

GUAM PUBLIC UTILITIES COMMISSION
SPECIAL MEETING
DECEMBER 11, 2012
SUITE 202, GCIC BUILDING, HAGATNA



MINUTES

The Guam Public Utilities Commission [PUC] conducted a special meeting commencing at 6:04 p.m. on December 11, 2012, pursuant to due and lawful notice. Commissioners Johnson, Pangelinan, McDonald, and Montinola were in attendance. The following matters were considered at the meeting under the agenda made *Attachment "A"* hereto.

1. Guam Power Authority

The Chairman announced that the first item of business was GPA Docket 11-09, GPA's Rate Rollback Petition, PUC Counsel Report, and Proposed Order. Counsel indicated that there is a report on file from Shaw Consultants International. GPA previously indicated that it would return savings to the customers from its recent refunding and bond refinancing. However, Shaw believes that some leeway should be given to GPA to retain at least a portion of the savings due to its financial situation and reduced revenues in recent years. The proposed order would adopt GPA's plan, which is a 10-month rate roll-back credit to customers. Customers would receive a rollback credit based upon returning the last rate case increase (\$9.1M) to customers. The rollback would be affective for ten months, starting December 1, 2012 and continuing through next September, 2013. The rollback credit to civilian customers for this 10-month period would be .00618 cents per kWh.

GPA's proposal does not technically return all of the rate increase of \$9.1M to the ratepayers. The proposed Order leaves open the option that the PUC could continue the rollback for two additional months in the next fiscal year. PUC can address that matter in the next GPA rate case. GPA will submit its next rate case in April of 2014. Counsel concurs with GPA's position. In general, it's not preferred regulatory policy to give rebates and rollbacks. Caution is urged. GPA's plan will give ratepayers a substantial amount of the rate increase back. Counsel recommends that the Commissioners accept GPA's proposal. GPA would be authorized to implement the rollback credits using the methodology set forth in Mr. Randy Wiegand's Exhibit. In the order there is also a credit to civilian ratepayers for certain underpayments by Navy in the amount of \$380,000.

The Chairman clarified that this rollback was on a 10 month basis rather than a full 12 months. The PUC can revisit this at a later time. GPA GM Joaquin Flores indicated that the revenue requirements for FY14 would be folded into its April 1, 2013 rate filings.

Commissioner Montinola further clarified that the rollback was just for \$9M and not for \$11M. Mr. Flores agreed. Commissioner Montinola asked what GPA would use the other \$2M for. GPA's Comptroller Randy Wiegand indicated that GPA revenue requirements had been short during the last year by more than \$5M. The additional funds would be used to "beef up our cash a little bit." Upon motion duly made, seconded and unanimously carried, the Commissioners approved GPA's Rate Rollback and adopted the Order made *Attachment "B"* hereto.

The Chairman indicated that the second Order in this docket establishes that the underpayment of \$380,000 by Navy would be credited to the civilian ratepayers through the rollback credit. Upon motion duly made, seconded and unanimously carried, the Commissioners approved crediting Navy underpayment to civilian ratepayers and adopted the Order made in *Attachment "C"* hereto.

2. Port Authority of Guam

The Chairman announced that the next matter for consideration was PAG Docket 12-02 related to the crane surcharge, ALJ Report, and Proposed Order. Counsel indicated that the PUC had already approved the purchase by the Port of the POLA cranes. At that time it was understood that the Port would have to implement a surcharge to pay for those cranes and maintenance, and other aspects. There is a detailed ALJ Report on file that has been provided to the Commissioners. The PUC Consultant for Port matters, Slater, Nakamura, also studied this matter and submitted a report. In the Order, the proposed surcharge is based upon the anticipated revenues from the container throughput. The ALJ recommends that the PUC adopt an order whereby PAG would establish the FY2013 baseline container throughput projection at 44,400 containers, and breakbulk cargo tonnage at 42,010 tons.

As to the basic surcharge, the ALJ recommends that the Port assess a \$105.00 interim surcharge applied to both foreign and domestic carriers effective January 1, 2013 and terminating on February 28, 2013 for each inbound, outbound, as well as transshipment containers handled at the Port, which transshipment containers shall be assessed on the first carrier and not on the feeder vessel. There is an interim surcharge for the months of January and February, 2013. Beginning in March, 2013, PAG shall assess a \$125.00 surcharge applied to both foreign and domestic carriers for each inbound, outbound, as well as transshipment containers handled at the Port, assessment only on the first carrier and not the feeder vessel. With respect to break bulk non-containerized cargo, the ALJ recommends that PAG assess a \$5.00 surcharge per ton with a charge capped at \$105.00 per unit item, effective January 1, 2013. The surcharge will be applied to both foreign and domestic carriers.

In order to fund the replacement of a crane within 15 years, paragraph 4 of the Order would set up a surcharge and a requirement that the Port deposit 9.5% of the revenue from the crane surcharge into a crane replacement sinking fund, which fund includes all revenues generated in excess of the baseline projections recommended by Slater,

Nakamura. The funds deposited into the sinking fund are restricted for the purpose of future acquisition of cranes or any loan payment default on any past due crane loan liability or any extraordinary corrective maintenance events.

Paragraph 5 of the Order established general ledger revenue and expense accounts for the Port that directly link the crane surcharge monies to the gantry crane loan payments, insurance, a sustainable structured maintenance program, a spare parts inventory, into the crane replacement sinking fund. This accounting measure will hopefully assure that all the funds in the surcharge account go to the sinking fund. The Port is required to prepare a study related to transshipment which at a minimum shall include review of whether the operational and maintenance costs associated with each transshipment container are appropriately captured; and, if not, to determine whether a full or reduced container charge fee should be assessed for those transshipment containers being loaded on to a feeder vessel. The Port is required to file a report on this matter by June 30, 2013. The Port is also required to file an annual report, on or before December 31 of each year, on the variance between the revenues and costs that were forecast in the petition and as modified by Slater, Nakamura, in determining whether the overall application of the crane surcharge should be adjusted to insure that the cost of crane ownership and debt amortization are properly all met by the surcharge and to make sure that the surcharge is adequate to properly fund the replacement of the crane.

Senator Tom Ada spoke to the Commissioners. He indicated that he had sent a memo to the PUC this afternoon requesting the addition of language in paragraph 4 of the Order providing that at any time when the Port makes a drawdown on the sinking fund, it would, within five working days, report back to the PUC and to the Legislature. Otherwise, the drawdown could go undetected until the end of the year. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the Order proposed by the ALJ, subject to the inclusion of Senator Ada's recommendation.

The Chairman announced that the next item on the agenda was a Status Report on PAG Docket 12-01, Review of ANZ Loan Documents. Counsel indicated that the ALJ stated that the loan documentation is not yet finalized. He is awaiting the loan documentation. When received, the matter will be brought back before the PUC for final approval. The Chairman of the Port Dan Tydingco asked whether the Port would have to come back before the PUC to finalize approval of the loan documents to wrap up the purchase. Counsel indicated that normally the Port would. However, the PUC could authorize the ALJ to review the documents and to make sure that they were consistent with prior PUC orders. Chairman Tydingco indicated that such an approach would be appropriate. Council suggested a motion by the PUC. Upon motion duly made, seconded and unanimously carried, the Commissioners moved to authorize the ALJ review and approve the loan documentation submitted relative to the ANZ loan.

3. Guam Telecom LLC

The Chairman indicated that the next item of business was GT Docket 12-03, Joint Application of Guam Telecom LLC and Docomo Guam Holdings, Inc. for approval of the Transfer Control of Guam Telecom LLC to Docomo Guam Holdings, Inc. However, there is no quorum for this issue. Counsel explained that since there was no quorum, a special meeting would likely have to be convened to consider this matter on either the 21st of the month or the 27th. But, there was no firm date yet. As for the statute, the PUC has extended the 90 day deadline and the matter can be considered in a later meeting.

4. Guam Waterworks Authority

The Chairman announced that the next item on the agenda was GWA Docket 12-03, Petition for Contract Review of PMC Contract Extension with Veolia, ALJ Report, and Proposed Order. Counsel indicated that Veolia's present contract for waste water services with GWA expires on January 1, 2013. This matter needs to be handled on an expedited basis. The extension is in excess of \$1M so contract reviewed by the PUC is necessary. The ALJ reviewed this matter and found that the one year extension of the contract was reasonable and necessary to insure that the performance management services are provided to GWA. At the same time, GWA is looking at other options by which the services could be provided. This extension will ensure that the services continue to be provided during the transition period.

There are also certain amendments to the contract, and the ALJ found those to be fair and reasonable. The amendments involve the manner in which the projects would be examined by committees within GWA and Veolia to determine the product that should be produced. The CCU has authorized this contract extension. The ALJ also found that Veolia services have provided a benefit to the operations and maintenance, health and safety, project management and procurement of GWA as a result of the PMC's Contract. The Proposed Order would approve extending the contract for a period of one year. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the one year extension of the Veolia PMC Contract and adopted the Order made *Attachment "D"* hereto.

The Chairman announced that the next item for consideration was GPA Docket 11-02, Petition for Approval of \$1.2M increase in GWA's Program Management Contract with Brown & Caldwell, PUC Counsel Report and Proposed Order. Counsel indicates that GWA's requested increase for its program management contract with Brown & Caldwell should be conditionally approved. However, the documentation submitted is not sufficient at this point. There is no documentation justifying over \$700,000 of the amounts requested by GWA. For each project, there should be work authorization, cost estimate, scope of work, explanation, etc. GWA clearly needs help with managing the stipulated order projects. However, conditional approval should be given subject to provision by GWA of information set forth in the Order. Commissioner Montinola asked Mr. Roush, GM of GWA, what documentation was provided to the CCU to get

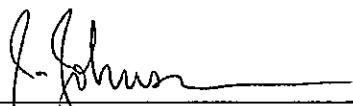
their approval for this \$1.2M? Mr. Roush indicated that it wasn't that level of documentation. It's dynamic in the sense that there is a \$310M court order and contractor must respond quickly. There needs to be more flexibility with these contracts. However, Mr. Roush agreed that there are agreed requirements with the PUC that must be complied with. Counsel indicated that the original \$3.2M for the Brown & Caldwell contract is an estimate based upon a percentage of the costs of each of the projects. However it is unclear now how long the funds will last and for what period of time the \$1.2M will be applied to. Some timelines are necessary.

Mr. Roush indicated that GWA would need \$1.2M the next fiscal year for the SO projects. The Chairman asked whether the \$1.2M requested would be for the entire next fiscal year. Mr. Roush indicated that such amount should last for the next year. If it doesn't, GWA would be back in six months. Counsel indicated that the most recent GWA November 8 invoice from Brown & Caldwell indicated that nearly \$2.64M had been expended out of the total contract of \$3.2M. The documentation does not adequately portray what is being done here. The Chairman expressed the concern that \$3.2M plus \$1.2M was significant for a fairly compressed amount of time, as GWA is a \$55M/\$60M a year agency. In response to a question by the Chairman, Mr. Roush gave an update on the water meter installation and indicated that over 11,000 the new batch meter were installed. Commissioner Montinola agreed that a better level of documentation from GWA was required. Upon motion duly made, seconded and unanimously carried, the Commissioners conditionally approved the GWA's request for an increase in its program management contract with Brown & Caldwell, subject to the provision of additional documentation. The Order made *Attachment "E"* hereto was adopted.

5. Approval of Minutes

The Chairman announced that the next order of business was approval of the minutes of the meeting of November 20, 2012. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the minutes subject to correction.

There being no further business, the Commissioners moved to adjourn the meeting.



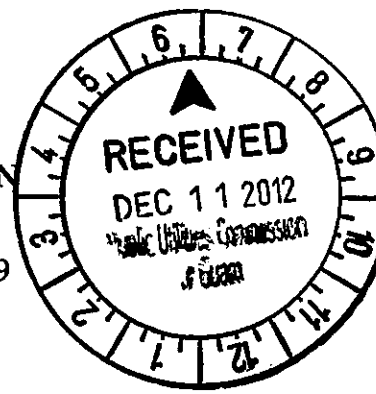
Jeffrey C. Johnson
Chairman

**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION
SPECIAL MEETING
SUITE 202, GCIC BUILDING
414 W. SOLEDAD AVE. HAGATNA, GUAM
6:00 p.m., December 11, 2012**

Agenda

1. **Approval of Minutes of November 20, 2012**
2. **Guam Waterworks Authority**
 - **GPA Docket 11-02, Petition for Approval of a \$1.2M Increase in GWA's Program Management Contract with Brown & Caldwell, PUC Counsel Report, Proposed Order**
 - **GWA Docket 12-03, Petition for Contract Review of Performance Management Contract Extension by GWA, ALJ Report, Proposed Order**
3. **Port Authority of Guam**
 - **PAG Docket 12-01, Petition Re: Review of ANZ Loan Documents, ALJ Report, Proposed Order**
 - **PAG Docket 12-02, Petition Re: Crane Surcharge, ALJ Report, Proposed Order**
4. **Guam Telecom LLC**
 - **GT Docket 12-03, Joint Application of Guam Telecom LLC and Docomo Guam Holdings Inc. for Approval of the Transfer of Control of Guam Telecom LLC to Docomo Guam Holdings, Inc., ALJ Report, Proposed Order**
5. **Teleguam Holdings LLC**
 - **GTA Docket 09-04, GPA Pole Attachments, Ratification of Order**
6. **Guam Power Authority**
 - **GPA Docket 11-09, GPA' Rate Rollback Petition, PUC Counsel Report, Proposed Order**
7. **PUC Website**
 - **Report by Administrator and Legal Counsel on progress of Ideal Advertising, website input catch up**
8. **Administrative Matters**
9. **Other Business**

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN THE MATTER OF:

GPA DOCKET 11-09

GUAM POWER AUTHORITY'S 2011
MULTI YEAR BASE RATE RELIEF
FILING: THE GPA RATE INCREASE
ROLLBACK PETITION

ORDER

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Guam Power Authority ["GPA"] Petition for Approval of GPA Rate Increase Rollback.¹

BACKGROUND

2. GPA recently completed its financing/restructuring of various prior bond issues. In the September 25, 2012 Order, the PUC approved the refinancing/restructuring plan and held that it would reduce GPA retail rates by the amount of reduction in debt service resulting from the bond transactions (i.e., somewhere on the order of \$9 Million).²
3. The actual first year savings from the bond restructuring/refinancing is estimated at \$11.5M. In the Petition GPA has proposed what it deems to be "the best method" for implementing a rate rollback. It is requesting that the PUC rollback the rate increase of \$9.1M which was effective May 1, 2012.³
4. GPA proposes to use the allocation method adopted by the PUC for the Working Capital Fund Surcharge in determining the amount of the Rate Rollback Credit.⁴ The Rollback Credit (RBC) would be effective for meters read from December 1, 2012 through September 30, 2013.⁵
5. The Rollback Credit for civilian customers for the 10 month period will be \$0.00618 per kWh (including credit for Navy Underpayment). The Rollback Credit for the Navy for the 10 month period will decrease its monthly payment to \$105,639.00.⁶

¹ GPA Petition for the Approval of the Rate Increase Rollback, GPA Docket 11-09, filed November 19, 2012.

² PUC Order, GPA Docket 12-03, Par. 9, issued September 25, 2012.

³ GPA Petition for the Approval of the Rate Increase Rollback, GPA Docket 11-09, filed November 19, 2012, at p. 2.

⁴ Id.

⁵ Direct testimony of Randall V. Wiegand, GPA Docket 11-09, filed November 19, 2012, at pgs. 4, and Exhibit RVW 4, Appendix E: Top Level Rate Impact, the Direct Testimony of Randall V. Wiegand.

⁶ Id., Exhibit RVW 4, Appendix E.

6. With its Petition, GPA has also submitted Amended Rate Tariffs which implement the rate rollback to the civilian and Navy customers.
7. In this Docket, GPA and Navy stipulated to a cost of service adjustment for Navy in the approximate amount of \$380,000 (amounts underpaid by Navy due to errors in GPA's Cost of Service study). GPA has proposed a credit of the civilian rate schedules for the amount underpaid by the Navy. This credit will also be included in the rollback of the FY2011 rate increase.⁷
8. On December 5, 2012, Shaw Consultants International Inc., Consultant to the PUC, filed its Report in this Docket.⁸
9. Shaw indicates a number of possible options for the PUC and recognizes that the Commission could allow some flexibility with respect to its prior Order⁹ :
"Consultants understand that GPA has financial issues and believes that it may be appropriate for GPA to retain some of its first year savings".¹⁰
10. One possible option proposed by Shaw is that the rollback period could be extended from 10 to 12 months to recover the full \$9.1M rate increase.¹¹
11. Shaw concurs with the proposed roll-back mechanism suggested by GPA. GPA's calculations of the credit are appropriate.¹²

DETERMINATIONS

12. The PUC September Order required GPA to return "savings" from its bond restructuring/refinancing to customers. GPA's proposal instead rolls back the rate increase that was effective May 1, 2012. PUC finds that GPA's proposal of rolling back the rate increase is a reasonable method of returning benefits to its customers from the bond restructuring/refinancing.

⁷ DIRECT TESTIMONY OF Randall V. Wiegand, GPA Docket 11-09, at pgs. 11-12.

⁸ Shaw Consultants International Inc., GPA Docket 11-09, Review and Evaluation of GPA's Petition to Roll-Back Savings to Customers from its Recent Refinancing, filed December 5, 2012.

⁹ Id. at p. 3.

¹⁰ Id.

¹¹ Id.

¹² Id. at p. 4.

13. PUC Consultant Shaw concurs that it is reasonable for PUC to give GPA some flexibility due to financial considerations and to allow it to retain a portion of the savings.
14. For a number of reasons, GPA's proposal is justified; GPA will be filing a new rate case in 2013, and new rates should be in effect by October 1, 2013. The savings from the restructuring/refinancing will reduce the revenue requirements for the FY2014 rate case and in subsequent years.
15. GPA has experienced some decrease in revenues in recent years, and its debt service coverage ratio should be strengthened. It is prudent to give GPA some flexibility in the procedural mechanism by which it implements its rate rollback to customers.
16. In its Report, Shaw indicated that the rollback could be extended for a full 12 months to recover the \$9.1M rate increase. At the present time PUC should authorize GPA to implement the rate rollback for the 10 month period requested. However, in the context of the FY 2014 Rate Proceedings, the PUC retains the option to consider whether GPA should be required to extend the rollback for an additional two month period. This issue will be further examined in the context of such Rate Proceedings.

ORDERING PROVISIONS

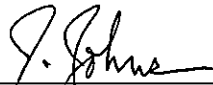
After careful review and consideration of the above determinations, the Petition of GPA, the Report of Shaw Consultants International Inc., and the record herein, for good cause shown, the Guam Public Utilities Commission **HEREBY ORDERS** that:

1. GPA's Petition for Approval of the Rate Increase Rollback is approved.
2. GPA is authorized to implement the Rollback credits [RBC] set forth in Exhibit RVW-4, Appendix E, effective December 1, 2012 through September 2013.
3. The Amended Tariff Rate Schedules attached to GPA's Petition are approved and shall be effective December 1, 2012. GPA shall file such Schedules with the PUC.
4. The method proposed by GPA for recovering the Navy underpayment resulting from cost of service issues, as set forth in Exhibit RVW-4, Appendix E, is also approved.


5. PUC retains jurisdiction to further consider issues related to the RBC in the context of the 2014 Rate Proceedings.

6. 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 §12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

Dated this 11th day of December, 2012.



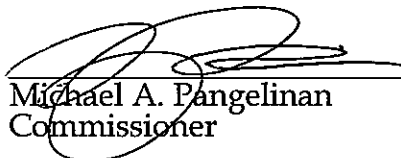
Jeffrey C. Johnson
Chairman



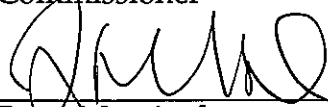
Joseph M. McDonald
Commissioner

Rowena E. Perez
Commissioner

Filomena M. Cantoria
Commissioner



Michael A. Pangelinan
Commissioner



Peter Montinola
Commissioner

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN THE MATTER OF:

GUAM POWER AUTHORITY'S 2011
MULTI YEAR BASE RATE RELIEF
FILING

GPA DOCKET 11-09

ORDER

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the STIPULATION of the Guam Power Authority ["GPA"] and the U.S. Department of the Navy ["Navy"] concerning GPA load data and a proposed cost of service adjustment for Navy, which were included in the GPA Phase II Supplemental Filing of May 29, 2012.¹

BACKGROUND

2. In its FY 12 RATE DECISION issued May 7, 2012, the PUC ordered that GPA and Navy meet and confer regarding certain issues which had arisen in the proceedings concerning the accuracy of GPA's load data and cost of service determinations.² The Parties were requested to propose an adjustment to the Interim Rates as soon as practicable.³
3. On November 20, 2012, GPA and Navy filed their STIPULATION concerning GPA's load data and proposed cost of service adjustment for Navy. A true and correct copy thereof is attached hereto as Exhibit "1".
4. GPA and Navy stipulate that the upward adjustments of Navy's cost of service and the allocation factor, as set forth in GPA's Supplemental Filing of May 29, 2012, are appropriately based upon GPA's revised Navy load data.⁴
5. As proposed by the Parties, the 12 Coincident Peak (12CP) allocation factor is 17.606% (revised upward from 17.277% established by the PUC in its May 7, 2012, Order) and the cost of service increase to Navy is \$380,000 (reflecting both an increase in the demand charge rate and allocated base costs to the Navy since May 7, 2012).⁵

¹ STIPULATION, GPA Docket 11-09, filed November 20, 2012.

² FY 12 RATE DECISION, GPA Docket 11-09, ¶12, issued May 7, 2012.

³ Id. at ¶12.

⁴ STIPULATION, GPA Docket 11-09, filed November 20, 2012.

⁵ Id.

DETERMINATIONS

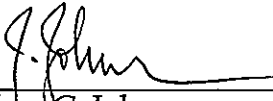
6. The STIPULATION, and the upward adjustments of Navy's cost of service and allocation factor, are reasonable and should be adopted. Pursuant to 12 GCA §12004, it is within the authority of the PUC to establish and modify rates and charges for utility services.
7. The adjustments and increases to Navy's rates, as proposed by the parties in the STIPULATION, are "just" and "reasonable" pursuant to 12 GCA §§12015 and 12017.
8. The rate adjustments proposed by the parties should be adopted effective December 1, 2012.

ORDERING PROVISIONS

After careful review and consideration of the above determinations, the Recommendations of PUC Counsel, the Stipulation, and the record herein, for good cause shown, the Guam Public Utilities Commission HEREBY ORDERES that:

1. The STIPULATION of the Parties, attached hereto as Exhibit "1", is approved; effective December 1, 2012, the rates charged by GPA to Navy shall be in accordance with the STIPULATION and the GPA Phase II Supplemental Filing of May 29, 2012.
2. The manner and procedure by which the rate changes to Navy shall be implemented will be determined in accordance with the proceedings on GPA's Rate Rollback Petition.
3. 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 §12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

Dated this 11th day of December, 2012.



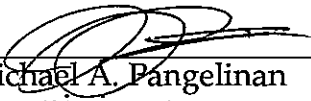
Jeffrey C. Johnson
Chairman



Joseph M. McDonald
Commissioner

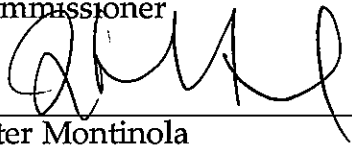
Order
GPA-Navy STIPULATION
GPA Docket 11-09
December 11, 2012

Rowena E. Perez
Commissioner



Michael A. Pangelinan
Commissioner

Filomena M. Cantoria
Commissioner



Peter Montinola
Commissioner

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF GUAM**

IN THE MATTER OF:) **GPA DOCKET 11-09**
)
GUAM POWER AUTHORITY'S 2011)
) **STIPULATION**
MULTI YEAR BASE RATE RELIEF)
)
FILING)
)

The Guam Power Authority ("GPA") and the U.S. Department of the Navy ("DoN"), through their counsel of record, hereby enter into this stipulation about GPA load data and proposed cost of service adjustment for the Department of the Navy (DoN) included in its Phase II Supplemental Filing on May 29, 2012, for the captioned multi-year base rate plan filed with the Guam Public Utilities Commission ("Commission").

DoN and GPA stipulate upward adjustments of Navy's cost of service and allocation factor in GPA's Supplemental Filing are appropriate based on GPA's revised Navy load data. As a result, the "12 Coincident Peak" (12 CP) allocation factor is 17.606% (revised upward from 17.277% established by the Commission as the 12 CP allocator on May 7, 2012), and the cost of service increase is \$380,000 (reflecting both an increase in the demand charge rate and allocated base costs to the Navy since May 7, 2012).

SO STIPULATED this 20th day of November, 2012.

BY: 

D. GRAHAM BOTHA, ESQ.
COUNSEL
GUAM POWER AUTHORITY

BY: 

JOHN MASTERSON, ESQ.
COUNSEL
NAVAL FACILITIES ENGINEERING COMMAND,
MARIANAS
U.S. DEPARTMENT OF THE NAVY



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE: **CONTRACT REVIEW OF**)
 PERFORMANCE)
 MANAGEMENT CONTRACT)
 EXTENSION BY GUAM)
 WATERWORKS AUTHORITY)
_____)

GWA DOCKET 12-03
ORDER

INTRODUCTION

This matter comes before the PUC pursuant to the November 15, 2012 Expedited Petition for Approval to Extend the Term of GWA’s Wastewater Performance Management Contract (hereinafter referred to as the “Petition”) filed by the Guam Waterworks Authority (“GWA”). GWA seeks expedited review of extension of the Performance Management Contract (“PM Contract”) with Veolia Water Guam, L.L.C. (“Veolia”) since, according to GWA, such contract expires on January 2, 2013.

DETERMINATIONS

Pursuant to 12 G.C.A. §12004, GWA cannot enter into any contractual agreements or obligations which could increase rates and charges without the PUC’s express approval. Additionally, pursuant to GWA’s current Contract Review Protocol, “[a]ll professional service procurements in excess of \$1,000,000” and “[a]ny contract or obligation not specifically referenced above which exceeds \$1,000,000” “shall require prior PUC approval under 12 G.C.A. Section 12004.”

On December 6, 2012, the Administrative Law Judge of the PUC (the “ALJ”) filed an ALJ Report detailing his review of GWA’s request for an extension of the PM Contract.

In the December 6, 2012 ALJ Report, the ALJ found that a one year extension of the PM Contract is reasonable and necessary to ensure that performance management services are provided to GWA “while GWA prepare a more streamlined PMC bid and to wrap up the existing PMC contract.” Petition, p. 2. In particular, the ALJ found that “[g]iven the unique nature of this Contract, the need to ensure uninterrupted services from Veolia during the transition period, the fact that the need for the services has been well established, and the fact that the Contract has been previously approved by the PUC, GWA’s request should be approved.” Petition, p. 2.

The ALJ further found that the amendments to the PM Contract, which are contained in the Third Amended Contract, are fair and reasonable since the new provisions chiefly concern tasks related to the transition of responsibilities from Veolia to another contractor or to GWA, as well as tasks related to the federal Stipulated Order projects, and projects related to GWA’s Capital Improvement Plan.

The ALJ also found that the Petition is supported by the findings of the CCU, which has authorized GWA to extend the PM Contract with Veolia for one (1) year commencing on January 2, 2013 and terminating on December 28, 2013, as well as to enter into the Third Amended Contract proposed by GWA and Veolia. The ALJ found that the CCU determined that the terms of the proposed Third Amended Contract included “provisions for wrapping up the PMC Contract for other performance measures” and that such terms were “fair and reasonable and provide adequate flexibility for the parties to effectuate the purposes set forth in the PMC Contract.”

In addition, based on the record before the PUC, the ALJ also found that Veolia, as GWA’s existing contractor for GWA’s performance management services related to GWA’s

wastewater services, has provided GWA with “significant benefits in operations and maintenance, health and safety, training, project management and procurement as a result of the PMC with Veolia”; and that Veolia has worked with GWA in ensuring the implementation of capital improvement projects specified in GWA’s Master plans. Petition, “Exhibit A,” p. 2. Based on the foregoing, the ALJ recommended that the PUC approve the extension, along with the proposed amendments to the agreement contained in the Petition.

The Commission hereby adopts the findings contained in the December 6, 2012 ALJ Report and, therefore, issues the following:

ORDERING PROVISIONS

Upon careful consideration of the record herein, GWA’s November 15, 2012 Petition, the December 6, 2012 ALJ Report, and for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby ORDERS the following:

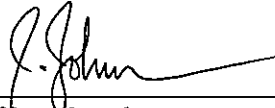
1. The Expedited Petition for Approval to Extend the Term of GWA’s Wastewater Performance Management Contract with Veolia Water Guam, L.L.C. is hereby approved. GWA is therefore authorized to extend its existing Wastewater Performance Management Contract with Veolia for a term of up to one (1) year.

2. Upon the execution of any contract extension between GWA and Veolia, GWA shall file in this Docket such extension with the PUC.

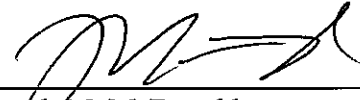
3. GWA is ordered to pay the PUC’s regulatory fees and expenses, including, without limitation, consulting and counsel fees and the fees and expenses of conducting the hearing proceedings. Assessment of PUC’s regulatory fees and expenses is

authorized pursuant to 12 GCA §§ 12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the PUC.

SO ORDERED this 11th day of December, 2012.



Jeffrey C. Johnson
Chairman

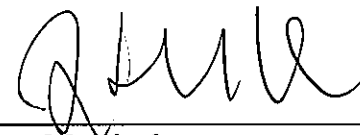


Joseph M. McDonald
Commissioner

Rowena E. Perez
Commissioner

Filomena M. Cantoria
Commissioner

Michael A. Pangelinan
Commissioner



Peter Montinola
Commissioner

P124106.JRA

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE:

GPA Docket 11-02

REQUEST BY GUAM WATERWORKS
AUTHORITY FOR APPROVAL OF A
\$1.2M INCREASE IN GWA'S
PROGRAM MANAGEMENT OFFICE
CONTRACT WITH BROWN &
CALDWELL

ORDER



INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Petition of Guam Waterworks Authority ["GWA"] for approval of a \$1.2M Increase in GWA's Program Management Office ["PMO"] Contract with Brown & Caldwell.¹

BACKGROUND

2. In its Order in this Docket dated March 21, 2011, the PUC authorized GPA to procure PMOs for GPA and GWA.² In the Order dated January 11, 2012, the PUC authorized the hiring of Brown & Caldwell for GWA for a PMO Contract "not to exceed \$3.2M."³
3. Subsequent to the PUC Order dated January 11, 2012, GWA entered into a PMO contract with Brown & Caldwell on February 6, 2012.⁴
4. In its Petition, GWA indicates that the project/tasks being performed by Brown & Caldwell are necessary for GWA to comply with the November 10, 2011 Order of the District Court of Guam in Civil Case No. 02-00035 (the "Stipulated Order").⁵
5. GWA has already issued 15 work authorizations to Brown & Caldwell totaling \$2.9M. A description of those projects and the Work Authorization Titles is set

¹ GWA Petition for Approval of a \$1.2M Increase in GWA's Program Management Office Contract with Brown & Caldwell, GPA Docket 11-02, filed November 13, 2012.

² PUC Order, GPA Docket 11-02, dated March 21, 2011.

³ PUC Order, GPA Docket 11-02, dated January 11, 2012.

⁴ GWA Petition for Approval of a \$1.2M Increase in GWA's Program Management Office Contract with Brown & Caldwell, GPA Docket 11-02, filed November 13, 2012; see Exhibit A thereto.

⁵ Id. at p. 2.

forth in Exhibit "1" attached to the Counsel Report hereto ["Summary of the GWA PMO Budget Allocation"]. The project expenditures involve such critical projects as the improvements to the Agana and Northern District Wastewater treatment plants, a development of a program management plan, and assistance in developing scopes of work and work plans for CIP projects, PUC stipulated projects, and Court Order Projects.

6. In Guam Consolidated Commission on Utilities Resolution No. 53-FY2012, the CCU approved GWA management's request to increase the funding for Brown & Caldwell PMO Contract in the amount of \$1.2M.⁶ The source of funding for the proposed increase in the Brown & Caldwell PMO contract is the 2010 bond series proceeds.⁷
7. It appears that a large amount of the PUC approved funding for the Brown & Caldwell PMO contract has been expended. See Exhibit "2" attached to the Counsel Report, GWA Program Management Office Work Authorization Budget Summary.
8. The additional amounts sought by GWA are for additional program management and engineering services and support in managing the 2011 EPA Stipulated Order deadlines in 2013, and specific expenditures for the southern facility evaluations, southern SSES, and central/I and SSES. These are additional amounts for work which was not funded in the original request of \$3.2M. See Exhibit "1", Summary of the GWA PMO Budget allocation.

DETERMINATIONS

9. The original PMO Contract with Brown & Caldwell commenced in February of this year. It appears that GWA has been authorizing expenditures and/or expending approximately \$300,000 per month for this contract. The GWA Petition does not indicate what accomplishments have been achieved by B&C for this large expenditure of funds.
10. There is no indication in any of the materials presented by GWA as to the time period in which the additional funds sought will be expended. GWA seeks an additional \$1.2M increase; if past practice is a guide, such additional amounts could

⁶ CCU Resolution No. 53-FY2012, Relative to Approving Contract Amendment No. 1 for Program Management Services, adopted August 28, 2012.

⁷ Id. at p. 2.

be authorized and/or expended in four months (\$300,000 per month for four months).

11. At present, GWA has presented very little documentation to justify the additional expenditure of \$1.2M. The only descriptions available for the Southern Facility Evaluations Phase 1, Southern SSES, and Central I/I and SSES were a few lines on the Summary of the GWA PMO Budget Allocation. Then, on December 7, 2012, GWA submitted a "draft" Work Authorization, 2012-12, for the Southern Facility Evaluations Phase I. It is not a final document and not approved by either party. Normally, it would be expected that GWA would submit the work authorization, a description of each project including timeframes and deadlines, the scope of work, and cost estimates, with its Contract Review Request to the PUC.
12. GWA's response to Counsel's request for such information was that Work Authorizations for the \$1.2M increases "were still being worked out." This material should be prepared in advance of the submission of a Petition to the PUC requesting contract review approval of an obligation. See Paragraph 6 of the Guam Waterworks Authority Contract Review Protocol. Exhibit "3" indicates that no work authorization no's have ever been assigned for the Southern SSES, Central I/I and SSES, nor has the WA been prepared or approved. On GWA's December 7 submission, there is an entirely new project, Agana Phase I Construction Management, which was not referenced in GWA's Petition. GWA has not submitted documentation justifying these projects or the projected costs.
13. Notwithstanding these significant concerns, it appears that GWA likely needs additional funds in order to meet the deadlines imposed for the Stipulated Order Projects. However, the need for such funds and the amounts should be properly justified.
14. Approval herein should be conditioned upon submission by GWA of a final Work Order 2012-12, and Work Authorizations for the additional projects being submitted to PUC, which documentation includes the appropriate descriptions of the projects, including timeframes and deadlines, and cost estimates with explanations. ~~GWA's submittals must comply with paragraph 6 of the GWA Contract Review Protocol.~~
15. PUC approval is required for any additional expenditure of bond funds.⁸

⁸ PUC Order, GPA Docket 11-02, dated January 11, 2012.

16. It does not appear that the increase requested herein will have an impact on rates or "could increase rates."⁹ The source of funding for the increase is from the 2010 Bond Series proceeds, which are tied directly to the 2011-2012 CIP.¹⁰
17. In accord with Counsel's recommendation, the PUC should conditionally approve GWA's request for a \$1.2M increase in its Program Management Office Contract with Brown & Caldwell. However, approval is conditioned on submission by GWA of the materials indicated in paragraph 14. Counsel shall certify compliance when GWA has filed appropriate documentation under paragraph 14.
18. It appears that the principal cost of this increase is provided for in the bond fund allocations. There should be no additional rate impact.
19. The PUC should not consider any further requests for PMO expenditure increases unless GWA submits proper documentation under Paragraph 6 of the GWA Contract Review Protocol.

ORDERING PROVISIONS

After careful review and consideration of the record herein, the above determinations, the Petition of GWA, the Report of PUC Counsel, and for good cause shown, on motion duly made, seconded and carried by the undersigned Commissioners, the Guam Public Utilities Commission **HEREBY ORDERS** that:

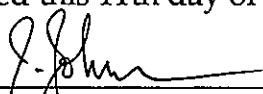
1. GWA's Petition for Approval of a \$1.2M increase in GWA's Program Management Office Contract with Brown & Caldwell is conditionally approved; approval is conditioned on submission by GWA of the materials indicated in paragraph 14 of this Order. Counsel shall certify compliance when GWA has filed appropriate documentation under paragraph 14.
2. GWA shall not expend the additional funds sought of \$1.2M until Counsel has certified compliance with this Order.
3. ~~Should GWA seek to utilize any additional bond or revenue funds related to the PMO Contract, it shall submit appropriate work authorizations and comply with express documentary requirements of Paragraph 6 of the Contract Review Protocol.~~

⁹ See 12 GCA §12004.

¹⁰ CCU Resolution No. 53-FY2012 at p. 2, issued August 28, 2012.

4. GWA 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 §§12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

Dated this 11th day of December, 2012.




Jeffrey C. Johnson
Chairman




Joseph M. McDonald
Commissioner

Rowena E. Perez
Commissioner



Michael A. Pangelinan
Commissioner

Filomena M. Cantoria
Commissioner



Peter Montinola
Commissioner