

GUAM PUBLIC UTILITIES COMMISSION
SPECIAL MEETING
December 23, 2009
SUITE 202 GCIC BUILDING, HAGATNA



MINUTES

The Guam Public Utilities Commission [PUC] conducted a special business meeting commencing at 6:00 p.m. on December 23, 2009 pursuant to due and lawful notice. Commissioners Johnson, Perez, McDonald, and Pangelinan were in attendance. The following matters were considered at the meeting under the agenda made *Attachment "A"* hereto.

1. Guam Telecom

This matter came before the Commission upon the Joint Petition of Guam Telecom LLC [GT] and GTA Telecom LLC [GTA] for PUC approval of their Interconnection Agreement, GT Docket 09-02. Legal Counsel reported that the parties sought approval of an "Interim Interconnection Agreement." GT and GTA adopted the same Interconnection Agreement, with slight modifications, that was adopted by GTA Telecom LLC and IT&E Overseas, Inc., dated August 8, 2007. Previously, in Docket 07-6, the PUC approved the Interconnection Agreement between GTA and IT&E. The "Interim" Agreement for which GT and GTA seek approval will only be in effect, at most, for a period of approximately 8 months, until August 8, 2010.

If the parties wish to adopt a subsequent Interconnection Agreement, they will need to seek the review and approval of the PUC. Counsel believes that GT has made a showing that expeditious approval by the PUC is appropriate, as GT needs to obtain the services provided by GTA under the Interim Interconnection Agreement. Counsel further pointed out that there are two legal prerequisites for approval of an Interconnection Agreement pursuant to 47 USC §252[e] of the Telecommunications Act of 1996: that the provisions of the Agreement do not discriminate against a telecommunications carrier not a party to the agreement, and that the implementation of the Agreement is consistent with the public interest, convenience and necessity.

Previously, the Commission had already determined that the same Interconnection Agreement which GT and GTA now propose to use [i.e. the GTA/IT&E Overseas Interconnection Agreement] does not discriminate against any carrier not a party to the agreement. Furthermore, the Commission had previously found that the Interconnection Agreement does promote competition in the telecommunications industry, which is a goal of the Guam Telecommunications Act of 2004. Based upon prior determinations of the

Commission, as well as the demonstrated need for the Interim Interconnection Agreement, Counsel recommends approval of the Interim Interconnection Agreement. The proposed Order approving such Interim Interconnection Agreement reserves the right of the Commission to authorize supplemental proceedings in the event that any language or provisions of the Agreement were determined to be inadequate.

For the record, Commissioner Pangelinan indicated that his law firm represents Guam Telecom. However he stated that he has not done any work on this matter. While he would normally recuse himself, in light of the fact that both parties had requested that the Commission move ahead expeditiously, and that his vote was required to approve the Interim Interconnection Agreement, he was inclined to participate in a limited capacity by approving the Interim Interconnection Agreement. He asked whether there was anyone present at the PUC meeting, including the parties, who objected to his signing of the order approving the Interim Interconnection Agreement. There was no response from the parties or anyone present at the meeting. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the Interim Interconnection Agreement between Guam Telecom LLC and GTA Telecom LLC, and adopted the Order made *Attachment "B"* hereto.

2. Pacific Data Systems

The Commission next considered the Order issued by Administrative Law Judge [ALJ] David A. Mair on December 15, 2009, in PDS Docket 09-03 [Delayed Service]. Legal Counsel reported that on November 19, 2009, the Commission had adopted a final Order approving certain findings of fact and conclusions of law of the ALJ and ordering that GTA process and complete pending and rejected service orders from PDS within 15 days, process and complete future orders from PDS within the timeframe set forth under the Interconnection Implementation Rules [IIRs], and immediately commence maintaining certain records required by the IIRs.

On November 30, 2009, GTA filed its Petition seeking clarification or rehearing of the Commission's November 19, 2009 Order in this Docket pursuant to Rule 37 of the Commission's Rules of Practice and Procedure. In its proposed Order, the ALJ rejected the contention of GTA that prior orders of the ALJ and the PUC were merely "interim" in nature and that another hearing should be conducted. The ALJ held that further proceedings were not necessary. The ALJ further found that GTA's Petition was defective, in that it did not specify which findings of fact or conclusions of law were allegedly erroneous, as required by Rule 37.

According to the ALJ, GTA was not denied an opportunity to present evidence, and there was no denial of due process. The ALJ further indicated that other procedural issues, such as damages, regulatory fees and sanctions, had not yet

been addressed by the ALJ but would be addressed at a further status hearing. Counsel indicated that the ALJ's Order of December 15, 2009 was well reasoned and recommended that the PUC adopt and approve such Order. Upon motion duly made, seconded and unanimously carried, the Commission approved the December 15, 2009 ALJ Order and denied GTA's Petition for Clarification or Re-Hearing. The Order adopted by the Commission is made *Attachment "C"* hereto.

3. Approval of Minutes

The PUC next reviewed the Minutes of the meetings conducted on November 13, 2009 and November 19, 2009. After certain clarification of technical corrections, upon motion duly made, seconded and unanimously carried, the Commission approved the Minutes of November 13, 2009. The Commission next reviewed the Minutes of the meeting conducted on November 19, 2009 and, upon motion duly motion made, seconded and unanimously carried, approved said Minutes as written.

4. Guam Waterworks Authority

The Commission next proceeded to consider the establishment of a System Development Charge, Docket 08-08; this matter had been tabled at the last PUC meeting. Legal Counsel reported that, since the last meeting, at the request of Chairman Johnson, he had made certain revisions to the proposed SDC Order: (1) Customers who, as of the date of the Order, are on a septic system and subsequently connect to GWA's wastewater system, shall not be charged a wastewater SDC by GWA; and (2) new customers who, after the date of the Order, are on a septic system and do not connect into GWA's wastewater system, also shall not be charged a wastewater SDC.

Furthermore, the Chairman had previously pointed out that there was confusion in the record as to whether residential customers were required to have $\frac{3}{4}$ " or $\frac{3}{4}$ " x $\frac{5}{8}$ " meters. The revised order clarifies that the vast majority of residential customers will be billed at the rate for $\frac{3}{4}$ " x $\frac{5}{8}$ " meters, which is the lowest rate. The only exception will be for customers who build homes which require $\frac{3}{4}$ " connection. Certain other revisions have been made in the Order with regard to deposit of SDC funds into the Island Water Sewer Infrastructure Development Fund.

Commissioner Perez then proceeded to ask a number of questions concerning the SDCs, commencing with a question concerning the cost of a new building permit for which an SDC has expired. According to the SDC Rules, the SDC is recomputed when a new application for a building permit is filed. GWA Legal Counsel Sam Taylor indicated that when a new application for a building permit is filed, GWA would have to determine the impact upon the system. The

customer would only pay the difference between the SDC originally paid and the SDC required on the new permit.

Following a request for clarification by Commissioner Perez, GWA Legal Counsel indicated that SDC Funds would not be used to renovate GWA offices, but only for improvements to the water or wastewater system, such as the collection system, pumps, and distribution/transmission lines. GWA Counsel also indicated that the period of 10 years provided in the rules was a reasonable time within which to allow the customer who hasn't built a building or undertaken development to receive a refund of the SDC.

Commissioner Perez then indicated that the SDC Rules provide that the eligibility of low income customers for the Amortized System Development Charge is determined according to the Guam Housing Corporation Standards; she inquired as to what assistance there would be for families that were on the borderline of low income, but fell between the cracks, and were not eligible for the ASDC. A payment schedule could be set for such individuals by tacking the monthly SDC charges onto the monthly charges from GWA. GWA Legal Counsel indicated that the standards for low income assistance were purely statutory; low income eligibility was tied to the GHC standards. As to individuals above GHC low income status, the amounts required to be placed in a mortgage to fund the SDCs would be very small as amortized over a 30 year period. It would cost such individuals more to have interest accruing on unpaid SDC amounts than to place the SDC amounts in the customer's mortgage.

Commissioner McDonald asked what percentage of the SDCs charged would be to commercial and residential customers out of the total amount. GWA Legal Counsel indicated that GWA was not certain at present, as it doesn't know what amounts would be collected. Commissioners Perez and Johnson asked whether there were specific criteria for determining when a residential home owner would go from 5/8" to 3/4" meters. GWA Legal Counsel indicated that the size of the meter would depend upon the number of fixtures in the home. The larger the number of fixtures, and the greater the demand, the larger the meter would be that the customer would use.

GWA Counsel also explained that the equity buyin aspect of the hybrid methodology involved the value of the system divided by ERUs. Commissioner Pangelinan asked why capital contributions were excluded from the calculation of the SDC. GWA Legal Counsel indicated that such exclusion applied primarily to federal government grants, and not contributions from customers to the system. At that point Commissioner McDonald had to leave the meeting, Commissioner Perez indicated that she was still not comfortable in voting on the SDCs, and had additional questions.

She asked about the concern of Developers' representative, Mr. Oliver Bordallo, expressed at the public hearing, concerning offsets for developers. GWA Counsel indicated that there are other methods for providing offsets to developers than through SDCs, such as various forms of agreement between GWA and the developer. The main question is whether the developer is providing excess capacity.

Commissioner Perez asked about the right of reimbursement of an owner who develops a water line and other property owners subsequently use such line. GWA Legal Counsel indicated that the main problem there was that reimbursement to the original owner was only for a period of 5 years, and that GWA needed to seek an extension from the Legislature of the five year period. CCU Representative John Benevente indicated that GWA would seek to address this issue.

In response to further questions by Commissioner Perez, GWA indicated that there was no direct impact of the SDCs upon GWA rates, and that it would be difficult for GWA to phase in payment of the SDCs. Lastly, Commissioner Perez asked when GWA would provide a report on the Leak Detection Program [which the Chairman indicated was due in November.] GWA indicated that it hoped to have such report in January 2010. At that point the Commissioners indicated that there was no quorum, and they could not proceed with voting on the proposed Order on SDCs. Discussion would continue on the matter at the next month's hearing.

5. Port Authority of Guam

Legal Counsel gave a status report on the "Project Charter" proposed by Slater, Nakamura & Co. on Port Authority Matters in Port Docket 09-02. Counsel explained that the "Charter" is a statement by the PUC's Port Consultant that defines what services the Consultant will undertake and the process for the PUC's investigation of Port rates. Counsel indicated that the Consultant had agreed to reduce the cost for this project. Consultant's Recommendations and Report should be filed by January 20, 2010. The price quote includes travel cost for the 3 off-island Consultants, who will travel to Guam to meet with the Commissioners, assist with the Public Hearings and the PUC meeting. The Commissioners present agreed that Counsel should prepare an Order for the Chairman's signature approving the Project Charter. The Order signed by the Chairman is made *Attachment "D"*.

6. Pacific Telecom Conference

The Chairman indicated that the Pacific Telecommunications Conference would be held in Hawaii from January 17 - 20, 2010. Previously certain Commissioners and Legal Counsel had attended, and all reported that the conference was

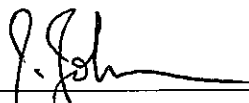
extremely helpful in understanding telecommunications issues, which issues are increasingly before the Commission. Some Commissioners and Legal Counsel indicated an interest in attending the Conference.

7. PUC Website

The Chairman stated that the Commission's Consultant, AJ Rosario and Icon, are attempting to get the website up in January 2010.

8. Other Business

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



Jeffrey C. Johnson,
Chairman

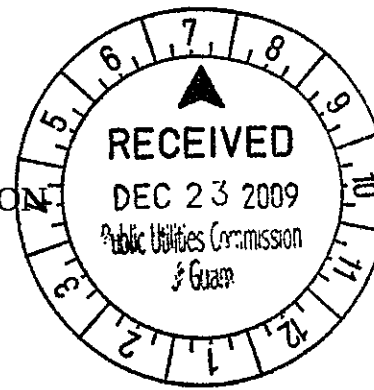
BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

**SPECIAL MEETING
SUITE 202 GCIC BUILDING
414 W. SOLEDAD AVE. HAGATNA, GUAM
6:00 p.m. December 23, 2009**

Agenda

- 1. Approval of Minutes of the Meetings of November 13, 2009 and November 19, 2009.**
- 2. Guam Waterworks Authority**
 - Docket 08-08, Petition of Guam Waterworks Authority for Establishment of a System Development Charge, ALJ Report, and Revised Proposed Order.
- 3. Port Authority of Guam**
 - Status Report on "Project Charter" proposed by PUC Consultant on Port Authority Matters in Port Docket 09-02; PUC Review.
- 4. Guam Telecom**
 - Status Report on GT/GTA Joint Petition for Interconnection Agreement, GT Docket 09-02.
- 5. Pacific Data Systems**
 - PDS Docket 09-03, Pacific Data Systems, Inc. and GTA Teleguam LLC/Delayed Service; Administrative Law Judge Order issued December 15, 2009, on Petition for Rehearing and other issues; Proposed PUC Order.
- 6. Administrative Matters**
 - Pacific Telecommunications Conference, January 17 - 20, 2010.
- 7. PUC Website**
 - Update
- 8. Other Business**

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN THE MATTER OF THE GUAM
TELECOM, LLC AND GTA TELECOM
LLC'S PETITION FOR APPROVAL OF
INTERCONNECTION AGREEMENT

GT DOCKET 09-02

ORDER APPROVING INTERIM INTERCONNECTION AGREEMENT

Findings

On November 13, 2009, Guam Telecom, LLC [GT] and GTA Telecom LLC [GTA] filed a joint petition with the Guam Public Utilities Commission [PUC] for review and approval of the Interim Interconnection Agreement [IIA], which has been negotiated and executed by them. The parties hereto have adopted the same Interconnection Agreement, with slight modifications, that was adopted by GTA Telecom, LLC and IT&E Overseas, Inc. dated August 8, 2007, a true and correct copy of which is attached to the Petition filed herein. The GTA-IT&E Interconnection Agreement was previously approved by the PUC, in Docket 07-6, on August 13, 2007. Thus, the PUC has already essentially approved the same Interconnection agreement that the parties in this Docket desire to enter into.

The Agreement between the parties indicates that they only seek approval for an interim agreement. They subsequently intend to negotiate a more long term or permanent agreement. The "Interim" Agreement will only be in effect, at most, for a period of approximately eight months, until August 8, 2010. Ordinarily, the full term of existing Interconnection Agreements has been three years. If the parties seek to adopt any subsequent non-interim Interconnection Agreement, they must again come before the PUC for review and approval of such Agreement.

GT requests expeditious approval of the Petition so that it may receive the services that GTA agrees to provide under the IIA.

The Parties agree that they voluntarily adopt, with the modifications indicated in Attachment A to their Petition, the Interconnection Agreement entered into between IT&E and GTA effective August 13, 2007. The parties have further submitted their "Interim" Interconnection Agreement to PUC for approval pursuant to 47 USC §252[e] of the Telecommunications Act of 1996, as amended. Pursuant to 47 USC §252[e][2][A], and the provisions of the IIA adopted by negotiation may only be rejected by PUC if PUC finds that [i] any such provision discriminates against a telecommunications carrier not a party to the agreement or [ii] the implementation of any such provision is not consistent with the public interest, convenience and necessity.

The Interim Interconnection Agreement which the parties intend to enter into has already previously been approved by the PUC and found not to violate the standards set forth in 47 USC §252[e][2][A]. Accordingly, PUC finds that the negotiated IIA does not discriminate against a telecommunications carrier not a party to the IIA and is consistent with the public interest, convenience and necessity. In Docket 07-06, the PUC has already determined that telecommunications carriers seeking interconnection with GTA, such as GT herein, may adopt the same terms and conditions as the GTA-IT&E Interconnection Agreement. PUC further finds that the implementation of the IIA may


promote competition, consistent with the goals of the Guam Telecommunications Act of 2004.

Order

Based upon the foregoing the Guam Public Utilities Commission **ORDERS THAT:**

1. The Interim Interconnection Agreement between Guam Telecom LLC and GTA Telecom LLC, as filed with their November 13, 2009 petition, is approved.
2. In the event that the parties revise, modify or amend the IIA approved herein, the revised, modified or amended IIA shall be submitted to PUC for approval pursuant to 47 USC §252[e][1] prior to taking effect.
3. The Interim Interconnection Agreement approved herein shall terminate not later than August 8, 2010.
4. The Interconnection Agreement is approved as an "Interim" Agreement. PUC reserves the jurisdiction and authority to enforce the IIA, to issue appropriate orders with regard thereto and to hear and resolve complaints with respect to the IIA pursuant to PUC's existing authority. In other dockets, ALJ Mair has raised concerns regarding ambiguities in the language of the remedy provisions of the Interconnection Agreement which the parties are adopting herein. PUC retains authority to authorize supplemental proceedings in this matter to address the adequacy of the remedy provisions or any other provision of the Agreement.
5. GT and GTA are ordered and directed to each pay one half of the PUC's regulatory expenses and fees in this docket.

Dated this 23rd day of December, 2009.

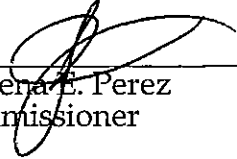


Jeffrey C. Johnson
Chairman

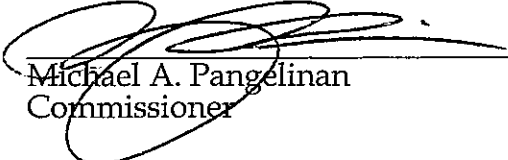


Joseph M. McDonald
Commissioner

Filomena M. Cantoria
Commissioner



Rowena E. Perez
Commissioner



Michael A. Pangelinan
Commissioner

**Before the
GUAM PUBLIC UTILITIES COMMISSION
Hagatña, Guam 96910**



In the Matter of)
)
Joint Petition of GTA TeleCom, LLC and)
Guam Telecom, LLC for approval of the)
Interconnection Agreement pursuant to)
Section 252 of the Telecommunications Act)
of 1996)

Docket No. 09-02


**PETITION FOR APPROVAL OF THE INTERCONNECTION AGREEMENT FOR THE
TERRITORY OF GUAM UNDER SECTIONS 251 AND 252 OF THE
TELECOMMUNICATIONS ACT OF 1996**

GTA Telecom, LLC (“GTA”) and Guam Telecom, LLC (collectively referred to as the (“Parties”), hereby petition the Guam Public Utilities Commission (“GPUC” or “Commission”) for approval of the Interconnection Agreement for the Territory of Guam attached hereto as Attachment A (the “Agreement”).

The Parties submit the Agreement for approval in accordance with the terms of Section 252(e) of the Telecommunications Act of 1996 (the “Act”). The Parties request that the GPUC approve the Agreement in accordance with the requirements of Section 252(e) of the Act by determining that the grounds for rejection of such Agreement set forth in Section(s) 252(e)(2)(A)(i) and 252(e)(2)(A)(ii) of the Act are not applicable to the Agreement. The Parties assert that the Agreement does not discriminate against any telecommunications carrier not a party to the Agreement. The Parties also assert that the implementation of the Agreement is consistent with the public interest, convenience, and necessity. The implementation of the Agreement does not violate any requirement of the Commission.

The Parties respectfully request that the Commission approve the Agreement consistent with the intent of the Act.

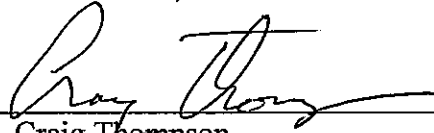
Dated this 12 Day of November, 2009

By: 

Eric N. Votaw
Vice President, Regulatory
624 North Marine Corps Drive
Tamuning, Guam 96913
(671) 644-0011

Dated this 13 day of November, 2009

GUAM TELECOM, LLC

By: 
Craig Thompson
President

Attachment A

Interconnection Agreement

By and Between

GTA Telecom, LLC

and

Guam Telecom, LLC

This Interconnection Agreement (“Agreement”), effective upon approval by the Guam Public Utilities Commission (the “Effective Date”), is entered into by and between GTA Telecom, LLC (“GTA”) a Delaware limited liability company, and Guam Telecom, LLC (“Guam Telecom”), a Delaware limited liability company, to establish the rates, terms and conditions for local interconnection, local resale and the purchase of unbundled network elements for the Territory of Guam . GTA Telecom and Guam Telecom may be referred to individually as a Party and collectively as the “Parties.”

WHEREAS, section 251(i) of the Telecommunications Act of 1996 (the “Act”) requires GTA to make available any interconnection, service or network element provided under an agreement approved by the Guam Public Utilities Commission to any other requesting Telecommunications Carrier upon the same terms and conditions as those provided in the agreement in its entirety; and

WHEREAS, Guam Telecom has requested that GTA make available the interconnection agreement in its entirety executed between GTA and IT&E Overseas, Inc.

NOW THEREFORE, the Parties agree as follows:

1. CONDITIONS

The Parties agree that the Agreement between the Parties shall consist of the Interconnection Agreement entered into by and between GTA Telecom, LLC and IT&E Overseas, Inc. dated August 8, 2007 (“Adopted Agreement”), a true and correct copy of which is attached hereto and incorporated herein as Exhibit 1.

All services provided under this Agreement will be consistent with the decisions of courts having jurisdiction over this Agreement, including but not limited to the decisions of the Court of Appeals and the United States Supreme Court.

2. PARTIES:

Guam Telecom is hereby substituted in the Adopted Agreement for IT&E Overseas Inc. GTA Telecom, LLC shall remain as the other Party to the Adopted Agreement. Except as modified herein, the Agreement shall in all other respects reflect the same terms as the Adopted Agreement.

3. TERM

The Agreement will be effective upon the Effective Date and will continue in full force and effect during and until the End Date, which will be the earlier of (1) the date a voluntary non-interim agreement has been negotiated and executed by the Parties; (2) the date a non-interim agreement has been arbitrated and executed by the Parties; or (3) August 8, 2010, which corresponds with the End Date of the Adopted Agreement.

4. AMENDMENTS:

The Parties agree to substitute and replace Paragraph 5.4.1 of the General Terms and Conditions of the Adopted Agreement as follows:

- 5.4.1 Any assignment or transfer of any Interconnection, Resale Service, Lawful Unbundled Network Element, function, facility, product or service provisioned pursuant to this Agreement without the transfer or the assignment of this Agreement shall be deemed a CLEC to CLEC Mass Migration. The CLEC that is a Party to this Agreement shall provide GTA with ninety (90) calendar days advance written notice of any CLEC to CLEC Mass Migration. CLEC's written notice shall include the anticipated effective date of the assignment or transfer. The acquiring CLEC must cure any outstanding charges associated with any Interconnection, Resale Service, Lawful Unbundled Network Element, function, facility, product or service to be transferred. In addition, the acquiring CLEC may be required to tender additional assurance of payment if requested under the term of the acquiring CLEC's agreement.

The parties agree to substitute and replace Section 50 of the General Terms and Conditions of the Adopted Agreement as follows:

Section 50

Intentionally Left Blank

The Parties agree to substitute and replace Paragraph 2.1 of the Interconnection Attachment of the Adopted Agreement as follows:

- 2.1 Point(s) of Interconnection.
- 2.1.1 GTA acknowledges that Guam Telecom may chose from any or all of the following locations as technically feasible Point(s) of Interconnection.
- 2.1.1.1 Agana Central Office
- 2.1.1.2 Upper Tumon Central Office
- 2.1.1.3 Dededo Central Office

The Parties agree to substitute and replace Section 3 of the Interconnection Attachment of the Adopted Agreement as follows:

3. Alternative Interconnection Arrangements. Intentionally left blank.

5. NOTICES:

Except as otherwise provided, all notices and other communications hereunder shall be deemed to have been duly given when made in writing and delivered in person or deposited in the United States mail, certified mail, postage paid, return receipt requested and addressed as follows:

If to GTA: Eric Votaw – Vice President Regulatory
GTA Telecom, LLC
624 N. Marine Corps Drive
Tamuning, GU 96913
Telephone: 671-644-0011 Facsimile: 671-646-4734

If to Guam Telecom: Craig Thompson – President & CEO
Guam Telecom, LLC
497 Harmon Loop Road
Dededo, Guam 96929
Telephone: 671-969-4035 Facsimile: 671- 635-4042

6. MISCELLANEOUS

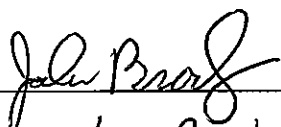
Other than as set forth above, the Adopted Agreement remains unchanged and in full force and effect. In the event of a conflict between the terms of this Agreement and the Adopted Agreement, this Agreement will control.

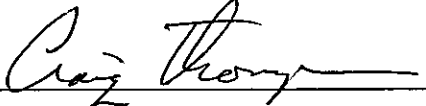
This Agreement, executed by authorized representatives of GTA Telecom and Guam Telecom, is made a part of and incorporates the terms and conditions of this Agreement and the Adopted Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly respective authorized representatives.

GTA Telecom, LLC

Guam Telecom, LLC

By: 
Name: John Brady
Title: CFO
Date: 11/11/2009

By: 
Name: Craig Thompson
Title: CEO
Date: 11-13-09

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE: PACIFIC DATA SYSTEMS, INC.)
AND GTA TELEGUAM LLC /)
DELAYED SERVICE)
ORDER)
Docket No. 09-03)
ORDER)

This matter comes before the Administrative Law Judge (the “ALJ”) of the Guam Public Utilities Commission (“GPUC”) in response to the GPUC’s Order dated November 19, 2009, GTA TeleGuam L.L.C.’s (“GTA”) Verified Petition for Clarification or Rehearing of the GPUC’s November 19, 2009 Order, Pacific Data Systems, Inc.’s (“PDS”) Request for a Pre-Hearing Conference Regarding Damages, Attorneys’ Fees and Penalties, and PDS’s Motion for Sanctions against GTA. Having reviewed the above, and the record before the GPUC in this matter, the ALJ determines the following.

1. GTA’s Petition for Rehearing

GTA’s Verified Petition for Clarification or Rehearing (“Petition”) argues that the ALJ’s November 16, 2009 Findings of Fact and Conclusions of Law (“Findings”) and the GPUC’s November 19, 2009 Order (“Order”) are merely “interim” in nature and that another hearing should be conducted. Petition, p. 2 (November 30, 2009). Thus, GTA “seeks confirmation that the rulings in the Order entered by the GPUC were, in fact, ‘interim.’” *Id.* For the reasons discussed herein, the ALJ finds this argument to lack merit.

A. Rule 4(j)

While PDS sought “interim” relief under Rule 4(j) of the GPUC’s Interconnection Implementation Rules (“IIRs”) in its October 28, 2009 Formal Complaint, this case was heard

under Rule 4(i), which provides for expedited dispute resolution. The case was neither heard nor scheduled pursuant to the “interim” provisions of Rule 4(j). This was made plainly evident in the Order scheduling the case issued on November 5, 2009, as well as the Order from the GPUC dated November 19, 2009, which stated, “the ALJ makes various recommendations to the GPUC pursuant to Interconnection Implementation Rule 4(i)(4).” Order, p. 1-2 (November 19, 2009). Nothing in Rule 4(i) makes reference to “interim” relief. Furthermore, the Findings make no reference to “interim” relief. Thus, the relief granted was not “interim” in nature.

B. Rule 37

GTA’s Petition has been filed pursuant to Rule 37 of the GPUC Rules for Practice and Procedure, which requires that any Petition for Rehearing “based upon claim of error shall specify all findings of fact and conclusions of law claimed to be erroneous with a brief statement of the ground of error.” The Petition is defective inasmuch as it fails to specify any particular erroneous findings of fact or conclusions of law in the Findings or the Order.

C. Presentation of Evidence

In the Petition, GTA also maintains that “[t]he expedited hearing process should not be allowed to strip a party of the ability to make discovery and build a case.” Petition, at 3. The primary reason, however, that GTA was unable to timely present evidence on the responsiveness of GTA to PDS service orders was that GTA failed to generate the information and documents that it was required to produce and maintain. For instance, it is undisputed that GTA: (a) repeatedly failed to issue FOCs as required by IIR 7(b); (b) failed to create the records required by IIR 7(i)(7), which, if generated as required, would have specified the “reason for delay” in providing service to PDS; (c) repeatedly failed to issue OCNs as required by IIR 7(b)

and the Definitions; and, (d) failed to compile the monthly monitoring reports required by IIR 7(j),(k) and (m), which, if created, would have specified the “average completion interval.” GTA cannot fail to generate information and documents that it was required by applicable rules and regulations to maintain, and then complain that it needs additional time to gather such information.

D. Due Process Considerations.

The ALJ and the GPUC have complied with all of the due process requirements relating to a hearing conducted under IIR 4(i). As shall be discussed herein, the ALJ will not recommend that the GPUC impose any penalties on GTA without first giving notice to GTA of a penalty hearing as required under Guam law and affording GTA an opportunity to be heard and present evidence. Furthermore, the ALJ is requiring that PDS file a separate petition should it wish to seek the recovery of any attorneys’ fees or damages. Should such a petition be filed, GTA would of course be given notice of any hearing in that case and likewise afforded an opportunity to be heard and present evidence. Hence, prior to the imposition of any penalties, attorneys’ fees or damages, GTA would be afforded ample due process and the benefit of another hearing.

Accordingly, the ALJ hereby finds that the Petition is without merit and, therefore, recommends that the GPUC deny the Petition.

2. PDS’s Request for Pre-Hearing Conference Regarding Damages and Attorneys Fees

In its October 28, 2009 Formal Complaint, PDS also sought relief under Sections 12107 and 12108 of the Guam Telecommunications Act. *See* PDS’s Formal Complaint, p. 7, ¶5

(October 28, 2009). However, as expressed in the Findings, the ALJ concluded that the time limits for expedited relief under Rule 4(i) and Sections 12107 and 12108 were incompatible. Accordingly, the ALJ ruled that “[s]hould PDS seek to recover damages or attorneys fees under Sections 12107 and 12108, then it should file a separate petition under those sections.” The Order from the GPUC did not authorize the ALJ to conduct a hearing in this docket to award damages or attorneys’ fees to PDS under Sections 12107 or 12108. The Order merely authorized the ALJ to conduct a hearing under Section 12108 for the purpose of determining whether penalties should be imposed against GTA.

Therefore, PDS is hereby instructed to file a separate petition if it wishes to seek recovery of damages and/or attorneys’ fees. At this time, neither the ALJ nor the GPUC have made any findings or rulings regarding whether PDS is entitled to recover damages and/or attorneys’ fees. To be clear, the ALJ will not make any recommendations to the GPUC regarding an award for damages and/or attorneys’ fees without first affording GTA a hearing to present evidence supporting any defense.

3. Monthly Hearings

The Order has authorized the ALJ to conduct monthly hearings to determine whether GTA has in fact completed PDS service orders as required under the IIRs and the GPUC’s Order. Inasmuch as the Christmas and New Year holidays are only a few days away, the ALJ will schedule the first monthly hearing on Monday, January 11, 2010 at 1:30 p.m. As part of the hearing, GTA shall address whether it has commenced submitting the monthly performance reports as required under IIR 7(j), (k), and (m). In addition, GTA shall also address whether it has commenced maintaining the records required by IIR 7(i)(7).

Prior to the first monthly hearing, however, PDS and GTA shall submit the following to the ALJ: (a) on December 28, 2009, PDS shall submit any briefs or evidence relating to GTA's compliance or non-compliance with the GPUC's Order; (b) on January 4, 2010, GTA shall respond to PDS's filing and submit any briefs or evidence relating to such compliance or non-compliance; and, (c) on January 7, 2010, PDS shall respond to GTA's filing.

4. Penalty Hearing

In the Order, the GPUC authorized the ALJ to conduct a penalty hearing pursuant to Title 21 G.C.A. Section 12108 for the purpose of "determining and recommending to the GPUC whether penalties should be assessed against GTA and, if so, in what amount." *See* Order, at 3. Although the ALJ does not waive the right to recommend that the GPUC impose penalties for conduct that pre-dates the Order, the ALJ presently intends to focus on prospective conduct subsequent to the GPUC's Order, and not on retrospective conduct prior to the Order.

Simply stated, in the event that GTA has complied with the GPUC's Order, the ALJ will recommend that no penalties should be assessed. However, should GTA fail to prospectively comply with the GPUC's Order, the ALJ will look at both prospective and retrospective conduct to determine what penalties should be recommended to the GPUC. Accordingly, the ALJ will decide after each monthly hearing, discussed above, whether it is necessary to schedule a Section 12108 penalty hearing.

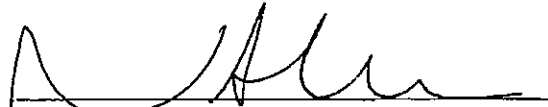
Should the ALJ determine after any monthly hearing that a penalty hearing should be scheduled, both GTA and PDS will be provided with the required notice of such a hearing. To be clear, however, the ALJ will not make any recommendations to the GPUC regarding the

imposition of penalties without first providing GTA with notice and an opportunity to present evidence supporting any defense.

5. PDS's Motion for Sanctions

On December 11, 2009, PDS filed a Motion for Sanctions against GTA based on an alleged failure of GTA to comply with the GPUC's Order. After the January 11, 2010 monthly hearing, the ALJ will either issue an order scheduling this motion as part of a penalty hearing, or the ALJ will otherwise rule on the motion or hold it in abeyance.

SO ORDERED this 15th day of December, 2009.

A handwritten signature in black ink, appearing to read 'DAVID A. MAIR', written over a horizontal line.

DAVID A. MAIR
Administrative Law Judge

P098171.JRA

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

The Port Authority Of Guam)
[PAG] Request For PUC Investigation)
of Rates and Tariffs)
_____)

Docket 09-02



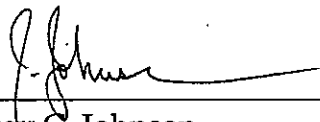
ORDER APPROVING PROJECT CHARTER AND
DELIVERABLE EXPECTATION DOCUMENT

This matter came before the Guam Public Utilities Commission [PUC] upon the status report presented by Legal Counsel at the Special Meeting on December 23, 2009. The Project Charter, prepared by the PUC Consultants on Port Authority matters [Slater, Nakamura & Co. LLC, hereinafter "Slater, Nakamura"], sets forth the plan and approach for implementation of the PUC investigation into the tariffs and rates of the Port. The Charter sets forth the project milestones, deliverables, and project price. The Deliverables Expectation Document sets forth the nature of the Report and Recommendations that Slater, Nakamura will submit in Port Docket 09-02, Port Authority of Guam Request for PUC Investigation of Rates and Tariffs.

The Commissioners present at the meeting on December 23, 2009, authorized the Chairman to act upon approval of the Project Charter and Deliverables Expectation Document. In accordance therewith, pursuant to 12 GCA §12004, the Chairman of the Commission hereby ORDERS as follows:

1. The Project Charter and Deliverable Expectation Document are hereby adopted and approved.
2. The estimated total labor costs and travel costs, as set forth in Project Charter, are hereby approved. Slater, Nakamura shall not exceed such estimated costs without the approval of the Commission.
3. In accordance with the Professional Services Agreement between the PUC Consultant and the Commission, Slater Nakamura shall submit monthly billings in this Docket, including a detailed rendering of hourly services provided, to the Commission as well as all invoices and/or receipts indicating travel and other costs.

SO ORDERED this 31st day of December, 2009.



Jeffrey C. Johnson
Chairman

SLATER & NAKAMURA

Project Charter

For Guam Public Utilities Commission Support
Port Docket 09-02

Joel Steadley

12/11/2009

Revision History

<i>Version</i>	<i>Changed By</i>	<i>Date</i>	<i>Revision Description</i>
1.0	J. Steadley	12/08/2009	Original
1.1	J. Steadley	12/11/2009	Changed to reflect feedback from Guam PUC

This document describes the Project Charter for the Guam PUC Support Port Docket 09-02. The Project Charter defines, at a high level, the overall project, its objectives, scope and governance structure.

Purpose: The purpose of the project charter is to document:

- Reasons for undertaking the project
- Objectives and constraints of the project
- Directions concerning the solution
- Identities of the main stakeholders

The three main uses of the project charter:

- To authorize the project.
- Serve as a focal point throughout the project - for example: project as people walk in to team meetings and use in managing change to ensure tight scope management.

Project Objectives: The objectives of the Port Docket 09-02 Project are to:

- Review the proposed interim tariff increases.
- Determine if the proposed interim tariffs are “just” and “reasonable” based upon the provided supporting documentation and a comparison with similar ports.
- Assess the potential impact of the PAG planning assumptions on the proposed interim tariff structure.

Project Scope: The project scope for the Port Docket 09-02 Project is to review the proposed interim tariff from the Port Authority of Guam and to recommend to the PUC whether the proposed tariffs are “just” and “reasonable”. The project will start on November 30, 2009. A draft report of findings and recommendations will be presented to the Guam PUC on January 22, 2010. The scope of this project is to develop a “interim” vice “final” tariff case for the PAG.

The documents that will serve as the basis for the review are:

- The USDA Financial Feasibility Report Appendix for the Port Authority of Guam of 2008.
- The Report to the Legislature Pursuant to 5 GCA Chapter 9 § 9301 dated August 3, 2009.
- The Port Authority of Guam letter to the Guam PUC dated October 27, 2009.
- Government of Guam Public Law 30-52.
- Summary Appraisal and Consulting Report for a Market Analysis for the Port of Guam by Captain, Hutapea and Associates dated June 2008.
- Summary Appraisal and Consulting Report for the F3 Fuel Storage and Delivery Site for the Port of Guam by Captain, Hutapea and Associates dated November 2008.
- Summary Appraisal and Consulting Report for Fuel Storage Fees for the Port of Guam by Captain, Hutapea and Associates dated August 2009.
- The PAG Master Plan Update 2007.
- The PAG Master Plan Legislature Report.

Project Approach: The project team will execute the following tasks in this project:

- Review the background documentation provided by the Guam PUC and Port Authority of Guam (PAG) related to roles and responsibilities including the Public Law placing the Port of Guam under the PUC, the PUC Charter Act and the provisions of Public Law 30-152 and Article 1, 12 GCA 12000.SEC.
- Review the current operating and capital improvement budgets.
- Review the factors that were used in developing the interim tariff and the supporting assumptions.
- Develop a list of similar ports for use in conducting a “just” and “reasonable” estimate. The list of ports is not to exceed 3.
- Develop questions related to the interim tariff development.
- Conduct interviews with the staff that developed the interim tariff to resolve the questions.
- Define risks related to the interim tariff development assumptions.
- Develop findings and recommendations for adoption of the interim tariff to the Guam PUC.
- Submit the findings and recommendations to the Guam PUC.
- Meet with the Guam PUC.
- Provide support for three public hearings.

Milestone Plan: The high level Milestone Plan is provided below:

Figure 1: Port Docket 09-02 Milestone Plan

ID	Task Name	Start	Finish	Duration	Dec 2009				Jan 2010				Feb 2010			
					12/6	12/13	12/20	12/27	1/3	1/10	1/17	1/24	1/31	2/7		
1	Review the background documentation provided by the Guam PUC and Port Authority of Guam (PAG).	11/30/2009	12/1/2009	2d												
2	Review the current operating and capital improvement budgets	12/2/2009	12/10/2009	7d												
3	Review the factors that were used in developing the interim tariffs and the supporting assumptions	12/2/2009	12/10/2009	7d												
4	Develop list of comparable ports for use in "just" and "reasonable" determination	12/2/2009	12/10/2009	7d												
5	Develop questions related to the interim tariff development and forward to PUC	12/2/2009	12/10/2009	7d												
6	Provide DED for final report	12/11/2009	12/11/2009	0d												
7	Conduct interviews with the staff that developed the interim tariff to resolve the questions	12/11/2009	12/31/2009	15d												
8	Define risks related to the interim tariff development assumptions	1/1/2010	1/14/2010	10d												
9	Develop findings and recommendations for adoption of the interim tariff to the Guam PUC	1/1/2010	1/14/2010	10d												
10	Submit the findings and recommendations to the Guam PUC	1/20/2010	1/20/2010	0d												
11	Meet with the Guam PUC to review the finding and recommendations	1/20/2010	1/22/2010	3d												
12	Provide support for three public hearings	1/25/2010	1/26/2010	2d												

Client Deliverables: The deliverables for this project will be:

- A Deliverable Expectation Document (DED) for the Findings and Recommendations Report for Port Docket 09-02.
- Final Findings and Recommendations Report for the Port Docket 09-02.

Work products for this project include:

- Project management documents including the Project Charter and the Project Schedule.
- Interview questions and documentation.

Client Stakeholders: The client stakeholders are:

Table 1: Port Docket 09-02 Client Stakeholders

Name	Organization	Project Role
Fred Horecky	Guam PUC	<ul style="list-style-type: none"> Attorney for Guam PUC Will provide day to day management of the Port Docket 09-02
Lou Palomo	Guam PUC	<ul style="list-style-type: none"> Administrator for Guam PUC Will provide information related to the PUC's mission
Chairman Jeffrey Johnson and Commissioners of the PUC	Guam PUC	<ul style="list-style-type: none"> Will review, comment and approve the recommendations provided by the S&N team related to the interim tariff request.
Monte Mesa	Port Authority Guam	<ul style="list-style-type: none"> Chairman of the Port Board
Glenn Leon Guerrero	Port Authority of Guam	<ul style="list-style-type: none"> General Manager, Port Authority of Guam
Joe Camacho	Port Authority of Guam	<ul style="list-style-type: none"> Board Member and Chair of Financial Committee
Jose Guevara, III	Port Authority of Guam	<ul style="list-style-type: none"> Financial Affairs Controller, Port Authority of Guam Will serve as first point of contact for questions related to the PAG interim rate increase

Key Assumptions: The key assumptions for this project are:

- The PAG staff will be available to answer questions related to the development of the interim tariffs.
- The assumptions related to the development of the interim tariff have supporting documentation.
- The public hearings can be completed within 2 days.
- The stakeholders will be available to meet in December and January based upon the milestone schedule.
- The PAG staff will respond to our questions within 5 working days from submission.
- The Scope of Work is limited to an interim tariff review.
- A full tariff review will begin in December 2010 (estimated).
- In the event of conflicting data, audited results will be used vice other sources.

Key Constraints: The key constraints for this project are:

- The interviews shall be completed by 12/31/09.
- All stakeholders will be available based upon the schedule in the milestone chart.

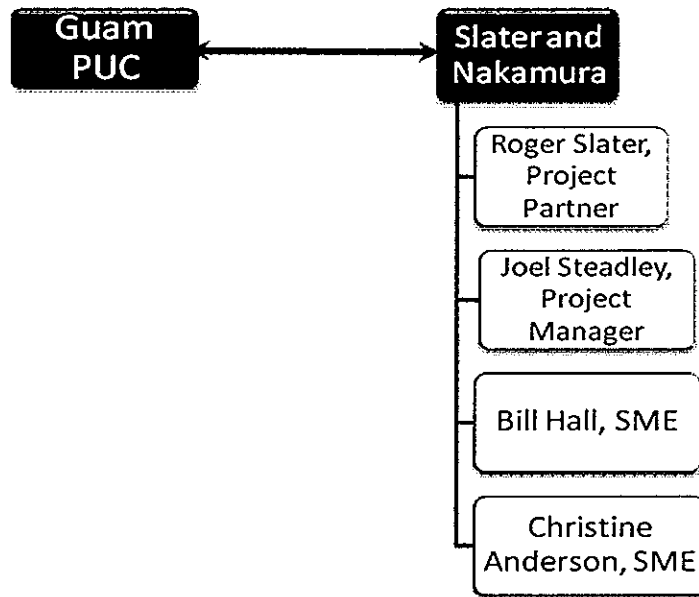
Project Organization Relationships: The organization chart for the project will be

In Figure 2 is presented the project organization relationship.

For day to day communications and questions, the Slater and Nakamura team will contact the Guam PUC Attorney, Mr. Fred Horecky.

Communications with the Guam PUC Board, including the Chairman, will occur at their request and convenience.

Figure 2: Organization Chart



Roger Slater, as the Project Partner, will be responsible for the overall performance of the team and the quality of the deliverables to the Guam PUC.

Joel Steadley, as the Project Manager, will guide the day to day project efforts. He will be responsible for Roger for the development of the approach and the deliverables.

Bill Hall and **Christine Anderson** will serve as the Subject Matter Experts (SME) for the Port Docket 09-02 project.

Level of Effort Estimate: Based upon the scope defined above, the level of effort, by WBS category is:

Table 2: Level of Effort – Not to Exceed – Port Docket 09-02

WBS Category	Level of Effort in Hours
WBS 1.0 Manage the project	4
WBS 2.0 – Execute the Project	455
WBS 3.0 – Close the Project	1
TOTAL	460

Due to the nature of the project, the contract will be managed as a Time and Materials (T&M) Not to Exceed (NTE) contract.

The estimated total labor costs are: \$69,000.

The estimated total travel costs are: \$16,000.

Since this will be managed as a T&M NTE contract, the Guam PUC Attorney will be notified when 80% and 90% of the ceiling is reached.

SLATER & NAKAMURA

Deliverable Expectation Document

For Guam Public Utilities Commission Support
Port Docket 09-02

Joel Steadley

12/11/2009

Revision History

<i>Version</i>	<i>Changed By</i>	<i>Date</i>	<i>Revision Description</i>
1.0	J. Steadley	12/11/2009	Original

This document describes the Deliverable Expectation Document (DED) for the Guam PUC Support Port Docket 09-02. The DED defines, at a high level, the contents of the final report.

Purpose: The purpose of the Deliverable Expectation Document is to define the overall contents and flow of a final report. The DED will serve as the framework for the development of the final report along with creating understanding and agreement from all the involved parties as to the proposed content of the report.

DED Contents: The proposed final report for the Guam PUC Port Docket 09-02 Interim Tariff Review will include the following sections. A page estimate is presented after each section heading along with a description of what the section will contain.

Executive Summary (2 page). The Executive Summary will discuss the objectives of the review; the justification for the interim tariff increase, as presented by PAG; a summary of the findings and a summary of the recommendation for the adoption or modification of the interim tariff increase.

Overview of the Interim Tariff Request (3 pages). The Overview of the Interim Tariff Request will discuss the Port Authority of Guam's (PAG) request for the interim tariff and describe the justification presented by PAG to support the increase. A review of the salient points for the justification will be compared with other documentation to determine if the request is based upon factual or subjective data.

Discussion of the Review Approach (2 pages). This section will discuss the approach that was used to conduct the review and the sources that were used in conducting the review.

The sources that will be used for this section include:

- The USDA Financial Feasibility Report Appendix for the Port Authority of Guam of 2008.
- The Report to the Legislature Pursuant to 5 GCA Chapter 9 § 9301 dated August 3, 2009.
- The Port Authority of Guam letter to the Guam PUC dated October 27, 2009.
- Government of Guam Public Law 30-52.
- Summary Appraisal and Consulting Report for a Market Analysis for the Port of Guam by Captain, Hutapea and Associates dated June 2008.
- Summary Appraisal and Consulting Report for the F3 Fuel Storage and Delivery Site for the Port of Guam by Captain, Hutapea and Associates dated November 2008.
- Summary Appraisal and Consulting Report for Fuel Storage Fees for the Port of Guam by Captain, Hutapea and Associates dated August 2009.
- The PAG Master Plan Update 2007.
- The PAG Master Plan Legislature Report.
- Interviews with PAG leadership.
- Interviews with cargo carrier and maritime business stakeholders.
- Interviews with GEDA/Chamber of Commerce leadership related to economic indicators since the last tariff increase to date.

The steps that will be followed for the review, based upon the Project Charter, include:

- Review the background documentation provided by the Guam PUC and Port Authority of Guam (PAG) related to roles and responsibilities including the Public Law placing the Port of Guam under the PUC, the PUC Charter Act and the provisions of Public Law 30-52 and Article 1, 12 GCA 12000.SEC.
- Review the current operating and capital improvement budgets.
- Review the factors that were used in developing the interim tariff and the supporting assumptions. Assess the degree of supporting data correlation with the recommended tariff levels. Identify potential data source conflicts.
- Develop a list of similar ports for use in conducting a “just” and “reasonable” estimate. The list of ports is not to exceed 3.
- Document the overall Guam economic indicators since the last tariff increase.
- Develop questions related to the interim tariff development.
- Conduct interviews with the staff that developed the interim tariff to resolve the questions.
- Define risks related to the interim tariff development assumptions.
- Recommend adoption or modification of the interim tariff request.

Findings (3 pages). The Findings section will discuss what was determined during the interim rate review. The findings will include

- A determination of the proposed interim tariff increase to evaluate whether the proposed interim rates are “just” and “reasonable” based upon the provided supporting documentation and a comparison with similar ports.
- An assessment of the potential impact of the PAG planning assumptions on the proposed interim tariff structure. For example, PAG is assuming the volume of containers will increase substantially in 2010 due to the increased military build-up operations. The increased container throughput will result in increased revenues which will be used to service the debt required to upgrade the Port’s facilities for an even greater throughput for the military buildup. However, if the projected throughput will not be met, how will this impact PAG’s ability to service the debt for required improvements?

Recommendations (1 page). The Recommendations section will provide recommendations to the Guam PUC related to the adoption or modification of the proposed interim tariff increases proposed by the PAG.

Appendices (Length TBD). The Appendices will be used to support the recommendations for the review. It is projected that the appendices will include such items as:

- The interim tariff request.
- Results of the questions and answers from PAG and other organizations.
- Relevant supporting documentation to include excerpts from the documents that provided the basis and justification for the interim tariff increase.