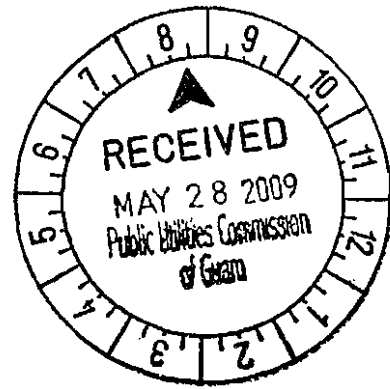


GUAM PUBLIC UTILITIES COMMISSION  
SPECIAL MEETING  
APRIL 20, 2009  
SUITE 207 GCIC BUILDING, HAGATNA



MINUTES

The Guam Public Utilities Commission [PUC] conducted a special business meeting commencing at 6:00 p.m. on April 20, 2009 pursuant to due and lawful notice. Commissioners Johnson, Perez, McDonald, Cantoria 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 Commission reviewed the minutes of the special meeting conducted on March 30, 2009. Commissioner Perez requested certain amendments to the minutes. She indicated that when the Guam Waterworks Authority had discussed the request for a 6.6% rate increase, it indicated that waste water rates would not be affected. However, when the PUC subsequently obtained additional information from GWA, such information showed that waste water rates were affected. Although residential waste water rates were not affected, commercial and Navy waste water rates were affected by the 6.6% increase. Commissioner Perez requested that Legal Counsel and PUC Administrator review the tapes and information recorded at the meeting of March 30<sup>th</sup> to insure that GWA presented the proper information to the Commission. Commissioner Perez indicated that she did not recall that GWA clarified that certain waste water rates would be increased.

Commissioner Perez also mentioned Commissioner McDonald's question about how much revenue would be collected as a result of the 6.6% increase. Commissioner McDonald indicated that there had been some response to his question. Legal Counsel stated that GWA's CFO, Greg Cruz, had said that approximately \$150,000 per month would be gained in revenues.

Commissioner Perez stated that, with regard to Docket 94-04, GPA's Petition to Exercise Financing Options under PMC with TEMES for Turbine Overhaul of Cabras Unit 2, she had requested that GPA also look in to the refinancing of the Cathay Bank loan at a lower interest rate.

Subject to the modifications requested by Commissioner Perez, upon motion duly made, seconded and unanimously carried, the Commission approved the minutes of the March 30, 2009 meeting.

## 2. Guam Power Authority

The Commission next considered Guam Power Authority [GPA's] Petition for Contract Review approval of its Request for Proposals, Renewables under Integrated Resources Plan [Docket 08-06]. PUC Legal Counsel reported that GPA seeks to issue a multistep procurement process to obtain providers of renewable energy such as biomass, hydro, geothermal, solar, wind, ocean thermal, wave action and tidal action. During the first step of the process, GPA will select qualified providers. During the second step, GPA will select the best price proposal and enter into a contract with the bidder. GPA will award up to forty MW projects in phase 1 with a maximum of 20 MW per project. The minimum project is 5 MW. GPA is required to develop renewable energy production pursuant to Public Law 29-62. GPA has already agreed to comply with certain conditions regarding the procurement process as set forth in its IRP Implementation Protocols. On April 20, 2009, the PUC's consultant, the Georgetown Consulting Group, Inc., submitted its Report, recommending approval of GPA's petition, subject to compliance with the conditions in the IRP Implementation Protocols. It also indicated that GPA would be required to seek approval of its final contract for renewable energy sources from the PUC once a contractor is selected. Commissioner Perez asked whether all parties could participate in the bid as long as they could meet the 36 month commissioning schedule. General Manager Joaquin Flores indicated that Phase 1 was limited to projects that could be energized within 36 months. Upon motion duly made, seconded and unanimously carried, and good cause appearing, the Commission adopted the ORDER made *attachment "B"* hereto.

The Commission next considered the Guam Power Authority's Emergency LEAC Filing, Docket 02-04. PUC Legal Counsel reported that on April 7, 2009, GPA filed an Emergency Petition to Reduce LEAC Factor from \$0.157309 per kWh for its civilian customers to \$0.13645 per kWh for meters read on and after May 1, 2009 and continuing until July 31, 2009. The change requested reflected a 9.36% decrease in the total bill, or \$21.18, for a residential customer utilizing an average of 1,000 kilowatt hours per month. The stated basis for this filing was that fuel costs have decreased substantially in the last several months, and GPA desires to pass on some of the benefits of reduced fuel costs to customers instead of waiting for the next LEAC adjustment, which does not take effect until August 1, 2009. On April 14, 2009, the Chairman of the Public Utilities Commission, Jeffrey C. Johnson, filed the REPORT OF THE PUC CHAIRMAN. Therein the Chairman stated that, due to the special circumstances of the present GPA Petition, it was appropriate for the Chairman to review the same and to

recommend approval of the GPA Petition. Since the LEAC reduction in the present filing requested by GPA was even lower than that previously recommended by PUC's consultant, Georgetown Consulting Group, Inc. in January 2009, there does not appear to be a need for extended review by the PUC's consultant and the reduction appeared to be appropriate. Based upon the declines in fuel prices during the last half of 2008, it is justified that GPA pass on the benefits of such reduced costs to its customers, instead of waiting for the next LEAC adjustment. In addition, this reduced factor will only be in effect for a period of three months, after which there will be a "true up" of the LEAC Factor for the next LEAC period of August 2009 - January 2010. The Chairman stated that the decrease now requested by GPA was essentially equivalent to the prior recommendation of GCG, thus rendering approval appropriate. Upon consideration of the Report of the PUC Chairman, and good cause appearing, upon motion duly made, seconded and unanimously carried, the Commission adopted the ORDER made *Attachment "C"* hereto.

The next matter of the agenda was Docket 94-04, Petition for Contract Review to Procure a Bank Loan to Pay off existing \$20M Cathay Bank Loan. PUC Legal Counsel reported that on April 13, 2009, GPA filed a petition requesting that the PUC authorize it to issue a procurement to secure bank loan financing for the purpose of paying off its current \$20 Million loan with Cathay Bank. The PUC previously addressed the history of GPA's loan with Cathay Bank on February 5, 2009. According to Counsel, GPA had presented compelling arguments for refinancing the Cathay Bank Loan. GPA sought to extend the term of the loan from 3 to 5 years and to obtain a fixed rate loan rather than a floating interest rate. Most importantly, the new proposed loan would authorize GPA to remove approximately \$5,000,000.00, which is presently held by Cathay Bank in a deposit account as "collateral" for the loan. At least a portion of the funds held in the Cathay Bank account as collateral were transferred by GPA from its Self Insurance Fund; furthermore, it was in the interest of GPA and its rate payers that the Self Insurance Fund be used for the purposes for which it was originally intended. Counsel indicated that once GPA issues the request for proposals and selects a qualified bank, the final loan agreement will later be reviewed by the Commission.

Commissioner Pangelinan stated that he agreed with the condition cited in the report of PUC's consultant, GCG, dated April 20, 2009. Once a new loan is secured, the self insurance fund monies will be placed in an account and used only for self insurance fund purposes. The Comptroller of GPA, Randy Weigand, indicated that as soon as GPA obtained its new loan, the self insurance funds in the existing collateral account would revert to the self insurance fund. Commissioner Cantoria asked if there was any reduction in the interest rate when the self insurance funds were shifted to Cathay Bank. Mr. Weigand indicated that he did not believe so. Commissioner Cantoria indicated that the

Order should state that the collateral funds should be taken out of Cathay Bank. Commissioner Pangelinan stated that any amount that was taken as collateral should be released and that Legal Counsel should draft appropriate wording in the Order. Upon motion duly made, seconded, and unanimously carried, the Commission, subject to the amendments requested by the Commissioners concerning self insurance funds, approved and adopted the ORDER made *Attachment "D"* hereto.

### **3. Pacific Data Systems**

Legal Counsel indicated that Pacific Data Systems Tariff Transmittal No. 2, PDS Docket 09-01, had been discussed at the previous PUC meeting. At that meeting there was no quorum present to act upon the PDS Tariff Transmittal. Commissioner Perez asked whether PDS had sent notice to other telecom carriers, and Counsel indicated that it had. Commissioner Perez suggested that, rather than approval at the present time, the Commission should allow comments to be brought in by other parties. Upon motion duly made, seconded and unanimously carried, the Commission tabled consideration of the PDS tariff transmittal in order to allow other telecommunications companies to provide feedback and input upon the transmittal.

### **4. GTA Teleguam**

The Commission next proceeded to consider the ORDER issued by Administrative Law Judge [ALJ] David A. Mair on April 13, 2009, in GTA Docket 08-11, Arbitration of Interconnection Disputes between Pacific Data Systems, Inc. and GTA Teleguam LLC. Legal Counsel gave an explanation of the background and history of these proceedings, which have previously been before the Commission on numerous occasions. Legal Counsel explained the ORDER of Administrative Law Judge Mair, and his finding of fact and conclusions of law regarding the dispute over the quality of dark fiber that GTA is required to provide to PDS under the Interconnection Agreement and applicable law. The ALJ found that GTA and PDS did agree to mutually acceptable standards for the dark fiber routes. The parties also agreed to the determination of the issue by a consultant as to whether the dark fiber provided by GTA to PDS complied with industry standards. The ALJ concluded that seven dark fiber routes provided by GTA to PDS are not in accordance with either the nationally accepted telecommunications industry standards or mutually acceptable standards agreed to between the parties. GTA had not provided dark fiber "in guaranteed good working condition" as agreed to in its interconnection agreement with PDS. Legal Counsel recommended that the Commission approve and adopt the ORDER of the ALJ. Upon consideration of the ORDER of the ALJ, and the findings of fact and conclusion of law stated therein, good cause appearing, upon motion duly made, seconded and unanimously carried, the Commission

approved the adoption of the ORDER issued by the ALJ and adopted his ORDER made *Attachment "E"* hereto.

The Commission next considered GTA Tariff Transmittal No. 13, GTA Docket 09-01. PUC Legal Counsel indicated that he had filed a report recommending approval of certain amendments made by GTA to its General Exchange Tariff No. 1. In its Tariff Transmittal No. 13, GTA deleted the monthly rates and non-recurring rates for DSL Access Service Connection and provided a charge for Special Access Service Synchronous Optical Channel Service for "Add/Drop Multiplexing." Counsel recommended approval of these changes. A motion to approve the Tariff Transmittal was made, but not seconded. Commissioner Perez clarified that, under the law, after the 30 day notice period, the tariffs proposed by GTA would go into effect, and the PUC also has 120 days to act on the tariff. She then requested that said tariffs be reviewed by the Georgetown Consulting Group Inc. Upon Motion duly made, seconded and unanimously carried, the Commission approved a request that the tariff be reviewed by GCG.

#### **5. Guam Telecom LLC**

For notice purposes, Legal Counsel advised the Commission that Guam Telecom LLC had filed an Application for Certificate of Authority [GT Docket 09-01]. The application was presently under review and would be brought back to the Commission later for action. Commissioner Pangelinan indicated that he would not participate in this matter, as his law firm, Calvo & Clark, represents Guam Telecom LLC with regard to the Certificate of Authority. Upon motion duly made, seconded, and unanimously carried, the Commission requested that PUC Legal Counsel examine the application and make recommendations to the Commission pertaining thereto [Commissioner Pangelinan abstained].

#### **6. Office Space for PUC**

Chairman Johnson reported concerning the search by the Commission for new office space for lease. The Chairman indicated that next door to the Commission's present space, in room 208-209, the Commission could obtain either 530 square feet or 662 square feet. If the Commission took the 662 square foot space, there would be a monthly savings of over \$400. If the Commission took the 530 square foot space, there would be a savings of over \$700 per month. The build out cost is approximately \$5,000.00 to 6,000.00; the decrease in rental could pay for the same within a year. The Chairman then recommended that the matter be tabled for the present time for further consideration.

**7. PUC Web Site**

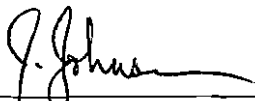
The Chairman mentioned that 2 proposals for the web site have been presented by A.J. Rosario/ICON. These proposals are presently being discussed and reviewed by Commission staff. An extended discussion ensued between the Commissioners about the various symbols proposed for the utilities in the web site, and how the various tabs should be organized on the site relative to such matters as rules and procedures, hearings, meetings and dockets, etc. There was also a discussion as to how pending dockets and files could be set up on the web site. The Chairman recommended that a meeting be set up with Mr. Rosario and scheduled.

**8. Other Business**

The Commissioners agreed that the next PUC Meeting would be scheduled for May 28, 2009 at 6:00 p.m.

The Chairman next indicated that the Administrator was collecting consultant billings on LEAC matters, and that these should be subsequently discussed with the consultants. The Chairman recommended that in the future, the Commission should revert back to the ordinary system of considering LEAC every 6 months.

Upon motion duly made, seconded and unanimously carried, the meeting was adjourned.

  
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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. April 20, 2009**

**Agenda**

1. Approval of Minutes of March 30, 2009.
2. Guam Power Authority
  - Docket 08-06, Contract Review of Request for Proposals, Renewables under Integrated Resource Plan; Proposed Order
  - Docket 02-04, Emergency LEAC Filing; Proposed Decision and Order
  - Docket No. 94-04: Petition for Contract Review to Procure a Bank Loan to Payoff Existing \$20M Cathay Bank Loan; Proposed Order
3. Pacific Data Systems
  - PDS Docket 09-01, Tariff Transmittal No. 2, General Exchange Tariff No. 1; Proposed Order
4. GTA TeleGuam
  - Docket 08-11, in Re: Arbitration Disputes, GTA/PDS; ALJ Arbitration Decision and Order; Proposed PUC Order
  - GTA Docket 09-01, Tariff Transmittal No. 13, General Exchange Tariff No. 1; PUC Legal Counsel Report and Proposed Order
5. Guam Telecom LLC
  - GT Docket 09-01; Filing of Application for Certificate of Authority; Status Report

**6. Office Space for PUC**

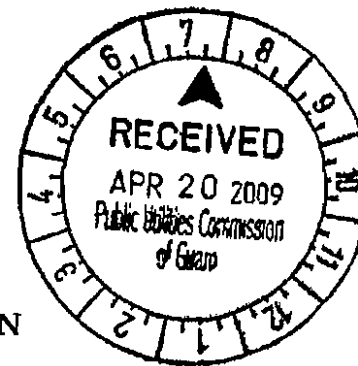
- **Proposal Re: Room 208, GCIC**

**7. PUC Website**

- **Update**

**8. Other Business**





BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:

DOCKET 08-06

Guam Power Authority's Renewable Energy  
Acquisition Pursuant to GPA's Integrated  
Resource Plan

ORDER

This matter comes before the Guam Public Utilities Commission [PUC] upon the Guam Power Authority's [GPA] Petition for PUC Review and Approval of GPA's Renewable Energy Acquisition.<sup>1</sup> On December 29, 2008, the PUC approved GPA's Integrated Resource Plan (IRP).<sup>2</sup> GPA's IRP requires GPA to acquire renewable resources.<sup>3</sup> Pursuant to Public Law 29-62, it is now a requirement of law that 5% of GPA's net electricity sales be from renewable resources by 2015.<sup>4</sup>

In its Petition, GPA has attached certain Renewable Energy Acquisition bid documents prepared by GPA and its contracted consultants, Winzler & Kelly and R.W. Beck.<sup>5</sup> Pursuant to the bid documents, there will be a multi-step procurement process. In the first step, GPA will select qualified providers of renewable energy. Renewable energy sources may include technologies such as biomass, hydro, geothermal, solar, wind, ocean thermal, wave action and tidal action. During the second step, GPA will select the best price proposal and enter into a contract with a bidder.<sup>6</sup>

During the "Phase 1" acquisition, GPA may limit the amount of energy purchased from "highly variable" renewable resources to no more than 20MW (in total). The minimum project capacity that may be bid in the IFB will be 5MW.<sup>7</sup> The Consolidated Commission on Utilities has approved the renewable resource bid

<sup>1</sup> GPA Petition for Contract Review of Renewable Energy Acquisition, filed March 26, 2009.

<sup>2</sup> PUC Decision and Order issued December 29, 2008 in Docket 08-06.

<sup>3</sup> GPA Petition for Contract Review of Renewable Energy Acquisition, p. 1.

<sup>4</sup> 12 GCA §8311(a).

<sup>5</sup> GPA Petition for Contract Review of Renewable Energy Acquisition p. 1.

<sup>6</sup> Id. at p. 1 - 2.

<sup>7</sup> Invitation for Multi-Step Bid, Vol. 11 Technical Requirements, Secs. 2.2.5 & 2.3.1.

documents and authorized the General Manager of GPA to petition the PUC for approval of the documents.<sup>8</sup>

This matter is properly reviewable by the PUC under the GPA Contract Review Protocol, which requires PUC review of any contract or obligation which exceeds \$1,500,000.00, before the procurement process is begun.<sup>9</sup> In its December 29, 2008 Order, the PUC also required that GPA procurements under the IRP be carried out in full compliance with the Resource Procurement Principles set forth in a Memorandum of Understanding concerning Integrated Resource Planning Implementation Protocols.<sup>10</sup> Pursuant thereto, the PUC reviews and approves, prior to their release, all RFP's used for the purposes of procuring renewable, demand side management and conventional power resources or services.<sup>11</sup>

Public Law 29-62 established a policy requiring a development of renewable energy production and a decrease upon total reliance on oil for electricity production.<sup>12</sup> The Guam PUC, in its oversight role in implementing the IRP, has been supportive of GPA's efforts to develop renewable generation resources. GPA's efforts to issue an IRP for renewable energy acquisition are consistent with law and should be authorized.

On April 20, 2009, the PUC's consultant, the Georgetown Consulting Group, Inc., submitted its Report recommending approval of GPA's Petition, subject to compliance with the conditions in the IRP Implementation Protocols.<sup>13</sup>

Upon consideration of the record herein, prior orders of the Commission in this docket, and GPA's Petition for Contract Review of Renewable Energy Acquisition, for good cause shown and on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby ORDERS that:

1. GPA is hereby authorized to issue its Invitation for Multi-Step Bid for Renewable Resource.

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<sup>8</sup> Consolidated Commission on Utilities Resolution No. 2009-11.

<sup>9</sup> GPA Contract Review Protocol (as amended), May 26, 2007 ¶1(e).

<sup>10</sup> Memorandum of Understanding between GPA and Georgetown Consulting Group, Inc. dated December 15, 2008, Docket 08-06.

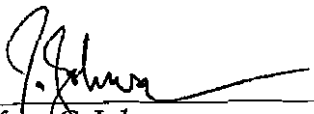
<sup>11</sup> Id. at ¶8(b).

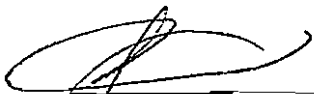
<sup>12</sup> Public Law 29-62 Section 1.

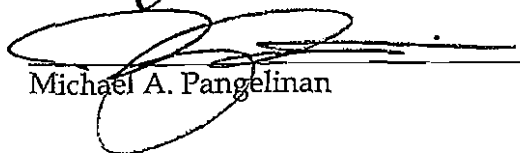
<sup>13</sup> GCG Report in Docket 08-06 on GPA Petition for Contract Review, filed April 20, 2009.

2. GPA shall comply with the Resource Procurement Principles set forth in par. 8 of the IRP Implementation Protocols agreed to on December 15, 2008.
3. In particular, GPA is requested to ensure it undertakes procurement outreach activities to maximize interest from prospective project proponents to ensure the acquisition of a sufficient number of competitively priced development proposals. GPA should actively seek to identify prospective bidders for the IFB and to encourage submission of proposals from as many potential bidders as possible.
4. Subsequent to selection of a bidder in Step 2 of the multi-step procurement, and negotiation of a contract, GPA should seek approval of such contract from the PUC pursuant to the Contract Review Protocol and the IRP Implementation Protocols.
5. GPA shall comply with its reporting requirements to the PUC concerning this IFB pursuant to par. 9 of the IRP Implementation Protocols.

Dated this 20<sup>th</sup> day of April, 2009.

  
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Jeffrey C. Johnson  
Chairman

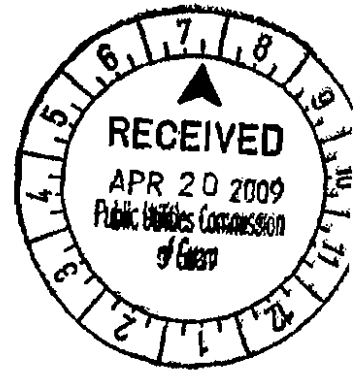
  
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Rowena E. Perez

  
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Michael A. Pangelinan

  
\_\_\_\_\_  
Joseph M. McDonald

  
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Filomena M. Cantoria

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF GUAM



GUAM POWER AUTHORITY  
LEVELIZED ENERGY ADJUSTMENT  
CLAUSE [LEAC]

DOCKET 02-04

ORDER

In accordance with the protocol established by Guam Public Utilities Commission [PUC] Order dated January 29, 1996, as amended by Order dated March 14, 2002, Guam Power Authority [GPA] by Emergency "LEAC filing dated April 7, 2009, requested that the current LEAC factor [\$0.157309 per kWh] for its civilian customers be decreased to \$0.13645 per kWh for meters read on and after May 1, 2009 and continuing until July 31, 2009.<sup>1</sup> This change reflects a 9.36% decrease in the total bill, or \$21.18, for a residential customer utilizing an average of 1,000 kilowatt hours per month.<sup>2</sup>

The basis for the LEAC filing is that fuel costs have decreased substantially in the last several months, and GPA desires to pass on some of the benefits of reduced fuel costs to customers, instead of waiting for the next LEAC adjustment which does not take effect until August 1, 2009.<sup>3</sup> In a prior ORDER in this docket issued January 26, 2009, the Commission had recognized that a volatility factor of 7% should be added to the projected fuel prices in the determination of the LEAC factor.<sup>4</sup> However, effective May 1, 2009, this volatility factor will no longer be included in the determination of the LEAC factor.<sup>5</sup>

Chairman Jeffrey C. Johnson has submitted a Report recommending that the PUC approve a decrease in the LEAC factor from the current \$0.15763 per kWh to \$0.13645 per kWh effective on all meters read on or after May 1, 2009.<sup>6</sup>

<sup>1</sup> Emergency Petition to Reduce the Levelized Energy Adjustment Clause [LEAC] Factor, by D. Graham Botha, Esq. GPA legal counsel, dated April 7, 2009.

<sup>2</sup> Id.

<sup>3</sup> Id. at p. 1; pursuant to 12 GCA §12004, the Commission has the power to modify reasonable rates and charges for services.

<sup>4</sup> Order in Docket 02-04, GPA LEAC Clause, dated January 26, 2009.

<sup>5</sup> Representation by Randall Wiegand, CFO, to PUC Legal Counsel on April 14, 2009.

<sup>6</sup> Report of Chairman Jeffrey C. Johnson Re: Emergency LEAC Petition dated April 14, 2009.

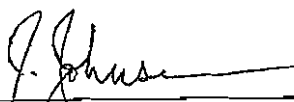
Order  
LEAC, Docket 02-04  
April 20, 2009


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After carefully reviewing the record in this proceeding and after discussion at a duly noticed public meeting held on April 20, 2009, for good cause shown and on motion duly made, seconded and carried by affirmative vote of the undersigned Commissioners, the Guam Public Utilities Commission hereby **ORDERS THAT:**

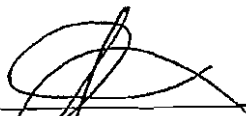
1. A LEAC factor of \$0.13645 per kWh shall be used by GPA for all civilian bills, for meters read on and after May 1, 2009, to recover its forecasted fuel and related expenses in accordance with the Schedules appended hereto as *Attachment A*. This change reflects a 9.36% decrease in the total bill, or \$21.18, for a residential customer utilizing an average of 1,000 kilowatt hours per month.
2. Any assumptions accepted in this Order concerning the valuation of GPA's fuel inventory are only applicable until the end of the current LEAC period ending July 31, 2009.<sup>7</sup>
3. GPA is reminded of its duty to report to the PUC no later than May 1, 2009 on actions taken by it in response to the volatility of oil prices and the impact of the hedging program on the financial liquidity of GPA.


Dated this 20<sup>th</sup> day of April, 2009.

  
\_\_\_\_\_  
Jeffrey C. Johnson  
Chairman

  
\_\_\_\_\_  
Filomena M. Cantoria

  
\_\_\_\_\_  
Joseph M. McDonald

  
\_\_\_\_\_  
Rowena E. Perez

  
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Michael A. Pangelinan

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<sup>7</sup> See par. 3 of Order in Docket 02-04, GPA LEAC Clause, dated January 26, 2009.



**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF:** ) **DOCKET 94-04**  
 )  
**Guam Power Authority's Request to** )  
**Enter into Loan Agreement** )

**ORDER AUTHORIZING PROCUREMENT FOR BANK LOAN**

On April 13, 2009, the Guam Power Authority [GPA] filed a Petition requesting that the Guam PUC authorize it to issue a procurement to secure bank loan financing for the purpose of paying off its current \$20 million loan with Cathay Bank.<sup>1</sup> The PUC is familiar with the history of GPA's loan with Cathay Bank; such loan was the subject of a prior Commission Order Approving Commercial Paper Program, issued in this docket on February 5, 2009.<sup>2</sup> In such Order, the PUC authorized GPA to amend its Credit Agreement with Cathay Bank to convert an existing Line of Credit into a 3 year loan.<sup>3</sup>

This matter comes before the Commission pursuant to the Contract Review Protocol, which requires that all externally funded loan obligations of the Authority require prior PUC approval.<sup>4</sup> The loan refinancing which GPA seeks to secure is such an obligation. In January 2009, GPA indicated that it had little choice but to enter into the loan agreement with Cathay Bank, as it was technically in default of its line of credit agreement. Cathay Bank had demanded immediate payment of the \$20 million balance due.<sup>5</sup> GPA officials indicated to the PUC at the meeting on this matter that GPA would be seeking to subsequently refinance the Cathay Bank loan on more favorable terms.

GPA's Petition is properly before the Commission, as the current Contract Review Protocol requires prior PUC approval before the procurement process has begun.<sup>6</sup> Under the procurement proposed by GPA, the proposed new bank loan

<sup>1</sup> Petition for Contract Review to Procure a Bank Loan to Payoff Existing Cathay Bank Loan, Docket No. 94-04. filed April 13, 2009.

<sup>2</sup> PUC Order Approving Commercial Paper Program, issued February 5, 2009.

<sup>3</sup> Id. at pgs. 2 - 3.

<sup>4</sup> Contract Review Protocol for the Guam Power Authority (issued on May 26, 2007) and 12 GCA §12004.

<sup>5</sup> Letter from Joaquin C. Flores, General Manager of GPA, dated January 30, 2009, to Jeffrey C. Johnson, Chairman of the PUC.

would be a five year loan with standard terms and conditions including a debt service coverage pledge not to exceed 1.3x, a subordinate pledge of revenues, and an interest rate capped at 8% for the purpose of replacing the \$20 million owed under the existing Cathay Bank Credit Agreement.”<sup>7</sup> GPA presents compelling arguments for refinancing the Cathay Bank Loan. It would prefer a longer repayment term, and a fixed rate loan, rather than a floating interest rate; significantly, the new loan would authorize GPA to remove approximately \$5,000,000.00 which is presently held by Cathay Bank in a deposit account as “collateral.” These funds could be freed up for the “purposes intended” if a new loan arrangement were secured.<sup>8</sup> At least a portion of the funds held in the Cathay Bank account as collateral were transferred by GPA from its Self Insurance Fund.<sup>9</sup> It is in the interest of GPA and its rate payers that the Self Insurance Fund be used for the purposes for which it was originally intended.

On April 20, 2009, the PUC’s consultant, Georgetown Consulting Group, Inc., recommended approval of GPA’s Petition.<sup>10</sup>

Upon due consideration of the Petition of GPA, the prior record in this proceeding and the Orders issued therein, for good cause shown, and upon motion duly made, seconded and unanimously carried, the Public Utilities Commission ORDERS as follows:

1. GPA’s Petition for Contract Review to Procure a Bank Loan to Payoff the Existing Cathay Bank Loan is hereby approved.
2. GPA is authorized to commence the procurement process in order to secure a new bank loan which will refinance its existing \$20 million loan with Cathay Bank.
3. When the procurement process is completed and GPA has negotiated a loan agreement with a new bank for the refinancing of its existing \$20 million loan, it shall present the proposed agreement to the PUC for final review.
4. At the present time, the PUC need not review the loan terms proposed by GPA, but will review the terms negotiated by GPA in the final loan agreement.

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<sup>6</sup> Contract Review Protocol for Guam Power Authority, par. 1 (issued May 26, 2007).

<sup>7</sup> Petition for Contract Review, at p. 1 – 2; see also letter from Joaquin C. Flores, General Manager GPA, to PUC Legal Counsel dated April 1, 2009, p. 3.

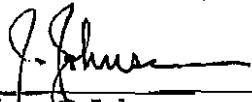
<sup>8</sup> Id. at p. 2.

<sup>9</sup> Order approving Commercial Paper Program, Docket 94-04, February 5, 2009 at p. 3.

<sup>10</sup> Letter Report from William J. Blair, Esq., filed April 20, 2009.

5. GPA's petition for final approval of the loan agreement be accompanied with a resolution of the Guam Consolidated Commission on Utilities which approves such loan agreement and authorizes GPA management to enter into the agreement.
6. Once GPA consumates a loan agreement with a new bank, it shall immediately redeposit all self insurance funds, presently held as collateral by Cathay Bank, into a separate self insurance reserve account with the new bank; all self insurance funds shall be maintained separately and not commingled with other funds. Thereafter, the self insurance funds in such account shall only be used for the specific purposes for which the self insurance fund was created.

Dated this 20<sup>th</sup> day of April, 2009.

  
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Jeffrey C. Johnson  
Chairman

  
\_\_\_\_\_  
Joseph M. McDonald

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Rowena E. Perez

  
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Filomena M. Cantoria

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Michael A. Pangelinan





BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

ARBITRATION OF INTERCONNECTION  
 DISPUTES BETWEEN PACIFIC DATA  
 SYSTEMS, INC. AND GTA TELEGUAM LLC

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 )  
 ) Docket No. 08-11  
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 )

ORDER

This matter comes before the Guam Public Utilities Commission upon the ORDER issued by the Administrative Law Judge [ALJ] David A. Mair on April 13, 2009. The history of this proceeding is set forth in the Scheduling Order upon Remand issued by ALJ Mair on January 15, 2009.<sup>1</sup> In October 2008, prior ALJ Harry M. Boertzel had issued an ARBITRATION REPORT finding that seven “dark fiber routes” provided under the Interconnection Agreement between GTA Teleguam [GTA] and Pacific Data Systems [PDS] were not in “good working order” and failed to meet applicable service standards.<sup>2</sup> On October 28, 2008, GTA filed exceptions to the Arbitration Report of the ALJ.<sup>3</sup> Subsequently, the PUC approved and ratified the Arbitration Report.<sup>4</sup>

After the ALJ scheduled further proceedings, GTA Teleguam filed suit in the District Court of Guam, Civil Action No. 08-00021. Therein the PUC and GTA stipulated that the PUC would treat GTA’s “Exceptions” as a “Petition for Reconsideration” and that the parties would have a full opportunity to address the matter before the Commission. On January 6, 2009, the District Court of Guam issued its Order remanding the matter back to the PUC in order to “further develop the record and narrow the issues for any further appeal, if any...”<sup>5</sup>

The ORDER of Administrative Law Judge David A. Mair, issued on April 13, 2009, indicates that the parties hereto have now had the opportunity to submit briefs on the “Exceptions” filed by GTA. The ORDER of the ALJ contains his findings of fact and

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<sup>1</sup> Scheduling Order upon remand, January 15, 2009.

<sup>2</sup> Arbitration Report of ALJ Harry M. Boertzel, October 22, 2008.

<sup>3</sup> Exceptions of GTA Teleguam to Report of Administrative Law Judge, October 28, 2008.

<sup>4</sup> Minutes of PUC Meeting of November 10, 2008.

<sup>5</sup> Order of the District Court of Guam in Civil Action No. 08-00021, January 6, 2009.

conclusions of law regarding the dispute over the quality of dark fiber that GTA is required to provide to PDS under the Interconnection Agreement and applicable law.

The ALJ has found that GTA and PDS agreed to mutually acceptable standards for the dark fiber and jointly requested that Mr. John Limtiaco of L&K Communications provide consulting services to determine if the dark fiber provided by GTA to PDS complied with industry standards.<sup>6</sup> In his report, Mr. Limtiaco concluded that 9 of the 14 routes failed to meet these mutually acceptable industry standards.<sup>7</sup> GTA indicated in writing that it did not dispute the findings of Mr. Limtiaco.<sup>8</sup> PDS subsequently notified the former ALJ and GTA via email that the dispute about the acceptance of GTA dark fiber routes had been narrowed to seven routes.<sup>9</sup> According to the ALJ, GTA and PDS agreed as to the specific 7 dark fiber routes that remained in dispute.<sup>10</sup>

The ALJ indicates that, under federal law, incumbent local exchange carriers such as GTA may agree to provide interconnection that is superior in quality when it negotiates an interconnection agreement, as it did with PDS.<sup>11</sup> Furthermore, the courts have upheld the right of a state regulatory agency such as the Guam PUC to require that an Incumbent Local Exchange Carrier such as GTA provide standards and procedures superior in quality to those which it provides to itself and its customers. Under Guam law, the PUC has broad powers to determine just and reasonable rates, charges, classifications and conditions for and in connection with telecommunications services provided by telecommunications companies.<sup>12</sup> GCA §12105(c).

Pursuant to this authority, the PUC has adopted Rule 6(c) of the Interconnection Rules, which provides for nationally accepted telecommunications industry standards and/or mutually acceptable standards.<sup>12</sup> The ALJ concluded that the parties had agreed to mutually acceptable standards under Rule 6(c) of the Interconnection Rules.<sup>13</sup> Furthermore, in its Interconnection Agreement, GTA contracted to and agreed to

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<sup>6</sup> ALJ Order, p. 5-6.

<sup>7</sup> Id. at p. 6.

<sup>8</sup> Id. at p. 6.

<sup>9</sup> Id. at p. 7.

<sup>10</sup> First Pre-hearing Conference Order dated September 10, 2008

<sup>11</sup> Id. at p. 11-12.

<sup>12</sup> Id. at p. 14.

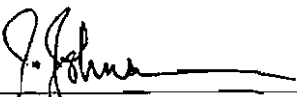
<sup>13</sup> Id. at p. 15.

provide dark fiber "in guaranteed good working condition" and in accordance with applicable law.

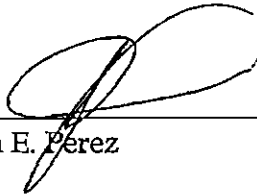
Having considered the ORDER of the ALJ issued on April 13, 2009, and good cause appearing, the Guam Public Utilities Commission HEREBY ORDERS as follows:

1. The ORDER issued by the ALJ on April 13, 2009, is hereby adopted and approved.
2. The Guam Public Utilities Commission accepts and adopts the findings of fact and conclusions of law of the ALJ in said Order.
3. In accordance with the ORDER, the injunction issued by the former ALJ on August 29, 2008 shall remain in place restraining GTA from terminating PDS's service regarding lack of payment for dark fibers.
4. The ALJ is authorized to schedule a status conference to address the amounts owing between PDS and GTA regarding the dark fiber services provided under the interconnection agreement and to address other remaining issues, such as the relief to which PDS is entitled in this proceeding, including the process whereby GTA will bring the disputed dark fiber routes into compliance with the nationally accepted telecommunications standards identified herein.
5. GTA and PDS are ordered to pay for the PUC's regulatory fees and expenses incurred in this Docket, including, without limitation, consulting and counsel fees and expenses, and the fees and expenses for conducting the hearing process. Pursuant to Rule 1(b)(iii) of the PUC's July 27, 2005 Rules Governing Regulatory Fees for Telecommunications Companies, GTA and PDS will each pay one-half of PUC's regulatory fees and expenses in this docket. Assessment of PUC's regulatory fees and expenses is authorized pursuant to 12 GCA §§12002(b), 12024(b), 12104, 12109, the Rules Governing Regulatory fees for Telecommunications Companies, and Rule 40 of the Rules of Practice and Procedure before the PUC.

Dated this 20<sup>th</sup> day of April, 2009.

  
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Jeffrey C. Johnson  
Chairman

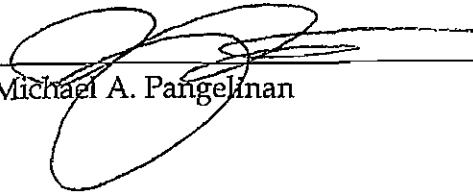
  
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