

**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF:</b>	)	
	)	<b>GPA DOCKET 18-16</b>
	)	
<b>THE APPLICATION OF THE GUAM</b>	)	
<b>POWER AUTHORITY TO APPROVE A</b>	)	<b>PUC COUNSEL REPORT</b>
<b>THREE-MONTH EXTENSION TO THE</b>	)	
<b>CONTRACT FOR RESIDUAL FUEL OIL</b>	)	
<b>NO. 6 FOR THE BASELOAD POWER</b>	)	
<b>GENERATING PLANTS.</b>	)	

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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 a Three-Month Extension to the Contract for Residual Fuel Oil No. 6 for the Baseload Power Generating Plants.<sup>1</sup>

**BACKGROUND**

2. GPA’s current contract for Residual Fuel Oil (RFO) with Hyundai Corporation will expire on August 31, 2018.<sup>2</sup> On October 26, 2017, the PUC authorized GPA to issue a procurement for a new contract for Residual Fuel Oil No. 6 for the Baseload Generating Plants.<sup>3</sup>
3. GPA has released an Invitation for Bid for the Supply of Residual Fuel Oil No. 6 as approved by the Consolidated Commission on Utilities in accordance with the PUC Order in GPA Docket 18-01.<sup>4</sup>
4. GPA indicates that the new IFB for the procurement of Residual Fuel Oil No. 6 for the Baseload Plants under IFB GPA-019-18, will be for a base period of two (2) years, commencing on or about September 1, 2018 through August 31, 2020, with three (3) additional 1-year extension options.<sup>5</sup>

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<sup>1</sup> GPA Petition to Approve a Three-Month Extension to the Contract for Residual Fuel Oil No. 6 for the Baseload Power Generating Plants, GPA Docket 18-16, filed June 12, 2018.

<sup>2</sup> Id. at p. 1.

<sup>3</sup> PUC Order, GPA Docket 18-01, dated October 26, 2017, at p. 4.

<sup>4</sup> Guam Consolidated Commission on Utilities Resolution No. 2018-12, Authorizing the Management of the Guam Power Authority (GPA) to Proceed with the Extension of the Contract for the Supply of Residual Fuel Oil No. 6 (GPA-068-12) with Hyundai Corporation, issued June 12, 2018.

<sup>5</sup> Id. at p. 1.

5. GPA anticipates that the contract for Supply of Residual Fuel Oil No. 6 will be awarded by August, 2018; however, GPA believes that it needs to provide an adequate mobilization period for the new supplier, particularly if the supplier is one other than the existing supplier.<sup>6</sup>
6. Both GPA and Hyundai have negotiated and agreed to a three-month extension up to November 30, 2018, under the same contract terms and conditions.<sup>7</sup>
7. GPA and Hyundai Corporation have signed Contract Amendment No. 4, which would extend the present contract for an additional three-month period, through November 30, 2018. The proposed Amendment indicates that it is subject to the approval of the PUC.<sup>8</sup>
8. GPA management believes that the extension is reasonable, in the best interest of GPA and its customers, and necessary to allow for adequate transition to the new fuel supplier.<sup>9</sup>
9. The estimated total cost for the three (3) month extension is approximately \$36M and will be funded under the fuel revenue funds.<sup>10</sup>

### ANALYSIS

10. The only issue presented herein is whether it is legal and appropriate for GPA to extend its existing Contract for Residual Fuel Oil No. 6 for an additional three-month period.
11. Section 40 of a Contract for Supply of Residual Fuel Oil No. 6 between GPA and Hyundai provides as follows:

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<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Amendment No. 4 to the Fuel Oil Supply Contract between the Guam Power Authority and Hyundai Corporation, attached to CCU Resolution No. 2018-12.

<sup>9</sup> Guam Consolidated Commission on Utilities Resolution No. 2018-12, Authorizing the Management of the Guam Power Authority (GPA) to Proceed with the Extension of the Contract for the Supply of Residual Fuel Oil No. 6 (GPA-068-12) with Hyundai Corporation, issued June 12, 2018, at p. 1.

<sup>10</sup> Id.

#### AMENDMENT AND WAIVER

Neither the Contract nor any provision hereof may be changed, waived, altered, amended, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, alteration, amendment, discharge or termination is sought. For purposes of this Contract, the signature of the Chairman or his designee, of the Consolidated Commission on Utilities is required to bind the **AUTHORITY**....<sup>11</sup> (emphasis added).

12. The provision appears to give the parties broad latitude to amend the contract, as long as the amendment has been agreed to by the parties.
13. While generally GPA should not use contract amendment power to extend contractual terms established by procurements, the PUC recently allowed GPA and Marianas Energy Corporation to enter into a 5-year extension of the Energy Conversion Agreement for the Piti 8 & 9 Plants. The PUC determined that the extension of the existing ECA will help to ensure the continued operation, management and reliability of the Piti 8 & 9 plants.<sup>12</sup>
14. Here, as was the case with the ECA for Piti 8 & 9, the contract authorizes broad amendment powers on the part of the parties.
15. Here, unlike with regard to Piti 8 & 9, the contract extension is only for a short three-month period. GPA has presented a reasonable justification to extend the contract for three months in order to ensure a smooth transition from the old supplier to a new supplier, and that there is sufficient time for mobilization by the new supplier.
16. In light of the broad amendment power granted to the parties under the agreement, and the Commission's longstanding view that it does not function as a procurement board, GPA should not be prohibited from amending the agreement

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<sup>11</sup> Contract for Supply of Residual Fuel Oil No. 6 between the Guam Power Authority and Hyundai Corporation, IFB No. GPA-068-12, Volume II, at SECTION 40.

<sup>12</sup> PUC Order, GPA Docket 18-13, dated May 31, 2018, at pgs. 2-4.

17. The three-month contract extension for the contract between GPA and Hyundai Corporation for Residual Fuel Oil No. 6 for the Baseload Power Plants is reasonable, prudent and necessary. Residual Fuel Oil is essential to the operation of the Cabras power plants.

**RECOMMENDATION**

18. Counsel recommends that the PUC approve GPA's request to proceed with the three-month contract extension with Hyundai Corporation for Residual Fuel Oil No. 6 for the Baseload Power Plants.
19. A Proposed Order is submitted herewith for the consideration of the Commissioners.

Dated this 20th day of June, 2018.

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PUC Legal Counsel