$0	$25,317	$0	$25,317	$7	$119	1
01/08/18	$25,317	$0	$0	$25,422	($21,034)	$4,388	$105		
01/10/18	$4,388	$0	$0	$4,394	($16,172)	($11,778)	$6		
01/31/18	($11,778)	$0	$0	($11,778)	$0	($11,778)	$0		
02/01/18	($11,778)	$15,000	$77,782	$81,004	$0	$81,004	$0	$909	1
02/02/18	$81,004	$0	$0	$81,004	($15,000)	$66,004	$0		
02/07/18	$66,004	$0	$0	$66,233	($16,490)	$49,743	$229		
02/21/18	$49,743	$0	$0	$50,227	($15,000)	$35,227	$484		
02/28/18	$35,227	$0	$0	$35,423	$0	$35,423	$196		
03/01/18	$35,423	$15,000	$0	$50,447	$0	$50,447	$25	$939	1
03/23/18	$50,447	$0	$0	$51,183	($12,720)	$38,463	$736		
03/26/18	$38,463	$0	$0	$38,543	($15,000)	$23,543	$80		
03/31/18	$23,543	$0	$0	$23,641	$0	$23,641	$98		
04/01/18	$23,641	$15,000	$0	$38,658	$0	$38,658	$16	$624	1
04/03/18	$38,658	$0	$0	$38,685	($8,837)	$29,848	$27		
04/30/18	$29,848	$0	$0	$30,428	($15,000)	$15,428	$580		
05/01/18	$15,428	$15,000	$44,370	$74,809	$0	$74,809	$11	$1,030	1
05/03/18	$74,809	$0	$0	$74,861	($18,286)	$56,575	$52		
05/15/18	$56,575	$0	$0	$57,046	($15,000)	$42,046	$471		
05/31/18	$42,046	$0	$0	$42,543	$0	$42,543	$496		
06/01/18	$42,543	$15,000	$0	$57,572	$0	$57,572	$30	$798	1
06/11/18	$57,572	$0	$0	$57,932	($24,878)	$33,054	$360		
06/26/18	$33,054	$0	$0	$33,398	($15,000)	$18,398	$344		
06/30/18	$18,398	$0	$0	$18,462	$0	$18,462	$64		
07/01/18	$18,462	$15,000	$0	$33,475	$0	$33,475	$13	$272	1
07/12/18	$33,475	$0	$0	$33,707	($27,379)	$6,328	$232		
07/18/18	$6,328	$0	$0	$6,355	($15,000)	($8,645)	$26		
07/31/18	($8,645)	$0	$0	($8,645)	$0	($8,645)	$0		
08/01/18	($8,645)	$16,994	$79,471	$87,820	$0	$87,820	$0	$1,529	1
08/16/18	$87,820	$0	$0	$88,674	($24,284)	$64,390	$854		
08/28/18	$64,390	$0	$0	$64,927	($15,000)	$49,927	$537		
08/31/18	$49,927	$0	$0	$50,065	($46,069)	$3,997	$139		
09/01/18	$3,997	$60,101	$0	$64,101	$0	$64,101	$3	$831	1
09/05/18	$64,101	$0	$0	$64,234	($25,779)	$38,455	$134		
09/30/18	$38,455	$0	$0	$39,149	$0	$39,149	$694		
10/01/18	$39,149	$16,027	$0	$55,203	$0	$55,203	$27	$588	1
10/09/18	$55,203	$0	$0	$55,471	($25,431)	$30,040	$268		
10/15/18	$30,040	$0	$0	$30,166	($16,027)	$14,139	$125		
10/31/18	$14,139	$0	$0	$14,306	($16,027)	($1,721)	$167		

APPENDIX II

Calculation of Late Charges for Rent Due to the City
For Calendar Years 2017 and 2018

Transaction Date	Cumulative Outstanding Balance Forward	Balance Assessment					Late Charges Calculated	Late Charge Amount for the Month	Note
		Base and Annual Rent	% Rent	Total Amount Due	Payment Amount	Cumulative Outstanding Balance			
11/01/18	($1,721)	$16,028	$80,766	$95,073	$0	$95,073	$0	$1,826	1
11/05/18	$95,073	$0	$0	$95,271	($5,099)	$90,172	$198		
11/30/18	$90,172	$0	$0	$91,800	$0	$91,800	$1,628		
12/01/18	$91,800	$16,027		$107,890	$0	$107,890	$64	$1,122	1
12/04/18	$107,890	$0	$0	$108,040	($16,027)	$92,013	$150		
12/14/18	$92,013	$0	$0	$92,652	($45,000)	$47,652	$639		
12/17/18	$47,652	$0	$0	$47,752	($31,380)	$16,372	$99		
12/31/18	$16,372	$0	$0	$16,542	$0	$16,542	$171		
01/01/19	$16,542	$16,027	$0	$32,580	$0	$32,580	$11	$690	1
01/31/19	$32,580	$0	$0	$33,259	$0	$33,259	$679		
02/01/19	$33,259	$16,027	$73,064	$122,373	$0	$122,373	$23	$1,805	1
02/12/19	$122,373	$0	$0	$123,223	($34,501)	$88,722	$850		
02/20/19	$88,722	$0	$0	$89,214	($18,885)	$70,329	$493		
02/28/19	$70,329	$0	$0	$70,769	$0	**$70,769**	$440		
Total Late Charge Due:								$16,332	

Note 1: Late charges were calculated based on the Lease terms but were capped at the maximum annual rate of 25 percent allowed by law as required by the Lease.

NY WATERWAY®

June 12, 2019

Mrs. Marjorie Landa
City of New York
Office of the Comptroller
One Centre Street
New York, NY 10007

Dear Ms. Landa:

We are submitting herewith our responses to the City of New York Office of the comptroller's financial audit report dated May 31, 2019.

We have reviewed and made all necessary changes in both accounting and policies and procedures to insure that all errors are avoided in the future calculations of the percentage rent.

PIFC response to the Audit Recommendations:

PIFC is in the process of making payment of the outstanding amount due after making an adjustment for payments already made. PIFC already submitted 2 payments in the amount of $4,297 to cover the excluded Belford route ticket sales and it will include the ticket revenue in the future.

Upon further review of the lease, PIFC agrees that the affiliated entity that operates the southern routes should be paying percentage rent instead of landing fees. PIFC will pay $21,361 calculated by the auditors for 2017 and 2018 and it has made the necessary adjustments to insure they are included in the future.

PIFC will properly classify terminal revenue in its general ledger in order to accurately calculate the percentage rent.

PIFC will accurately report all revenue received from Terminal operation when calculating percentage rent.

PIFC made the necessary accounting adjustments to insure that all additional rent payments received from its subleases for Pier 79 are captured when calculating the percentage rent.

PIFC made an adjustment to insure that all rents are paid on time and by the 1st of the month.

Please contact the undersigned with any questions.

Regards,

William Maloof
Chief Financial Officer

4800 Avenue @ Port Imperial, Weehawken, New Jersey 07086-7142
Inquiries: 1.800.53.Ferry Corporate Offices: 201.902.8700 Fax: 201.223.4311
www.nywaterway.com

NYCEDC

June 19, 2019

Marjorie Landa
Deputy Comptroller for Audit
New York City Office of the Comptroller
1 Centre Street 13 Floor
New York, NY 10007

Re: Audit Report (the "Audit Report") on the Compliance of Port Imperial Ferry Corporation ("PIFC") with Its Lease Agreement for the Pier 79, (Ref # "FN18-140A") dated May 31, 2019

Dear Ms. Landa:

Please find below EDC's response to the eight recommendations included in the above referenced Pier 79 Lease Agreement Audit Report. These recommendations are directed to NYCEDC and are recommendation numbers seven through fourteen.

Recommendation # 7: Ensure that PIFC remits the amount of $70,769 and all overdue rents, additional Percentage Rent and late charges to the City.

EDC response # 7: Per Appendix I, the total rent due from PIFC of $70,769 is made up of three categories:

- Additional Percentage Rent Assessed totaling $51,679
- Outstanding Balances in Rent Accounts totaling $2,758 and
- Late Charges totaling $16,332

EDC agrees with the recommendations that PIFC owes the City $54,437 ($51,679 + $2,758). The Outstanding Balance in Rent ($2,758), was paid on 4/25/2019 and $4,297 of the $51,679 was received on 03/01/19. EDC has billed the tenant the remaining Additional Percentage Rent Assessed ($47,382) and expects to collect this amount during the month of June 2019. The current outstanding late fee balance totals $420.63 which EDC will also collect in June.

Recommendation # 8: Review and calculate the total amount PIFC owes the City from understated revenue for prior periods not covered in this audit in accordance with the Lease terms.

EDC response # 8: EDC agrees with the recommendation and is currently reviewing revenue reporting back to 2013. Any additional amounts due will be identified and promptly collected.

NYCEDC

Recommendation # 9: Ensure Base Rent increases are promptly and accurately computed and billed to PIFC.

EDC response # 9: EDC had already corrected this discrepancy which was discovered through an internal periodic review of the billing increases of various tenants. This specific increase relates to a CPI based increase that the lease requires every 5 years. EDC reviewed this lease in June of 2018 and recalculated the amounts due. EDC received a payment of $44,075 in August 2018. EDC will continue to review all such base rent adjustments to ensure that any discrepancies are immediately identified, billed and collected.

Recommendation # 10: Ensure that PIFC payments are credited to the appropriate account to properly reflect the payments received.

EDC response # 10: EDC agrees with this recommendation. EDC maintains eleven (11) different tenant accounts with PIFC and the lack of billing information attached to payments has caused various payments to be credited to incorrect invoices. Going forward, PIFC has agreed to provide information with all payments sent to EDC in order to guarantee the proper accounts are credited in a timely manner.

Recommendation # 11: Calculate late charges in accordance with the Lease requirements and ensure that PIFC remits the amounts as required by the Lease.

EDC response # 11: While EDC agrees that late charges should be calculated and collected in accordance with the lease, we disagree with the assertion that the same was not done for this lease. EDC's interpretation of the lease terms is that late fees are assessed on the amounts outstanding after the 10th of the month. This has been the understanding of the grace period since the lease inception. While the lease does state that amounts are due on the first of the month, it is silent on when late fees are to be applied given a stated grace period. There are also a variety issues that occur in the payment application process that affects the timeliness of payment recording including misallocations, lock box errors and payments being applied to old balances. In EDC's review, there were instances where PIFC sent payments to EDC without backup and those payments were credited to one of the other eleven (11) PIFC accounts. Over the life of the lease to date, EDC has charged $34,333.51 in late fees to PIFC. For this process going forward, EDC has worked with PIFC to clarify the late charge language and has instructed on the specific payment identification information to be included with all future payments. In addition, EDC has recommended that PIFC make payments on or before the first of the month.

Recommendation # 12: Ensure that there is proper justification and authorization before waiving any fees and charges due to the City.

NYCEDC

EDC response # 12: While EDC agrees that proper justification and authorization needs to exist before waiving charges, we disagree with the assertion that this was not done in this case. EDC always ensures there are valid reasons for crediting late fees, i.e. subsequent evidence that the tenant paid on time, posting cash to older aged items first, errors in posting cash timely, negotiated settlements, etc. As noted in EDC's response above, there were instances where payments sent without backup were misapplied to one of PIFC's other accounts. In such cases, any related late fees would be reversed upon discovery of these cash application errors which were corrected in the tenant accounts. As an example, during the audit period, EDC provided support for a $21,034 rent credit for temporary loss of Con Edison service which was properly documented. EDC will strengthen established procedures to make sure all documentation for credits to customer accounts are properly documented, approved, stored and available for future review.

Recommendation # 13: Implement review procedures to verify the accuracy and completeness of the information contained in PIFC's Revenue Reports to ensure all revenue is included in accordance with the Lease.

EDC response # 13: EDC's Asset Management department has established a Standard Operating Procedure to ensure proper compliance for administration, collection and review of all tenant financial reports. PIFC's reports for the period under audit were supplied to the Comptroller's auditors.

Recommendation # 14: Review the terms of the Lease to effectively administer its requirements

EDC response # 14: We disagree with any assertion that EDC has not effectively administered this lease.

Thank you for the opportunity to respond to the recommendations in the audit report. Should you have any questions or concerns regarding EDC's response, please feel free to contact me at 212-312-3503

Sincerely,

Spencer Hobson
Executive Vice President and Treasurer, NYCEDC

Cc: Kimberly Vaccari, Chief Financial Officer, NYCEDC
Matthew Kwatinetz, Executive Vice President, Asset Management, NYCEDC
Fred D'Ascoli, Controller, Finance, NYCEDC
James Wong, Senior Vice President, Asset Management, NYCEDC
John-Michael Economos, CPA, Deputy Director, Audit Bureau, NYC DOT