

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:) GPA Docket 16-05
)
The Petition of the Guam Power Authority)
for Approval of the Navy Lease for 45MW) **ORDER**
Solar PV Development.)
)
)
_____)

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission [“PUC”] upon the Petition of the Guam Power Authority [“GPA”] for Approval of a Lease with the United States Navy [hereinafter “Navy”] for approximately 164 acres of federal land.¹
2. The purpose of the Lease is to enable GPA to undertake a 37MW Solar PV Development.²
3. Because the lease payments under the proposed Lease would exceed \$1.5M over the term of the lease, GPA is required, under the Contract Review Protocol, to obtain prior PUC approval before entering into the Lease.³
4. GPA seeks to enter into a thirty-seven year lease (as Lessee) with the Navy for five parcels of land on the following areas: South Finegayan; WWTP Site; CDF Site; existing 250 KV Site; and Commissary Site.⁴
5. GPA would develop a total 37MW PV Solar on the leased premises. Separate PV Solar facilities would be built on each of the five sites.
6. GPA would be the Engineering, Procurement and Construction [“EPC”] Partner for Navy on the development project. GPA would undertake the solicitation of bids

¹ GPA Petition for Approval of the Navy Lease for the 45MW Solar PV Development, GPA Docket 16-05, filed April 11, 2016, at p. 1.

² Id.

³ Contract Review Protocol for Guam Power Authority, Administrative Docket, dated February 15, 2008, at par. 1(e).

⁴ Proposed Lease between the United States of America and the Guam Power Authority, submitted with the Petition, Attachment A.

from firms and the procurement to provide Solar PV facilities at each of the leasehold sites.⁵

7. GPA is also responsible for engineering and construction of the renewable energy power plants on the leasehold properties, including renewable integration, energy storage, and interconnection to GPA's grid.⁶
8. GPA will be responsible for all project and post-project coordination between the solar PV facility owners/operators and Navy.⁷

BACKGROUND

9. PUC Counsel filed his Report dated July 11, 2016. The PUC adopts the Background section of the Report and its conclusions/recommendations.⁸
10. In 2015, Navy issued Request for Qualifications No. LO-15149. The Request solicited the lease of approximately 192 acres of federal land for solar renewable energy development. GPA submitted its responsive proposal on July 6, 2015.⁹
11. The Navy issued a Notice of Award to GPA.¹⁰
12. The Lease provides a rent schedule for payments by GPA over the 37 year period. A copy of the Rent Schedule is attached to the Counsel Report as Exhibit "1".¹¹
13. The Lease includes provision of potential "In Kind Consideration (IKC)" payment by GPA, which could offset payments due under the Lease. The "In Kind Consideration" is based upon GPA's development of the solar facilities.¹²
14. GPA's interest in this project arises at least in part from the fact that Navy is GPA's largest customer, accounting for over 16% of its revenues. If the Navy pursued its renewable projects without the involvement of GPA, there could be large impacts to

⁵ Id. at p. 9.

⁶ Id.

⁷ Id.

⁸ PUC Counsel Report, GPA Docket 16-05, dated July 11, 2016.

⁹ Letter from John Benavente, GPA General Manager, to John W. Baxter, Navy Renewable Energy Program Office Real Estate Lead, dated July 6, 2015, Re: GPA Proposal to Department of Navy (DON) Request for Qualifications No. LO-15149.

¹⁰ Email from Jennifer Sablan, GPA Project Engineer, to PUC ALJ Frederick J. Horecky, dated July 5, 2016.

¹¹ Attachment D, Rent Schedule, attached to the SPORD Whitepaper dated April 28, 2016.

¹² Attachment D, Id. at p. 10.

other customers' tariffs to make up the difference. Were the Navy to delink from the GPA island wide system, this could result in major rate increases for other customer classes.¹³

15. GPA and Navy have engaged in an even far more broad reaching discussion of an extensive number of renewable energy projects, including an additional 160MW of renewable energy projects, referred to as "Phase 4". Additional projects could involve microgrids for the Airforce and Navy and a biomass/Waste to Energy Plant.¹⁴ These plans are not yet operational and are in the planning stage.
16. GPA has assumed, as with the prior NRG renewable energy project, that the Navy Phase 3 energy charges will be a LEAC pass-through to GPA ratepayers.¹⁵
17. In Resolution No. 2016-11, the Guam Consolidated Commission on Utilities authorized the GPA General Manager to petition the PUC for approval of the Lease with the Navy for renewable energy projects.¹⁶

DETERMINATIONS

18. Although GPA previously cancelled its Phase 2 Renewable Acquisition, it now indicates that it will proceed ahead with the reissuance of its bid for Phase 2. GPA will rebid with the addition of renewable integration and energy storage to ameliorate the impacts of power intermittency upon GPA's power system.
19. GPA has increased the amount of renewable capacity it would consider awarding from 40MW to 60MW. GPA, in such rebid, will also require renewable integration and energy storage systems concurrently with intermittent renewable resources.¹⁷
20. The PUC is satisfied that GPA will proceed with its Phase 2 Renewable Acquisition, as it had previously committed to undertake. It is now appropriate for the PUC to consider GPA's request for approval of the Phase 3 Lease with Navy.

¹³ SPORD Whitepaper dated April 28, 2016, at p. 8.

¹⁴ Id. at p. 6.

¹⁵ Id. at p. 11.

¹⁶ Guam Consolidated Commission on Utilities Resolution No. 2016-11, Relative to the Approval of Navy Lease for 45MW Solar PV Development, adopted February 23, 2016.

¹⁷ Id. at p. 4.

21. GPA primary justification for this project rests upon the need to maintain Navy revenues and to avoid the potential adverse rate impacts to other classes of customer if GPA were not a part of the Navy renewables project.
22. GPA's justification for adding this new generation capacity does not address the usual rationale for the development of such capacity, which is a demonstrated need for such capacity.
23. GPA has not addressed the issues of load or capacity at all; it has not demonstrated that there is a need in the system for the additional capacity represented by the 37MW of energy.
24. GPA has concluded that it must maintain the Navy customer to preserve revenues; otherwise, it contends that it would be required to raise rates for the other ratepayer classes. While GPA could have other options such as downsizing its functions, and allowing the private sector to provide this additional generation, GPA has provided some justifications for participating in the Navy solar project.
25. At present GPA has also not provided a complete or accurate picture of how much this project will cost. In carrying out its EPC functions, GPA will be expending considerable resources and personnel. GPA has suggested that it might later itself consider handling O & M functions for the renewable facilities.
26. Also, GPA has, at its own cost, engaged a number of consultants to investigate the costs of integrating the Navy renewables into the IWPS, interconnection costs and substation upgrade costs.
27. GPA has not presented a clear picture of how costs will be shared between it and Navy.
28. However, for various reasons, the PUC concludes that GPA's participation in this 37MW Navy renewables project may be advantageous to Guam and in the best interest of the ratepayers. GPA has justified an opportunity to bid such projects and determine whether they can be incorporated into the power system.
29. GPA has a legitimate concern that the loss of its biggest customer would require other rate classes to be burdened in terms of increased rates. Many of GPA's costs, particularly bond principal and interest payment, are fixed. Loss of its largest customer could mean that other rate classes would have to bear a larger proportion of the fixed costs.

30. A major factor warranting approval is that the 37MW Navy Renewables project is already a part of the 120MW of renewables which GPA has contemplated incorporating into the IWPS for a number of years.
31. The 37MW Phase 3 Renewable Project with the Navy is part and parcel of the 120MW projects that GPA intends to introduce into the island wide power system.¹⁸
32. The power produced by the Navy Renewables Project in the 37MW will be fed into the GPA island wide power system. It will not be used solely for Navy power needs. GPA ratepayers will also benefit by the addition of renewable energy into the system.
33. There are also distinct advantages in having GPA control the development of the new renewables and their integration into the IWPS. If a private developer were developing the Navy renewable systems, without GPA participation, the issue of integrating such power into the IWPS could present complex issues and potential problems.
34. From the perspective of integrating the entire island wide power system, it does make sense for GPA to be responsible for the overall coordination and integration of the Navy renewables into the island wide power system, and for assuring that there is sufficient energy storage.
35. GPA has indicated its belief that using energy storage systems that charge during the day using renewable production and discharge during the GPA night system peak “will enable it to reduce conventional generation reserve requirements”.¹⁹
36. Thus, an additional benefit of GPA’s Navy Solar Project is that it will enable it to reduce conventional generation reserve requirements. GPA should indicate how this project and other solar projects will affect its current requests for 180MW of new conventional generation capacity.
37. There are also potential issues concerning the cost of the annual lease payments due under the proposed Lease, which range from \$1,205,000 in the first year up to \$2,039,000 in the 37th year of the lease. The Lease does provide for potential

¹⁸ Discussion between GPA officials and PUC Counsel Horecky at GPA on June 6, 2016.

¹⁹ Attachment I to SPORD Whitepaper, prepared by John J. Cruz Jr., SPORD Manager, Guam Power Authority, dated April 28, 2016.

payment abatement during the first 3 years of the term based upon GPA's progress towards successful completion of the projects.

38. Under Section 3.2.1 of the Lease, is also possible that GPA can satisfy rent payments throughout the full term of the lease based upon "in-kind consideration", which includes GPA performance of its duties and obligations under the Lease and actions as the EPC.
39. Ratepayers could face risks in non-performance by GPA of either the initial project completion requirements for 3 years, or for completing the tasks of the 37 year term. If GPA was unable to complete the projects or otherwise incapable of performing its duties during the term of the Lease, GPA ratepayers could have to pay the bill for the lease payments.
40. GPA will ameliorate risks in Phase 3 such as default in completing the solar projects and ratepayer potential liability for lease payments and other non-performance by using certain contracting mechanisms with the private parties that construct the solar projects. GPA will require bid and performance bonds, and will include liquidated damage provisions in the contracts with the private developers.
41. Under the circumstances, it appears that GPA has thought out the nature of the risks involved to ratepayers and is taking prudent steps to ameliorate such risks. GPA correctly points out that its customers always bear some or all of the risk for GPA and its contractors' non-performance.²⁰
42. There is a substantial issue concerning the funding of the Phase 3 Navy 37MW Renewable Projects. As indicated, GPA intends to fund the Phase 3 energy charges from the Navy renewable facilities through a LEAC "pass-through" to GPA customers. The LEAC factor is based upon civilian fuel costs, not Navy costs. Navy does not pay fuel charges based upon the LEAC factor. Under the Utility Services Contract, Appendix B, Fuel Clause Applicable to Navy, Navy pays to GPA the actual cost of fuel which it consumes in the IWPS.²¹
43. The PUC did approve such a pass-through in LEAC of the energy charges resulting from the Phase 1 NRG solar project in Dandan. The original PUC decision was made in an effort to encourage the development of renewables and to provide an

²⁰ Id. at p. 11.

²¹ Guam Power Authority-Utility Services Contract, July 2012, Appendix B, Fuel Clause Applicable to Navy Agreement.

expeditious method of paying for such project without necessitating a base rate increase.

44. The current monthly cost of the energy produced by the NRG solar plant is between \$800,000 and \$1M plus per month. The costs for the energy produced by the NRG plant are approximately \$11M per year.²² The amounts due to NRG escalate every year.
45. The monthly payments for the power generated by the Navy 37MW renewable facilities will be well in excess of \$1 million per month and could mount to \$1.3-\$1.5M per month. The development of the Navy 37MW renewable facilities will conceivably add \$18M annually to the cost of LEAC, a cost that will be borne by the ratepayers of Guam.
46. It can be argued that the cost of renewable energy is not properly included within LEAC, as it is not a fuel cost. It is a cost of power production. Similar cost of energy production, such as those for the Piti 8 and 9 plants, are paid for in base rates and not through LEAC.
47. However, there will obviously need to be some method of payment by ratepayers for renewable energy produced, whether through LEAC or otherwise.
48. The PUC will address the issue of funding for the costs of the renewable energy from the projects at a later time.

ORDERING PROVISIONS

After review of the record herein, including GPA's Petition for Approval of the Navy Lease for 45MW Solar PV Development and the PUC Counsel Report, for good cause shown, on Motion duly made, seconded and carried by the undersigned Commissioners, the Guam Public Utilities Commission **HEREBY ORDERS** that:

1. GPA's Petition to enter into the Navy Lease for 37MW Solar PV Development is approved.
2. GPA shall file its final Lease Agreement with Navy for this project, along with all attachments, with the PUC.

²² GPA LEAC Filing, GPA Docket 16-10, Schedule 12, filed June 20, 2016.

3. GPA must obtain prior approval for each procurement of a solar plant under Phase 3 in accordance with the Contract Review Protocol.
4. Approval of the Lease herein does not constitute or provide PUC consent for the development of any other Navy PV solar project.
5. GPA is ordered to pay the Commission's regulatory fees and expenses, including, without limitation, consulting and counsel fees and the fees and expenses of conducting the hearing proceedings. Assessment of PUC's regulatory fees and expenses is authorized pursuant to 12 GCA §§12103(b) and 12125(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

Dated this 28th day of July, 2016.

Jeffrey C. Johnson
Chairman

Joseph M. McDonald
Commissioner

Rowena E. Perez
Commissioner

Peter Montinola
Commissioner

Michael A. Pangelinan
Commissioner

Andrew L. Niven
Commissioner

Filomena M. Cantoria
Commissioner