

GUAM PUBLIC UTILITIES COMMISSION
REGULAR MEETING
December 5, 2019
Suite 202, GCIC BUILDING, HAGATNA



MINUTES

The Guam Public Utilities Commission [PUC] conducted a special meeting commencing at 6:35 p.m. on December 5, 2019, pursuant to due and lawful notice. Commissioners Johnson, Perez, Montinola, Pangelinan, McDonald, Cantoria, and Miller were in attendance. The following matters were considered at the meeting under the agenda included as *Attachment "A"* hereto.

1. Approval of Minutes

The Chairperson announced that the first item of business on the agenda was approval of the minutes of October 31, 2019. Upon motion duly made, seconded, and unanimously carried, the Commission approved the minutes subject to correction.

2. Port Authority of Guam

The Chairperson announced that the next item of business was Port Authority of Guam [PAG] Docket 20-02, Petition for Approval of PAG Insurance Coverage Contract for FY2020, ALJ Report, and Proposed Order. ALJ Alcantara stated that the Commission had previously approved the PAG's contract for property, liability, and auto insurance with AM Insurance for \$2.372 million in PAG Docket 18-01 in 2017. ALJ Alcantara stated that since 2017, the contract's insurance premium has grown to \$2.970 million which exceeded the amount the Commission previously approved. ALJ Alcantara stated that the 2018 PAG Bond Indentures require the PAG to maintain insurance on its assets and that AM Insurance believes that the contract's insurance premiums will rise again because the market is generally increasing insurance premiums for Guam insured assets because Guam is exposed to natural catastrophes and typhoon and storm activity has increased in this region in recent years and due to a decrease in insurance syndicates that are willing to insure marine risks. ALJ Alcantara stated that the PAG's Contract Review Protocol allows for a 10% cost contingency for the insurance contract which means that the PAG may incur no more than a \$1.186 million in contract costs per year or no more than \$13 million in total costs for the remainder of the contract's five-year term and that the Commission should review the additional costs now because it is estimated that the contract's costs will increase over these limits soon. ALJ Alcantara stated that his research indicates that the contract's increase in the insurance premiums are in line with increases in global market rates and he recommended that

the Commission authorize the \$2.970 million expense for FY2020 and that the PAG be required to return to the Commission when it receives notice of its insurance premium cost for FY2021. PAG Director Respicio stated that the PAG's prior administration believed that its insurance contract was a fixed price contract and AM Insurance took the position that it was not and that during the transition period between administrations last year, he was notified that if the contract's price increase was not paid the PAG's insurance coverage would lapse and that the PAG's board approved the price increase in January, 2019 to avoid the lapse in insurance coverage. PAG Director Respicio stated that subsequently, GSA's Chief Procurement Officer clarified that the contract states that every year the contract's premium rate would be subject to market conditions, and that later this year, AM Insurance advised him that the premium rate would likely increase by 15% for FY2020 and that he filed this petition to the Commission because at this rate, the contract would exceed the 10% price increase threshold before its five year term ended. Commissioner Montinola moved to approve the proposed order authorizing the contract's price increase, which motion was seconded by Commissioner Pangelinan. The motion carried unanimously. PAG Director Respicio inquired as to whether the order included the ratification of the PAG's Board Resolution approving the price increase. Commissioner Montinola made a motion to approve the ratification, which motion was seconded by Commissioner Pangelinan. The motion carried unanimously.

3. Guam Power Authority

The Chairperson announced that the next item of business was Guam Power Authority [GPA] Docket No. 20-01, Petition to Approve Consent Decree with U.S. Environmental Protection Agency [USEPA], ALJ Report, and Proposed Order. ALJ Horecky stated that the USEPA alleged that GPA's Cabras Units and Piti Units 8 and 9 had violated various environmental laws and GPA and the USEPA have been in negotiations to resolve these violations and these negotiations have resulted in the Consent Decree. ALJ Horecky stated that the Consent Decree requires GPA to pay a civil penalty of \$400,000 and to construct a 196 megawatt power plant that burns ultra-low sulfur diesel fuel [ULSD] and that is capable of burning liquified natural gas, and the power plant project also requires GPA to refurbish its fuel storage tanks and to construct a ULSD pipeline. ALJ Horecky stated that the Commission has previously approved the power plant, fuel storage, and ULSD pipeline projects. ALJ Horecky stated that the Consent Decree also requires GPA to convert its Cabras Units and Piti Units 8 and 9 to ULSD, and to permanently close Cabras Units 1 and 2 on October 31, 2022, and to permanently close Cabras Units 3 and 4, and Tanguisson Units 1 and 2 thirty days after entering into the Consent Decree. ALJ Horecky stated that the Consent Decree requires GPA to build 100 megawatts of solar power in addition to its existing 25 megawatts of solar power and that the Commission has already approved these projects. ALJ Horecky stated that the Consent Decree also requires GPA to construct and operate a new energy storage

system. ALJ Horecky stated that the CCU has approved the Consent Decree subject to the Commission's final approval and he recommended that the Commission approve the Consent Decree despite the risks of further penalties if GPA fails to comply with its terms, especially the timelines to complete the new power plant, because the environmental litigation would be too risky and expensive, and it would improve Guam's air quality and renewable energy, and because the \$400,000 penalty is very low. GPA GM Benavente stated that the USEPA has been very reasonable considering that they could have demanded that many of the projects be implemented in a shorter timeline and that GPA is working to complete the remaining Consent Decree projects on time to avoid further penalties.

A discussion then ensued between GPA GM Benavente, the Chairperson, and Commissioner Montinola regarding the status of the KEPCO project and whether GPA has been working with Guam Public Works regarding their concerns wherein GPA GM Benavente stated that KEPCO's contractor, Hyundai Engineering, to work with Public Works to develop the movement plan. They also discussed the status of the new energy storage system wherein GPA GM Benavente stated that the new energy storage facility would have 300 megawatts of storage capacity and would have a 40 megawatt output for 7.5 hours or a 30 megawatt output for 10 hours and that it would be constructed in Piti and he also stated that GPA was planning on filing a reduction to the LEAC rate and that filing would include \$3 million in rebates which GPA will make up with its growth of 400-500 new customers every year. Commissioner Pangelinan stated that he had recuse himself from this docket due to a conflict of interest. Commissioner McDonald inquired what was the life span of the solar farm and GPA GM Benavente stated it was 20 years and that LG, the contractor for this project, will operate and maintain it for all of those 20 years, and that the contract will increase by 1% each year. A discussion ensued between the Commissioners and GPA GM Benavente regarding the integration of GPA and U.S. Navy power systems wherein GPA GM Benavente stated that GPA would likely take over distribution at the new U.S. Marine Base and that he believed that there would be many future opportunities to improve the systems and reduce costs. Commissioner Montinola inquired whether the Judge could increase the \$400,000 penalty and GPA Legal Counsel Botha stated that GPA would only have to pay the \$400,000 after it is approved by the Judge and stated that GPA could be subject to future fines and penalties if it violates the terms of the Consent Decree. A discussion ensued between the Commissioners and GPA GM Benavente regarding placing power lines underground in high density population areas and GPA GM Benavente stated that project might be 10 to 20 years from now and that currently, 20% of GPA's transmission lines are underground and that GPA is currently focused on training additional linemen apprentices, completing its Harmon Loop project which would replace the 115 kv line that runs across Nimitz Hill, and building a new transmission line from Dandan, to Talofof, to Barrigada and Hagatna. A discussion ensued between the Commissioners and GPA GM Benavente regarding GPA's plans for the Cabras 1 and 2 workforce after those plants closed wherein GPA GM Benavente stated that about 40% of them are

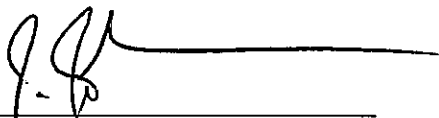
eligible for retirement and that some would likely be hired by the new power plant and the remainder would have to be retrained and reassigned, and that GPA currently has 455 employees but expects it will only need 400 employees after the Consent Decree projects are completed. Commissioner Montinola made a motion to approve the order authorizing GPA to enter into the Consent Decree, which motion was seconded by Commissioner Miller. The motion carried unanimously.

4. Administrative Matters.

The Chairperson announced that the next item of business was PUC Resolution 20-01 commending Dr. Filomina Cantoria for her distinguished and exemplary service as a PUC Commissioner. ALJ Horecky read the resolution stated that Dr. Cantoria was appointed as a PUC Commissioner on March 24, 1999 and completed three terms with six years for each term, and that she ended her third and final term as a PUC Commissioner on October 31, 2019. ALJ Horecky stated that Dr. Cantoria served for twenty years as a PUC Commissioner in the position that requires certification as an accountant and that Dr. Cantoria's contributions were instrumental in developing the regulatory practices, protocols, and rules and regulations of the Commission in carrying out its supervisory duties. ALJ Horecky stated that Dr. Cantoria was diligent in carrying out all of her PUC duties and responsibilities despite her demanding full-time employment as a tenured full professor of Accounting with the University of Guam's School of Business and Public Administration and that the Commission will miss her expertise and thanks her for her many years of dedicated service to the Commission and the People of Guam. Commissioner Perez moved to approve the resolution, which motion was seconded by Commissioners Montinola. The motion carried unanimously.

A discussion ensued between the Commissioners wherein Commissioner Cantoria said her goodbyes and the rest of the Commissioner commended her for her service and wished her well. The Commission then presented Dr. Cantoria with the resolution and a picture taking session ensued.

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



Jeffrey Q. Johnson
Chairperson

ATTACHMENT A
THE GUAM PUBLIC UTILITIES COMMISSION
NOTICE OF PUBLIC MEETING

NOTICE IS HEREBY GIVEN that the Guam Public Utilities Commission [PUC] will conduct a special business meeting, commencing at 6:30 p.m. on December 5, 2019, at Suite 202 GCIC Building, 414 W. Soledad Ave., Hagatna.

The following business will be transacted:

Agenda

- 1. Approval of Minutes of October 31, 2019**
- 2. Port Authority of Guam**
 - **PAG Docket 20-02, Petition for PUC Approval of Contract for PAG Insurance Coverage for FY2020, ALJ Report, and Proposed Order**
- 3. Guam Power Authority**
 - **GPA Docket 20-01, Petition for PUC Approval of Consent Decree with USEPA, ALJ Report, and Proposed Order**
- 4. Administrative Matters**
 - **PUC Resolution 20-01, Commending Dr. Filomena M. Cantoria for her distinguished and exemplary Service as a Commissioner of the Guam Public Utilities Commission**
- 5. Other Business**

Further information about the meeting may be obtained from the PUC's Administrator Lou Palomo at 472-1907. Those persons who require special accommodations, auxiliary aids, or services to attend the meeting should also contact Ms. Palomo.

This Notice is paid for by the Guam Public Utilities Commission

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN RE: PETITION FOR PUC APPROVAL)
OF CONTRACT FOR PAG)
INSURANCE COVERAGE FOR)
FY2020)
PAG DOCKET 20-02)
ORDER)

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the "PUC") pursuant to a November 13, 2019 request filed by the Jose D. Leon Guerrero Commercial Port, Port Authority of Guam ("PAG"), seeking PUC guidance regarding its contract for insurance with AM Insurance ("AM").

On December 2, 2019, the Administrative Law Judge of the PUC (the "ALJ") assigned to this matter filed an ALJ Report that included his findings and recommendations based on the administrative record before the PUC. The ALJ found the following.

DETERMINATIONS

Back in 2017, the General Services Agency of the Government of Guam ("GSA") publicly announced Invitation for Bid No. GSA/PAG 020-17 in the Pacific Daily News, which sought sealed bids for property insurance, liability insurance, directors and officers liability insurance, automobile insurance, and crime insurance for PAG.

Thereafter, GSA transmitted a copy of the sole submission by AM to PAG's Risk Consultant for its review. PAG then selected bids for the list of coverage for five-year terms.

1 Petition for Review and Approval for Bid Award for Insurance Coverage ("Petition on Insurance Bid Award"), PAG Docket 18-01, p. 1 (Oct. 12, 2017).

2 Invitation for Bid No. GSA/PAG 020-17, p. 36.

3 Petition on Insurance Bid Award, p. 1.

On October 25, 2017, PAG's Board of Directors issued Resolution No. 2017-21, which approved GSA's award to AM; and which at the time, had an annual premium cost of \$2,372,181.47.

In PAG Docket 18-01, the PUC approved PAG's insurance contract with AM for coverage indicated in the petition filed in that docket.

1. PAG's Request for Guidance

In its current Petition, PAG requested that the PUC provide guidance related to PAG's contract for insurance with AM. While seeking a request for guidance, it was clear that PAG sought PUC approval of any increases above the PUC-approved costs related to PAG's purchase of such insurance.

In particular, PAG sought PUC's guidance because the cost of its insurance premium had gradually risen since the contract for insurance was first approved by the PUC in 2017. Back in fiscal year 2018, the premium was at \$2,389,940.16. For fiscal year 2020, PAG requests approval of a premium of \$2,970,043.48. The bulk of the increase concerns coverage of up to \$55 million in property insurance at a new cost of \$2,587,076.00. PAG further indicated that it sought PUC guidance "since there is a possibility that the total aggregate amount for the 5-year insurance will exceed the review threshold plus the annual cost is not fixed."⁴

In support of its request, PAG attached a memo from its Controller to the General Manager requesting approval of payment for PAG's insurance premium for fiscal year 2020. In this memo, the Controller explained that PAG's premium costs over the past 12 years "have increased and decreased based on 'market conditions' and coverage of Port assets." The Controller further indicated that the fiscal year 2020 premium was anticipated and was therefore

⁴ Petition for PUC Approval of Contract for PAG Insurance Coverage for FY2020, PAG Docket 20-02, p. 1 (Nov. 13, 2019) (the "Petition").

added to the budget approved by PAG's Board of Directors back in August. The Controller also indicated that PAG's 2018 bond indenture requires that the Port maintain insurance on its assets.

Also submitted for PUC review was a schedule of PAG's annual cost of insurance from fiscal year 2008 through fiscal year 2019. As illustrated in this schedule, PAG's insurance cost \$2.42 million in fiscal year 2008; then dipped to \$1.84 million in fiscal year 2011; then increased to \$2.27 million in fiscal year 2013 with the inclusion of the Port of Los Angeles cranes; then dipped to \$2.14 million in fiscal year 2014; then increased to \$2.44 million in fiscal year 2017; and increased again to \$2.59 million in fiscal year 2019.

PAG also provided an October 24, 2019 email from Tricia Granillo, an agent for AM, that summarizes the reasons for the increase in cost. In particular, the email noted that based on discussions with AM's "London broker," the market was "definitely hardening" and that "we should prepare for rate increase for all large clients who require reinsurance"; and that, in addition to an increase in rates, there will be "reduced capacity and more restrictive coverages in property insurance, particularly because Guam is known as a catastrophe exposed area and the typhoon and windstorm activity" has become "pretty active again recently."

The email further noted that the increase in rates is also attributable to the limited market in Lloyd's willing to insure marine risks, and that Lloyd's syndicates "have either dropped marine underwriting altogether or at least pulled out of one or more marine lines."

The email noted that "the hardening situation started at the last quarter of 2018" and that locally, in 2019, "all of our major accounts on Guam/CNMI are experiencing double digit rate increases." The email referred to a 40% increase in the property and aviation premium for Guam's airport authority, and a 200% increase for the CNMI port authority owing to its typhoon losses.

PAG also included the relevant invoices for the insurance coverage for fiscal year 2020.

3. PAG's Contract Review Protocol

Pursuant to 12 G.C.A. §12105, PAG may not enter into any contractual agreements or obligations which could increase rates and charges without the PUC's express approval. Additionally, pursuant to PAG's current Contract Review Protocol, "[a]ll internally financed contracts utilizing O&M funds in excess of \$1,000,000" and "[a]ll capital items by account group utilizing O&M funds, which in any year exceed \$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."⁵

Further, with regard to multi-year contract with fixed terms and variable annual costs, "PAG shall seek PUC approval of the contract if the aggregate cost estimate for the entire term of the procurement exceeds its review threshold. On each anniversary date during the term of the procurement, PAG shall file a cost estimate for the coming year of the procurement. PAG shall seek PUC approval in the event a procurement subject to this Section should exceed 120% of the aggregate cost initially approved by the PUC."⁶

In addition, under PAG's Contract Review Protocol, "PAG shall not incur expenses for PUC approved internally financed contracts and obligations in excess of 10% over the amount authorized by the Commission without prior PUC approval. In the event that PAG estimates that it will exceed the PUC approved level of expenditures by more than 10%, it shall

⁵ Contract Review Protocol, PAG Docket 09-01, p. 1 (June 20, 2011).

⁶ *Id.* at 3.

submit to the PUC the revised estimate and full explanation of all additional costs. PAG shall not increase the amount of any externally financed obligation without prior PUC approval.”⁷

When the PUC first examined the contract, it based its initial estimate on the original premium of \$2,372,181.47. Pursuant to the Contract Review Protocol, PAG is afforded a cost contingency of 10% on the contract, which means that PAG may incur additional costs up to \$1,186,090.73, or no more than \$13,046,998.09 over five years. In addition, since this contract is a multi-year contracts with fixed terms and variable annual costs, “PAG shall seek PUC approval in the event a procurement subject to this Section should exceed 120% of the aggregate cost initially approved by the PUC”; and regardless, PAG should file a cost estimate for the coming year of the procurement each anniversary date during the term of the procurement. Since PAG will soon reach the cost contingency limit, any additional cost on the contract should be reviewed by the PUC.

4. The Global and Local Insurance Markets

Indeed, as indicated by the brokers mentioned herein, the market appears to be “hardening.” According to a November 27, 2019 online article published by PERE, a leading publication on private real estate markets (found at <https://www.perenews.com/insurers-rethink-property-coverage-as-seas-rise/>), “insurance companies are now reevaluating premium prices and the coverage they offer admit growing instances of climate disasters globally,” citing as an example the flooding in the city of Venice, Italy, as well as significant flood events in the city of Houston, Texas.

In the article, a senior head of a Chicago-based real estate firm stated that “[j]ust because you have insurance today does not mean insurance is going to be available, or at the

⁷ *Id.* at 4.

same rate, as there are more regular instances of flooding or intense storms.” The article posits that “[c]limate change-driven weather events have lead several insurance companies to start re-thinking the coverage and prices offered to landlords” and that insurers have already pulled out “of provisions of certain types of insurance in certain locations, reducing the file of possible coverage.”

The article further noted that “[i]nsurance costs are also on the rise”; indicating that “[g]lobal property insurance pricing increased by more than 10 percent during the third quarter of 2019, up from 3.2 percent property pricing noted in the same period last year,” citing a report from a global insurance brokerage and risk management firm, Marsh.

According to this report, property insurance has been increasing steadily since last year. The report further indicates that “[t]he financial burden from insurance coverage will be felt by owners of coastal property in particular”; that “the difficulty is going to be keeping the same rate of insurance” The report added that “coastal locations-waterways are going to be one of those properties that are going to have a deeper dive into what actuaries are going to be looking at and what rate companies are going to want so they can remain profitable when they have to pay for catastrophes.”

Another online article published by the Insurance Journal on November 12, 2019, indicated that, according to a recent report from broker USI Insurance Services, “[o]ngoing rate increases and reductions in capacity are taking shape in most property/casualty commercial lines in the fourth—and for some, will continue into the new year.”

According to USI Insurance Services, 20 lines, including all property lines, general liability, umbrella and cyber, had indications of higher rate changes for the fourth quarter than at midyear 2019, as indicated in the following graphic.

USI Rate Forecast by Product Line

Product Line	Midyear Update	Q4 2019-2020
Property Non-Catastrophic <i>Good Loss History</i>	Up 10%	Up 10% to 20%
CAT Property <i>Minimal Loss History</i>	Up 10% to 40%	Up 25% to 40% +
CAT or Non-CAT Property <i>Poor Loss History</i>	Up 10% to 40% +	Up 30% to 60% +
Primary General and Products Liability	Flat to up 15%	Up 5% to 10%
Primary Automobile Liability <i>Fleet Lower than 200/Good Loss History</i>	Up 5% to 10% +	Up 10% to 15%
Primary Automobile Liability <i>Fleet Lower than 200/Poor Loss History</i>	Up 15% +	Up 15% to 25%
Umbrella & Excess Liability <i>(Middle Market Buyers)</i>	Up 5% to 20% Layers possibly reduced	Up 10% to 25% (Factors in contraction of limits)
Umbrella & Excess Liability <i>(Risk Management Buyers)</i>	Up 5% to 20% Layers possibly reduced	Up 15% to 30% + (Factors in contraction of limits)
Directors and Officers Public Company	Up 10% to 30% +	Up 25% to 50% 100% + if "troubled"
Private Company Management Liability	Up 5% to 10%	Up 5% to 20% 20% is claim dependent
Crime	Down 5% to up 5%	Up 5% to 25% Due to Social Engineering
Network Security & Privacy (Cyber Insurance)	Flat to 5%	Flat to 10%

SOURCE: USI COMMERCIAL PROPERTY & CASUALTY MARKET OUTLOOK - Q4 2020

In addition, the article noted that “[t]hree market leaders, AIG, FM Global and Lloyd’s of London are highly scrutinizing their North American property business impacting capacity, rates, and coverage.”

And the local market appeared to feel this impact. In a February 4, 2019 article published in the Guam Business Magazine (found at <http://www.guambusinessmagazine.com/assurance-in-the-face-of-disaster/>), Paul M. Calvo for Calvo’s Insurance Underwriters Inc. provided the following analysis:

[Guam's] property insurance industry is heavily dependent on reinsurance from both the United States and international sources to spread the risk for the Mariana Islands' high catastrophe exposure to both typhoons and earthquakes.

The financially smaller Guam domestic insurance companies need reinsurance to protect their long term sustainability as even one major typhoon could wipe them out if not for the hedge of reinsurance. Even the financially large insurance companies on Guam cede out portions of their high-valued risks to reinsurance groups to spread out the risk because of Guam's history as being in the "typhoon alley" where storms always brew to our southeast and strengthen as they move toward our area of the northwestern Pacific.

The issue of the rising catastrophe reinsurance cost to Guam insurers is always a concern if more and more devastating high claim losses accumulate over a short period of time. The worst case scenario arises should reinsurers elect to withdraw from providing reinsurance capacity to Guam and the Northern Mariana Islands and the smaller remaining reinsurance market requires higher premiums to accept the local risk.

It would seem, therefore, as predicted by Mr. Calvo, that large claim losses in Saipan have had an "effect on the property insurers and their own reinsurers' appetite to continue writing business at least at the same terms and pricing as in the past." In this instance, the purchase of insurance coverage is not a luxury, but a necessity that protects the ratepayers' interest. And as a consequence, Guam agencies and systems are limited to the small market that accepts the local risk.

CONCLUSION

Based on the record before the Commission, the ALJ found that insurance of the Port's assets is instrumental in its operations as such insurance safeguards its assets from all risks, including natural disasters or catastrophic events, as well as, coverage for any liabilities resulting from PAG's operations.

The ALJ further found that this Commission has historically highlighted the importance of maintaining insurance since such insurance benefits ratepayers with regard to the protection of assets by assisting with recovery efforts after natural disasters or other calamities.

Additionally, the ALJ found that the market trend for insurance rates appears within the range indicated by the global market forecasts. In addition, the premium itself, while 15% higher than the prior fiscal year, remains in the range of PAG's purchase of insurance since fiscal year 2008.

Moreover, the ALJ further found that PAG is obligated to carry such insurance coverage in order to comply with its bond obligations as indicated in its 2018 bond indenture.

Accordingly, based on the record before this Commission in the instant docket, and for the other reasons set forth herein, the ALJ recommended that the PUC authorize the \$2,970,043.48 cost for insurance with AM for fiscal year 2020, and for coverage indicated in the invoices submitted to the PUC; and ratify PAG's payment to AM for such insurance coverage. The ALJ further recommended that PAG should be required to return to the PUC as soon as it receives notice of the total premium cost for fiscal year 2021. The Commission hereby adopts the findings made in the December 2, 2019 ALJ Report, and therefore, issues the following:

ORDERING PROVISIONS

Upon careful consideration of the record herein, 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. PAG's payment to AM Insurance for insurance coverage for FY2020 is RATIFIED at a cost of \$2,970,043.48.

2. As soon as it receives notice of the total premium cost for fiscal year 2021, PAG shall submit copies of such invoices to the PUC for the PUC's review.

3. PAG is ordered to pay the PUC's regulatory fees and expenses, including and without limitation, consulting and counsel fees, and the fees and expenses associated with this matter. Assessment of the PUC's regulatory fees and expenses is authorized pursuant to 12 G.C.A. §§ 12103(b) and 12125(b), and Rule 40 of the Rules of Practice and Procedure before the PUC.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

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SO ORDERED this 5th day of December, 2019.



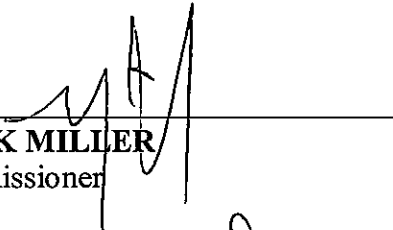
JEFFREY C. JOHNSON
Chairman



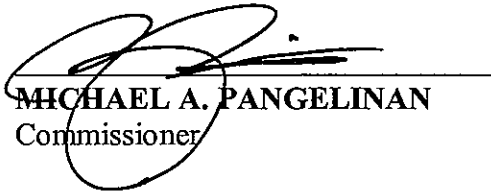
ROWENA PEREZ CAMACHO
Commissioner



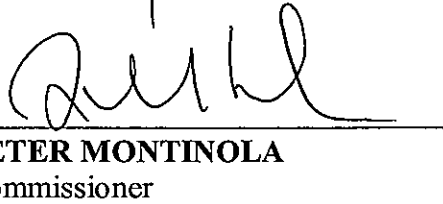
JOSEPH M. MCDONALD
Commissioner



MARK MILLER
Commissioner



MICHAEL A. PANGELINAN
Commissioner



PETER MONTINOLA
Commissioner

DORIS FLORES BROOKS
Commissioner

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BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN THE MATTER OF:) GPA Docket 20-01
)
The Application of the Guam Power)
Authority to Approve the Consent Decree) **ORDER**
with the United States Environmental)
Protection Agency (EPA).)
_____)

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission [“PUC”] upon the Guam Power Authority [“GPA”] Petition for PUC Approval of the Consent Decree with the United States Environmental Protection Agency [“EPA”].¹

BACKGROUND

2. Attached to GPA’s Petition is a Consent Decree, which GPA proposes to enter into with the United States Environmental Protection Agency [USEPA] and the U.S. Department of Justice [DOJ].
3. The need for GPA to enter into a Consent Decree with USEPA and DOJ arises out of certain alleged violations by GPA of the EPA National Emission Standards for Hazardous Air Pollutants (NESHAP) standards.²
4. USEPA alleges that Cabras Units No. 1 & 2 have violated the MATS NESHAP standards for oil-fired electric steam generating units since April 2015; it further alleges that GPA has been in violation of the RICE NESHAP standards for stationary reciprocating internal combustion engines at Cabras Units No. 3 & 4 from May 2013 to September 2015, and Piti Units No. 8 & 9 since May 2013.³
5. The “MATS” NESHAP are the Mercury and Air Toxics Standard and apply to oil-fired electric steam generating units such as Cabras Units 1 & 2. The MATS are a set of air pollution limits for toxic air pollutants such as mercury, arsenic and

¹ GPA Petition to Approve the Consent Decree with the United States Environmental Protection Agency (EPA), GPA Docket 20-01, filed November 12, 2019.

² Id. at p. 1.

³ Id. at p. 1.

metals. The RICE NESHAP imposes limitations upon emissions of toxic air pollutants including carbon monoxide.⁴

6. The purpose of the Consent Decree is to resolve all outstanding issues concerning alleged violations by GPA of the NESHAP standards. To resolve EPA's alleged violations, the Consent Decree/Settlement would require the following:
 - (a) GPA's payment of a civil penalty of \$400,000;
 - (b) Construction and operation of a new 180-MW power plant burning ultra-low sulfur diesel (ULSD), and also capable of burning liquified natural gas;
 - (c) GPA's fuel delivery system will be converted from residual fuel oil to ULSD, which will include refurbishing the main fuel storage tanks and constructing a new ULSD pipeline;
 - (d) Piti units 8 and 9 will be repowered with ULSD by December 31, 2021;
 - (e) Cabras units 1 and 2 will be repowered with low-sulfur residual fuel oil, then permanently shut down by October 31, 2022;
 - (f) Cabras units 3 and 4 and Tanguisson units 1 and 2 will be permanently shut down within 30 days of the settlement;
 - (g) GPA will build 100 MW of solar power (in addition to the 25 MW of solar already installed); and
 - (h) GPA will install and operate a new energy storage system.⁵
7. Attached to the ALJ Report as Exhibit "1" is the Summary of Proposed Settlement Agreement prepared by GPA in October 2019.
8. Attached to the ALJ Report as Exhibit "2" is the Guam Power Authority Presentation to the Guam Public Utilities Commission, dated October 2019. This presentation was given to some of the PUC Commissioners in October 2019, by Matt Morrison, an environmental litigation specialist from the Pillsbury Law Firm. Mr. Morrison has been a part of the GPA Legal Team which negotiated the Consent Decree proposal. The Presentation explains the background of the Consent Decree and its key Settlement terms, and recommends approval of the Consent Decree.⁶

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9. In Resolution No. 2019-014, the Guam Consolidated Commission on Utilities granted GPA's request for approval of the Consent Decree with the USEPA and

⁴ Guam Power Authority Presentation to the Guam Public Utilities Commission, October 2019, at pgs. 3 – 5.

⁵ GPA Summary of Proposed Settlement Agreement between Guam Power Authority and the U.S. Environmental Protection Agency to Resolve Clean Air Act Violations alleged at the Cabras and Piti Units, prepared for the Consolidated Commission on Utilities, October 2019.

⁶ Exhibit "2" attached hereto.

DOJ.⁷ The CCU found that “the proposed settlement will provide a fair and reasonable resolution of the violations alleged by EPA, environmental benefits, and needed enhancements to Guam’s energy security and reliability.”⁸

10. The CCU further determined that “the settlement will improve air quality by requiring that GPA retire some older units upon competition of the new power plant and convert all remaining units to ULSD, which will reduce emissions of pollutants such as sulfur dioxide...”⁹ Finally, the CCU resolved that “it is in the best interest of the ratepayers of Guam to proceed with the proposed Consent Decree with EPA and DOJ.”¹⁰
11. On October 31, 2019, the PUC approved GPA’s award of an Energy Conversion Agreement to Korean Electric Power Company (KEPCO) to build, own, operate and transfer a 198MW fossil fuel plant.¹¹ At its meeting on the New Power Plant proposal, the PUC heard a presentation by Attorney Morrison which indicated that approval of the New Power Plant was necessary for the adoption of the Consent Decree. The ALJ also suggested that if the PUC did not approve the New Power Plant, there would not be a Consent Decree Settlement and the result would be the filing of litigation by the USEPA.
12. In approving the ECA with KEPCO, the PUC approved the essential element of the Consent Decree: the construction and operation of a new 180MW power plant burning ultra-low sulfur diesel (ULSD) by October 31, 2022.¹²
13. In its Order, the PUC also found that: “if a Consent Decree and Compliance Plan is not implemented soon, GPA will face significant penalties from USEPA. For non-compliance with USEPA regulations, GPA currently faces \$352,200,000 in penalties. The plan that GPA has proposed for the new 198MW combined cycle power plant will comply with USEPA regulations and appears to be satisfactory to USEPA.”¹³
14. On November 5, 2019, GPA and KEPCO executed the Energy Conversion Agreement.

⁷ CCU Resolution No. 2019-014, Relative to Approving the Consent Decree with the United States Environmental Protection Agency adopted October 29, 2019, at p.2.

⁸ Id., at p. 2.

⁹ Id.

¹⁰ Id., at p. 3.

¹¹ PUC Order, GPA Docket 19-13, dated October 31, 2019, at p. 19.

¹² GPA Petition to Approve the Consent Decree with the United States Environmental Protection Agency (EPA), GPA Docket 20-01, filed November 12, 2019, at p. 1.

¹³ PUC Order, GPA Docket 19-13, dated October 31, 2019, at p. 14.

15. The ALJ submitted his Report in this Docket dated December 2, 2019.

DETERMINATIONS

16. Approval of the Consent Decree is in the best interest of GPA and the ratepayers of Guam for a number of reasons. Such approval of the Consent Decree will resolve the violations alleged by USEPA, avoid further protracted litigation, and bring finality to the proceeding.
17. Prior to finalization of the Consent Decree, USEPA and DOJ will file a Civil Complaint against GPA. Assuming that GPA executes the Consent Decree, GPA will not be required to file an Answer to the Civil Complaint. However, If GPA does not enter into the Consent Decree/settlement concerning the violations, the Department of Justice and the USEPA will proceed with the litigation against GPA.
18. If GPA does not agree to the \$400,000 penalty and the other provisions of the Consent Decree, it faces the risk of a far higher penalty award against it. According to Attorney Morrison, the total maximum amount that DOJ could seek is an excess of \$600 million, which is beyond GPA's means.¹⁴
19. Litigation will impose substantial risks on GPA. A review of the draft Complaint prepared by USEPA and DOJ suggest a distinct possibility that GPA could be found by the District Court to have violated the MAT NESHAP and the RICE NESHAP. In the Complaint prepared by the Department of Justice, there are specific allegations that performance tests conducted by GPA prove that there were NESHAP violations. Violations include excessive omissions of CO, filterable particulate matter, and HAP metals. The evidence of violations offered are tests conducted by GPA of the emissions levels.¹⁵ It would not be prudent for GPA to risk a litigation outcome that could result in a far more excessive penalty.
20. GPA's Attorney Morrison estimates that a "best case scenario" in litigation would be a penalty award against GPA in excess of \$750,000.¹⁶
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21. In a case involving the Virgin Islands, the United States recovered \$1.3 million for RICE NESHAP Violations regarding two units. That settlement did not include claims for MATS Violations. In the Virgin Islands case there were only two units

¹⁴ Guam Power Authority Presentation to the Guam Public Utilities Commission, October 2019, at p. 17.

¹⁵ Draft Complaint of the United States versus GPA, submitted to the ALJ Fred Horecky by GPA Counsel Graham Botha on October 14, 2019.

¹⁶ Guam Power Authority Presentation to the Guam Public Utilities Commission, October 2019, at p. 17.

alleged to be in violation, fewer than the number of units alleged to be in violation by GPA.¹⁷

22. The Consent Decree/settlement, with various improvements to the GPA power system, will improve Guam's air quality and significantly reduce present harmful omissions and greenhouse gases. Operation of the new power plant will substantially reduce almost all levels of pollutants, including nitrogen oxides, sulfur dioxide, and particulate matter.¹⁸ The new power plant, utilizing ULSD, should reduce greenhouse gases by 36%.¹⁹
23. When the New Power Plant is in operation, GPA's annual fuel consumption will be reduced by about 35 million gallons annually.²⁰ Furthermore, the new plant will use tertiary-treated wastewater for cooling, substantially reducing demand on the aquafer.²¹
24. The proposed resolution in the Consent Decree will also increase Guam's energy security by allowing for the expansion of GPA's renewable energy portfolio with the construction of the new 198MW power plant and provide increased reliability with the retirement of the Cabras 1 and 2 units. The new power plant will complement the additional proposed solar power, providing the necessary support for the intermittent production of renewable energy during the day with the capacity to serve peak loads at night.²²
25. A potential downside and risk to the Consent Decree is that it imposes very strict deadlines on GPA, and imposes serious financial penalties upon GPA for violating the deadlines in the Consent Decree. Thus, there is certainly a risk that GPA will be unable to meet deadlines agreed to, and that financial penalties could be imposed upon GPA.
26. However, GPA has little option but to agree to the deadlines as set forth in the Consent Decree. All such Decrees ordinarily impose compliance deadlines upon the party alleged to be in violation of law. GPA has sought to mitigate the risk that the

¹⁷ Id.

¹⁸ GPA PRESENTATION ON NEW COMBINED CYCLE POWER PLANT, GPA Docket 19-13, dated October 1, 2019, at p. 24.

¹⁹ Attachment 9 to ALJ Report, GPA Docket 19-13, GPA PRESENTATION ON NEW COMBINED CYCLE POWER PLANT, dated October 3, 2019, at p. 25.

²⁰ Id., at 32.

²¹ Id.

²² CCU Resolution No. 2019-014, Relative to Approving the Consent Decree with the United States Environmental Protection Agency adopted October 29, 2019, at p.2.

New Power Plant will not be constructed on time by imposing the same penalties for delay upon KEPCO as are imposed upon GPA in the Consent Decree.

27. A positive aspect of the Consent Decree is that some of GPA's substantive agreements as to plant and system improvements had already been determined by GPA to be advantageous and desirable for undertaking. These include the New Power Plant, the 100MW of solar plant, closure of the Cabras 3 & 4 and Tanguisson plants, and the conversion of PITI 8 & 9 to ULSD.
28. The GPA Legal Team did an outstanding job in negotiating the Consent Decree. It successfully negotiated an agreement to pay a lesser penalty in recognition of GPA's inability to pay, and agreements concerning construction of plants and conversion of other plants that GPA had previously determined to undertake on its own.

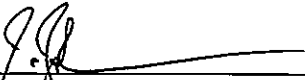
ORDERING PROVISIONS

Upon consideration of the record herein, the Petition of GPA for Approval of the Consent Decree between GPA and the United States Environmental Protection Agency/ United States Department of Justice, the Consent Decree, the Presentations of GPA and its Legal Team, and the 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** that:


1. The Consent Decree between GPA and the United States Environmental Protection Agency/ United States Department of Justice is approved. GPA is authorized to enter into the Consent Decree.
2. GPA shall file a copy of the final executed Consent Decree with the PUC.
3. GPA shall copy the PUC with all reports, notices, or other documents which it files with the parties under the Consent Decree.
4. 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
Approve the Consent Decree with EPA
GPA Docket 20-01
December 5, 2019

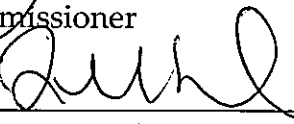
Dated this 5th day of December, 2019.



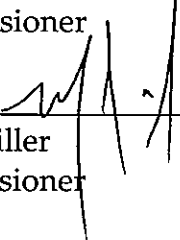
Jeffrey C. Johnson
Chairman



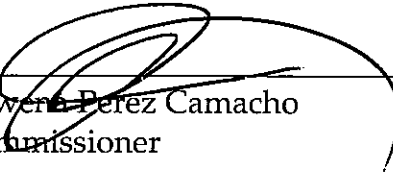
Joseph M. McDonald
Commissioner



Peter Montinola
Commissioner



Mark Miller
Commissioner



Rowena Perez Camacho
Commissioner

Michael A. Pangelinan
Commissioner

Doris Flores Brooks
Commissioner

**PUBLIC UTILITIES COMMISSION
OF GUAM**



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Chairman

Rowena E. Perez
Vice Chairwoman

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Lourdes R. Palomo
Administrator

Frederick J. Horecky
Chief Administrative Law Judge

Joephet R. Alcantara
Administrative Law Judge

Anthony R. Camacho
Legal Counsel

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

RESOLUTION NO. 20-01

**COMMENDING DR. FILOMENA M. CANTORIA FOR
HER DISTINGUISHED AND EXEMPLARY SERVICE AS A COMMISSIONER OF
THE GUAM PUBLIC UTILITIES COMMISSION**

WHEREAS, Filomena M. Cantoria [affectionately known as "Melba"] was first appointed to serve as a member of the Guam Public Utilities Commission ["PUC"] on March 24, 1999 for a six-year term; and

WHEREAS, Melba completed her first term and was reappointed to a second six-year term on August 22, 2006; and

WHEREAS, Melba completed her second term as a Commissioner of the PUC and was reappointed to a third six-year term on September 25, 2013; and

WHEREAS, Melba completed her third term as a Commissioner of the PUC on October 31, 2019; and

~~**WHEREAS**, Melba has faithfully served the PUC for 20 years, occupying the Commissioner position which requires certification as a public accountant; and~~

WHEREAS, Melba has regularly attended meetings of the PUC and diligently asked questions concerning the operations and activities of the regulated utilities; and

WHEREAS, Melba has demonstrated discernment and an inquiring mind in addressing rate making and other decision-making activities of the utilities; and

WHEREAS, during the formative years of the PUC, Melba’s participation and contributions were instrumental in developing the regulatory practices, protocols, and rules and regulations of the PUC in carrying out its supervisory duties; and

WHEREAS, Melba has brought her extensive background in economic principles to her work with the PUC, and guided the Commission in issuing appropriate rate making decisions concerning the Guam Power Authority, the Guam Waterworks Authority, and other regulated entities; and

WHEREAS, Melba has continually sought to enhance her understanding of regulatory theory by attending utilities conferences during her tenure with the PUC, including the Pacific Telecommunications Conference in Honolulu, conferences involving Power Purchase Agreements, Utility Environmental Impacts, and Regulation of Power Companies; and

WHEREAS, in February 2019 Melba attended a conference on Energy, Utility, and Environment in San Diego, California, and was a featured conference speaker, giving a presentation on Regulatory Challenges in Guam’s Power Generation and the low emissions produced by the New Power Plant; and

WHEREAS, Melba has been diligent in all of her duties and responsibilities with the PUC, notwithstanding her obligations as a tenured full Professor of Accounting with the School of Business and Public Administration at the University of Guam and as Coordinator of the Professional MBA program; and

WHEREAS, Melba has worked conscientiously over the years to ensure that rates for the utilities are “just and reasonable”; and

WHEREAS, Melba is now one of the two longest serving members of the Commission in its entire history; and

WHEREAS, the Commission and its Staff will sorely miss the expertise and exemplary dedication that Melba Cantoria has brought to her duties with the Commission and is extremely thankful for her long and faithful dedication to her duties as Commissioner over the many years.

NOW, THEREFORE, BE IT

RESOLVED, that the Guam Public Utilities Commission hereby recognizes the great and substantial contributions that Dr. Filomena M. Cantoria has made as a Commissioner of the PUC over the past 20 years.


RESOLVED, that Dr. Cantoria is recognized by the Commission and staff, the regulated utilities, and the people of Guam as a fair and impartial decision maker as Commissioner.

RESOLVED, that the work and dedication of Dr. Cantoria in assisting with the development of the regulatory practices, protocols, and rules and regulations of the PUC in its formative period will continue to provide great benefits to the Commission for many years into the future; and

RESOLVED, that the Guam Public Utilities Commission gratefully recognizes and commends the contribution that Dr. Filomena M. Cantoria has made to the people of Guam by her leadership and service on the Commission and wishes her well in future endeavors; and

RESOLVED, that a copy hereof be transmitted to the Governor of Guam, to the Speaker of the 35th Guam Legislature, and to Dr. Filomena M. Cantoria.

DULY AND REGULARLY ADOPTED ON THIS 5th DAY OF DECEMBER, 2019.



JEFFREY C. JOHNSON
Chairman



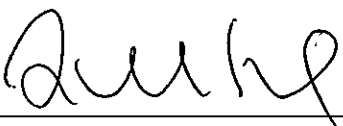
ROWENA E. PEREZ
Commissioner



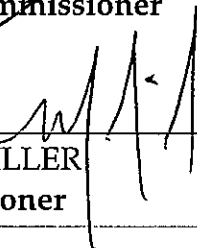
JOSEPH M. McDONALD
Commissioner



MICHAEL A. PANGELINAN
Commissioner



PETER MONTINOLA
Commissioner



MARK MILLER
Commissioner

DORIS FLORES BROOKS
Commissioner