

GUAM PUBLIC UTILITIES COMMISSION  
REGULAR MEETING  
August 25, 2016  
SUITE 202, GCIC BUILDING, HAGATNA



MINUTES

The Guam Public Utilities Commission [PUC] conducted a regular meeting commencing at 6:50 p.m. on August 25, 2016, pursuant to due and lawful notice. Commissioners Perez, McDonald, Pangelinan, Montinola, Cantoria and Niven were in attendance. The following matters were considered at the meeting under the agenda made *Attachment "A"* hereto.

**1. Approval of Minutes**

The Chairwoman announced that the first item of business on the agenda was approval of the minutes of July 28, 2016. Upon motion duly made, seconded and unanimously carried, the Commission approved the minutes subject to correction.

**2. Guam Power Authority**

The Chairwoman announced that the second item of business on the agenda was GPA Docket 16-12, GPA Petition for Approval of the NRG Interconnection Cost Reimbursement Claim, PUC Counsel Report, and Proposed Order.

Counsel indicated that this matter involves GPA's Petition for Approval of the NRG Interconnection Cost Reimbursement Claim. The claim relates to the Dandan 25 MW solar facility. The original contracts for the solar facility indicated that the contractors/developers of the solar plant would be responsible for certain interconnection costs. In the Amended and Restated Small Generator Interconnection Agreement, GPA and Quantum/NRG agreed that the cost of developing, designing, procuring, constructing and installing the interconnection facilities would be borne by the interconnection customer (NRG), but in no event would such cost exceed \$11,411,786.00. GPA would reimburse NRG for any cost in excess of such amount.

Upon completion of plant construction, NRG tallied up the interconnection costs. NRG originally indicated that its interconnection costs had exceeded the amounts specified in the contract by more than \$2M. GPA and NRG negotiated the costs, and in the final analysis, the parties agreed that the excess or overage of costs was roughly \$2,008,000. The Guam Consolidated Commission on Utilities approved the reimbursement for that amount, finding it to be reasonable. GPA was authorized to apply to the PUC for approval.

These interconnection facilities built by NRG/Quantum become GPA's facilities at the end of the contract. GPA is now requesting that the PUC approve its contractual

obligation to pay the excess interconnection costs to NRG. Counsel recommends that the PUC approve GPA's request to expend the amount of \$2,008,000 to pay the NRG claim. GPA has also worked out a repayment plan with NRG. It has up to three years to payoff that amount, beginning in January 2017. There are quarterly payments at 6% interest, and no interest if the amount is repaid prior to January 2017. The Proposed Order would incorporate Counsel's recommendations allowing reimbursement of the NRG claim. Counsel indicated that GPA Counsel Botha would explain why there was an overage and amounts that were included in the claim.

GPA Counsel Botha indicated that GPA made some change orders in the contract. One of the main ones was the provision for an outdoor substation, a concrete box wall for all the switches that were exposed to the elements. GPA requested that a fully enclosed substation be built which protects the plant from the weather. Also, the lines were all placed underground to the substation in Talofoto. The substation has been deeded over to GPA, so these were overall improvements to GPA's facilities. The \$2M is a fair price for the additional work.

Commissioner Cantoria referred to provision §1.4.3.3 in the Amended Agreement and asked what the additional 73% of the interconnection costs were that interconnection customer would pay for, not to exceed \$4.4M. GPA Counsel Botha indicated that was previously the amount that Pacific Green Resources was supposed to reimburse had it hooked up to the same substation. However, PGR never hooked up to the project, so it did not have to reimburse anything to NRG. Thus, NRG is allowed reimbursement for any amounts that would have been contributed by PGR. The additional amount is what would have been reimbursed by PGR. However, PGR is not asking for that. Commissioner Cantoria asked whether this was the final amount. GPA Counsel Botha indicated that it was the final amount, with no additional costs for the project.

Commissioner Montinola asked whether \$2M was a full or partial amount. Counsel Botha indicated that the intent of GPA is to try to pay the amount this year to avoid any interest charges through the CIP Budget. GPA asked to be allowed to pay the amount in this fiscal year to avoid incurring additional interest charges, although GPA does have the option to spread it out.

PUC Counsel Horecky wished to cover one additional point, which is that the payment of the claim would come from the CIP Fund balance. Counsel obtained adequate information from GPA to indicate that there are still sufficient funds in the FY2016 CIP Fund, a budget balance of over \$7M, to pay the NRG Cost Claim.

Commissioner Niven stated his understanding that the April 25, 2013 Amendment basically imposed a new financial obligation on GPA which turned out to be \$2M; it could have been more had it not been negotiated down. GPA Counsel explained that the financial obligation had originally been there in the two contracts GPA negotiated with NRG and PGR. Commissioner Niven asked whether in the original agreement there was no threshold over which GPA took financial responsibility. GPA Counsel

Botha indicated that the original contracts did include the provision that each contractor would be required to contribute up to a fixed amount; if there was an excess, GPA would have to pay the excess for both bidders. PUC Counsel explained that he had sent Commissioner Niven prior PUC Orders which referenced the interconnection obligations of both NRG and PRG. There were separate interconnection costs requirements for both Quantum and PRG. The original interconnection requirement for Quantum/NRG was about \$9M, and \$4 or \$5M for PRG--a total originally of about \$14M. Counsel Botha explained that when NRG bought the extra 5MW, a percentage of what the interconnection cost would have been for PRG was added into the Agreement.

Commissioner Niven clarified that the agreement to pay the extra amount by GPA was approved by the PUC in 2011. Counsel Botha indicated that was correct, for both vendors. Commissioner Niven asked why this matter was not filed in the 2011 docket. He felt it just seemed to be a final step in the process that started in 2011, but was filed as a brand new petition. There is no reference to the 2011 decision authorizing this expenditure. So, in reading the decision on its face, it looks as if the PUC is being asked to approve a *fait accompli*, without reference to prior PUC approval.

PUC Counsel explained he, after discussion with GPA Counsel, had decided to assign a new docket number to this matter. Although it is related, Docket 11-12 was heard quite a while ago. Where there is an old docket, under some circumstances, Counsel will sometimes assign a new docket number. Commissioner Niven asked whether a reference could be placed in the Decision in this docket to the earlier decision. PUC Counsel indicated he could certainly do that.

Commissioner Pangelinan asked about the interest. If it were paid through extended payments over a period of time, would that be the 15% capital recovery charge? GPA Counsel Botha indicated that it would be. That is why GPA wishes to pay the amount owed before December. NRG would prefer not to take interest payments, but would want them paid over time with that rate. Commissioner Pangelinan indicated that it was a pretty big interest rate. Counsel Botha stated that NRG would prefer to have the matter settled to close out its year-end books.

The Commissioners agreed that the Decision should have a reference to the approval of this arrangement by the PUC in the 2011 Docket. PUC Counsel indicated that there was no additional cost approved in the amendment because the two separate amounts for the interconnection costs actually exceeded the amount in the amendment. Even if the original contract had been approved by the PUC, GPA must obtain contract review approval by the PUC because the amount it seeks to reimburse NRG is \$2M. GPA Counsel Botha suggested earlier PUC approval was not possible; GPA could not know the amount of the excess interconnection claim until the contract was completed. It would have not been possible for GPA to obtain the approval of such amount from the PUC, as the excess was not known until the interconnection facilities were fully

completed. Counsel stated that NRG did not make its excess interconnection claim until September 2015.

Upon motion duly made, seconded and unanimously carried, the Commissioners approved payment by GPA from the CIP Fund of the NRG Interconnection expense Claim in the amount of \$2,008,000, and approved the Order made *Attachment "B"* hereto with the agreed revisions.

**3. Administrative Matters**

The Chairwoman stated that the next item on the agenda was Administrative Matters. PUC Counsel indicated that there was no such matter to consider at the present time.

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

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Rowena E. Perez  
Chairwoman

THE GUAM PUBLIC UTILITIES COMMISSION  
REGULAR MEETING  
THIRD FLOOR, SUITE 306, GCC BUILDING  
414 W. SOLEDAD AVE., HAGATNA, GUAM  
6:30 p.m., August 25, 2016

Agenda

1. Approval of Minutes of July 28, 2016
2. Guam Power Authority
  - GPADocket 16-12, GPA Petition for Approval of the NRG Interconnection Costs Reimbursement Claim, PUC Counsel Report, Proposed Order
3. Administrative Matters
4. Other Business

ATTACHMENT A

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN THE MATTER OF: ) GPA Docket 16-12
)
The Petition of the Guam Power Authority)
for Approval of the NRG Interconnection ) ORDER
Costs Reimbursement Claim. )
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INTRODUCTION

- 1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Petition of the Guam Power Authority ["GPA"] for Approval of the NRG Interconnection Costs Reimbursement Claim.

BACKGROUND

- 2. In 2011, GPA awarded Quantum Guam Power ["Quantum"] the 20MW Solar Renewable Energy Purchase Agreement ["REPA"].
3. In GPA Docket 11-12, the PUC approved GPA's award of the renewable contracts to Quantum Guam Power and Pacific Green Resources.
4. R.W. Beck issued its Final Report on the Renewable IFB System Impact Study in May of 2012.
5. On June 11, 2012, PUC approved the cost allocation in the R.W. Beck Study and determined that Quantum had accepted the cost allocation of R.W. Beck.

1 GPA Petition for Approval of NRG Interconnection Costs Reimbursement Claim, GPA Docket 16-12, filed August 10, 2016.
2 Id. at p. 1.
3 PUC Order, GPA Docket 11-12, dated December 19, 2011.
4 R.W. Beck, Renewable IFB System Impact Study, May 2012.
5 Id. at Section 5.3.
6 PUC Order, GPA Docket 11-12, dated June 11, 2012, at p. 3.

ATTACHMENT B

6. On February 26, 2013, PUC approved the cost allocation in the R.W. Beck Study and determined that PGR had accepted the cost allocation of R.W. Beck.<sup>7</sup>
7. GPA required both Quantum and PGR to enter into Interconnection Agreements which indicated the total cost responsibility of each party for interconnection costs.<sup>8</sup> Quantum was originally responsible for interconnection costs up to \$9,186,544.<sup>9</sup> PGR was responsible for interconnection costs up to \$7,430,350.00.<sup>10</sup> After PGR transferred its 5.65MW solar contract to Quantum, Quantum's responsibility to pay for interconnection costs was increased to \$11,471,786.00.<sup>11</sup>
8. The Amended Interconnection Agreement between GPA and Quantum provided as follows in Section 1.4.2.2:

The cost of developing, designing, procuring, constructing and installing the Interconnection Facilities shall be borne by Interconnection Customer, but shall in no event exceed \$11,411,786.00. Any verified costs in excess of such amount shall be reimbursed by GPA to Interconnection Customer, plus a capital recovery charge of 15% per annum.<sup>12</sup> (emphasis added).
9. On March 16, 2016, NRG submitted documentation and analysis to GPA indicating that its cost for developing, designing, procuring, constructing and installing the Interconnection Facilities for the solar plant had exceeded the amount of \$11,411,786.00 by \$2,008,033.46. The total NRG cost for such Interconnection facilities was \$13,419,819.00.<sup>13</sup>
10. The documentation submitted by NRG included invoices received from its Engineering Procurement Contractor [the Boeing Company], a listing of project costs, and an Excel Summary. This documentation demonstrated that NRG paid \$2,008,033.46 in excess of the amount specified in §1.4.2.2.<sup>14</sup>

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<sup>7</sup> PUC Order, GPA Docket 11-12, dated February 26, 2012, at p. 4

<sup>8</sup> GPA Petition for Approval of NRG Interconnection Costs Reimbursement Claim, GPA Docket 16-12, filed August 10, 2016, at p. 1.

<sup>9</sup> Id. at p. 1.

<sup>10</sup> Small Generator Interconnection Agreement between Guam Power Authority and Pacific Green Resources, LLC, dated February 1, 2013.

<sup>11</sup> Amended and Restated Small Generator Interconnection Agreement between Guam Power Authority and Quantum Guam Power, LLC, dated April 25, 2013, attached to GPA Petition.

<sup>12</sup> Id. at §1.4.2.2.

<sup>13</sup> E-mail Submission of John J. Cruz, Jr., GPA Manager of SPORD, to PUC ALJ Horecky, dated August 16, 2016; attached email from the Manager Asset Management, of NRG.

<sup>14</sup> Id.

11. The above referenced materials, and in particular, the Excel Summary, are attached as Exhibit "A" to the PUC Counsel Report in this Docket.
12. GPA reviewed the excess costs of \$2,008,033.46, and deemed them to be reasonable.<sup>15</sup> The emails between the parties indicated that GPA undertook a considerable amount of analysis and review of the excess cost before determining that such cost was reasonable.<sup>16</sup>
13. In Guam Consolidated Commission on Utilities Resolution No. 2016-39, relative to the Approval of the NRG Interconnection Costs Reimbursement Claim, the CCU found that GPA had reviewed the costs; based on a reevaluation of the initial assumptions and the completed project, GPA deemed the costs to be reasonable.<sup>17</sup> The CCU determined that the approved funding source for reimbursement of cost to NRG was internal revenue CIP funds.<sup>18</sup>
14. The CCU authorized the GPA General Manager to petition the PUC for approval of the NRG Interconnection Costs Reimbursement Claim in the total amount of \$2,008,033.00.<sup>19</sup>
15. GPA submits that PUC should approve payment by GPA of the NRG Interconnection Costs Reimbursement Claim, as it is "reasonable, prudent and necessary."<sup>20</sup>

### DETERMINATIONS

16. Both GPA and NRG have agreed that, pursuant to §1.4.2.2 in their Agreement, NRG's costs relating to Interconnection Facilities exceeded the specified amount by \$2,008,033.00.

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<sup>15</sup> GPA Petition for Approval of NRG Interconnection Costs Reimbursement Claim, GPA Docket 16-12, filed August 10, 2016, at p. 1.

<sup>16</sup> E-mail Submission of John J. Cruz, Jr., Manager of GPA's SPORD, to PUC ALJ Horecky, dated August 16, 2016; attached email from the Manager, Asset Management, of NRG.

<sup>17</sup> Guam Consolidated Commission on Utilities Resolution No. 2016-39, Relative to Approval of the NRG Energy Interconnection Costs Reimbursement Claim, adopted July 26, 2016.

<sup>18</sup> Id at p. 2.

<sup>19</sup>Id.

<sup>20</sup> GPA Petition for Approval of NRG Interconnection Costs Reimbursement Claim, GPA Docket 16-12, filed August 10, 2016, at p. 2.



17. Such a determination was made by the parties after a detailed review and consideration of the applicable costs. The determination of the parties is supported by the documentation provided to the PUC.
18. Under the applicable provision of the Agreement between the parties, GPA is bound to reimburse NRG for all excess costs which exceeded \$11,411,786.
19. As a matter of contract law, GPA is bound to reimburse NRG for the excess costs. The Supreme Court of Guam held in *Guam United Warehouse Corporation v. Dewitt Transportation Services of Guam, Inc.*, 2003 Guam 20 [15] that "...the modern trend of the law is to favor the enforcement of contracts and, if feasible, to carry out the intentions of the parties."
20. GPA's request that PUC authorize GPA to pay NRG's excess costs is supported by the contract between the parties and is reasonable.
21. GPA has worked out a repayment plan with NRG which includes the following elements:
  - Payment over 3 year period beginning January 2017
  - Scheduled quarterly payments
  - 6% interest rate applied annually
  - No interest if total amount is paid prior to January 2017.<sup>21</sup>
22. The funding source proposed by GPA for reimbursement is internal revenue CIP funds. As the PUC determined in GPA Docket 16-11 [GPA Petition for Approval of the Macheche CT Repairs], there is still a balance of funds for the FY2016 CIPs.<sup>22</sup>
23. At Counsel's request, GPA has submitted an updated Budget Balance for the FY 2016 Revenue CIP Funds, which is attached to the PUC Counsel Report as Exhibit "B". There are sufficient funds available to pay the reimbursement costs to NRG.<sup>23</sup>

### ORDERING PROVISIONS

After review of the record herein, including GPA's Petition for Approval of the the NRG Interconnection Costs Reimbursement Claim 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:

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<sup>21</sup> Guam Consolidated Commission on Utilities Resolution No. 2016-39, Relative to Approval of the Energy Interconnection Costs Reimbursement Claim, adopted July 26, 2016, at p. 2.

<sup>22</sup> See PUC Order, GPA Docket 16-11, dated July 28, 2016.

<sup>23</sup> See Exhibit "B" attached hereto.

1. The PUC hereby approves the NRG Interconnection Costs Reimbursement Claim as requested in GPA's Petition.
2. GPA is authorized to expend the amount of \$2,008,033.00 from the FY2016 Revenue CIP Fund to pay the NRG Claim.
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 §§12103(b) and 12125(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.


Order  
GPA Petition for Approval of the  
NRG Interconnection Costs  
GPA Docket 16-12  
August 25, 2016

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Dated this 25th day of August, 2016.

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Jeffrey C. Johnson  
Chairman




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Rowena E. Perez  
Commissioner.



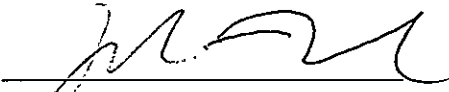
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Michael A. Pangelinan  
Commissioner



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Filomena M. Cantoria  
Commissioner



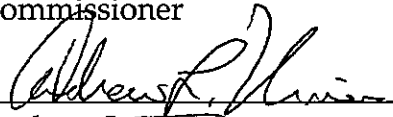
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Joseph M. McDonald  
Commissioner



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Peter Montinola  
Commissioner



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Andrew E. Niven  
Commissioner