

GUAM PUBLIC UTILITIES COMMISSION  
SPECIAL MEETING  
September 15, 2010  
SUITE 202, GCIC BUILDING, HAGATNA



MINUTES

The Guam Public Utilities Commission [PUC] conducted a special meeting commencing at 6:30 p.m. on September 15, pursuant to due and lawful notice. Commissioners Johnson, Cantoria, McDonald, Perez, and Pangelinan were in attendance. The following matters were considered at the meeting under the agenda made *Attachment "A"* hereto.

**1. Approval of Minutes**

The PUC reviewed the minutes of the meeting conducted on August 30, 2010. Subject to such technical corrections as may be identified prior to signing of the minutes, upon motion duly made, seconded and unanimously carried, the minutes were approved.

**2. PTI Pacifica Inc.**

The Chairman announced that the first item on the agenda is PTI Pacifica, PTI Docket 10-01, Petition for Annual USAC Certification, PUC Legal Counsel Report, and proposed Use Certification. Counsel indicated that since the requirements for USAC Certification were before the Commissioners at the last meeting, Counsel would not repeat them. PTI is requesting that the Commission certify that it will use Federal Universal Service Support Funds for purposes in compliance with the Federal Telecommunications Act. In compliance with requirements, PTI has proposed a five year build out plan. PTI is now building numerous new CDMA stations throughout the island and GSM base stations. PTI cellular service now extends to approximately 98% of the population of Guam and PTI intends to extend coverage and increased traffic loads in 2010 and 2011. PTI meets the core services identified for USF. The nine core services are provided.

Outages and complaints per thousand headsets are in line with requirements. PTI offers an unlimited local usage calling plan available to all customers and comparable to that provided by the ILEC. PTI has been responsive in submitting information requests to the PUC. PTI's build out is beneficial to Guam, as more services are provided for customers and coverage is expanded in the southern area. Counsel recommended that the Commission approve the Use Certification. Commissioner Pangelinan asked whether PTI, by providing cellular coverage to over 98% of the population means that 98% of the populated areas of Guam are covered? Counsel indicated that Commissioner Pangelinan was correct. Upon motion duly made, seconded and

unanimously carried, the Commissioners authorized the Chairman to sign the Use Certification for PTI, which is made *Attachment "B"* hereto.

### 3. Guam Power Authority

The Chairman announced that the next matter on the agenda for consideration by the PUC is GPA Docket No. 94-04, Petition for Contract Review (for early review and approval of the new PMC Contract for Cabras 1 & 2), PUC Legal Counsel Report, and Proposed Order. Counsel reported that this Performance Management Contract has a history of legal disputes and protests which have now all been resolved. Previously, there had been five extensions of the PMC contract with TEMES. Counsel indicated that he had compared the annual operation and maintenance spending budget under the prior contract and the proposed contract. In the proposed contract, the operating budgets are less and the fixed management fees are also less than those under the prior contract. The procurement process resulted in lower prices to GPA for the services of the PMC.

Historically, PMCs have been beneficial for the rate payers of Guam and have increased the operational efficiency and reliability of the Cabras plants. The Commission has viewed the PMC contracts favorably. Counsel submits that the terms and conditions of the proposed PMC contract adequately protect GPA. Counsel recommends that the contract be approved, as it was appropriately negotiated and will likely provide continuing benefits for the operation of the Cabras plants. Counsel has submitted a proposed Order approving the PMC for the consideration of the Commissioners. The PMC (TEMES) will undertake a series of performance improvement projects and capital improvement projects, which is another benefit of this arrangement. The Order would approve the contract and find that it is reasonable, prudent and necessary, and authorize GPA to enter into the contract.

Commissioner Perez asked whether the cost of this PMC contract was lower than that of the previous PMC contract. Counsel responded that yes, there was some reduction in the cost of the present contract. In all years except possibly one, the fixed management fees were less under the new contract than under the old contract. Commissioner Perez further asked about a reference in the cover letter of the GPA General Manager indicating that GPA would not be able to meet the 45 day period. She questioned what the 45 day period referred to. Counsel stated that this was a provision in the contract review protocol that requested, where possible, that utilities give PUC 45 day to review a matter for contract review. However, Counsel stated that it has always been his practice that if he can review a contract matter in time, he will do it as soon as possible. Upon motion duly made, seconded and unanimously carried, the Commissioners adopted the recommendation of Legal Counsel and the Order approving GPA's PMC contract with TEMES for Cabras 1 & 2. Said Order is made *Attachment "C"* hereto.

#### 4. Port Authority of Guam

The Chairman announced that the next item on the agenda was Port Docket 09-01, PAG Contract for Tariff/Rate Consultant: PAG Request for Ratification of June effective date and proposed Order. Counsel indicated that this was a technical issue. The last Order approved by the Commission in this matter did approve the Rate Consultant Agreement. It said that the Contract was effective upon approval by PUC. The Port, through its General Manager, indicated in a recent letter to the PUC that the Port Consultant had come to Guam in June and had already commenced working on the Port's rates. The Port felt that was appropriate, because Public Law 30-52 establishes a strict deadline for completion of the Port's rate study by December 31, 2010. The Port, operating in good faith, began to work with its rate Consultant back in June.

The problem is that the Order approved by the PUC said that the Agreement was effective upon approval by the PUC. If such were the case, it would be questionable if the Port could pay the contractor for work that it had already done going back to June. Furthermore, the Rate Consultant Agreement provided that it was effective June 1<sup>st</sup>. Based upon that justification, Counsel recognizes the Port's dilemma and feels that there is a reasonable justification for amending the prior PUC Order which would change the effective date of the contract to June 1, 2010.

Commissioner Perez asked whether to do this would not set a precedent for any other agency to proceed with a contract before getting PUC approval. Counsel stated that he did not think such would happen. It would not be a precedent, but based on the unique circumstances in this matter. A factor is that the Port is new to regulatory supervision by the PUC. A contract review protocol is still in formation. However, it is understandable that this happened in this matter due to the need of the Port to proceed quickly. Counsel did not feel that a precedent would be set, and the Port and Counsel were in the process of straightening out contract review matters to assure that contracts are appropriately reviewed.

Commissioner Cantoria stated that the early start by the Port did not increase the length of the contract. Counsel concurred and stated that the Port had done a good job in negotiating the fee of this Rate Consultant Agreement. Commissioner Pangelinan asked what the recourse would be if the PUC did not retroactively approve the effective date. Counsel stated that the Contractor could have trouble getting paid for the services that it did prior to the effective date of the contract. Commissioner Pangelinan asked what the Contractor would be required to do in order to get paid, whether it would have to submit a claim through the claims process. Counsel said that yes, perhaps, the claim then would be based on quantum meruit which would be difficult for the Contractor.

The Port does really need the services of the Contractor and it would be a concern if the project is not done. Commissioner Perez asked whether there was language that Counsel could put in to protect the PUC so that this kind of circumstance doesn't happen again. Counsel indicated that he could include a proviso in the Order that this would not be precedent or establish that the Commission will take similar actions in the future under such circumstances. Commissioner Perez requested that language to that effect be included in the Order. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the Amended Order, made *Attachment "D"* hereto, which approved the effective date of the Contract as June 1, 2010, inclusive of language to prevent such an incident from ever happening again.

## **5. Guam Waterworks Authority**

The Chairman indicated that the next matter for PUC consideration was GWA Docket 09-03, Base Rate Case: True-up of Proposed FY2011 rate increase and GCG Report. Counsel reported on the history of rate proceedings in this matter, wherein the Commission had approved a five year rate plan with scheduled increases for each year. Last year there was a 14% rate increase; the approved rate plan indicated a rate increase of 8% for this fiscal year. However, the PUC order of July 2009 required that the amount of each annual increase was subject to a true-up process. In June of this year, GWA submitted a petition for true-up basically asking that the rate increase for FY2011 stay at 8%. The PUC Consultant Georgetown filed a report in response initially recommending a 4% increase for FY2011. The parties then submitted a Stipulation according to which the 8% increase would be reduced to 6%.

Counsel suggested that the parties, rather than Counsel, should give an explanation of the Stipulation and the status of these proceedings. What followed was a detailed explanation by Consolidated Commission Chairman Simon Sanchez concerning the negotiations and proceedings between GWA and the PUC Consultant GCG. In essence, Chairman Sanchez indicated that GWA could maintain its operations with a 6% increase. Hopefully, with leak detection, water meter initiatives, and other improvements in operations, GWA would be able to increase the amount of its revenues. There was an issue as to whether decreasing rate increase to a 6% increase would affect GWA's bond rating. However, the CCU Chairman believed that GWA could still make a compelling case to the rating agencies. He concluded that the decision of whether to reduce the 8% increase to 6% or to leave it at 8% was a decision to be made by the PUC. There was also substantial discussion by other GWA officials and by Mr. Bill Blair, the GCG representative.

After hearing the discussion of the parties and the explanations given, Commissioner Cantoria indicated that she would move in favor of keeping the rate increase at 8%. Upon motion duly made, seconded and unanimously carried, the Commissioners moved that the rate increase for GWA for FY2011 would be 8%.

Counsel suggested to the Chairman that Counsel be authorized to work with the parties to draft an appropriate Order. There may be elements other than the rate increase that need to be included in the Order. Upon motion duly made, seconded and unanimously carried, the Commissioners moved to authorize PUC Counsel to work with the parties to develop an appropriate Order.

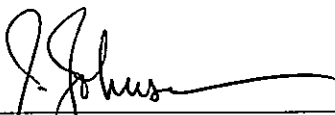
#### **6. PUC Website**

The PUC Administrator indicated that she was working with the PUC Consultant, AJ Rosario; they were attempting to input telecommunications matters at this time and she indicated that the website could possibly be launched the following week.

#### **7. Administrative Matters**

The Chairman indicated that he had requested that the Administrator put together a regulatory report and administrative report for expenses over the past year. Upon submission of such reports, the Commission could plan for next fiscal year starting October 1. Counsel indicated that administrative matters would be addressed at the next meeting, such as approval of the budget. After discussion, it was determined that the next meeting of the Commission would be September 29, 2010. Counsel also indicated that there was a pending matter of the Administrator's contract that still needed to be handled.

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

  
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Jeffrey C. Johnson  
Chairman

**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

**SPECIAL MEETING  
SUITE 206 GCIC BUILDING  
414 W. SOLEDAD AVE. HAGATNA, GUAM  
6:00 p.m. September 15, 2010**

**Agenda**

- 1. Approval of the Minutes of the Meeting of August 30, 2010.**
- 2. Guam Power Authority**
  - Docket No. 94-04, Petition for Contract Review (for early Review and Approval of the New PMC Contract for Cabras 1 & 2), GPA Petition, PUC Legal Counsel Report, and Proposed Order.
- 3. PTI Pacifica Inc.**
  - PTI Docket 10-01, PTI Petition for Annual USAC Certification, PUC Legal Counsel Report, and Use Certification.
- 4. Port Authority of Guam**
  - Port Docket 09-01: PAG Contract for Tariff/Rate Consultant: PAG Request for ratification of June effective date; Proposed Order.
- 5. Guam Waterworks Authority**
  - GWA Docket 09-03, Base Rate Case: True-up of Proposed FY2011 rate increase pursuant to par. 7 of the 2009 Rate Decision; GCG Report, and Proposed Order.
- 6. PUC Website**
- 7. Administrative Matters**
- 8. Other Business**

**ATTACHMENT A**

**Guam Public Utilities Commission**

**To: Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554**

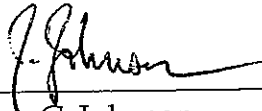
**Irene M. Flannery  
Vice-President - High Cost & Low Income Division  
Universal Service Administration Company  
2000 L Street, N.W. Suite 200  
Washington, DC 20036**

**RE: CC Docket 96-45 - "Use" Certification**

This is to certify that PTI Pacifica Inc. will use federal high cost support funds only for the provisioning, maintenance and upgrading of facilities and services for which the support is intended, consistent with section 254(e) of the Communications Act.

I am authorized to make this certification on behalf of the Guam Public Utilities Commission. This certification is for study area 669004 for the Territory of Guam.

Dated this 15th day of September, 2010.

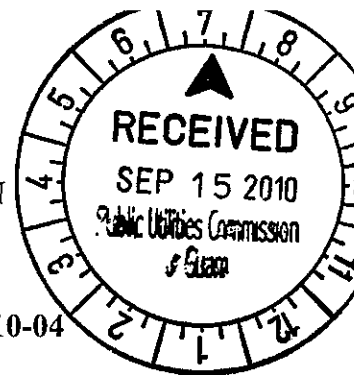


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Jeffrey C. Johnson  
Chairman  
Guam Public Utilities Commission

**ATTACHMENT B**

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN THE MATTER OF:

The Petition of the Guam Power Authority for Early Review and Approval of the Performance Management Contract (PMC) for Cabras 1 & 2

GPA DOCKET 10-04

ORDER

This matter comes before the Guam Public Utilities Commission [PUC] upon GPA's Petition for Contract Review, filed September 2, 2010.<sup>1</sup> Therein, GPA asks the PUC for "early review and approval of the Performance Management Contract (PMC) for Cabras 1 & 2 to Taiwan Electrical and Mechanical Engineering Services, Inc. [TEMES]."<sup>2</sup>

PUC Counsel has filed a Report herein which details that the finalization of a new PMC Contract has been delayed for a considerable time as a result of procurement protests and disputes.<sup>3</sup> Counsel recommends that the proposed PMC Contract with TEMES should be approved for the following reasons: (1) the contract provisions are those that have previously been used by GPA in its performance management contracts and approved by the PUC; (2) Performance Management Contract for the Cabras Plants have improved the operational efficiency and reliability of such plants, and have saved Guam ratepayers substantial amounts of money over the years; (3) both the Fixed Management Fees and the O & M Spending Limits under the new PMC Contract appear to be less than those under the existing Contract;<sup>4</sup> (4) under the Contract, TEMES will undertake a substantial number of new Performance Improvement Projects and Capital Improvement Projects, which will benefit ratepayers.

For the reasons set forth in Counsel's Report, the PUC finds that approval of the proposed PMC Contract is reasonable and prudent, as it is in the interest of the ratepayers.

Upon consideration of the record herein, the Petition of GPA, the PUC Legal Counsel Report, and for good cause shown, upon motion duly made, seconded, and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby ORDERS that:

1. The Performance Management Contract [PMC] for the Guam Power Authority Cabras Units 1 & 2, between Guam Power Authority and Taiwan Electrical and Mechanical Engineering Services, Inc. (TEMES) (a copy of which was submitted by GPA to the PUC on September 3, 2010) is hereby approved.

<sup>1</sup> GPA Petition for Early Review and Approval of the New PMC Contract for Cabras 1 & 2.

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

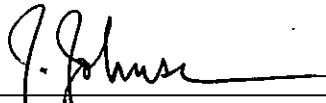
<sup>3</sup> PUC Counsel Report, GPA Docket 10-04, filed herein on September 15, 2010.

<sup>4</sup> Attachment to email from GPA Counsel to PUC Counsel dated September 13, 2010.




2. The Performance Management Contract is reasonable, prudent and necessary.
3. GPA is authorized to enter into the Performance Management Contract.
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 §§12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

Dated this 15<sup>th</sup> day of September 2010.



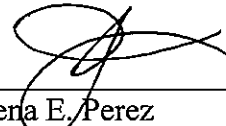
Jeffrey C. Johnson  
Chairman



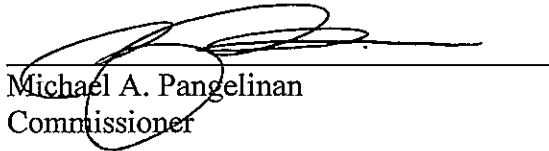
Joseph M. McDonald  
Commissioner



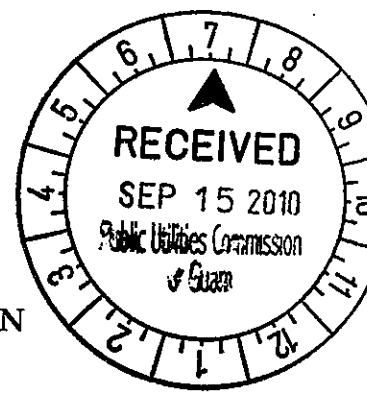
Filomena M. Cantoria  
Commissioner



Rowena E. Perez  
Commissioner



Michael A. Pangelinan  
Commissioner



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF: )  
 ) Port Docket 09-01  
 ) GENERAL REGULATORY DOCKET  
 REQUEST OF THE PORT AUTHORITY )  
 OF GUAM [PAG] FOR APPROVAL OF )  
 TARIFF CONSULTANT CONTRACT )  
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AMENDED ORDER

This matter comes before the Guam Public Utilities Commission [PUC] upon the request of the Port Authority of Guam [PAG] for approval of the Tariff Consultant Agreement between PAG and the Cornell Group, Inc., which was filed on August 24, 2010.<sup>1</sup> Therein, PAG requests that the PUC review such agreement and approve it at its meeting on August 30, 2010. On August 30, 2010, PUC Counsel filed his Report herein.<sup>2</sup> The Report details the background of the proceedings in this matter. On April 1, 2010, the PUC, through its Chairman, approved the request of the Port to issue RFP No. 010-005, Professional Services for Comprehensive Tariff Study, subject to inclusion of the changes recommended by PUC Counsel. Pursuant to Public Law 30-52, the Port is required to hire a rate consultant, and, by December 31, 2010, to submit to the PUC the results from a study of existing rates, charges and costs of services.<sup>3</sup>

There was only one bidder in response to the RFP, the Cornell Group Inc. ["Cornell"]. The Cornell Group [hereafter "Cornell"] filed a detailed proposal which included a "Work Plan and Schedule" ( a true and correct copy thereof is attached to Counsel's Report as Exhibit "A"). Initially, Cornell had proposed a total cost for the project of \$251,011, which consisted of both professional fees and estimated expenses.<sup>4</sup> However, the PAG Cost Negotiation Committee was successful in negotiating the final contract price down to a fee of \$190,000, inclusive of all expenses.

<sup>1</sup> See e-mail dated August 24, 2010, from Jose B. Guevara, Financial Affairs Controller of PAG, to Frederick J. Horecky, PUC Legal Counsel, with Tariff Consultant Agreement attached.

<sup>2</sup> PUC Legal Counsel Report, Port Docket 09-01, filed August 30, 2010.

<sup>3</sup> Minutes of PUC Special Meeting of March 25, 2010, p. 2.

<sup>4</sup> Record of Fee Negotiations – RFP No. 010-005 [Memorandum from General Manager to Procurement and Supply Manager, dated May 24, 2010] filed in Docket 09-01 on August 24, 2010.

The Agreement adequately sets forth the plan by which the Cornell Group will prepare a study of existing rates, charges and costs of services. If the services are provided in accordance with the Agreement, the Port should be able to meet its statutory duty under Section 7 of Public Law 30-52 of submitting the study to the Commission no later than December 31, 2010. The cost of the proposal appears reasonable, given the comprehensive nature of the proposed tariff study; the cost of the study will not have any measurable impact upon Port rates or tariffs. The Consultant also agrees that it will provide consultation, advice and assistance to the PAG pertaining to the preparation of presentations and cases at public hearings before the PUC or other relevant government bodies.<sup>5</sup>

Upon consideration of the record herein, the Request of the Port, the PUC Legal Counsel Report, the Letter of the Port General Manager dated September 9, 2010, 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:

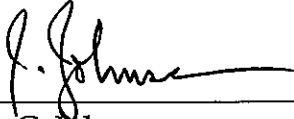
1. The Consultant Agreement between the Jose D. Leon Guerrero Commercial Port (Port Authority of Guam) and the Cornell Group, Inc. is hereby approved pursuant to Section 7 of Public Law 30-52.
2. The Scope of Services under the Consultant Agreement is reasonable and, if fully performed and carried out, should be sufficient to enable PAG to submit to the Commission results of its study of existing rates, charges and cost of services no later than December 31, 2010.
3. As stated in Section II, Term of the Consultant Agreement, the Contract is effective as of June 1, 2010. However, approval by the Commission of this Contract shall in no manner excuse the Port from full compliance hereafter with the requirements of 12 GCA §12004 regarding PUC approval of Port contracts and any Contract Review Protocol subsequently adopted by the Commission.
4. The Port 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

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<sup>5</sup> Id. at p. 31.

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

Dated this 15<sup>th</sup> day of September, 2010.



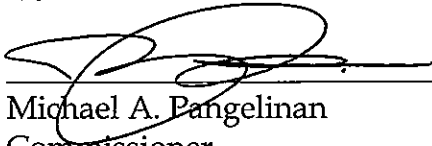
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Jeffrey C. Johnson  
Chairman



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Filomena M. Cantoria  
Commissioner



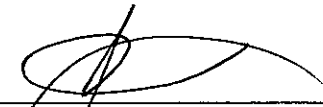
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Michael A. Pangelinan  
Commissioner



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Joseph M. McDonald  
Commissioner



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Rowena E. Perez  
Commissioner