BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:	)	GPA Docket 17-16
	)	
The Application of the Guam Power Authority Requesting Approval of the Performance Management Contract (PMC) for the Management, Operation and Maintenance of the GPA Cabras 3&4 Power Plants	)))))	**PUC COUNSEL REPORT**

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Application of the Guam Power Authority Requesting Approval of the Performance Management Contract (PMC) for the Management, Operation and Maintenance of the GPA Cabras 3&4 Power Plants.[1]

2. The Application requests a 3-month extension of the Performance Management Contract between GPA and Korea East-West Power (KEWP).[2]

BACKGROUND

3. Korea East-West (KEWP) is currently GPA's Performance Management Contractor for Cabras Units 3 & 4. The initial 5-year term of the contract commenced on July 1, 2010 to June 30, 2015. The contract provides for renewal by GPA, at its election, for up to a 5 year term.[3]

4. GPA has previously extended its PMC with KEWP, after the initial five year term, for periods of 3, 6, and 15 months.[4]

5. On August 31, 2015, there was a major explosion at the Cabras Units 3 & 4. The Units have not been operational since that date and are not available for dispatch.

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[1] GPA Application Requesting Approval of the Performance Management Contract (PMC) for the Management, Operation and Maintenance of the GPA Cabras 3&4 Power Plants, GPA Docket 17-16, filed November 29, 2016.
[2] Id. at p. 1.
[3] PUC Counsel Report, GPA Docket 94-04 [the Application of Guam Power Authority to Approve the Performance Management Contract (PMC) for Cabras 3&4] dated April 26, 2010 at p. 2.
[4] PUC Order, GPA Docket 15-25 dated December 10, 2015 at p. 1.

6. Since the explosion, the activities at the plant have mainly consisted of roof demolition and plant preservation.[5] GPA has indicated that Cabras Unit No. 4 is likely irreparable; there is no assurance that Cabras Unit No. 3 will be restored. GPA's stated goal and preference in its new generation plan is to replace Units 3 and 4 with new generation.[6]

7. Although GPA does not view Cabras Units 3 & 4 as part of its generation future, it continues to expend sums on those plants. Now GPA seeks to extend the KEWP PMC for an additional 3 months. The Guam Consolidated on Utilities, in Resolution No. 2016-71, approved the 3 month extension at a total contract extension cost of $382,173.44 (over $127,391 per month).[7]

8. The monthly PMC includes a "fixed management fee" of $80,747.48 per month and a "preservation management services cost" of $46,643.66 per month.[8]

ANALYSIS

9. The PUC recently authorized GPA, through KEWP, to retain a contractor, Belfor USA, for Cabras No. 3 & 4 Plant and Engine Cleaning at a cost of $4,840,538.00.[9] In addition, GPA through KEWP, was authorized to retain the services of Royce Power Engineering Ltd. for Cabras No. 4 Engine and Equipment Removal at a cost of $5,996,435.00.[10]

10. GPA contends that it is critical to continue the services of KEWP "to provide valuable expertise and support in areas such as Engineering Assessment, Technical Services, Program Management, and related tasks…"[11]

11. On December 22, 2016, PUC Counsel sent GPA various "Requests for Information", which sought to explore the rationale for the proposed contract extension. Copies of the Requests for Information are attached hereto as Exhibit "1".

[5] PUC Order, GPA Docket 15-21, dated October 28, 2015, at p. 3.
[6] PUC Order, GPA Docket 15-05, dated October 29, 2015.
[7] Guam Consolidated Commission on Utilities Resolution No. 2016-71, Authorizing Management of the Guam Power Authority to Extend the Performance Management Contract for the Cabras No. 3 Power Plant, dated November 22, 2016.
[8] Id. at p. 2.
[9] PUC Order, GPA Docket 17-12, dated November 28, 2016.
[10] PUC Order, GPA Docket 17-13, dated November 28, 2016.
[11] CCU Resolution No. 2016-71, dated November 22, 2016.

12. Late on December 27, 2016, GPA filed its Responses to the Requests for Information. The responses are attached hereto as Exhibit "2".

13. There are a number of troubling aspects of this request by GPA. The first is the piecemeal nature of the requests by GPA for PMC extension. Previously there were GPA requests for 3, 6, and 15 month extensions of this PMC. It has now requested an additional three month extension. In its response to RFI No. 2, it indicates that it anticipates extending the PMC contract "until the Insurance Settlement is reached, which is expected by the end of 2017."

14. Under the scenario proposed by GPA, it is likely that an additional request for extension will be filed in March of 2017, and perhaps a number of further requests thereafter until the end of 2017 and perhaps beyond. It is a burden on the PUC resources for GPA to file successive *seriatim* requests with the PUC. It also indicates a lack by GPA of a longer range plan to deal with the PMC.

15. From GPA's responses it is abundantly clear that its contract with KEWP is no longer in fact a "Performance Management Contract" for Management, Operation and Maintenance of the GPA Cabras 3 & 4 Power Plants. It is no more than an arrangement for the "preservation" and "caretaking" of the plants. Nearly all work done by KEWP relates to Cabras 3. One half of the original PMC Contract, work on Cabras Unit 4, has essentially been removed from the Contract.

16. GPA is continuing to pour considerable resources into the Cabras 3 & 4 Plants even though, in the New Generation Docket, it basically said that those plants are no longer part of its long range generation plan and should be replaced by combined cycle plants.

17. The Cabras 3 & 4 units have essentially been inoperative since August 2015. A "Fixed Management Fee" seems out of place and inapplicable for a contractor that is not operating a plant. When the tasks performed by KEWP are examined, they all related to caretaking and preservation. Responding to insurers questions, developing "restoration" plans, and damage assessment etc., would not appear to demand the same amount of time and commitment required for the full time operation of power plants.

18. KEWP is intimately involved in preparing responses to insurers questions about plant, possibly the explosion, and necessary preservation steps. There is still no

explanation from anyone as to the cause of the explosion. Whether KEWP was responsible for or in any manner contributed to the cause of the explosion is still unknown.

19. In Response to RFI No. 6, GPA states that it "must position itself to be fully indemnified against its Insurance Policy through the assistance of KEWP." One could question whether GPA's success under its insurance claim should be pinned to a party that was managing the Cabras 3 & 4 plants at the time the explosion occurred.

20. In response to RFI No. 7, GPA indicates that "The root cause of the event is still yet undetermined. <u>Due to the extent of the damage and lack of physical forensic evidence available, it may very well be that the root cause of the event will be undetermined</u>." (emphasis added). It would not appear to be fair to ratepayers that responsibility for an event that likely caused ratepayers to lose more than $100M in property value from the destruction of the plants will never be addressed or determined.

21. The original reason for retaining KEWP for the 15-month extension was that there was "an urgent need to complete the damage assessment and Root Cause Analysis for the Cabras No. 3 & 4 incident…"[12] Based on GPA's conclusion that a root cause may never be determined, the original justification for retaining KEWP is no longer valid.

22. It is unclear as to why GPA must extend the PMC contract for "preservation services." GPA, through KEWP, has hired two contractors to perform cleanup and engine removal services at a cost of $10M. These are also "preservation" efforts.

23. GPA is planning to pay KEWP a monthly "fixed management fee" of $80,747.48 for services that do not appear to have anything to do with a PMC or management of a plant. The services required involve mostly one plant, not two. This cost appears excessive to perform only "preservation" and "caretaking" functions. GPA perhaps could have negotiated a lower rate. This amount is only slightly less than the amount GPA has paid KEWP for the last fifteen month extension ($87,769 per month.)[13]

[12] PUC Order, GPA Docket 15-25, dated December 10, 2015, at p. 2.
[13] PUC Counsel Report, GPA Docket 15-25, dated December 7, 2015, at p. 3-4.

24. Attachment B to GPA's RFI Responses lists, for example, four activities for December 2016. Two of those are tasks to be performed primarily by the contractors Belfor and Royce, plant cleaning and engine removal. The tasks for KEWP are less than what would ordinarily be required of a full time PMC.

25. GPA also intends to pay KEWP a monthly fee "Preservation Management Services", which is in addition to the fixed management fee. In its Response to RFI No. 10, this fee amounts to an additional fee of $46,643.00 per month. This means that the total monthly payment to KEWP will be $127,390.48.

26. The "source" of funds for both the fixed management fees and the preservation management services is the $50M in unallocated insurance funds as an advance against its insurance policy coverage. GPA Responses to RFIs 12 and 13. However, these continued expenses for plants that GPA does not intend to continue to operate depletes insurance settlement funds that could otherwise be used toward the installation of the new generation combined cycle plants.

27. GPA claims in its Response to RFI No. 10 that this monthly fee for "preservation management services" is "similar to the Routine Operation & Maintenance budget of the previous Performance Management Contract." There is little, if any, similarity. The routine O & M budget is an annual budget negotiated between GPA and the PMC for specific performance improvement and capital improvement projects necessary to run and operate the plants.

28. The proposed "preservation management services" expenditures listed by KEWP in Attachment C are a very broad and loosely- defined listing of proposed expenses for "preservation", i.e., "technical services", "Other Maintenance", "Other Materials", tools, etc. This general listing does not inspire confidence that these amounts were closely scrutinized or negotiated by GPA.

29. If KEWP is demanding an excessive cost to continue its services, perhaps GPA could explore other alternatives. There are 60-70 employees from Cabras No. 3 & 4 that were "reassigned" after the explosion. Perhaps these employees could be used to assist in plant preservation and caretaking functions. However, there seems to be no reason to pay KEWP the full "fixed management fee" when it is not managing any plants. GPA has not justified the proposed cost of the KEWP extension.

RECOMMENDATION

30. At this time, due to many reservations, Counsel cannot recommend approval of GPA's request to extend the PMC Contract. This is a matter that should be addressed and decided by the Commissioners.

31. Rather than presenting a series of three month extension requests to the PUC, GPA should be required to present its complete plan for KEWP for the entire period of the Cabras 3 & 4 projects.

32. In Counsel's opinion, GPA has not provided a scope of services or work that would justify paying KEWP $127,000 per month for provision of preservation and caretaking services.

33. The Commissioners should reduce the payment amount to KEWP if they decide to approve the three months extension (for example half the amount ($63,695) per month for the proposed services).

34. A Proposed Order is submitted herewith for the consideration of the Commissioners.

Dated this 28th day of December, 2016.

Frederick J. Horecky
PUC Legal Counsel