



**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF: ) GPA Docket 16-02  
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 GPA Petition for Ratification of )  
 Design/Construction Contract for the ) **PUC COUNSEL REPORT**  
 GPA Wind Turbine Pilot Project. )  
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**INTRODUCTION**

1. This matter comes before the Guam Public Utilities Commission [“PUC”] upon the Petition of Guam Power Authority [“GPA”] for Ratification of the Design/Construction Contract for the GPA Wind Turbine Pilot Project with DCK Pacific Guam, LLC.<sup>1</sup>

**BACKGROUND**

2. The construction of GPA’s Wind Turbine Pilot Project was recently completed.<sup>2</sup> The Wind Turbine produces 275kw of wind power in Cotal, Yona.<sup>3</sup>
3. The project will assist GPA in determining the viability of larger scale wind turbine projects and open opportunities to work with local educational institutions in developing technical trades to support such technology on Guam and in the Region. The project will also help GPA gain experience in the construction management, operation, maintenance and grid interconnection of wind turbines; the construction of the Wind Turbine complies with Guam Public Law 29-32, which promotes the development of renewable energy.<sup>4</sup>
4. Beginning in 2009, the Department of the Interior Office of Insular Affairs has awarded grant funds to GPA to support the Wind Turbine Project. The initial grant

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<sup>1</sup> GPA Petition for Ratification of Design/Construction Contract for the GPA Wind Turbine Pilot Project, GPA Docket 16-02, filed March 23, 2016.

<sup>2</sup> GPA Invitation to Ribbon Cutting Ceremony on March 11, 2016, at 10:00a.m., dated February 23, 2016.

<sup>3</sup> Letter from John J. Cruz, Strategic Planning and Operations Research Manager, Guam Power Authority, to Fred Horecky, PUC Counsel, dated March 18, 2016.

<sup>4</sup> Id.

award was for \$1,000,000.<sup>5</sup> In 2012, the Office of Insular Affairs granted an additional \$505,000 for the GPA Wind Turbine Pilot Project.<sup>6</sup>

5. The total amount of federal grant funds for the Wind Turbine Pilot Project is \$2,102,000.00.<sup>7</sup>
6. On August 12, 2014, the Guam Consolidated Commission on Utilities approved the award of a contract to DCK Pacific Guam, LLC in the amount of \$1,653,523 for the design and construction of the Wind Turbine Pilot Project.<sup>8</sup>
7. On April 21, 2015, based upon the receipt of additional federal grant funds in the amount of \$597,000, the Guam Consolidated Commission on Utilities authorized GPA to increase the total contract amount with DCK Pacific Guam, LLC to \$2,150,895.36 for the design and construction of the Wind Turbine Pilot Project.<sup>9</sup>
8. DCK Pacific Guam LLC was recently purchased by Pernix Guam LLC. Pernix is now the contractor performing the Wind Turbine Contract.<sup>10</sup>
9. To date, the total contract cost with DCK Pacific Guam is \$2,160,777.91. Of that amount \$2,012,254.91 is funded by the Department of Interior Grants, and only \$148,523 will be paid for from GPA Capital Improvement Project funds.<sup>11</sup>
10. The project is complete other than the provision of another contractor to provide post-construction biological surveys for the wind turbine site.<sup>12</sup>

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<sup>5</sup> Department of the Interior Office of Insular Affairs, Notification of Provisional Grant Award, Award No. Guam-CIP-2009-1, 2009.

<sup>6</sup> United States Department of the Interior Office of Insular Affairs, Grant and Cooperative Agreement, dated September 16, 2012.

<sup>7</sup> Letter from John J. Cruz, Strategic Planning and Operations Research Manager, to Fred Horecky, PUC Counsel, dated March 18, 2016.

<sup>8</sup> Guam Consolidated Commission on Utilities Resolution No. 2014-36, Authorizing Management of Guam Power Authority (GPA) to enter into a Contract with DCK Pacific Guam, LLC for the Wind Turbine Pilot Project Design and Construction, adopted on August 12, 2014; see also GPA Purchase Order No. 20709 OP to DCK Pacific Guam, LLC..

<sup>9</sup> Guam Consolidated Commission on Utilities Resolution No.2015-26, Authorizing Management of Guam Power Authority (GPA) to Increase the Contract Amount with DCK Pacific Guam, LLC for the Wind Turbine Pilot Project Design and Construction, adopted April 21, 2015.

<sup>10</sup> Phone Conference between Graham Botha, GPA Attorney, and Fred Horecky, PUC Counsel, on March 24, 2015.

<sup>11</sup> Letter from John J. Cruz, Strategic Planning and Operations Research Manager, to Fred Horecky, PUC Counsel, dated March 18, 2016.

11. In its annual process of auditing GPA accounts, the accounting firm of Deloitte & Touche questioned whether GPA's contract with DCK for Design/Construction of the Wind Turbine Pilot Project had been properly approved by the PUC under the Contract Review Protocol.<sup>13</sup>
12. Deloitte & Touche raised the issues of whether GPA filed sufficient documentation under the Contract Review Protocol to justify the contract award, and whether the Contract Review Protocol was properly followed. GPA is now requesting PUC ratification of the DCK Contract to satisfy the concerns of Deloitte & Touche.

### ANALYSIS

13. To date, the total amount expended by GPA for the Wind Turbine Pilot Project exceeds \$2.160M. In general, GPA is required to seek PUC approval for contracts in excess of \$1.5M "before the procurement process is begun..."<sup>14</sup>
14. However, in the instant case, the overwhelming portion of the costs for the GPA Wind Turbine Pilot Project has been funded by grant funds from the Office of Insular Affairs. Only a small portion, roughly \$148,523, has been paid with GPA funds.<sup>15</sup>
15. The GPA Contract Review Protocol ordinarily requires PUC approval for contracts in excess of \$1.5M before the procurement process begins. However, there is a different procedure where GPA receives revenues or reimbursement of costs from an outside source. In such case, GPA is not required to obtain PUC approval before procuring the contract. Paragraph 2 of the Contract Review Protocol provides as follows: "For contracts that involve the receipt by GPA of revenues or reimbursement of costs in excess \$1,500,000, the following procedure will apply:
  - a) GPA is permitted to evaluate the contract without PUC approval;
  - b) Prior to entering into the contract, GPA will provide the following to PUC:

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<sup>12</sup> Id.

<sup>13</sup> Email from Lenora M. Sanz to John J. Cruz, Jr. dated March 10, 2016.

<sup>14</sup> CONTRACT REVIEW PROTOCOL FOR GUAM POWER AUTHORITY, Administrative Docket, issued February 15, 2008.

<sup>15</sup> Letter from John J. Cruz, Strategic Planning and Operations Research Manager, to Fred Horecky, PUC Counsel, dated March 18, 2016.

- i) The Consolidated Commission on Utilities [CCU] resolution authorizing the contract.
    - ii) An affidavit from GPA management stating that the contract does not produce an increased revenue requirement with supporting documentation.
    - iii) A narrative description of the contract.
  - c) The contract will be deemed approved unless rejected by PUC within 30 days after an adequate filing [as determined by the ALJ] has been made by GPA pursuant to subparagraph (b).”
16. The Wind Turbine Contract does involve reimbursement of GPA costs for the Wind Turbine Project through federal grant funds, and the receipt of revenues by GPA in the form of federal grant funds.
17. GPA admittedly did not follow this procedure prior to awarding the contract for the project or before the project was completed. However, since learning of the audit issues raised by Deloitte & Touche, GPA has taken proactive steps to provide the materials required under paragraph 2 of the Contract Review Protocol, including the CCU Resolutions authorizing the contract, a Declaration from GPA management indicating that the contract has not produced an increased revenue requirement, and a narrative description of the contract.<sup>16</sup>
18. Under the limited circumstances of this case, Counsel believes that the PUC should ratify the Wind Turbine Contract and approve the expenditures by GPA under the Design/Construction Contract GPA Wind Turbine Pilot Project with DCK Pacific Guam.
19. Although GPA did not technically follow the procedure under the Contract Review Protocol, it has previously informed both staff and some Commissioners of the PUC about the Wind Turbine Pilot Project at meetings of the CCU, and provided applicable Resolutions to them concerning the Project. In general, Counsel believes that PUC Commissioners and staff have been aware of this Project for a number of years.

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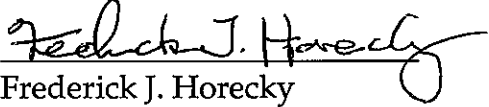
<sup>16</sup> Materials provided to PUC legal counsel Fred Horecky by John J. Cruz, Strategic Planning Operations Research Manager, Guam Power Authority, dated March 10, 2016 and March 15, 2016.

20. Significantly, in a filed Declaration, GPA has indicated that this contract “**does not produce an increased revenue requirement for GPA.**”<sup>17</sup> Only \$148,523 in GPA funds has been utilized for this Contract. It is very unlikely that the amount of GPA’s internally funded expenditures would necessitate a rate increase.
21. GPA must always undertake strict compliance with the Contract Review Protocol. After learning of its non-compliance with the Protocol with the DCK Contract, GPA has undertaken expeditious measures to comply after the fact. Under these circumstances, the Commission should ratify the expenditures for the Project.
22. The project is a beneficial one, and the Wind Turbine is now providing energy output on a daily basis of in excess of 200kw.<sup>18</sup>

#### RECOMMENDATION

23. Counsel recommends that the PUC ratify the Design/Construction Contract with DCK Pacific Guam for the GPA Wind Turbine Pilot Project.
24. Expenditures in the total amount of \$2,160,777.91 should be approved.
25. A Proposed Order is submitted herewith for the consideration of the Commissioners.

Dated this 24th day of March, 2016.

  
Frederick J. Horecky  
PUC Legal Counsel

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<sup>17</sup> Letter from John J. Cruz, Strategic Planning and Operations Research Manager, to Fred Horecky, PUC Counsel, dated March 18, 2016; Declaration of John J. Cruz, filed on March 24, 2016.

<sup>18</sup> Email from John J. Cruz to Frederick J. Horecky, dated March 10, 2016.