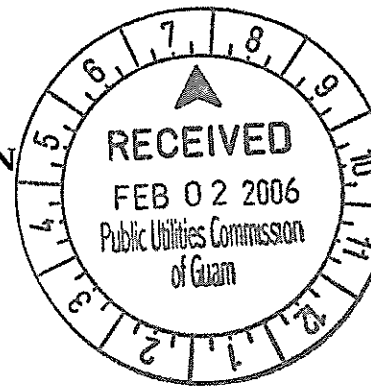


BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

GUAM POWER AUTHORITY
PROCUREMENT REVIEW

DOCKET 94-04



Procurement Order

This Order reviews a number of Guam Power Authority [GPA] procurements, which under PUC's December 16, 2003 contract review protocol order [Protocol] require regulatory approval before the procurement process begins. This order also amends the Protocol.

1. Ratification of unapproved procurements.

Georgetown Consulting Group's [GCG] recent review of GPA's FY05 procurement activities disclosed three procurements, which were entered into by GPA in violation of the Protocol. PUC finds these multiple violations particularly disturbing given its admonishment of similar activity in its March 31, 2004 Order [*Attachment A*], which recommended that *the Consolidated Commission on Utilities [CCU] institute governing controls to assure that GPA strictly complied with the requirements of the Protocol.*

GCG by letters dated December 29, 2005, January 10, 2006 and January 24, 2006 recommends that PUC ratify the following procurements:

- a. 2005 TEMES Deferred Payment Agreement, involving the financing of \$2.99 million in capital expenditures on the Cabras 1 & 2 plants. [amount exceeds \$1.5 million contract review threshold.] PUC approval is also expressly required by PUC's December 16, 2002 Order in Docket 02-04.
- b. 2005 Diesel Engine Cylinder Lubrication Oil Contract. [approval required under Protocol section 4 (multi-year procurement).
- c. 2005 Amendments to Property & Casualty Insurance Policy. [approval required due to a material amendment (\$6.5 million dollar increase in deductible risk) to multi-year policy with \$7.18 million annual premium].

After review of the GCG letters, on motion duly made, seconded and carried by the undersigned commissioners, PUC **resolves** that the above procurements be and are hereby ratified. PUC reminds GPA and CCU that continued violation of the Protocol is unacceptable and if it reoccurs will require a more pro-active regulatory oversight of GPA procurement activities. As explained in Mr. Blair's December 16, 1998 opinion letter [*Attachment B*], serious legal consequences can result from GPA's failure to obtain PUC approval of regulated contracts.

2. FY06 CIP Ceiling.

The Protocol provides that PUC will annually set a ceiling for GPA internally funded capital improvement expenditures. GCG by its January 24, 2006 letter recommends that the FY06 ceiling be set at \$17.3 million dollars.

After discussion and on motion duly made, seconded and carried by the undersigned commissioners, PUC *resolves* to approve the \$17.3 million dollar ceiling.

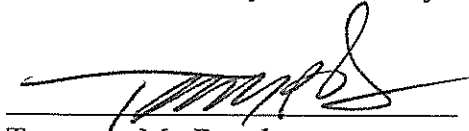
3. 2006 Deferred Payment Agreements.

On December 15, 2005, GPA petitioned PUC for expedited review and approval of 2006 deferred payment agreements with TEMES and Doosan. By its January 10, 2006 letter, GCG has recommended that the agreements be approved. After review, Chairman Brooks determined that adequate grounds existed to warrant his approval of the procurements in advance of PUC's February 2, 2006 business meeting. A copy of his order approving the agreements is made *Attachment C*. After discussion, on motion duly made, seconded and carried by the undersigned commissioners, PUC *resolves* to ratify the chairman's order.

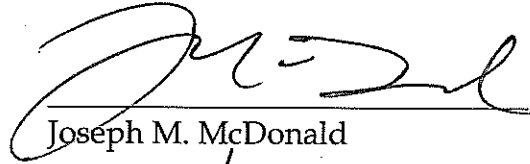
4. Amended Protocol.

By Order dated October 27, 2005, PUC amended the contract review protocol applicable to Guam Waterworks Authority in order to incorporate a common review standard with CCU. This common standard, which was adopted by CCU on October 18, 2005, will facilitate an expedited and coordinated PUC review of regulated procurements. PUC staff has recommended that the GPA protocol be amended to incorporate the common review standard. After discussion and on motion duly made, seconded and carried by the undersigned commissioners, PUC resolves to amend the GPA protocol in form made *Attachment D*.


Dated this 2nd day of February 2006.



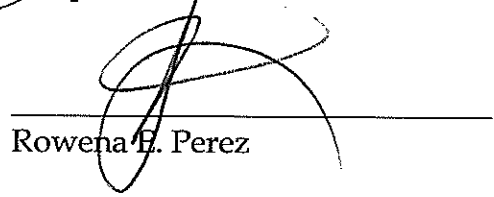
Terrence M. Brooks



Joseph M. McDonald



Edward C. Crisostomo



Rowena E. Perez

BEFORE THE PUBLIC UTILITIES COMMISSION
OF GUAM

GUAM POWER AUTHORITY
REGULATORY DOCKET -
CONTRACT REVIEW

DOCKET 94-00



ORDER

In its November 28, 2003 report on Guam Power Authority's [GPA] informational filings with the Guam Public Utilities Commission [PUC], Georgetown Consulting Group [GCG] expressed concern regarding a disclosure in GPA's FY02 External Audit that in September 2000 bond reserve fund forward delivery agreements [Agreements] were entered into on GPA's behalf by Governor Gutierrez¹. Under the terms of the Agreements, GPA liquidated, at discount, a long-term interest revenue stream on certain bond proceeds for the payment of \$13.5 million dollars. There was no public notice or disclosure of the transaction. In the transaction, GPA incurred termination fees of \$3.35 million and closing costs of \$1.25 million. GCG recommended that PUC examine whether the transaction required PUC approval pursuant to 12 GCA 12004 and PUC's contract review protocol and further the consequences of GPA's failure to have obtained such PUC approval.

On January 5, 2004, PUC's administrative law judge [ALJ], found that the transaction raised substantial regulatory issues. GPA has conceded that it never sought or obtained PUC approval of the Agreements. GCG was directed by ALJ to investigate the transaction and to report to PUC in preparation for the March 2004 regulatory session. A copy of GCG's February 11, 2004 report is made Attachment A. The GCG report concludes that:

1. The transaction contained in the Agreements, by which GPA cashed in a long term revenue stream of interest on its bond reserves, constituted a borrowing which required prior PUC review under paragraph 1(d) of PUC's contract review protocol².

¹ Two agreements were entered into by GPA and its co-trustee U.S. Bank Trust National Association on September 28, 2000: one with Lehman Brothers Special Financing Inc. and one with Bank America N.A.

² The PUC contract review protocol in effect at the time of the transaction is contained in PUC Order dated February 25, 2000 in Docket 00-04.

ATTACHMENT A

2. The termination fees of \$3.35 million and closing costs of \$1.25 million, which GPA incurred in the transaction exceed the \$1.5 million review threshold for PUC's contract review. Accordingly, GPA required prior PUC approval before it could lawfully incur these transaction fees.
3. The \$700,790 broker's fee, which was paid to IMAGE in the transaction, is substantially greater than the \$227,800 fee it was paid in an earlier similar transaction and may deserve further investigation as to its reasonableness.
4. This transaction was entered into on GPA's behalf, by the Governor of Guam, under an assertion of organic authority, in the absence of a quorum of the GPA board of directors. There is a substantial question whether the transaction would have sustained regulatory scrutiny. GPA and Governor Gutierrez, with the aid of an ill advised Attorney General's opinion, sidestepped independent public scrutiny that PUC would have brought to bear under its contract review authority.
5. GPA's failure to have obtained prior PUC approval of the transaction in accordance with 12 GCA 12004, makes it voidable³. GCG, nevertheless, recommends that the transaction be ratified for the benefit of third parties.
6. PUC's contract review protocol should be amended to explicitly bring such transactions under PUC's contract review protocol and to put third parties on notice that they deal with regulated utilities at their own peril if required regulatory approval is not obtained.

In comments filed on March 5 and 9, 2004, GPA asserts that the Agreement did not require PUC approval, but nevertheless requests that PUC ratify the Agreement "*so that any questions as to the lawfulness of the Agreement are resolved*". A copy of the GPA comments are made *Attachment C*. GPA and GCG have agreed to submit this matter to PUC on the record and without need for public hearing.

³ By opinion dated December 16, 1998 [*Attachment B*] GCG's counsel opined on the consequences of a regulated utility's failure to comply with the requirements of section 12004.

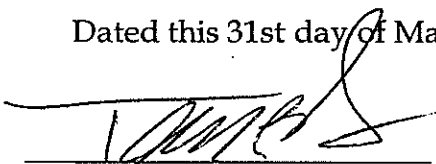
After careful review of the attachments hereto, after consultation with its administrative law judge and for good cause shown, the Guam Public Utilities Commission on motion duly made, seconded and carried by the affirmative vote of the undersigned commissioners hereby **FINDS AND ORDERS THAT:**


1. The transaction and the Agreements required prior PUC review and approval under 12 GCA 12004 and under PUC's contract review protocol. The transaction constituted a borrowing, which required PUC approval under section 1(d) of the protocol. Moreover, the \$4.6 million termination expenses, which GPA incurred required PUC approval under section 1(e) of the protocol. GPA's failure to have obtained this approval makes the transaction and the Agreements voidable. GPA's inability in its recent March 2004 filings with PUC to understand the clear need for regulatory review and approval of the transaction is troubling.
2. PUC shall reserve its decision of whether to ratify the Agreements and the transaction until the July 2004 regulatory session. In the interim, PUC's administrative law judge is directed to obtain further comment from GPA and GCG regarding: a. the potential negative consequences which could flow from PUC's refusal to ratify the Agreements and the transaction; and b. the impact of PUC's ratification of the Agreements and the transaction on potential civil and criminal liability, if any, of persons involved therein.
3. A copy of this Order shall be transmitted to the Attorney General of Guam and to the Public Auditor for such investigation as they may deem appropriate regarding the broker's fee, which was paid to IMAGE in the transaction.
4. A copy of this Order shall be transmitted to the Guam Legislature and to the Governor of Guam for such consideration as they may deem appropriate regarding the organic issues raised by Governor Gutierrez's assertion of executive authority in the absence of a quorum of the GPA board of directors and further regarding the need for statutory guidelines to govern future transactions of this kind by Guam public corporations and by the government of Guam.
5. Paragraph 1(d) of the contract review protocol dated December 16, 2003, which now governs PUC regulation of GPA contracts and obligations is hereby amended to read:

d) All externally funded loan obligations and other financial obligations such as lines of credit, bonds, and bond reserve fund forward delivery agreements [such as discussed in PUC's March 30, 2004 Order in Docket 94-03], in excess of \$1,500,000 and any use of the proceeds of such obligations and transactions;

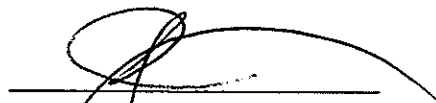
6. A copy of its Order shall be transmitted to the Consolidated Commission on Utilities with the recommendation that it institute governing controls to assure that both GPA and GWA strictly comply with the requirement of contract regulatory review, as contained in the protocols established by PUC.

Dated this 31st day of March 2004.


Terrence M. Brooks


Edward C. Crisostomo


Gerald M. Woo


Rowena E. Perez


Joseph M. McDonald


Richie T. Lim


Filomena M. Cantoria

LAW OFFICES

KLEMM, BLAIR, STERLING & JOHNSON

A PROFESSIONAL CORPORATION

SUITE 1008 PACIFIC NEWS BUILDING
238 ARCHBISHOP F.C. FLORES STREET
AGAÑA, GUAM 96910-5205

TELEPHONES: (671) 477-7857
(671) 477-7558
(671) 477-4217

FACSIMILE: (671) 472-4250
(671) 477-2504

EMAIL: kbsj@lts.net

J. BRADLEY KLEMM
WILLIAM J. BLAIR
THOMAS C. STERLING
RICHARD L. JOHNSON
ELIZABETH ROBERTSON
VINCENT E. LEON GUERRERO
THOMAS C. MOODY
JEHAN AD G. MARTINEZ
CAROL R. KERR
JOSEPH W. SCUDERI

OF COUNSEL
WILLIAM B. CLEARY

December 16, 1998

VIA FACSIMILE
(671) 477-0783

Harry M. Boertzel, Esq.
Administrative Law Judge
GUAM PUBLIC UTILITIES COMMISSION
c/o CHING BOERTZEL CIVILLE
CALVO & TANG
Suite 400 GCC Building
414 West Soledad Avenue
Hagåtña, Guam 96910

**RE: CONSEQUENCES OF FAILURE TO COMPLY
WITH 12 GCA § 12004**

Dear Mr. Boertzel:

You have requested from me an analysis of what might be the legal consequences of the Utilities subject to the jurisdiction of the Guam Public Utilities Commission ("PUC") entering into contracts without first receiving the approval required under 12 GCA § 12004, including the possibility of civil or criminal liability of the responsible Utility employees.

We have only conducted a cursory review of the laws of Guam which may be applicable. We have not attempted to reach any definitive conclusions at this time, as we thought this was beyond the scope of your initial inquiry. Rather, this letter is intended to be more in the vein of an "issue-spotting" exercise. We believe additional research would be necessary in order to come to more definitive conclusions. Nonetheless, our cursory research suggests to us that there is a significant potential for both civil and criminal liability for employees of the Utilities who approve and enter into contracts which do not have the required PUC approval under 12 GCA § 12004 and the contract approval procedures established

ATTACHMENT B

To Harry M. Boertzel, Esq.

Date December 16, 1998 Page 3

The requirement of 12 GCA § 12004 that the PUC must first approve any contracts which "could affect rates," is a critical, indeed absolutely essential, element of the ratemaking process in the context of the Guam regulatory scheme. If the Utilities were free to enter into contracts, without prior review as to their reasonableness or prudence, the PUC's statutory mandate would require it to establish rates sufficient to pay for such contracts irregardless of how imprudent they may have been. In prior dockets, the PUC has rejected the suggestion that its authority in this area is limited for the simple reason that to hold otherwise would eviscerate the regulatory scheme contemplated by Guam law. That is to say, if the Utilities were free to enter into contracts without prior approval or if the PUC was bound to honor such contracts, its regulatory role would be rendered meaningless.

At the same time, the PUC has recognized that, in a metaphysical sense, each and every contract entered into by a Utility "could" affect rates and, thus, implicate the possible need for prior PUC approval. It was recognized that such an interpretation would place unreasonable burdens on the Utilities with no offsetting benefits to the Utilities' ratepayers. For this reason, the PUC's staff consultants have worked with each of the Utilities to establish agreed upon contract approval procedures which would minimize the need for seeking prior PUC approval. Stipulations have been entered into between the PUC staff consultants and each of the Utilities in dockets opened by the PUC specifically for that purpose. These stipulations recommending contract approval procedures have been approved by PUC orders.

In addition, the PUC has imposed requirements to seek prior approval of certain contracts entered into in connection with specified projects which were submitted to it for its approval. In the case of GPA, for example, certain revenue bond funded projects have been approved based on cost estimates submitted to the PUC by GPA which were subject to rigorous scrutiny by the PUC and its consultants. Only after careful cost benefit analyses were performed were certain of these contracts considered to be prudent and, therefore, reasonable. The approvals of the PUC were conditioned on GPA staying within the budget estimates reviewed and approved by the PUC. To the extent GPA determined that the costs of the projects would exceed the approved budgets (which invariably

To Harry M. Boertzel, Esq.

Date December 16, 1998 Page 4

include a contingency allowance), GPA is obligated to seek prior approval before entering into any contract which would exceed the approved limitation.

Other limitations have been imposed by the statutes which have approved the issuance of revenue bonds. For example, the statutes approving issuance of revenue bonds have, in some cases, limited the use of the bond proceeds to certain projects and no others, without the prior approval of both the PUC and the Guam Legislature. See Public Law 22-136, as an example.

THE PROBLEM — FAILURE TO OBTAIN REQUIRED APPROVAL

Despite these clear limitations, employees of the Utilities have regularly and routinely entered into contracts without seeking the required prior approval of the PUC. Such contracts are entered into in violation of 12 GCA § 12004, applicable PUC orders, other Guam statutes, and the Utilities' own commitments made in the form of stipulations reached in the various dockets.

WHAT ARE THE CONSEQUENCES?

1. **Contracts are probably void or voidable.**

18 GCA § 88101 (formerly Guam Civil Code § 1667) defines what is "unlawful" in connection with obligations or contracts. That section provides as follows:

What is unlawful? That is not lawful which is:

1. Contrary to an express provision of law;
2. Contrary to the policy of express law, though not expressly prohibited; or
3. Otherwise contrary to good morals.

As noted, the entering into contracts which "could affect rates" without prior PUC approval is contrary to an express

To Harry M. Boertzel, Esq.

Date December 16, 1998 Page 5

provision of law, as well as contrary to the policy of express law. As such, it would seem fairly certain that such contracts by Utilities are "unlawful" contracts and, therefore, likely unenforceable.

To the extent that the contracts might be subject to the strictures of the Guam procurement law, unlawful contracts are, at the least, voidable. 5 GCA § 5451, for example, provides that:

[I]f prior to award it is determined that a ... proposed award of a contract is in violation of law, then the ... proposed award shall be ... cancelled; or ... revised to comply with law.

See, also, GSA Procurement Regulation § 9-202.01. After an unauthorized award is made, if the contractor did not procure the contract through fraud or bad faith, the contract may be ratified and affirmed, or terminated and the person awarded the contract compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to the termination. 5 GCA § 5452; GSA Procurement Regulation § 9-203.01.

Presumably, therefore, the PUC could declare a proposed award of a contract or an already awarded contract to be improper and unlawful and order the Utility to take the steps necessary to cancel or terminate the contract.

2. Personal Liability of contracting officers.

Chapter 14 of Title 4 of the Guam Code Annotated governs certifying and disbursing officers of the Government of Guam. The chapter covers the purchasing activities of autonomous agencies, such as the three government-owned Utilities and their dealings with special or trust funds. 4 GCA §§ 14101(a) and (c). Under § 14101(a), a certifying officer may be held personally accountable for and required to make good to the Government of Guam or, in this case, the Utility, the amount of any illegal, improper or incorrect payment resulting from any false, inaccurate or misleading certificate made by him, as well as for payments prohibited by law which did not represent legal obligations under the appropriation or fund involved. 4 GCA § 14105(a)(3). Certain exceptions to

To Harry M. Boertzel, Esq.

Date December 16, 1998 Page 6

personal liability (such as good faith) are outlined at 4 GCA §§ 14105(b) and (c). Similar personal liability is also imposed upon disbursing officers (as defined in § 14101(b)) under 4 GCA § 14104(1).

Employees of the three government-owned Utilities are delegated responsibilities to act as procurement employees pursuant to the Government of Guam's procurement laws. They have responsibility for ensuring that funds of their agencies (such as the various funds established under bond covenants or reserved funds established by PUC orders) are properly used to pay only lawful obligations. Payments made pursuant to contracts entered into in violation of 12 GCA § 12004, other applicable statutes, or express PUC orders having the force and effect of law would thus potentially trigger personal liability on the part of the certifying or disbursing officers.

Such personal liability would be consistent with the generally recognized rule that makes a public official who controls public funds personally liable to repay improperly expended funds if the official has failed to exercise due care in permitting the expenditure. See, e.g., Stevens v. Geduldig, 27 Cal.Rptr. 405, 410 Cal. 1986; 63C. Am.Jur.2d Public Officers and Employees § 346.

3. Possible criminal penalties.

Chapter 14 of Title 4 also imposes criminal sanctions on certifying or disbursing officers for authorizing an expenditure of funds in excess of an appropriation. Under 4 GCA § 14105(a)(5), employees are held accountable for and required to make good to the Government of Guam the amount of the illegal, improper or incorrect payment resulting from a false, inaccurate or misleading certificate by him, as well as for payment prohibited by law which did not represent a legal obligation under the appropriation or fund involved. Such conduct constitutes a misdemeanor punishable by a fine not to exceed \$1,000 and a term of imprisonment of up to one year. 4 GCA § 14105(a)(5); 9 GCA §§ 80.34(a), 80.50.

It is presumed such liability would attach to an employee of a Utility since autonomous agencies are specifically covered by Title 4, Chapter 14.

To Harry M. Boertzel, Esq.

Date December 16, 1998 Page 7

4. Administrative sanctions.

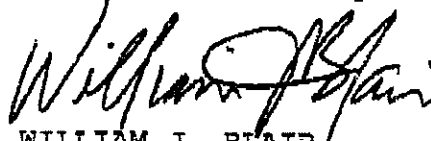
The only sanction specifically made available to the PUC is found in 12 GCA § 12020. That section provides that "any public utility violating or neglecting or failing in any particular way to conform to or comply with this Chapter or any lawful order of the Commission shall forfeit to the Public Utilities Commission funds no more than \$500 for every violation, neglect or failure per day." (Emphasis added.) The efficacy of such a fine is questionable, however, inasmuch as it would be the ratepayers of the Utility who would ultimately bear the brunt of any such fine. To the extent a Utility was fined, however, it could, depending on the facts, presumably seek reimbursement from the employee whose conduct led to the imposition of the fine.

SUMMARY

As noted, initially, I have not attempted to reach definitive conclusions as to the legal issues raised here. The objective of this letter is to alert the Utilities to the fact that continued disregard and disdain for the requirement to comply with 12 GCA § 12004 and applicable PUC orders may have severe consequences. On their face the statutes cited herein appear applicable. Moreover, the normal fiduciary obligations of the officers and agents of the Utilities which flow from agency and corporations law principles would also seem relevant.

Very truly yours,

KLEMM, BLAIR, STERLING & JOHNSON
A Professional Corporation


WILLIAM J. BLAIR

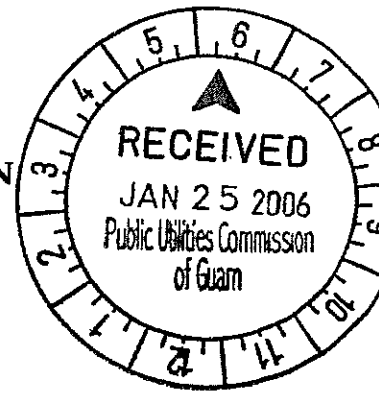
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BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

GUAM POWER AUTHORITY
CABRAS DEFERRED PAYMENT
AGREEMENTS

DOCKET 94-04



ORDER

The Guam Public Utilities Commission [PUC] is in receipt of a December 15, 2005 petition from Guam Power Authority [GPA] for approval of deferred payment agreements with Taiwan Electrical and Mechanical Engineering Services, Inc. and Doosan Engine Company, which respectively manage Cabras plants 1&2 and plants 3&4. The performance management contracts, under which these companies manage the Cabras plants, authorize GPA to solicit the companies' participation in long or short term debt financing necessary for capital expenditures on the plants. Under the proposed agreements, the management companies would provide short term financing for scheduled Cabras capital improvements and maintenance. The proposed transactions have been approved by Consolidated Commission on Utilities' Resolutions 2005-39 and 2005-40. By letter dated January 10, 2006, Georgetown Consulting Group [GCG] [PUC's independent regulatory consultant] has recommended approval of the proposed agreements. At the GPA regulatory conference held on January 19, 2006, GPA requested that PUC approval of the agreements be issued in advance of its early February 2006 business meeting to enable the management companies to immediately commence planning and procurement for the necessary capital projects.

Under PUC's April 11, 2003 *Administrative Resolution*, Chairman Terrence Brooks is empowered with delegated authority to act on PUC's behalf, subject to the following conditions:

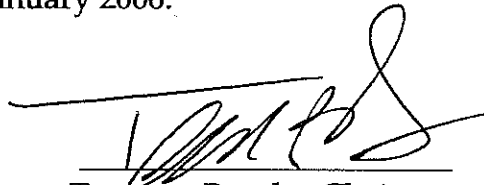
1. The requirement that the chairman certify that regulatory action on the petition cannot await PUC action at the next business meeting, which is scheduled for February 3, 2006. After careful review of the petition and supporting documentation, the undersigned finds good and reasonable cause to issue this certification.
2. The utility, which requests expedited regulatory action, must waive the final determination exception established in 12 GCA 12004. GPA has made this waiver by email dated January 2, 2006.

ATTACHMENT C

3. The utility's petition must be reviewed and supported by PUC's regulatory consultant. By its January 10, 2006 letter GCG has recommended approval of the petition.
4. The requirement that the chairman make a diligent effort to confer with other on-island commissioners and act only if a majority of said commissioners do not oppose the petition. The undersigned certifies that he made this effort and that the petitions were not so opposed.
5. The Resolution prohibits its use to approve a petition for rate relief. The undersigned finds that the petition does not request rate relief.

After review of the petition and the record herein, for good cause shown and in furtherance of the authority delegated by the Administrative Resolution, the undersigned on behalf of the Guam Public Utilities Commission **HEREBY ORDERS THAT** GPA be and is hereby authorized to enter into the proposed deferred payment agreements.

Dated this 25th day of January 2006.



Terrence Brooks, Chairman

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

CONTRACT REVIEW PROTOCOL FOR)
GUAM POWER AUTHORITY) ADMINISTRATIVE
) DOCKET
)

ORDER

Pursuant to its authority under 12 GCA Section 12004, the Guam Public Utilities Commission [PUC] establishes the following protocol to identify and review regulated contracts and obligations of Guam Power Authority [GPA]:

1. The following GPA contracts and obligations shall require prior PUC approval under 12 GCA 12004, which shall be obtained before the procurement process is begun:
 - a) All capital improvement projects (CIP) in excess of \$1,500,000 whether or not a project extends over a period of one year or several years;
 - b) All capital items by account group, which in any year exceed \$1,500,000;
 - c) All professional service procurements in excess of \$1,500,000;
 - d) All externally funded loan obligations and other financial obligations such as lines of credit, bonds and bond reserve fund forward delivery agreements [such as discussed in PUC's March 30, 2004 Order in Docket 94-04], in the excess of \$1,500,000 and any use of the proceeds of such obligations and transactions;
 - e) Any contract or obligation not specifically referenced above which exceeds \$1,500,000, not including individual contracts within an approved CIP or contract;
 - f) Any internally funded procurement in excess of a CIP expenditure ceiling, which PUC shall establish on or before November 15 of each fiscal year.
 - g) Any agreement to compromise or settle disputed charges for services by GPA, when the amount of the waived charges would exceed \$1,500,000.

2. For contract that involve the receipt by GPA of revenues or reimbursement of costs in excess \$1,500,000, the following procedure will apply:

- a) GPA is permitted to evaluate the contract without PUC approval;
- b) Prior to entering into the contract, GPA will provide the following to PUC:
 - i) The Consolidated Commission on Utilities [CCU] resolution authorizing the contract.
 - ii) An affidavit from GPA management stating that the contract does not produce an increased revenue requirement with supporting documentation.
 - iii) A narrative description of the contract.
- c) The contract will be deemed approved unless rejected by PUC within 30 days after an adequate filing [as determined by the ALJ] has been made by GPA pursuant to subparagraph (b).

3. Emergency procurements, which are made by GPA under 5 GCA section 5215, shall not require PUC approval; provided, however that GPA shall file its section 5215 declaration, the governor's written approval of same, and the procurement details, as set forth in paragraph 5(b) below, within 20 days of the declaration. Any emergency procurement funded by other than bond revenues shall be included in the CIP ceiling established under paragraph 1(f).

4. With regard to multi-year contracts:

- a) The term of a contract or obligation [*procurement*] will be the term stated therein, including all options for extension or renewal.
- b) The test to determine whether a procurement exceeds the \$1,500,000 threshold for PUC review and approval [*the review threshold*] is the total estimated cost of the procurement, including cost incurred in any renewal options.
- c) For a multi-year procurement with fixed terms and fixed annual costs, GPA must obtain PUC approval if the total costs over the entire procurement term exceed the review threshold. No additional PUC review shall be required after the initial review process.

d) For multi-year procurements with fixed terms and variable annual costs, GPA shall seek PUC approval of the procurement 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, GPA will file a cost estimate for the coming year of the procurement. GPA shall seek PUC approval in the event a procurement subject to this paragraph should exceed 120% of the aggregate cost initially approved by PUC.

e) Unless for good cause shown, any petition for PUC approval of a multi-year procurement must be made sufficiently in advance of the commencement of the procurement process to provide PUC with reasonable time to conduct its review.

5. On or before September 15 of each year, GPA will use best efforts to file with PUC its construction budget for the coming fiscal year plus estimates for the subsequent two fiscal years. The filing shall contain a description of each CIP contained with the budget and estimates. Project descriptions should be sufficiently detailed to identify the specific location and type of equipment to be purchased, leased or installed. For capital items that are subject to review by account group, GPA shall file information equivalent to that submitted to its governing body for these items.

6. With regard to any contract or obligation [*procurement*], which requires PUC approval under this Order, GPA shall initiate the regulatory review process through a petition, which shall be supported with the following:

- a) A resolution from CCU, which confirms that after careful review of the documentation described in subparagraph (b) below and upon finding that the proposed procurement is reasonable, prudent and necessary, CCU has authorized GPA to proceed with the procurement, subject to regulatory review and approval.
- b) The documentation on which CCU based its approval under subparagraph (a) above, which shall include, at a minimum, a report from management or an independent third party, which contains the following:
 - i. A description of the project, including timeframes, time constraints and deadlines, and a justification of its need.

- ii. An analysis from a technical and cost benefit perspective, of all reasonable alternatives for the procurement.
 - iii. A detailed review of the selected alternative, which establishes the basis of selection and that it is economically cost effective over its life.
 - iv. Cost estimates and supported milestones for the selected alternative.
 - v. The projected source of funding for the project with appropriate justification and documentation.
 - vi. A supporting finding that the procurement is necessary within the context of other utility priorities.
7. If during any fiscal year, GPA desires to undertake a contract or obligation covered by paragraph 1, for which approval has not otherwise been received, it may file an application with the PUC for approval of such contract or obligation, which shall contain the information required in paragraph 6 above. GPA shall obtain PUC approval thereof before the procurement process is begun.
8. GPA shall, on or before December 1 of each year, file a report on the contracts and obligations approved by PUC for the prior fiscal year pursuant to this Protocol. This report shall show the amount approved by PUC and the actual expenditures incurred during the preceding fiscal year for each such contract and obligation and other changes from the prior filing in cost estimates, start dates and inservice or completion dates.
9. GPA shall not incur expenses for PUC approved contracts and obligations in excess of 20% over the amount authorized by PUC without prior PUC approval. In the event that GPA estimates that it will exceed the PUC approved level of expenditures by more than 20%, it shall submit to PUC the revised estimate and full explanation of all additional cost.
10. GPA shall file with PUC monthly financial reports within five working days of presentation of monthly financial reports to its governing body.
11. To the extent GPA submits a filing to PUC under this order which

PUC staff believes in incomplete or deficient, it shall notify GPA and the PUC with in 15 calendar days thereof with specific indication of the alleged incompleteness or deficiency.

12. PUC staff will use best efforts to be prepared for hearing within 45 days of a complete GPA filing under the terms of paragraph 6 above.
PUC's administrative law judge, is authorized, in his judgment, to shorten the above 45 day period, for good cause shown by GPA.
13. Within the context of a rate or management audit proceeding, PUC staff may review the prudence of all procurement or obligations whether or not subject to review herein.
14. PUC's administrative law judge is authorized to interpret the meaning of any provision of this order, in furtherance of the contract review process.

Dated this 2nd day of February, 2006.

Terrence M. Brooks

Joseph M. McDonald

Edward C. Crisostomo

Rowena E. Perez