#### GUAM PUBLIC UTILITIES COMMISSION REGULAR MEETING June 20, 2011 SUITE 202, GCIC BUILDING, HAGATNA

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#### **MINUTES**

The Guam Public Utilities Commission [PUC] conducted a special meeting commencing at 6:30 p.m. on June 20, 2011, pursuant to due and lawful notice. Commissioners McDonald, Cantoria, Perez and Pangelinan were in attendance. The following matters were considered at the meeting under the agenda made *Attachment "A"* hereto.

#### 1. Approval of Minutes

The PUC reviewed the minutes of the meeting conducted on June 2, 2011. Upon motion duly made, seconded and unanimously carried, the minutes were approved subject to correction.

#### 2. Port Authority of Guam

The Chairman announced that the next matter on the Agenda was consideration of PAG Docket 09-01 General Regulatory, and signing by Commissioners of Order and the PUC/PAG Contract Review Protocol. Legal Counsel indicated that Order and the PAG Contract Review Protocol had already been approved by the Commission. The matter was only before the Commissioners for signing.

The Chairwoman, there being no discussion, indicated that the next matter for consideration by the PUC was PAG Docket 11-01, ALJ Report on Consultant Scope of Work for Review of PAG Tariff Rate Relief Request, and proposed Order. Counsel indicated that the ALJ was requesting PUC approval of the revised scope of work by the PUC Consultants for review of the PAG Tariff Rate Relief Request. The Commissioners were now being asked to approve the scope of work for its own consultants regarding review of the PAG rate case.

As a result of discussions with the PUC Port Consultants, PUC Consultants have agreed to reduce their scope of work from 872 hours to 650 hours. The ALJ finds the revised scope-of-work-submitted-by-the-PUC Consultants-on-Port-matters-to-be-reasonable, and recommends that it should be approved. The Proposed Order would recognize that the scope of work is reasonable and adequately sets forth the tasks required by which the PUC Consultants would examine the Port's existing tariff and the Cornell Group's rate study. Upon motion duly made, seconded and unanimously carried, the

Commissioners approved the PUC Consultant's Proposed Scope of Work and adopted the Order made *Attachment "B"* hereto.

#### 3. GTA Telecom LLC

The Chairwoman announced that the next matter on the Agenda was GTA Docket 11-03, Repair Time Interval for xDSL UNE, GCG Report, ALJ Report and Proposed Order. Legal Counsel indicated that this proceeding involves a request by GTA to establish a repair time interval for xDSL UNE in the Interconnection Rules. GTA's position is that a 24 hour repair time interval is appropriate for xDSL UNE. It is GTA's position that, since they only provide their own business customers with a 42 hour repair interval, they are not legally required to provide a greater repair time interval to other customers.

Under 47 USC 251(c) GTA is only legally required to provide access "at least equal in quality" to that provided to its own customers. However, WISP Guam Inc. argues that a 2 hour repair interval would be appropriate, and Pacific Data Systems suggests that a 3 hour repair interval should be adopted by the PUC. The PUC's Consultant, Georgetown Consulting Group Inc., recommended that the Commission adopt a 24 hours repair time interval.

At a conference PDS argued that the DSL repair time intervals are technically more akin to those of DS1 and T1 for which the PUC previously adopted a 3 hour repair interval. However, Counsel feels that the federal law on this matter is clear: if GTA only provides DSL repair service to its own customers in 42 hours, it cannot be required to provide superior repair time interval to other customers. Furthermore, GTA's website indicates that its business customers for DSL service agree in writing that service outages and repairs may take up to 48 hours.

In accordance with the ALJ Report filed herein, it is recommended that PUC adopt a 24 hour repair time interval for xDSL UNE, and a revised Rule 7f for the Interconnection Implementation Rules has been provided. The 24 hour standard would also apply to other services within the xDSL family, including ADSL, HDSL, IDSL, etc.; the PUC would adopt the reasoning of the ALJ Report and GCG Report. Counsel recommends that GTA bear the regulatory costs and expenses of this docket.

Mr. John Day, President of PDS, was then given the opportunity to make public comment. Mr. Day pointed out that PDS is the only carrier affected by this rule currently. PDS has 500 of these types of circuits and probably 350 different customers associated with these facilities. For other similar facilities, the PUC has established a much lower service repair level, i.e. T1 circuits have a 4 hour requirement. GTA doesn't have to repair 2 or 4 wire facility through which PDS provides a T1 service, and that would have significant implications for its business line customers. PDS does not

believe that it actually takes GTA 42 hours to repair this type of xDSL UNE services. It does not believe that GTA's calculations are correct. GTA has not submitted detailed calculations, and the PUC did not engage GCG to verify the 42 hour average number. There is no urgency for this matter to be resolved. PDS believes that the PUC needs to obtain more information from GTA and to engage GCG for an additional review of these numbers.

Commissioner Pangelinan asked Mr. Day in PDS' experience how long repairs normally take. Mr. Day indicated that at present, GTA operates these services in an under 4 hour repair time line. His understanding is that for the most part repairs are done in 4 hours. Eric Votaw of GTA indicated that at present GTA does repair them on a 4 hour time period; PDS is currently on what they call the "platinum service". However, Customers who have that service pay extra for it, and they pay roughly 15% extra of their monthly recurring charge so that GTA can devote resources to get these critical customers up. So, such service is not normal, but something that customers pay extra for.

PDS is the only current CLEC that purchases UNEs, but there's another carrier that is going to come in and buy 500 to 1000 circuits. Federal law and the 8th Circuit Court of Appeals has made it clear that GTA does not have to provide a CLEC with anything better than it gives to itself. GTA is willing to provide a 24 hour repair interval. PDS is more than welcome to purchase a T1 for a 4 hour repair time interval, but PDS chooses to purchase x DSL. Commissioner Pangelinan asked Mr. Votaw whether John Day's comment about the 42 hour repair interval figure being unsubstantiated requires comment.

Mr. Votaw indicated that GTA pulled all the trouble repair tickets month by month, did a breakdown, and came up with the 48 hour repair interval. Mr. Votaw signed it and attests to it. Commissioner McDonald asked whether Platinum customers are given a 4 hour repair time interval. Mr. Votaw indicated that they were, and that PDS was more than welcome to avail itself of this platinum service. Mr. Votaw indicated that PDS was requesting better service than GTA gives to its customers that pay 15% extra per month.

Commissioner Cantoria asked Mr. Day whether if PDS wanted 3 hours, it would pay for it. Mr. Day stated that PDS believed it already paid too much, and that the repair time interval for xDSL should be similar to other high capacity circuits. Chairman Perez clarified that the present response time that PDS was receiving from GTA for repairs is within 4 hours. She further clarified the concern of PDS that if the PUC approved a 24 hour repair interval, GTA would revert to the 24 hour interval and delay repairs. Mr. Day clarified that if the circuit which supplies 23 digital phone lines goes out for 24 hours, that would have a dramatic effect on the customer's operations. Mr. Votaw of GTA responded that if PDS wants a 4 hour repair time for a T1 line, it is welcome to purchase a T1 from GTA.

Counsel stated that, as he understood GTA's position, if PDS wants the 4 hour standard then it has to pay what everybody else pays for it. Commissioner McDonald asked Mr. Day whether PDS is paying for platinum, silver or standard. Mr. Day stated that PDS is paying for what it's getting. Today they are repairing circuits in 4 hours. Commissioner McDonald asked whether PDS believed it was paying for platinum, Mr. Day stated that it is paying for 4 hours.

GTA Attorney Serge Quenga stated that 24 hours is better than what regular customers get, so if they want more than that they have to pay for it like other customers do. For the record it shows that 42 hours is the normal repair interval. GTA is offering 24 hours at no extra cost, and that is fair. Commissioner Perez asked whether if PDS wanted 4 hour service or 3 hour service, then they have to pay for that service, the response time. Counsel indicated her understanding was correct. Commissioner Perez asked for a motion. Commissioner McDonald stated that he wished to insert the word "standard" repair time in the order. GTA had no objections. Upon motion duly made, seconded and unanimously carried, the Commissioners approved a standard repair time interval for xDSL UNE of 24 hours, and adopted the Order made *Attachment "C"* hereto.

Chairwoman Perez indicated that the next matter on the agenda was GTA Docket 11-05, Tariff Transmittal No. 17 [a Promotional Offering for Vertical Calling Services] Public Notice, GCG Report, Counsel Report and a Proposed Order. Public comments have been received. The Chairwoman asked for further public comments. Counsel indicated that, before the Commission proceeds, public comments had just been received today. For that reason, the Commission should take public comments this evening, but defer action on the tariff.

Mr. John Day, President of PDS, proceeded to present his oral comment. Mr. Day suggested that GTA Telecom LLC does not have any filed tariff. The only tariff on file with PUC is in the name of TeleGuam Holdings LLC. GTA Telecom is violating Section 6 of the Telecom Act by not having a tariff on file with the Commission. GTA Telecom seeks to modify a tariff in somebody else's name. PDS takes the position that this practice has to stop, that GTA is out of compliance and breaking the law. The Commission should not entertain changes to the tariff it isn't even in the right person's name.

Additionally, GTA Telecom is seeking to provide free regulated services if a customer chooses unregulated services and bundles them together. Essentially, GTA is saying that it has regulated services, the Vertical Calling Services, and it will give those to customers for free if they buy the unregulated services. Related services are then discounted to zero to entice a customer to buy unregulated services. In fact this is a violation of Affiliate Transaction Rule 5 which forbids cross-subsidization between affiliated companies. Regulated services cannot be subsidized with unregulated services.

Lastly, by providing regulated services for free, GTA fails the "reasonability test." The PUC is required to review tariffs under section 12105(c) of the Telecom Act which provides that prices for regulated services must be reasonable. "Reasonable" is defined as above cost. While it might not cost GTA much to provide vertical calling services it costs them something. GTA cannot provide regulated services for free. To do so is anti-competitive. GTA is taking advantage of its market power to provide these services to force competition out.

PDS recommends that the Commission suspend the tariff filing. Commissioner Pangelinan asked Mr. Day concerning the significance of the name in which the tariff is issued. Mr. Day indicated that the law must be complied with, and that GTA Telecom doesn't have a tariff. Commissioner Pangelinan asked how this technical point could be resolved. Mr. Votaw of GTA indicated that GTA was in the process of rewriting the entire tariff. Counsel for GTA, Serge Quenga, indicated that it agreed with PUC Counsel's recommendation to defer decision on this docket, and to provide GTA with a further opportunity to respond. The Chairwoman indicated that this matter would be tabled until the next meeting.

#### 4. Guam Power Authority

The Chairwoman announced that the next matter on the Agenda was GPA Docket 10-09, Application for Approval of Contract for Environmental Engineering and Technical Services, PUC Counsel Report and Proposed Order. Counsel indicated that the Commission previously approved GPA's procurement of environmental engineering and technical services. The matter is now back before the Commission for approval of GPA's contract for these services, which include ambient air quality monitoring, air quality modeling, the redesignation of the Cabras plants from non-attainment areas to attainment areas, reporting on Fuel Switching and other engineering/technical services.

GPA had 5 bidders and selected TRC Environmental Corporation as the most qualified proposer. Documents submitted by GPA indicate that TRC was the most qualified. GPA is requesting approval for the first year amount of the contract, which is \$313,000. Thereafter GPA should file annual cost estimates for this contract under paragraph 4d of the Contract Review Protocol for multi-year contracts. If GPA determines that the contract will exceed the threshold of \$1.5M over the 5 years or that bond funds will be used, it should come back to the PUC for specific approval. The proposed Order would approve the contract and the first year expenditure.

Commissioner Pangelinan asked whether GPA had indicated a need for the contract in already available rate funds and non-bond funds, or did Counsel mean bond funds. Counsel indicated that there are available bond funds that GPA had pointed out, \$1.9M in the bond issue for ambient air quality. The Report does refer to bond funds. Commissioner Cantoria asked whether TRC had a deadline for the costing in the next 5

years. General Manager Flores of GPA indicated that is GPA's responsibility. The Chairwoman clarified that the term of the contract was for 5 years.

Legal Counsel of GPA Graham Botha stated that GPA would go forward with the task orders that it needs for services and that the amount may not exceed \$1.5M; however if GPA uses bond funds or the cost does exceed \$1.5M, then GPA will come back to the Commission for its approval for future task orders. Counsel indicated that the contract has a 5 year option to extend. Upon motion duly made, seconded, and unanimously approved, the Commissioners approved GPA's contract for environmental and engineering services, and adopted the order made *Attachment "D"* hereto.

The Chairwoman announced that the next item on the Agenda was GPA Docket 10-05, Petition for Authorization to Exercise Remaining Options on GPA's Property Insurance Policy for the period of November 1, 2011 to 2013, PUC Counsel Report, and Proposed Order. Counsel indicated that GPA was seeking authorization to exercise the remaining two 1 year options on its property insurance policy for the period of November 1, 2011 to November 1, 2013. The Property and casualty insurance policy contract approved by the Commission authorized these two annual extensions.

GPA's consultants and management believe that the ability to exercise these contract extensions may mitigate rate increases. GPA's General Manager believes he could use the ability to exercise two options as a negotiating tool to keep the insurance at a reasonable price. GPA believes that the price of the contract renewal will not deviate significantly from the existing amount of \$5.3M annually. According to GPA, the current insurance contract allows the provider to increase fees in an amount up to 10%.

Counsel recommends that GPA's petition be approved, and the proposed Order would authorize GPA to exercise the options. If contract renewal does not increase cost more than 10%, GPA would not have to come back to the PUC for approval of the property and casualty insurance policy. Commissioner Pangelinan asked whether, with the authorization that the PUC gave in 2008, shouldn't GPA have the current ability to enter into the extensions without coming back to the PUC. Counsel concurred with Commissioner Pangelinan. Commissioner Pangelinan further asked whether the insurance might be that GPA wants the authority to exercise both options in advance. Again, Counsel concurred. Essentially GPA wished to be able to turn 1 year options into a 2 year option.

Chairwoman Perez asked GPA whether the cost for the insurance would be \$5.3M per year. GPA Legal Counsel Botha indicated that the cost would be approximately \$5.3M per year; GPA is trying to negotiate perhaps instead of a 1 year extension a 2 year extension to try to lock in something around that amount. The Chairwoman clarified that GPA would then gain better negotiating power plus the \$250,000 bonus for no claims, which amount could be put towards the premium. GPA concurred. The

Chairwoman indicated that under this proposal, the \$250,000 could be subtracted from the \$5.3M, leaving the price at \$5.05M, but with a 2 year option. Upon motion duly made, seconded and unanimously carried, the Commissioners approved GPA's Petition to exercise property and casualty insurance options, and adopted the Order made *Attachment "E"* hereto.

The Chairwoman announced that the next item on the Agenda was GPA Docket 07-10, Petition to Modify Working Capital Fund Surcharge, GCG Report, ALJ Report, and Proposed Order. Counsel indicated that the Commission had already approved a WCF Surcharge in its May 27, 2010 Order. Counsel did not think it was necessary to go through the entire history, but pointed out that the implementation of the surcharge had been delayed on various occasions. Now, GPA seeks to make the surcharge effective April 2, 2012, and to apply \$5.1M which they received in a settlement involving certain securities with the Bank of America, as an offset to the Surcharge. The rate for civilian customers would be \$.00554 per kWh and a flat fee to the Navy of \$131,414 per month.

These surcharges would repay the debt service on the portion of the bond used to fill the working capital fund. GCG does not disagree with implementation of the surcharge, but feels that the surcharge should be offset by amounts awarded to GPA in the last base rate case, \$2.6M in base rates annually to fill the WCF. GPA has not subtracted those amounts in its calculation of the surcharge. Counsel pointed out that the prior stipulation between GPA, GCG, and the Navy stated that \$2.6M would be deducted annually from the WCF Surcharge and the May 10, 2010 Order of the Commission stated that the \$2.6M would be taken into account.

GCG takes the position that two years of the \$2.6M base rate amounts, or \$5.2M, would reduce the net ratepayer contribution for the surcharge. The ALJ had conducted a hearing in this matter to give the parties an opportunity to respond to GCG's Report. GPA indicated that it did not believe the \$2.6M should be taken into account because there were other revenue shortfalls. It was short in expected revenues in the amount of \$2.7M.

However, amounts paid by the ratepayers and base rates must be taken into account; if they are not, the ratepayers are required to pay twice. Ratepayers must receive the benefit of the \$2.6M that was actually put into the base rates. Counsel recommends that the Commission adopt the GCG rate proposal, which would be \$.00466 kWh for civilian customers and \$110,000 plus per month. The surcharge will be amortized over a period of 42 months starting on April 2, 2012 and lasting for 42 months thereafter. GPA would be required to file a schedule of revised rate tariffs in accordance with the amounts indicated by Georgetown.

The fuel component of the WCF and bond requirements relate to the price of fuel. Therefore, in accordance with the prior stipulation of the parties, there is a procedure whereby GPA can indicate its requirements for the fuel portion of the WCF in its LEAC Filings. Thus, the same procedure approved by the Commission in its May 2010 Order, whereby GPA would include fuel expense increases in the WCF surcharge as part of the LEAC filing, would remain in effect. In response to the Chairwoman's question, GPA Legal Counsel indicated that at present it was not collecting the surcharge payments. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the WCF Surcharge in accordance with the ALJ Report, and adopted the Order made *Attachment "F"* hereto.

The Chairwoman announced that the next matter for consideration by the Commission was GPA Docket 11-03, Application of GPA for Approval of Procurement for Guaranteed Investment Contracts. Counsel indicated that previously the Commission had approved and authorized GPA to seek guaranteed investment contracts. The purpose of this contract is for GPA to obtain a better interest rate on the bond funds in its Construction Fund and the Bond Reserve Fund. The Construction Fund has approximately over \$92M and the Bond Reserve Fund has about \$12M.

Commissioner Cantoria asked whether the funds could be invested in the stock market, but Counsel indicated that they could not--there are many restrictions with bond funds. However, the guaranteed investment contracts will give a better rate than GPA presently obtains. General Manager of GPA Joaquin Flores indicated that GPA hoped to obtain at least .3% interest. Counsel indicated that there is a proposed order to authorize GPA to enter into investment contracts for such funds. The Order was drafted by Bond Counsel, and there is already a list of 5 potential bidders.

Tomorrow the bidders will actually lock in the actual interest rates that they can offer. GPA will then select the best bid in terms of the interest rate. GPA indicated that that combined amounts of the Construction Fund and the Bond Reserve Fund were approximately \$150M. The Chairwoman clarified that GPA would be going hopefully for .3% interest. Upon motion duly made, seconded and unanimously carried, the Commissioners authorized GPA to enter into the guaranteed investment contracts in accordance with the stated terms and conditions, and adopted the order made *Attachment* "**6**" hereto.

#### 5. PUC Website and Administrative Matters

PUC Administrator Palomo indicated that there was correspondence between her and the Commission's website consultant, ICON, for informational purposes. In addition, FY 2011 2<sup>nd</sup> quarter accounts were submitted for the Commissioner's consideration, which include services rendered by the PUC Consultants. The Chairman indicated that these matters should be discussed at the next meeting. Counsel was then asked to

address a Resolution which had been presented to the Commissioners. Counsel indicated that the Resolution would authorize the issuance of requests for proposals for professional consultants to advise the PUC on water/power and telecom. These RFPs would not impact the contract of the existing consultants GCG.

All Consultant contracts of the PUC are terminable on 30 days notice. There are times when the Commission may need to consult on telecom matters. This Resolution authorizes PUC Counsel to prepare and publish procurement dockets. The resolution indicated that Counsel should prepare these documents within 60 days, but the Chairwoman suggested lengthening that period to 90 days. After some discussion, Counsel indicated that he would be able to complete the procurement documents within 60 days. Upon motion duly made, seconded, and unanimously carried, the Commissioners approved Resolution 11-04.

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

Rowena E. Perez Chairwoman

# BEFORE THE GUAM PUBLIC UTILITIES COMMISSION REGULAR MEETING SUITE 202, GCIC BUILDING 414 W. SOLEDAD AVE. HAGATNA, GUAM 6:00 p.m. June 20, 2011

#### Agenda

- 1. Approval of Minutes of May 16, 2011 and June 2, 2011.
- 2. Guam Power Authority
  - GPA Docket 10-09, GPA Application for Approval of Contract for Environmental Engineering and Technical Services, PUC Counsel Report, and Proposed Order
  - GPA Docket 11-05, Petition for Authorization to Exercise Remaining Options on GPA's Property Insurance Policy for the period of November 1, 2011 to November 1, 2013, PUC Counsel Report, and Proposed Order
  - GPA Docket 07-10, Petition to Modify Working Capital Fund Surcharge, GCG Report, ALJ Report and Proposed Order
- 3. GTA Telecom LLC
  - GTA Docket 11-03, GTA Petition to define the appropriate Repair Time Interval for xDSL UNE ("Unbundled Network Element"), Carrier Commence, GCG Report, ALJ Report, Proposed Order.
  - GTA Docket 11-05, Tariff Transmittal No. 17 [Promotional Offering, Vertical Calling Services], Public Notice, GCG Report, PUC Counsel Report, and Proposed Order.
- 4. Port Authority of Guam
  - Port Docket 09-01, General Regulatory; Signing by Commissioners of Order and PUC/Port Authority Contract Review Protocol
- 5. PUC Website
  - Update
- 6. Administrative Matters
- 7. Other Business



#### BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

PAG DOCKET 11-01

IN RE:

PETITION FOR TARIFF RATE RELIEF BY THE PORT AUTHORITY OF GUAM

ORDER

#### INTRODUCTION

This matter comes before the Guain Public Utilities Commission ("PUC") upon the filing of the December 30, 2010 Comprehensive Tariff Study ("Tariff Study"), prepared by The Cornell Group, Inc. ("Cornell"), on behalf of the Port Authority of Guam ("PAG"). The Tariff Study examines PAG's tariff rates by providing a comprehensive review of PAG's existing terminal tariff, as well as recommending modifications to the terminal tariff.

#### **DETERMINATIONS**

- On June 17, 2011, the Administrative Law Judge (the "ALJ") of the PUC issued his ALJ Report regarding the Scope of Work submitted by the PUC's consultant Slater,
   Nakamura ("Slater-Nakamura Scope of Work") to examine PAG's Tariff Study.
- 2. In the June 17, 2011 ALJ Report, the ALJ found that the Slater-Nakamura Scope of Work adequately sets forth the tasks required to examine PAG's existing terminal tariff, Cornell's Tariff Study, and PAG's proposed tariff, dated June 2, 2011.
- 3. The ALJ further found that the projects indicated in the Scope of Work appeared reasonable and necessary to complete a study of PAG's proposed terminal tariff, and that Slater-Nakamura's proposed cost estimate appeared reasonable, especially given the comprehensive nature of the types of tariff studies to be examined.
- 4. Thus, the ALJ recommended that the PUC approve Slater-Nakamura's Scope of Work, which was attached to the June 17, 2011 ALJ Report as "Exhibit A."

The Commission hereby adopts the findings made in the ALJ Report and, therefore, issues the following:

#### ORDERING PROVISIONS

Upon consideration of the record herein, the June 17, 2011 ALJ Report, and for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby ORDERS that:

- 1. The Scope of Work between the Guam Public Utilities Commission and Slater, Nakamura is hereby approved.
- 2. PAG is further ordered to pay the PUC's regulatory fees and expenses, including and without limitation, consulting and counsel fees, and the fees and expenses associated with conducting the review process. Assessment of the PUC's regulatory fees and expenses is authorized pursuant to 12 G.C.A. §§ 12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the PUC.

SO ORDERED this 200 of June, 2011.

Jeffrey C. Johnson Chairman

Rowena F. P erez

Commissioner

Joseph M. McDonald

Commissioner

Filomena M. Cantoria

Commissioner

Michael A. Pangelinan

Commissioner

P114064.JRA



#### BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

PETITION FOR TARIFF RATE IN RE:

RELIEF BY THE PORT

ALJ REPORT

PAG DOCKET 11-01

**AUTHORITY OF GUAM** 

#### INTRODUCTION

This matter comes before the Guam Public Utilities Commission ("PUC") upon the filing of the December 30, 2010 Comprehensive Tariff Study ("Tariff Study"), prepared by The Cornell Group, Inc. ("Cornell"), on behalf of the Port Authority of Guam ("PAG"). The Tariff Study examines PAG's tariff rates by providing a comprehensive review of PAG's existing terminal tariff, as well as recommending modifications to the terminal tariff.

#### DISCUSSION

On April 18, 2011, Slater, Nakamura ("Slater-Nakamura") submitted a draft Scope of Work that described the tasks and services involved in examining PAG's Tariff Study and tariff rates, as well as cost estimates related to the study. On May 9, 2011, after discussing Slater-Nakamura's draft Scope of Work with the PUC Chairman Jeffrey Johnson and PUC Legal Counsel Frederick Horecky, the Administrative Law Judge of the PUC (the "ALJ") requested that the consultants reduce the number of labor hours indicated in the draft Scope of Work from 872 hours to 650 hours so as to reduce the costs associated with the PUC's examination of PAG's terminal tariff study. Thereafter, Slater-Nakamura submitted a revised Scope of Work. This new Scope of Work, which is attached hereto as "Exhibit A," similarly outlines and

describes the tasks and services involved in examining PAG's terminal tariff study. In addition, the Scope of Work reflects a reduction from 872 to 626 labor hours to complete the project.

The Slater-Nakamura Scope of Work adequately sets forth the tasks required to examine PAG's existing terminal tariff, Cornell's Tariff Study, and PAG's proposed tariff. The ALJ finds that the projects indicated in the Scope of Work appear reasonable and necessary to complete a study of PAG's proposed terminal tariff. In addition, Slater-Nakamura's proposed cost estimate appears reasonable, especially given the comprehensive nature of these types of tariff studies. Accordingly, the ALJ recommends that the PUC approve Slater-Nakamura's Scope of Work.

#### RECOMMENDATION

For the reasons set forth above, the ALJ hereby recommends that the PUC approve the Slater-Nakamura Scope of Work, which is attached hereto as "Exhibit A." A draft Order is submitted herewith for the consideration of the Commissioners.

Dated this 17<sup>th</sup> day of June, 2011.

W

DAVID . MAIR

Administrative Law Judge

P1-14063.JRA

Proposal to the Guam Public Utilities Commission Tariff Review - 2011 June 2, 2011 NORDCLOUD LIMASSOL **EXHIBIT A** 

## Statement of Work for Support to the Guam Public Utilities Commission in Reviewing the Tariff for the Port Authority of Guam

June 2, 2011

#### Submitted to:

Guam Public Utilities Commission Suite 207, GCIC Building 414 W. Soledad Avenue Hagatna, Guam, 96910

#### Submitted by:

Mr. Roger Slater Partner Slater, Nakamura 790 South Marine Corps Drive, Suite B, Tamuning, Guam 96910

Phone: 1-671-687-6711 Fax: 1-671-649-3890

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Slater, Nakamura

PAG Tariff Review – 2011

#### 1.0 INTRODUCTION

The purpose of this document is to describe the tasks that we will execute in our role as the Guam Public Utilities Commission consultants for matters related to the tariff for the Port Authority of Guam.

Included in this document is a description of the Statement of Work, the estimated cost for providing these services and a preliminary time line.

#### Our Role in Supporting the Guam Public Utilities Commission

Slater, Nakamura was retained by the Guam PUC to provide consulting services in the following areas:

- Consultation and advice on matters related to the Commission's duties as defined by Guam Public Law 30-52 ad 12 GCA §12000.
- Reviewing and providing recommendations concerning existing rates, charges and cost of services provided by the Port.
- Providing advice, as required, on the establishment or modifications of rates, charges and costs of services.
- Assisting the Commission in reviewing, evaluating and recommending actions to be taken by the Commission with regard to its regulatory oversight supervision of PAG.
- Acting as the consultant to the Commission for services related to the review of the PAG's financial records, accounting information and rate fillings.
- As requested, examining and reviewing any documents or information related to the PAG rate proceedings or other regulatory matters including information submitted by PAG as part of their standard filling requirements in applications for changes to rates. This may include PAG revenue requirements, income statements, operating expenses, operating income, interest, depreciation, other revenues and expenses, and net income; cash flow statements, forecasted results of operations, customer and sales data, revenue by customer class, internal labor costs, analysis of proposed bond issues and/or loan agreements, payment terms and schedules and calculations of working capital.
- Analyzing the information listed in the previous bullet to provide opinions to the Commission specifically to scrutinize the figures and calculations presented by PAG or its supporting staff to determine if the information is accurate and correct.
- Verifying the financial and accounting accuracy of any records or information submitted by PAG.
- Determining if the PAG accounting and financial records are being maintained in accordance with General Accepted Accounting Principles (GAAP) and the GAO Yellow Book standards.
- Providing other services as required by the Commission.

#### 2.0 STATEMENT OF WORK

In this section, we will describe the tasks we will execute as part of the tariff review of the PAG.

Slater, Nakamura PAG Tariff Review - 2011

Our overall approach is to work with the PAG staff, their consultants and the PUC to develop a tariff that is just and reasonable for the people of Guam while also meeting the business objectives of the PAG.

We will achieve this overall objective by engaging with the PAG early to develop a tariff that is supportable, that meets the "just and reasonable" criteria and that will address the issues that were raised during the interim tariff review process in 2010.

#### 2.1 STATEMENT OF WORK

In Figure 1, we show the overall approach that we will use in executing this review:

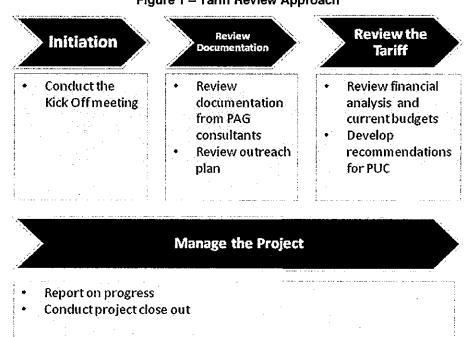


Figure 1 – Tariff Review Approach

#### Phase 1 - Initiation

This phase will be focused on the development of the plan for the tariff creation and review.

#### Conduct a Kickoff Meeting

The objectives of this meeting will be to:

- · Discuss the plan for the tariff review
- Review and comment on the Outreach plan
- · Define the business objectives of the tariff

We will conduct two 2 hour meetings via WebEx to discuss these topics with PAG and the PAG consultant.

Slater, Nakamura PAG Tariff Review - 2011



The output from these meetings will be an agreed upon approach for the review of the draft tariff.

#### Phase 2 - Review documentation

In this phase, we will review the documentation that was provided by the PAG consultants. Our review will focus on the following areas:

#### Review the PAG consultant Study and Tariff documentation

The activities in this task will include

- Identify informational gaps within the PAG consultant report. We will review the PAG consultant report to determine where inaccuracies or inconsistencies, if any, within the report
- Document the inaccuracies or inconsistencies. Identify impact on the development of the proposed tariff ranging from minor (not requiring adjustment) to significant (will require revision of the proposed tariff)
- · Work with the PAG and its consultant to resolve informational needs and inconsistencies

As part of this task, we will conduct a series of conference calls to discuss the inconsistencies in order to better understand the approach.

#### Review the outreach program

- Identify potential customer concerns and issues
- Review the outreach results to identify potential consumer issues and concerns

#### Phase 3 – Conduct the Draft Tariff Review

We will execute the following tasks:

### Review the PAG consultant financial Analysis and current operating and capital improvement budgets

The activities in this task will include

- Review the financial analysis related to the development of the PAG proposed tariff
- Discuss potential funding/debt service coverage issues
- Work with PAG and its consultants to refine operating and capital budgets
- Review comparables, CPI indicators and other factors to establish whether proposed rates are "fair and reasonable"

#### Develop recommendations for PUC

Based upon our review, we will make a recommendation to the PUC related to acceptance of the proposed tariff using the "just and reasonable" criteria that was defined in the previous phase.

#### This will include:

· Conduct up to 2 meetings with the PUC to review the results of the tariff review

#### Slater, Nakamura



#### **Phase 4 - Manage the Project**

For this phase, we will execute the tasks related to managing the project. This will include:

- Provide bi-weekly status reports to the PUC ALJ
- Maintain the project schedule and billing

#### 3.0 COST ESTIMATE

Based upon the tasks described above, the cost estimate for this project is presented in Table 1.  $\,$ 

Table 1 - Cost Estimate

	Total hours
Phase 1 - Initiation	
Conduct kickoff meeting with PAG	20
Phase 2 – Review documentation	
Review the PAG consultant Study and Tariff documentation	
Identify gaps in the PAG consultant report. Document inaccuracies or inconsistencies within the report	76
Work with the PAG and its consultant to resolve informational needs and inconsistencies	20
Review the Outreach Program and Results	
Conduct a review of the outreach program and the results	16
Phase 3 – Conduct the Draft Tariff	
Review	
Review the PAG consultant financial analysis and current operating and capital improvement budgets	
Review the financial analysis. Define potential funding / debt service coverage issues. Define potential funding / debt service coverage issues.	
Wash with BAC and the same than to be Constituted to	368
Work with PAG and its consultants to refine operating and capital budgets	16
Develop recommendations for PUC	
Provide support in meeting with PUC (in person)	80
Conduct up to 2 meetings with the PAG and their consultants to discuss (Remote meetings)	16
Phase 4 - Manage the Project	
Provide two one hour bi-weekly status reports to the PUC ALI	10
Maintain the project schedule and billing	4

Cost Estimate	
Labor Hours	626
Labor Cost @ \$150 / hour	\$93,900.00
Expenses (estimated)	
Travel - 1 trip for 3 staff members	
Airlines	\$16,000.00
Per Diem / Lodging - 3 days per staff member @ US Govt Rate	\$2,000.00
Rental Car for 3 days shared by 3 staff members	\$300.00
Miscellaneous expenses (WebEx, printing etc)	\$500.00
Subtotal - expenses - estimated	\$18,800.00
Total cost	\$112,700.00

#### BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

) PAG DOCKET 11-01
IN RE: PETITION FOR TARIFF RATE )
RELIEF BY THE PORT ) ORDER
AUTHORITY OF GUAM )

#### INTRODUCTION

This matter comes before the Guam Public Utilities Commission ("PUC") upon the filing of the December 30, 2010 Comprehensive Tariff Study ("Tariff Study"), prepared by The Cornell Group, Inc. ("Cornell"), on behalf of the Port Authority of Guam ("PAG"). The Tariff Study examines PAG's tariff rates by providing a comprehensive review of PAG's existing terminal tariff, as well as recommending modifications to the terminal tariff.

#### **DETERMINATIONS**

- On June 17, 2011, the Administrative Law Judge (the "ALJ") of the PUC issued his ALJ Report regarding the Scope of Work submitted by the PUC's consultant Slater,
   Nakamura ("Slater-Nakamura Scope of Work") to examine PAG's Tariff Study.
- 2. In the June 17, 2011 ALJ Report, the ALJ found that the Slater-Nakamura Scope of Work adequately sets forth the tasks required to examine PAG's existing terminal tariff, Cornell's Tariff Study, and PAG's proposed tariff, dated June 2, 2011.
- 3. The ALJ further found that the projects indicated in the Scope of Work appeared reasonable and necessary to complete a study of PAG's proposed terminal tariff, and that Slater-Nakamura's proposed cost estimate appeared reasonable, especially given the comprehensive nature of the types of tariff studies to be examined.
- 4. Thus, the ALJ recommended that the PUC approve Slater-Nakamura's Scope of Work, which was attached to the June 17, 2011 ALJ Report as "Exhibit A."

The Commission hereby adopts the findings made in the ALJ Report and, therefore, issues the following:

#### **ORDERING PROVISIONS**

Upon consideration of the record herein, the June 17, 2011 ALJ Report, and for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby ORDERS that:

- The Scope of Work between the Guam Public Utilities Commission and Slater, Nakamura is hereby approved.
- 2. PAG is further ordered to pay the PUC's regulatory fees and expenses, including and without limitation, consulting and counsel fees, and the fees and expenses associated with conducting the review process. Assessment of the PUC's regulatory fees and expenses is authorized pursuant to 12 G.C.A. §§ 12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the PUC.

SO ORDERED this \_\_\_\_ of June, 2011.

Jeffrey C. Johnson	Joseph M. McDonald
Chairman	Commissioner
Rowena E. Perez	Filomena M. Cantoria
Commissioner	Commissioner
Michael A. Pangelinan Commissioner	



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE:	) GTA Docket 11-03
	)
GTA PETITION FOR RULEMAKING	)
TO ESTABLISH AN APPROPRIATE	)
REPAIR TIME INTERVAL FOR xDSL	)
UNE ("UNBUNDLED NETWORK	)
ELEMENT")	Í

ORDER APPROVING THE ADOPTION OF A REPAIR TIME INTERVAL FOR \*DSL UNE (RULE 7F OF THE INTERCONNECTION IMPLEMENTATION RULES)

#### **INTRODUCTION**

- 1. This matter comes before the Guam Public Utilities Commission [PUC] upon the Petition of GTA Telecom LLC [GTA] for Rulemaking to Define the appropriate repair time interval for xDSL UNE (Unbundled Network Element).<sup>1</sup>
- 2. On April 18, 2011, the PUC issued an Order approving the commencement of proceedings, through the authority of the PUC Administrative Law Judge, to establish and define the repair time interval for xDSL UNE and to conduct appropriate hearings in this matter.<sup>2</sup>

#### BACKGROUND

3. On April 21, 2011, the PUC published "Notice of Proposed Rulemaking" in the Pacific Daily News.<sup>3</sup>

<sup>&</sup>lt;sup>1</sup> GTA Petition for Rulemaking to Define the Appropriate Repair Time Interval for xDSL UNE, GTA Docket 11-03, filed March 16, 2011.

<sup>&</sup>lt;sup>2</sup> PUC Order Instituting Rulemaking, GTA Docket 11-03, issued April 18, 2011.

<sup>&</sup>lt;sup>3</sup> PUC Notice of Proposed Rulemaking, GTA Docket 11-03, published in the Pacific Daily News on or about April 21, 2011.

- 4. The Notice indicated that, at present, the Interconnection implementation Rules [adopted by the PUC on August 13, 2007 in Docket 05-1, do not define the repair time interval for xDSL UNEs. Therein the PUC invited written comments from any interested party or member of the public as to whether a repair time interval should be defined for xDSL UNE, and if so, whether 24 hours is the appropriate repair time interval for such service. Written comments were requested to be submitted to the PUC on or before May 13, 2011.<sup>4</sup>
- 5. Written comments were received from interested parties, including WISP Guam Inc., Pacific Data Systems Inc., and GTA.<sup>5</sup>
- 6. Although at the PUC meeting on May 16, 2011, the Chairman invited public comments on GTA's Petition, no public comments were offered.<sup>6</sup>
- 7. On June 7, 2011, the Georgetown Consulting Group Inc. submitted its report re: GTA Petition for Rulemaking, xDSL Repair Interval, GTA Docket 11-03.7
- 9. On June 16, 2011, at the PUC Office, the ALJ held a conference among interested parties in this proceeding to provide them with an opportunity to comment upon the Report submitted by the Georgetown Consulting Group and to raise any additional matters concerning the appropriate repair time interval for xDSL.
- 10. On June 18, 2011, the Administrative Law Judge filed his Report herein.8

#### **DETERMINATIONS**

11. Based upon the testimony of the parties, there is a demonstrated need for the PUC to establish a repair time interval for xDSL UNE. The PUC should establish such a repair time interval.

<sup>4</sup> Id.

<sup>&</sup>lt;sup>5</sup> See Email from David Sykes, President, WISP Guam, Inc., Re: Public Comments for GPUC, filed May 10, 2011; John Day, President, Pacific Data Systems, Re: GTA Docket 11-03, GTA Petition for Rulemaking to Establish an Appropriate Repair time interval for xDSL UNE, filed May 13, 2011; and GTA Reply Comments, GTA Docket 11-03, filed May 19, 2011.

<sup>&</sup>lt;sup>6</sup> See Agenda for PUC Regular Meeting of May 16, 2011, and PUC Minutes from the Regular Meeting of May 16, 2011.

GCG Report, GTA Petition for Rulemaking, xDSL Repair Interval, GTA Docket 11-03, filed June 7, 2011.

<sup>&</sup>lt;sup>8</sup> ALJ Report, GTA Docket 11-03, filed June 17, 2011.

- 12. In accordance with 47 USC §251(c)(3), an Incumbent Local Exchange Carrier (ILEC) cannot be required to provide service to Competitive Local Exchange Carriers (CLECs" which is "superior" to that provided by the ILEC to its own customers.
- 13. Provisions of the Code of Federal Regulations, 47 C.F.R. Part 51 [§§51.305(a)(3) and 51.311 (b)] also require that an ILEC provide services to CLECs in "parity" ["at least equal in quality"] with those provided to the ILECs own customers.<sup>9</sup>
- 14. Case precedent reinforces that ILECs are not required to offer services to CLECs which are "superior in quality", and any regulatory attempt to do so violates the Telecommunications Act of 1996.<sup>10</sup>
- 15. GTA has presented evidence that its average repair time interval for a Basic Business DSL circuit for its own customers is over 42 hours.<sup>11</sup>
- 16. The GTA website contains "legal terms and conditions" under which "Spyder" broadband services are provided. Basic Business DSL service is provided under "Spyder." The website provides that, for Spyder services, "Service outages and repairs may take up to 48 hours."
- 17. Based upon federal law and case precedent, PUC cannot compel an ILEC such as GTA to provide superior service to CLECs than the ILEC provides to itself or its own customers. GTA cannot be required to provide repair service for xDSL UNE in a period of less than 24 hours.
- 18. In fact, the 24 hour repair time service interval which GTA proposes for xDSL UNE is superior to that which it provides to its own customers.
- 19. GCG's recommendation that a 24 hour repair time interval be approved for xDSL UNE is hereby adopted. In accordance with GCG's conclusion, the 24 hour

<sup>11</sup> GTA Reply Comments, GTA Docket 11-03, filed May 19, 2011, at p. 3 and Exhibit A.

<sup>&</sup>lt;sup>9</sup> GTA Reply Comments, GTA Docket 11-03, filed May 19, 2011, at p. 3

<sup>&</sup>lt;sup>10</sup> Id; see <u>Iowa Utilities Board v. FCC</u>, 120 F.3d 753, 812-813 (8th Cir. 1977), rev'd on other grounds, <u>Iowa Utilities Board v. AT&T Corp.</u>, 525 U.S. 366 (1999), on remand, <u>Iowa Utilities Board v. FCC</u>, 219 F.3d 744, 758 (8th Cir. 2000), rev'd on other grounds, <u>Verizon Communications Inc. v. FCC</u>, 535 U.S. 366 (2002).

standard should also be applied for other services within the xDSL family, such as ADSL, HDSL, IDSL, SDSL, VDSL, ADSL2, ADSL2+, etc.<sup>12</sup>

#### ORDERING PROVISIONS

After careful review of the GTA Petition to define the appropriate repair time interval for xDSL UNE, the comments of PDS and WISP Guam Inc., the report of GCG and the ALJ Report, and for good cause shown, based upon the determinations herein, on motion duly made, seconded, and unanimously carried by the undersigned Commissioners, the Guam Public Utilities Commission HEREBY ORDERS that:

- 1. A 24 hour repair time interval is hereby adopted for xDSL UNE.
- Rule 7f of the Interconnection Implementation Rules shall be amended to include such repair time interval for xDSL UNE, in the form attached as Exhibit "1" to this Order.
- 3. The 24 hour standard should also be applied for other services "within the xDSL family", such as ADSL, HDSL, IDSL, SDSL, VDSL, ADSL2, ADSL2+, etc.
- 4. The PUC adopts the analysis, reasoning and recommendations as set forth in the aforementioned ALJ Report and the GCG Report filed herein.
- 5. GTA is ordered to pay for the PUC's regulatory fees and expenses incurred in this Docket, including, without limitations, consulting and counsel fees and expenses. Assessments of the PUC's regulatory fees and expenses is authorized pursuant to 12 GCA §12002(b) and 12024(b), 12104, 12103, the Rules Governing Regulatory fees for Telecommunications Companies, and Rule 40 of the Rules of Practice and Procedure before the PUC.

12	T.J
14	Ia.

Dated this  $20^{th}$  day of June, 2011.

Jeffrey C. Johnson

Chairman

Rowena E. Perez Commissioner

Michael A. Pangelinan

Commissioner

Joseph M. McDonald Commissioner

Filomena M. Cantoria

Commissioner

Rule 7f) of the Interconnection Implementation Rules, adopted in Docket 05-1 on August 13, 2007, is hereby amended as follows:

The ILEC shall clear out-of-service trouble reports received from another telecommunications carrier within the following intervals, unless other repair intervals have been agreed to in the ICA:

REPAIR INTERVAL TABLE	
DS – 3, OC – 3 and higher	2 hours
DS – 1, Fractional DS – 1, Design DS – 0, and Local	4 hours
Interconnection Trunks	
Residential and Business Resale POTS	24 hours
XDSLUNE Standard repair	24 hours



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

	)	
IN THE MATTER OF:	)	GPA Docket 10-09
The Application of the Guam Power	)	
Authority Requesting Approval of the	)	
Procurement of Environmental	)	
Engineering and Technical Services.	)	
	)	

#### ORDER

#### INTRODUCTION

- This matter comes before the Guam Public Utilities Commission [PUC] upon the Application of the Guam Power Authority [GPA] requesting approval of the Contract for Environmental Engineering and Technical Services.<sup>1</sup>
- 2. On December 15, 2010, the PUC approved GPA's Application for Approval of the Procurement for Environmental Engineering and Technical Services. There the PUC found that GPA had demonstrated a need to procure services for Ambient Air Quality Monitoring, Air Quality Modeling for purposes related to redesignation of non-attainment areas to attainment areas, evaluation and reporting on fuel switching compliance for plant operations, and other engineering/technical services.<sup>2</sup>

#### **BACKGROUND**

3. The Background of this matter has been set forth in the PUC Counsel Report issued herein on June 14, 2011, which Report is adopted by the Commission.

<sup>&</sup>lt;sup>1</sup> GPA Application Requesting Approval of the Contract for Environmental Engineering and Technical Services, GPA Docket No. 10-09, filed May 13, 2011.

<sup>&</sup>lt;sup>2</sup> PUC Order, GPA Docket 10-09, filed December 15, 2011.

ORDER

In Re: Application of GPA Requesting Approval Of Procurement for Environmental Engineering & Technical Services GPA Docket 10-09 June 20, 2011

- 4. GPA now seeks approval from the PUC to allow the Authority to proceed with the award of a multi-year contract for Environmental Engineering and Technical Services to TRC Environmental Corporation.<sup>3</sup>
- 5. GPA has provided documentation which establishes that TRC was ranked by GPA as the most qualified proposer for the contract.

#### **DETERMINATIONS**

- 6. GPA has demonstrated a need for these consulting services.
- 7. In accordance with the authorization of the Consolidated Commission on Utilities, GPA Management should be authorized to award a multi- year contract to TRC Environmental in the amount of \$313,000 for the first year. The contract should be approved in the form submitted by GPA.<sup>4</sup>
- 8. The proposed term of the Contract, providing for a base contract of five years, and, upon mutual agreement of the parties, a contract extension for an additional five year period, should be approved.<sup>5</sup>

#### **ORDERING PROVISIONS**

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

1. GPA's Award of the Contract for Environmental Engineering and Technical Services to TRC Environmental Corporation is hereby approved.

<sup>&</sup>lt;sup>3</sup> Memorandum from Joaquin C. Flores, P.E., General Manager, Guam Power Authority to the Guam Public Utilities Commission, Re: Request for PUC Approval for the Award of a Multi-Year Contract for Environmental Engineering and Technical Services, dated May 11, 2011.

<sup>4</sup> Id. at pgs. 1-2.

<sup>&</sup>lt;sup>5</sup> Contract for Technical Services, attached to the November 15, 2010, Application of GPA Requesting Approval of the Procurement of Environmental Engineering and Technical Services, at p. 21.

#### ORDER

In Re: Application of GPA Requesting Approval Of Procurement for Environmental Engineering & Technical Services GPA Docket 10-09 June 20, 2011

- 2. GPA Management is authorized to enter into the Contract for Technical Services (a copy of which is attached to its Application) with TRC Environmental Corporation. GPA is authorized to expend the negotiated price of \$313,000 for the initial tasks identified in Exhibits B and C to the contract for the first contract year.
- 3. GPA has demonstrated the need for such contract, and there are already available rate funds and bond funds for implementation of these contract services without the necessity for a rate increase.
- 4. In the event GPA determines that the multi-year contract will exceed the contract review threshold of \$1.5M over the five year contract period, or bond funds are to be used for the contract, further review and approval will be required by the PUC.
- 5. GPA must file an annual cost estimate for the contract in accordance with paragraph 4d) of the Contract Review Protocol for Guam Power Authority.
- 6. GPA is ordered to pay the Commission's regulatory fees and expenses, including, without limitation, consulting and counsel fees and the fees and expenses of conducting the hearing proceedings. Assessment of the PUC's regulatory fees and expenses is authorized pursuant to 12 GCA §§12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

Dated this 20th day of June, 2011.

Jeffrey C. Johnson

Chairman

Rowena F. Perez

Commissioner

Joseph M. McDonald

Commissioner

Filomena M. Cantoria

Commissioner

Michael A. Pangelinan

Commissioner



#### BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:	) ) GPA DOCKE	T 11-05
GUAM POWER AUTHORITY PROPERTY INSURANCE RENEWAL	) ) )	

#### ORDER

#### **INTRODUCTION**

- 1. This matter comes before the Guam Public Utilities Commission [PUC] upon the Guam Power Authority [GPA] Petition for Authorization to Exercise the Remaining Two (2) One (1) year options on GPA's property insurance policy for the period of November 1, 2011 to November 1, 2013.<sup>1</sup>
- 2. GPA General Manager seeks such authority based upon the belief that GPA may be able to avoid a significant rate increase if it could include in the negotiating process a commitment to exercise both options available to GPA to obtain its policy extension.<sup>2</sup>
- 3. GPA's current insurance policy will expire November 1, 2011, if GPA does not renew the existing policy.<sup>3</sup>

#### BACKGROUND

4. GPA's current property and casualty insurance policy includes two remaining one year options to extend such policy. The PUC previously approved the GPA insurance coverage adopted in 2008, which provided for a three year term plus two (2) one year options to extend at the mutual agreement of both parties.

<sup>&</sup>lt;sup>1</sup> GPA Petition for Authorization to Exercise the Remaining Two (2) One (1) Year Options of GPA's Property Insurance Policy, GPA Docket 11-05, filed May 19, 2011.

<sup>&</sup>lt;sup>2</sup> Letter from GPA General Manager Joaquin Flores to PUC ALJ, GPA Docket 11-05, dated May 18, 2011, Re: Petition to Exercise up to Two (2) Options for Insurance Coverage.

<sup>&</sup>lt;sup>3</sup> GPA Petition for Authorization, GPA Docket 11-05, filed May 19, 2011.

 On April 12, 2011, the Consolidated Commission authorized the GPA General Manager to exercise up to two options for the renewal of the property insurance policy.<sup>4</sup>

#### **DETERMINATIONS**

- 6. Given current market conditions, GPA should be given the option to extend its existing property and casualty coverage.<sup>5</sup>
- 7. The General Manager should also have the negotiating tool to exercise up to two one year options in the negotiating process to obtain a policy extension and to potentially avoid a significant cost increase.<sup>6</sup>

#### ORDERING PROVISIONS

After a review of the record herein, GPA's Petition to Authorize Remaining Options on its Property Insurance Policy, and the PUC Counsel Report, for good cause shown, on motion duly made, seconded and carried by the undersigned Commissioners, the Guam Public Utilities Commission **HEREBY ORDERS** that:

- 1. GPA's Petition for Authorization to Exercise the remaining two (2) one (1) year options on GPA's Property Insurance and Casualty Policy for the period of November 1, 2011 to November 1, 2013, is hereby approved.
- 2. The General Manager is authorized to extend the existing property and casualty insurance policies in accordance with such negotiating strategy as he determines will best protect the interest of the Guam Power Authority.
- 3. GPA is authorized to extend its present property and casualty insurance, in accordance with its present policy, up to an amount of \$5.3M per annum plus ten percent.
- 4. In the event that GPA is able to negotiate per annum extension(s) which do not exceed the annual cost of \$5.3M plus ten percent, GPA will not be required to

<sup>&</sup>lt;sup>4</sup> CCU Resolution No. 2011-16, adopted April 12, 2011, at pgs. 1-2.

<sup>&</sup>lt;sup>5</sup> Letter from GPA General Manager Joaquin Flores to PUC ALJ, Re: Petition to Exercise Up to Two Options for Insurance Coverage, GPA Docket 11-05, dated May 18, 2011, at p. 2. <sup>6</sup> Id.

request additional approval of such amount(s) from the PUC. If the rate(s) exceed ten percent, further PUC approval shall be required.

- 5. Once GPA has negotiated a rate for the extension of its property and casualty insurance, it shall file a copy of such extension and documentation relating to any extension of such property and casualty insurance policy with the PUC, indicating the cost thereof.
- 6. GPA is ordered to pay the Commission's regulatory fees and expenses, including, without limitation, consulting and counsel fees and the fees and expenses of conducting the hearing proceedings. Assessment of the PUC's regulatory fees and expenses is authorized pursuant to 12 GCA §§12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

Dated this 20th day of June, 2011.

Jeffrey C. Johnson Chairman

Rowena E. Perez Commissioner

Michael A. Pangelinan Commissioner Joseph M. McDonald

Commissioner

Filomena M. Cantoria

Commissioner

#### BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:

**GUAM POWER AUTHORITY** PETITION TO MODIFY THE **WORKING CAPITAL FUND** SURCHARGE

**DOCKET 07-10** 

SUPPLEMENTAL PHASE III ORDER RECEIVED

JUN 20 2011 State Utilities Commission

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### INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission [PUC] upon the Petition of the Guam Power Authority [GPA] to modify the Working Capital Fund (WCF) surcharge.1

### **BACKGROUND**

- 2. On June 15, 2011, the Administrative Law Judge [ALJ] issued a Report herein which details the background of these proceedings. The PUC adopts the background statement of the ALI.
- 3. The PUC previously approved the adoption of the WCF Surcharge after the holding of three public hearings and a recommendation by the ALJ that the WCF Surcharge be approved.<sup>2</sup>
- On April 4, 2011, GPA filed the present Petition, which now seeks to implement the WCF Surcharge on April 2, 2012.3 GPA seeks to implement a Working Capital Fund Surcharge on civilian bills on meters read on and after April 2, 2012 at the rate of \$0.00554/kWh.4 The monthly charge to the Navy was proposed at \$131,414.00 per month.5

<sup>&</sup>lt;sup>1</sup> GPA Petition to Modify Working Capital Fund Surcharge, Docket 07-10, filed April 4, 2011.

<sup>&</sup>lt;sup>2</sup> ALJ Report, Docket 07-10, filed May 25, 2010, at pgs. 3-4; PUC FY10 (Phase III) RATE DECISION Docket 07-10, adopted May 27, 2010.

<sup>&</sup>lt;sup>3</sup> GPA Petition to Modify Working Capital Fund Surcharge, Docket 07-10, filed April 4, 2011.

<sup>4</sup> Testimony of Randall V. Wiegand on behalf of the Guam Power Authority, Docket 07-10, filed April 4, 2010 at p. 4.

<sup>&</sup>lt;sup>5</sup> Id., Appendix A.

Supplemental Phase III Order In the Matter of: GPA Petition to Modify the Working Capital Fund Surcharge Docket 07-10 June 20, 2011

- 5. On May 20, 2011, the Georgetown Consulting Group (at the request of the ALJ) filed its Report on GPA's requested WCF Surcharge in Docket 07-10.6 Based upon a stipulation previously signed by GPA, the Navy and GCG in this proceeding, it contends that the surcharge should be <u>offset by \$2.6M annually</u> in order to determine the proper civilian and Navy surcharges.<sup>7</sup>
- 6. The justification for including the amount of \$2.6M annually as an offset to the WCF is that this \$2.6M had been included in the GPA base rates ordered by the PUC and established in PHASE II of the rate proceedings.<sup>8</sup>

#### **DETERMINATIONS**

- 7. The PUC concurs with the reasoning of GCG and the ALJ. While GPA's argument concerning its FY2010 budget shortfall is understandable, the fact remains that there were specific amounts included as rate relief for GPA to fill the WCF. Ratepayers will have paid the approximate amount of \$5.198M as the base rate contribution to the WCF by the time the surcharge is to become effective. It would be unfair to ratepayers to fail to credit the amount that they have already paid to fill the WCF, and to then require them to pay the same amount again.
- 8. The appropriate amount of the WCF Surcharge for civilian ratepayers, to commence on April 2, 2012, is the amount of \$0.00466 as suggested by GCG. The flat monthly charge to the Navy for its portion of the surcharge should be \$110,374.00.
- 9. It appears that the WCF base rate surcharge is "just" and "reasonable" pursuant to 12 GCA §§12015 and 12017. It is necessary so that GPA can recover its bond related costs for the filling of the working capital fund.

#### ORDERING PROVISIONS

After careful consideration of the record herein, Petition of GPA to modify Working Capital Fund Surcharge, the GCG Report dated May 20, 2011, GPA's Response to GCG Report, the Position Statement of Department of Defense, and the Report of the Administrative Law Judge [ALJ], for good cause shown, on motion duly made, seconded and carried by the undersigned Commissioners, the Public Utilities

Commission hereby ORDERS that:

<sup>&</sup>lt;sup>6</sup> Georgetown Consulting Group Inc.'s Report on Guam Power Authority's Petition to Modify Working Capital Fund Surcharge, Docket 07-10, filed May 20, 2011.

<sup>&</sup>lt;sup>7</sup> Id. at p. 3.

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

Supplemental Phase III Order In the Matter of: GPA Petition to Modify the Working Capital Fund Surcharge Docket 07-10 June 20, 2011

- 1. All Rulings and orders of the ALJ in this proceeding are confirmed and ratified.
- 2. Proper Notice of these proceedings has been duly given.
- 3. The proposed WCF Surcharge is reasonable, prudent and necessary, and is hereby adopted and approved. Such surcharge is necessary to provide for the amortization of the WCF-related bond debt, the net Ratepayer Contribution for which is approximately \$27.269M.
- 4. GPA is authorized to apply proceeds of \$5.1M from the Bank of America Settlement against the Working Capital Fund Surcharge
- 5. In accordance with the prior Stipulation of the Parties and the recommendation of the ALJ, the amounts previously recognized by the PUC for working capital that are currently embedded in GPA's base rates should not be included in the Net Ratepayer Contribution.
- 6. Commencing on April 2, 2012, there shall be a WCF Base Rate Surcharge of \$.00466 per kWh (including the residential lifeline rate) on GPA's civilian bills. A flat fee of \$110,374 per month shall be charged to the DOD as the WCF Base Rate Surcharge.
- 7. The WCF Base Rate Surcharge shall be charged over a period of forty two (42) months (the "WCF Surcharge amortization period"), after which time the surcharge shall automatically cease, unless extended or modified by PUC for good cause.
- 8. The calculation of the Working Capital Fund Surcharge, based upon a 42 month amortization period, is set forth in Exhibit "1" attached hereto, which exhibit is incorporated herein by reference.
- 9. Beginning with GPA's LEAC filing for the period commencing August 1, 2012 and for each LEAC filing thereafter for the term of the WCF surcharge, the difference in the WCF requirement of the fuel portion only of the WCF from that determined in this proceeding will be calculated and treated as a flow-through (positive or negative) through the WCF surcharges. Any difference in GPA's WCF requirements resulting from a change in fuel prices will be amortized over the remainder of the WCF surcharge amortization period, with the allocation to DOD done in a manner that is consistent with the calculations and the methodology contained in the Stipulation of the parties dated April 21, 2010, in this Docket.

Supplemental Phase III Order In the Matter of: GPA Petition to Modify the Working Capital Fund Surcharge Docket 07-10 June 20, 2011

- 10. As part of the LEAC proceedings, PUC will closely monitor any withdrawals and inflows from the WCF and review GPA's plan to restore the WCF as may be required.
- 11. By a preponderance of the evidence, it has been established that the implementation and adoption of a WCF Base Rate Surcharge is necessary. The WCF base rate surcharge is "just" and "reasonable" pursuant to 12 GCA §§12015 and 12017.
- 12. GPA shall file with the PUC a schedule of revised rate tariffs in accordance with the recommendation of GCG.
- 13. GPA is ordered to pay the Commission's regulatory fees and expenses, including, without limitation, consulting and counsel fees and the fees and expenses of conducting the hearing proceedings. Assessment of PUC's regulatory fees and expenses is authorized pursuant to 12 GCA §12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

Dated this 20th day of June, 2011.

Jeffrey C. Johnson

Chairman

Rowena F. Perez Commissioner

Michael A. Pangelinan

Commissioner

Joseph M. McDonald

Commissioner

Filomena M. Cantoria

Commissioner

GPA Series 2010A Subordinate Lien Taxable Bonds Working Capital Fund Borrowing

						O	CIF/DSRF	\$5.1M	\$2.599M	₩6	Net Debt Service		Surcharge	Over
ı	Period Ending	Principal	Coupon	Interest	Debt Service	Bon	Bond Proceeds	<b>BOA Settlement</b>	Base Rate Offset	Offset	<b>GPA</b> Portion		Collection	Under
	10/1/2010		\$	908'909	\$ 606,806	s,	606,806				\$			
	4/1/2011		φ.	1,213,613	\$ 1,213,613	s	1,213,613			~*	1			
	10/1/2011		\$ %0.9	1,213,613	\$ 1,213,613		₩.	1,213,613						
	4/1/2012		₩.	1,213,613	\$ 1,213,613		₩.	3 1,213,613		•	. 40			
	10/1/2012	\$ 7,515,000	6.5% \$	1,213,613	\$ 8,728,613		<b>∙</b>	2,746,446	ψ.	5,198,000	\$ 784,167	7 \$	3,824,564 \$	3,040,398
	4/1/2013		₩	969,375	\$ 969,375		₩.	,	₩.		\$ 969,375	ς.	3,881,227 \$	5,952,250
	10/1/2013 \$	\$ 8,000,000	7.5% \$	969,375	\$ 8,969,375		**	1	φ,		\$ 8,969,375	. 45 24	3,881,227 \$	864.102
	4/1/2014		s	669,375	\$ 669,375		**	1	÷>		\$ 669,375		3,911,197 \$	4.105,924
	10/1/2014 \$	\$ 8,600,000	7.5% \$	669,375	\$ 9,269,375		w	1	·ss	1	\$ 9,269,375	· vs	3,911,197 \$	(1,252,254)
	4/1/2015		s	346,875	\$ 346,875		**	1	\$		\$ 346,875	S	3,929,752 \$	2,330,623
	10/1/2015	\$ 9,250,000	7.5% \$	346,875	\$ 9,596,875	s)	3,336,500 \$	ا،	\$	•	\$ 6,260,375	lou	3,929,752 \$	•
6	Fotal	\$ 33,365,000	\$	9,432,506 \$	\$ 42,797,506 \$		5,156,919 \$	\$ 5,173,671 \$		5,198,000 \$		2 \$	27,268,917 \$ 27,268,917	
	п													

					Projected WMF Caler		1	
					רו טובניבת אייון סמוכט		CIVILIAN	Navy Navy
WCF Surcharge	Allocation	FY 12	FY 13	FY 14	FY 15	Total	\$/kwh	Flat Fee/Month
Navy	\$ 4,635,716	9	12	12	12	42		\$ 110.374
Civilian	\$ 22,633,201	679,292,976	1,382,929,216	1,395,804,747 1,403,776,388	1,403,776,388	4,861,803,327 \$	0.00466	
Total	\$ 27,268,917							
Total WCF Surcharge		3,824,564	7,762,454	7,822,394	7,859,504	27,268,917		
Debt Service		784,167	9,938,750	9,938,750	6,607,250			
Over (Under)		3,040,398	(2,176,296)	(2,116,356)	1,252,254			

### BEFORE THE PUBLIC UTILITIES COMMISSION

	OF GUA	<b>M</b>	H Shirt Hilling Common E
IN THE MATTER OF:	)	GPA Docket 11-03	of Grown
The Application of the Guam Power Authority requesting Approval of the Procurement for Guaranteed Investment Contracts	) ) ) )		511.

#### **ORDER**

On February 21, 2011, the Guam Public Utilities Commission [PUC] entered an Order [February Order] in this GPA Docket 11-03 in the matter of the application of the Guam Power Authority [GPA] for contract review for Approval of the Procurement of Guaranteed Investment Contracts. In the February Order, PUC required, among other things, that once GPA has selected appropriate bidder(s) and is ready to enter into such Guaranteed Investment Contracts [GICs], it shall seek approval of PUC for any award and contract for GICs.

GPA has submitted a list, attached as Exhibit A of potential bidders to serve as provider(s) of the two proposed GICs, and two sets of bid specifications [Specifications], attached as Exhibit B, on which potential bidders may bid. The contract for each GIC will reflect the terms and conditions set forth in the applicable Specifications, subject to non-material additional conditions that may be agreed to by GPA and the winning bidder as part of the GIC bidding process.

After careful review and consideration of the February Order, [other items], the list of potential bidders and the Specifications, for good cause shown, the Guam Public Utilities Commission, pursuant to the provisions of Section 12004 of Chapter 12 of Title 12 of the Guam Code Annotated, hereby **ORDERS THAT:** 

- 1. GPA is authorized to award each GIC to the bidder that: (a) is listed on Exhibit A hereto, and (b) submits the highest yielding bona fide bid for the investment (determined net of any broker fees) that provides conditions (if any) acceptable to GPA. GPA is further authorized to agree to additional conditions submitted by the highest yielding bona fide bidder, provided such conditions do not result in a material change to the Specifications.
- 2. GPA is authorized to enter into the contract for each GIC; provided that each such contract shall reflect in substance the applicable Specifications included in Exhibit B; and provided further, that any future material modification or

OHS WEST:261184290.1

amendment of the GICs shall be subject to PUC's prior review and approval. GPA shall have the responsibility of bringing any such material modification or amendment to PUC's attention.

SO ORDERED this 20th day of June, 2011.

Jeffrey C. Johnson

Chairman

Rowena E. Perez Commissioner

Michael A. Pangelinan Commissioner Joseph M. McDonald

Filomena M. Cantoria Commissioner

Guam Power	r Autho	ority - Bide	der List	
	Lo	ong Term Ra	atings	Guarantor
Potential Provider	S&P	Moodys	Fitch	
Royal Bank of Canada, NY	AA-	AA3	AA-	N/A
Credit Agricole Corporate Investment Bank	A+	AA3	AA-	N/A
Natixis Funding Corp.	A+	AA3	A+	Natixis
Credit Suisse Securities LLC (USA)	A+	AA1	AA-	Credit Suisse AG
ANZ Bank	AA	AA2	N/A	N/A



6420 Rea Road, Suite 344 Charlotte, NC 28277 704-644-3681 Charlotte 518-392-5010 New York 435-921-0457 Fax jengel@kensington-advisors.com

To:

Collateralized & Uncollateralized Deposit Agreement Providers

From:

Kensington Capital Advisors, LLC

Attention: James Engel, Jeff Klein, Charlie Jacobs and Jim Moore

Re:

Bid Specifications for a Collateralized or Uncollateralized Deposit Agreement

\$150,440,000 Guam Power Authority Revenue Bonds 2010 Series A

Date:

June 20, 2011

Kensington Capital Advisors, LLC is acting as the bidding agent ("Bidding Agent") to the Guam Power Authority (the "Issuer") in connection with the investment of certain proceeds of the above captioned 2010 Series A Bonds (the "Bonds").

The Bidding Agent, on behalf of the Issuer is requesting bids from qualified providers for a COLLATERALIZED OR UNCOLLATERALIZED DEPOSIT AGREEMENT (the "Agreement") for Bond proceeds deposited into the Senior Bond Reserve Fund (the "Reserve Fund") established with respect to the Bonds under the Indenture dated as of December 1, 1992, as amended and supplemented, including as amended and supplemented by the Supplemental Indenture, dated as of June 1, 2010 (collectively, the "Indenture"), by and among the Issuer, Bank of Guam as Trustee and Depositary (the "Trustee") and U.S. Bank National Association as Co-Trustee and Paying Agent (the "Co-Trustee" and, together with the Trustee, the "Fiduciaries"). Capitalized terms used but not defined herein will have the respective meanings set forth in the Indenture.

Below you will find the Bid Specifications relating to the Agreement. The winning provider and proposed form of Agreement and related documentation must be acceptable to the Issuer, the Fiduciaries, and Bond Counsel, as defined herein. The Issuer will select the winning bidder in accordance with the criteria described herein.

The Bonds constitute limited obligations payable solely from and secured by a pledge of (i) Revenues subject to the prior application of such Revenues for the payment of Maintenance and Operation Expenses, (ii) all of the proceeds of the Senior Bonds and (iii) any other amounts held in any Fund or Account established pursuant to the Indenture (except amounts held in the Rebate Fund), on a parity with outstanding and future bonds issued pursuant to the Indenture. "Revenues" generally consist of any and all rates and charges received in connection with the operation of the electric power system of the Issuer (the "System").

If you plan on participating in the bid process, we ask that you please provide a written list of bidding conditions by 1:00 PM ET-on-June-10,-2011.—The Issuer-reserves the right-to-review-such bidding-conditions and, if necessary or desirable, to revise the Bid Specifications and disseminate such revisions to potential bidders. Potential bidders shall submit their bids based on the Bid Specifications as revised and distributed to such potential bidders. Bid conditions deemed unacceptable by the Issuer may result in the exclusion of otherwise potential bidders from the bid process.

The bids will be taken verbally on June 20, 2011 at 3:00pm ET. We also require, immediately following verbal bid submission, a fax bid in the form provided within Exhibit A attached and labeled, "LETTER OF REPRESENTATIONS AND BID FORM". We request that the rate submitted will be held for 15 minutes and awarding of the winning bid will be made by 3:15pm ET.

Verbal Bid Submission: Fax Bid Submission:

Phone: 704-644-3681 Fax: 435-921-0457 Contact: James Moore, Jeff Klein or Charlie Jacobs

Guam Power Authority Page 2 of 2

1. Issuer: Guam Power Authority

2.

Bonds: \$150,440,000
Guam Power Authority
Revenue Bonds
2010 Series A

3. Underlying Ratings: BBB, Ba1, BBB- by Standard and Poor's Rating Services, Inc. ("S&P"), Moody's

Investors Service, Inc. ("Moody's") and Fitch Ratings ("Fitch"), respectively.

4. Trustee and Co-Trustee: Bank of Guam and U.S. Bank National Association, respectively. U.S. Bank National

Association is the Depositary for the Bond Reserve Fund.

Insurer: Assured Guaranty Municipal Corp, as provider of a municipal bond insurance policy

with respect to a portion of the Bonds.

6. Bond Counsel: Orrick, Herrington & Sutcliffe LLP ("Bond Counsel")

7. Bidding Agent: Kensington Capital Advisors, LLC

8. Purpose of Bonds: The Bonds were issued for the purposes of (i) financing the 2010 Projects, generally

consisting of a new administration building and various generation, transmission and distribution facilities; (ii) making a deposit to the Bond Reserve Fund to increase the amount therein to the Bond Reserve Fund Requirement; (iii) funding capitalized interest with respect to a portion of the Bonds through October 1, 2013; and (iv)

paying expenses incurred in connection with the issuance of the Bonds

9. Type of Funds: Bond Reserve Fund as established under the Indenture.

10. Type of Agreement: Collateralized or Uncollateralized Deposit Agreement

The Agreement will be between the Co-Trustee and the winning bidder (the "Provider") and will be in a form acceptable to the Issuer, the Fiduciaries, the Insurer

and Bond Counsel.

11. Initial Deposit Amount: \$12,028,872.24

12. Additional Deposits: No deposits will be made to the Agreement subsequent to settlement.

13. Settlement Date: June 29, 2011 (anticipated)

14. Agreement Maturity Date: October 1, 2015

15. Basis of Award: The highest yielding bona fide bid for the investment (determined net of any broker

fees) and which provides conditions acceptable to the Issuer will be accepted for the Agreement, provided-that-the-Issuer-reserves-the-right-in-its-sole-discretion-to-reject-any and all bids, to disregard any defect in a bid and to accept the bid deemed to be in the best interests of the Issuer. No party will have any recourse against the Issuer or its agents in connection with the acceptance or rejection of any bid for any reason, or

otherwise in connection with the bid process.

16. Eligible Bidders: Obligations of insurance firms or other corporations, including financial institutions,

whose investments or unsecured obligations, as applicable, are rated in the "AA" category without regard to gradation, or better by either Moody's or S&P and with

short term ratings of at least "A1" by Moody's or "P1" by S&P.

Eligible bidders must also be otherwise acceptable to the Issuer.

17. Interest Earnings:

Calculated and paid Semi Annually on a 30/360 day count basis with the first interest payment being paid on October 1, 2011 and on each April 1, and October 1, thereafter to maturity.

18. Withdrawals:

Par Withdrawals for debt service deficiency. If any withdrawals are made from the Debt Service Reserve Fund, the Issuer may redeposit the amount withdrawn at any time within twelve months of the withdrawal without cost or penalty.

19. Refunding

In connection with any refunding of the Bonds, the Co-Trustee (acting on behalf of and the direction of the Issuer) may, by written notice to the Provider, request that the Provider continue the Agreement and have such Agreement apply to the refunding bonds. The Provider shall agree that if it receives such request it shall agree to so continue the Agreement with respect to the refunding bonds and any Bonds that remain outstanding after such refunding, if any, provided, that:

- 1. The Provider receives such request (together with all relevant details relating thereto) at least 10 days in advance of the delivery of the refunding bonds;
- 2. the refunding bonds are to be delivered under the existing Indenture or such other trust agreement or similar instrument which is approved by the Provider;
- 3. on or prior to the date the Bonds are to be refunded (the "Refunding Date"), the Co-Trustee enters into, at the direction of the Issuer, such amendments to the Agreement with the Provider (the "Amended Agreement") as are necessary (if any) to have the Agreement pertain to the scheduled Bond Reserve Fund amounts, delivery dates and interest payment dates applicable to the refunding bonds and to any Bonds which remain outstanding after giving effect to such refunding (the "Amended Cash Flows");
- 4. the Funds maturity date(s) under the Amended Agreement are no later than the Fund(s) Maturity Date under the Agreement;
- 5. the refunding bonds have a creditworthiness at least equivalent to the creditworthiness of the Bonds at the time of refunding;
- at the time such request is received and on the Refunding Date neither the Co-Trustee nor the Issuer are in default under the Agreement;
- the Provider receives any opinions and other assurances it may reasonably request to assure that the protections afforded it under the Agreement will continue under the Amended Agreement;
- 8. if the Bond Reserve Fund Termination Payment which would have been payable to the Provider had the Issuer not exercised its rights to continue the Agreement as provided therein (the "Original Termination Payment") would be greater than the amount of the Bond Reserve Fund Termination Payment, if any, which would be payable to the Provider in connection with the termination of an agreement identical to the Agreement but with the Amended Cash Flow (the "Amended Cash Flows Termination Payment"), the Borrower shall on or before the Refunding Date pay to the Provider the amount of such difference, payable solely by the Issuer from funds not pledged to payment of the Bonds pursuant to the Indenture. This provision will not apply if the amended agreement utilizes identical cash flows to the original Agreement.

If the conditions (1) through (8) described are satisfied but the Amended Cash Flows Termination Payment is greater than the Original Termination Payment,

Guam Power Authority Page 4 of 3

the Provider shall pay the Issuer the amount of such difference.

20. Notification:

Two (2) business days

21. Documentation:

All bidders must be prepared to execute a final Agreement that conforms to the requirements of these Bid Specifications and is in a form acceptable to the Issuer, the Fiduciaries, the Insurer and Bond Counsel. The winning bidder will be required to circulate a draft of the Agreement and all other related documents to all persons on the distribution list for receipt no later than two (2) business days following the Bid Date. All documents and other information given by the Provider or any guarantor are public records and may not contain confidentiality provisions. The name of the Provider and other information concerning the investments may be disclosed in ongoing disclosure reports.

The Agreement must provide for immediate termination in the event of insolvency of the Provider and for termination upon demand of the Co-Trustee (which demand shall only be made by the Co-Trustee at the direction of the Issuer or the Insurer, unless an event of default with respect to the Bonds is then pending) after any payment or other covenant default by the Provider.

Consistent with the provisions of the Indenture, the Agreement must provide that the written consent of each Credit Provider (as that term is defined in the Indenture) is required for material amendments to the Agreement.

### 22. Downgrade Provisions:

The Agreement must provide that the Provider is obligated to deliver to the Issuer and the Co-Trustee prompt written notice of any suspension, withdrawal or downgrade of the Provider's rating. If during the term of the Agreement the Provider's sole rating, or the highest of the Provider's ratings in the case of a Provider with multiple ratings, is suspended, is withdrawn, drops below "AA-" but not below "A-" or drops below "Aa3" but not below "A3", and, in the case of a Provider with multiple ratings, the Provider's lowest rating is "A-" or "A3", then the Provider will have the option to remedy the downgrade within ten (10) business days of the downgrade, by (i) delivering to the Co-Trustee additional Permitted Collateral in the case of a collateralized investment agreement or Permitted Collateral in the case of an unsecured investment agreement (as provided in paragraph 22), (ii) assign the Agreement to an eligible Provider acceptable to the Issuer and the Insurer, or (iii) obtain a replacement or additional guarantee, letter of credit, surety bond or similar undertaking acceptable to the Issuer and the Insurer

If the Provider fails to remedy a downgrade event within ten (10) business days, it will repay the principal of and accrued but unpaid interest on the investment if requested to do so by the Issuer or Co-Trustee within 30 days of such failure.

Furthermore, the Agreement must provide that if during the term of this Agreement, the Provider's rating or , in the case of a Provider with multiple ratings, the lowest of the Provider's ratings, is suspended, is withdrawn, or drops below "A-" or "A3", the Issuer has the right, but not the obligation, to require the provider within five (5) business days of receipt of notice, to (i) deliver to the Co-Trustee additional Permitted Collateral in the case of a collateralized investment agreement or Permitted Collateral in the case of an unsecured investment agreement (as provided in paragraph 22), or (ii) repay the principal of and accrued but unpaid interest on the investment; provided, however, that, notwithstanding the foregoing, the Insurer shall have the right to cause the repayment of principal and accrued interest on the investment by the Provider upon the occurrence of the downgrade specified in this paragraph.

Guam Power Authority Page 5 of 3

If a remedy is not performed within 10 business days, the Agreement, at the Issuer's or the Insurer's direction, will be terminated, in which case the Provider will repay the principal of and accrued but unpaid interest on the investment.

#### 23. Collateral Requirements:

In the event that the Provider is executing a collateralized investment agreement or in the case that collateralization becomes necessary as outlined in the downgrade requirements for an uncollateralized investment agreement, and with permitted securities approved by the Issuer, a third party custodian will act as collateral agent (the "Collateral Agent"). The Agreement will require that the collateral must be maintained at a market value of at least 104% for full faith and GNMA securities and at least 105% for FNMA & FHLMC senior debt agencies. Collateral will be valued by the Collateral Agent no less frequently than weekly with deficiencies not cured within two (2) business days resulting in a Provider Event of Default. All fees and expenses related to any Collateral Agent will be the responsibility of the Provider.

If required by the Co-Trustee or the Issuer in connection with any such collateralization, delivery of such collateral shall be accompanied by an opinion of counsel that the Collateral Agent has a perfected first priority security interest in the collateral, any substituted collateral and all proceeds thereof. All legal expenses incurred by any party in connection with the preparation of this legal opinion shall be paid by the Provider.

## 24. Provider Event of Default:

Events of Default under the Agreement will include:

- (a) Failure to make a payment when due (including failure to deliver Permitted Collateral);
- (b) Failure to observe any other covenant or condition of the Agreement, including failure to adhere to the Downgrade Provisions set forth above;
- (c) the Provider admits its inability to pay or a petition of bankruptcy or similar insolvency action is filed; or
- (d) Any representation of or warranty furnished in connection with the Agreement is false or misleading.

#### 25. Termination Payment:

The Bond Reserve Fund Termination Payment shall be calculated by obtaining quotations from at least three (3) leading dealers in the relevant markets ("Dealers") of the amount the Dealer would charge or pay to substitute itself for the Provider in the Agreement. The Senior Bond Reserve Fund Termination Payment will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If the Dealer would receive a payment from the Provider to assume the obligations, then the Provider would owe that amount to the Co-Trustee (for the account of the Issuer). If the Dealer would make a payment to the Provider to assume the obligations, then the Co-Trustee (with funds provided by the Issuer) or the Issuer would owe that amount to the Provider.

Any Bond Reserve Fund Termination Payment or other payment required to be made to the Provider under the Agreement shall be payable solely from the assets of the Issuer not subject to the lien of the Indenture nor the subordinate Indenture of Trust, dated as of June 1, 2010, by and among the Issuer, Bank of Guam and U.S. Bank National Association. The Provider shall have no lien upon any assets of the Issuer, the Fiduciaries or any other party in connection with the Agreement.

## 26. Early Redemption or Defeasance:

During the life of the Agreement the Issuer may effect an early redemption, refunding or defeasance of Bonds in accordance with the Indenture. The Provider shall be entitled to notice, but not approval, of any full or partial redemption, refunding or defeasance of the Bonds. In the event of a full or partial refunding or defeasance, the Agreement will transfer to the refunding bonds and the remaining non-refunded

Guam Power Authority

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Bonds (if applicable) so long as standard conditions are met.

27. No Right of Set-off:

The Agreement must state that it is unconditional and must expressly disclaim any right of set-off.

28. Governing Law:

New York Law, provided that the Issuer's authority to enter into and perform its obligations under the Agreement shall be governed by the laws of Guam.

29. Transferability:

Rights and obligations under the Agreement may be transferred or assigned only with the prior written consent of the parties to the Agreement, the Insurer and the Issuer. In the event that the Agreement is transferred by the Provider, documentation and opinions similar to those required at settlement shall be required with respect to the successor provider.

30. Non-Delivery:

If for any reason the settlement does not occur, or does not occur as scheduled, the Provider will have no recourse against the Bidding Agent, the Issuer, the Fiduciaries, Bond Counsel or any other counsel or member of the financing team.

31. Bidding Agent Fee:

The Provider shall be responsible for paying a Bidding Agent Fee to the Bidding Agent, which is an amount equal to the lesser of (i) 0.2% of the amount to be deposited over the life of the agreement or (ii) \$35,000, with a minimum fee of \$4,000, as follows:

Bond Reserve Fund:

\$24,000

The Bidding Agent Fee is due and payable by the Provider upon receipt of funds to be invested on behalf of the Issuer. Kensington Capital Advisors will be sending \$9,600 of the fee to Pacific Public Finance Group.

32. Bid Submittal:

Bids should be submitted to Kensington Capital Advisors, LLC, Attention: Jeff Klein, Charlie Jacobs and Jim Moore verbally by telephone call to (704) 644-3681 on June 20, 2011 at 3:00pm ET. Written bids are required and should be faxed to (435) 921-0457 using the Letter of Representation & Bid Form provided in Exhibit A. The bid must be provided in such form and contain each and all of the representations specified therein within Exhibit A hereto.

Any additional or non-conforming provisions to your bid must be pre-approved. All bid conditions must be submitted in writing by June 10, 2011 at 1:00PM ET If no additional or non-conforming provisions are declared, the bid and the Agreement shall be constrained to the conditions set forth herein.

All expenses associated with the Provider's performance of the Agreement, including but not limited to the Provider's legal fees, brokers' fees, any custodial fees or expenses or related counsel fees, and electronic funds transfer charges, are the responsibility of the Provider. All bids should be net of all fees and expenses, including, but not limited to, any legal fees incurred by the Provider.

33. Legal Opinions:

(a) The Provider will be required to furnish an opinion of counsel as to customary matters of organization, existence, power and authority, authorization, execution, delivery and enforceability. In addition, foreign institutions shall deliver an opinion of foreign counsel to the effect that (i) the Agreement has been duly authorized, executed and delivered by the Provider and constitutes the legal, valid and binding obligation of the Provider enforceable in accordance with its terms, (ii) the choice of the laws of the state set forth in the Agreement is valid under that country's laws and

Guam Power Authority Page 7 of 3

a court in such country would uphold such choice of law, and (iii) any judgment rendered by a court in the United States would be recognized and enforceable in such country without re-examination. If the requisite ratings are being provided by a guarantor, a similar opinion of counsel of the guarantor will also be required at closing. All opinions must be in a form reasonably acceptable to Bond Counsel, the Insurer and the Issuer.

- (b) If requested by the Provider, Bond Counsel will render its customary legal opinion to the effect that the Agreement constitutes a permitted investment under the Bond Indenture and related matters, at a cost to be borne by the Provider of no less than \$5,000.
- (c) If requested by the Provider, the Co-Trustee will provide a certificate as to the incumbency of its officer signing the Agreement and its authority to enter the Agreement, but counsel will provide no legal opinion.

34. Reporting:

The Provider will send monthly reports to the Issuer and the Co-Trustee setting forth the name of the Issuer, the balance the Issuer has invested with the Provider, each withdrawal during the month and the amounts and dates of interest accrued and paid by the Provider under the Agreement during each reporting period.

The Provider must make its annual report available to the Co-Trustee annually.

35. Certain Representations:

By submitting a bid, each potential provider represents that it did not consult with any other potential provider about its bid, that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the Issuer, the Bidding Agent or any other person (whether or not in connection with the Bonds), and that the bid is not being submitted solely as a courtesy to the Issuer, the Bidding Agent or any other person for the purposes of satisfying the requirements of applicable statutory or regulatory requirements, including but not limited to Treasury Regulations Section 1.148-5(d)(6)(iii)(B)(1) or (2) (i.e. the requirement to receive three bids from providers that do not have a material financial interest in the Bonds, at least one of which is from a reasonably competitive provider).

All bidders will have an equal opportunity to bid. No bidder will have the opportunity to review other bids before providing a bid.

36. Provider's Closing Certificate:

The Provider will be required to execute and deliver a Provider's Certificate acceptable to Bond Counsel, stating, among other things, that the Agreement was entered into at fair market value and disclosing the amount paid to any third parties in connection with the Agreement. Each bidder will be required to represent whether or not it (or a related person) has a material financial interest in the Bonds. A draft of the form of Provider's Certificate is attached as Exhibit C.

37. Reservation of Rights:

Submission of a bid by a Provider is acknowledgment that the closing and settlement of the Agreement with the winning Provider is subject to final documentation acceptable to the Issuer, Bond Counsel, the Insurer and the Fiduciaries. The Issuer, Bond Counsel, the Insurer, the Fiduciaries, any other counsel and other members of the financing team shall not be liable for any damages or harm suffered by the winning Provider in the event the Agreement does not close.

The Issuer reserves the right to amend, modify or withdraw these Bidding Specifications, to waive or revise any requirement of these Bidding Specifications, to acquire any supplemental information from any responding party, to reject any bids submitted hereto in order to obtain a higher yielding bid than those previously submitted, to accept or reject any or all bids, and to negotiate or hold discussion with

Guam Power Authority

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any responding party in the preparation of its bid.

38. Indenture Amendments:

The Issuer will agree to provide Provider with a copy of any amendment to the Indenture. The Issuer will not, without Provider's prior written consent, execute an amendment to the Indenture that would have a material adverse effect on Provider, as provider of the investment contract; provided, however, that for purposes of this provision, supplements to the Indenture that provide for the issuance of additional bonds in accordance with the Indenture shall be deemed not to have a material adverse effect on the Provider and shall not require the Provider's consent.

39. Sovereign Immunity Waiver:

The Issuer will represent that claims against the Issuer are to be made pursuant to Guam's Government Claims Act, which constitutes a waiver of sovereign immunity with respect to matters of contract.

Guam Power Authority

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EXHIBIT A \$150,440,000 Guam Power Authority Revenue Bonds 2010 Series A

#### LETTER OF REPRESENTATIONS AND BID FORM

	sington Capital Advisors, LLC	Attention:	James Engel		
	Rea Road, Suite 344	Phone:	(704) 644-3681		
	rlotte, NC 28277	Fax:	(435) 921-0457		
"Agre makin	ereby submit our bid and agree to enter into a Fully Flexible, Collater ement") at the fixed rate set forth below, subject to all the terms and condig this bid we represent as follows:  We are a provider of investment contracts of the type described in the Bi	tions set forth in th	eralized, Deposit Agreement (the e foregoing Bid Specifications. In		
1.	we are a provider of investment contracts of the type described in the Br	d Specifications.			
2.	You have not provided us any information that induced us to bid a yield Bid Specifications.	l/amount lower that	n the yield/amount induced by the		
3.	No qualified administrative costs (as defined in the Treasury Regula provider to third parties in connection with the Agreements other than the as customary and reasonable outside counsel fees if applicable.	tions Section 1.14 ne following: Bidd	8-5(e)(2)) are to be paid by the ing Agent Fee of \$24,000, as well		
4.	We did not consult with any other potential providers about our bid.				
5.	Our bid is not being submitted solely as a courtesy to the Issuer, the Bidding Agent or any other person for purposes of satisfying applicable statutory or regulatory requirements, including but not limited to Treasury Regulations Section 1.148-5 (d)(6)(iii)(B)(1) or (2) (i.e. the requirement to receive three bids from providers that do not have a material financial interest in the Bonds, at least one of which is from a reasonably competitive provider).				
6.	The bid was determined without regard to any formal or informal agreement that the Provider has with the Issuer, the Bidding Agent or any other person (whether or not in connection with the above referenced Bonds).				
7.	We do/ do not [CHECK ONE] have any material financial interest in or with respect to the above referenced Bonds.				
8.	We received the Bid Specifications in a timely manner and had sufficient	time to formulate	a competitive bid.		
9.	We did not have the opportunity to review other bids before providing a	bid.			
10.	The Bid Specifications contain all the material terms that we took into ac		g our bid.		
Leg	al Entity of Bidder & Credit Ratings:				
Fixed	Rate:% (30/360, semi annual) (net of bidding a	gent fee)			
Date:	Name/Titl	le:			
Ву:		Fax:			
	Authorized Representative				

By signing this document the Provider acknowledges that the closing and settlement of the Agreement with the selected bidder is subject to final documentation acceptable to the Issuer, Bond Counsel, and the Fiduciaries. The Issuer, the Bidding Agent, or any other counsel or member of the financing team will not be liable for any damages or harm suffered by the selected bidder in the event the Agreement does not close.

# **EXHIBIT C**Form of Investment Provider's Certificate

## CERTIFICATE OF INVESTMENT AGREEMENT PROVIDER

	connection with a certain Investment Agreement, dated as of rovider and U.S. Bank National Association, as Co-Trustee (the
	ower Authority Revenue Bonds, 2010 Series A ("Bonds") issued
by the Guam Power Authority (the "Issuer"), hereby cer	
(a) The Provider is a reasonable has no material financial interest in the Bonds	y competitive provider of investment contracts and the Provider other than as an investment provider.
parties, including any brokerage or selling com  \$ paid to Kensington Cap Provider's legal counsel], investment advisor	and does not expect to pay, any administrative costs to third numissions, legal and accounting fees other than a brokerage fee of pital Advisors, LLC, [and a legal fee to, the y fees, recordkeeping, safekeeping, custody and similar costs or greement. [The Provider is not acting as a regulated investment
The bid was determined without regard to any Issuer or any other person (whether or not in case a courtesy to the Issuer or any other person)	t with any other potential seller about its bid for the Agreement. other formal or informal agreement that the Provider has with the connection with the Bonds), and the bid was not submitted solely on for purposes of satisfying applicable statutory or regulatory to review other bids for the Agreement before providing its
We, the undersigned, do hereby certify that execute and deliver this certificate for and on behalf of the control of the contr	we are officers of the Provider, and as such are authorized to the Provider.
In Witness Whereof,	has signed this certificate on, 2011.
	Ву
	Name: Title:
	Ву
	•
	Name: Title:



6420 Rea Road, Suite 344 Charlotte, NC 28277 704-644-3681 Charlotte 518-392-5010 New York 435-921-0457 Fax jengel@kensington-advisors.com

To: Collateralized & Uncollateralized Deposit Agreement Providers

From: Kensington Capital Advisors, LLC

Attention: James Engel, Jeff Klein, Charlie Jacobs and Jim Moore

Re: Bid Specification for a Fully-Flexible Collateralized or Uncollateralized Deposit Agreement

\$150,440,000 Guam Power Authority Revenue Bonds 2010 Series A

Date: June 20, 2011

Kensington Capital Advisors, LLC is acting as the bidding agent ("Bidding Agent") to the Guam Power Authority (the "Issuer") in connection with the investment of certain proceeds of the above captioned 2010 Series A Bonds (the "Bonds").

The Bidding Agent, on behalf of the Issuer is requesting bids from qualified providers for a FULLY-FLEXIBLE COLLATERALIZED OR UNCOLLATERALIZED DEPOSIT AGREEMENT (the "Agreement") for Bond proceeds deposited into the Construction Fund (the "Construction Fund") and the Capitalized Interest Account (the "Capitalized Interest Account") established with respect to the Bonds under the Indenture, dated as of December 1, 1992, as amended and supplemented, including as amended and supplemented by the Supplemental Indenture, dated as of June 1, 2010 (collectively, the "Indenture"), by and among the Issuer, Bank of Guam as Trustee and Depositary (the "Trustee") and U.S. Bank National Association as Co-Trustee and Paying Agent (the "Co-Trustee" and, together with the Trustee, the "Fiduciaries"). Capitalized terms used but not defined herein will have the respective meanings set forth in the Indenture.

Below you will find the Bid Specifications relating to the Agreement. The winning provider and proposed form of Agreement and related documentation must be acceptable to the Issuer, the Fiduciaries, and Bond Counsel, as defined herein. The Issuer will select the winning bidder in accordance with the criteria described herein.

The Bonds constitute limited obligations payable solely from and secured by a pledge of (i) Revenues subject to the prior application of such Revenues for the payment of Maintenance and Operation Expenses, (ii) all of the proceeds of the Senior Bonds and (iii) any other amounts held in any Fund or Account established pursuant to the Indenture (except amounts held in the Rebate Fund), on a parity with outstanding and future bonds issued pursuant to the Indenture. "Revenues" generally consist of any and all rates and charges received in connection with the operation of the electric power system of the Issuer (the "System").

If you plan on participating in the bid process, we ask that you please provide a written list of bidding conditions by 1:00 PM ET-on-June 10, 2011. The Issuer reserves the right to review such bidding conditions and, if necessary or desirable, to revise the Bid Specifications and disseminate such revisions to potential bidders. Potential bidders shall submit their bids based on the Bid Specifications as revised and distributed to such potential bidders. Bid conditions deemed unacceptable by the Issuer may result in the exclusion of otherwise potential bidders from the bid process.

The bids will be taken verbally on June 20, 2011 at 3:00pm ET. We also require, immediately following verbal bid submission, a fax bid in the form provided within Exhibit A attached and labeled, "LETTER OF REPRESENTATIONS AND BID FORM". We request that the rate submitted will be held for 15 minutes and awarding of the winning bid will be made by 3:15pm ET.

Verbal Bid Submission: Phone: 704-644-3681 Contact: James Moore, Jeff Klein or Charlie Jacobs

Fax Bid Submission: Fax: 435-921-0457

Guam Power Authority

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1.	Issuer:	Guam Power Authority
2.	Bonds:	\$150,440,000 Guam Power Authority Revenue Bonds 2010 Series A
3.	Underlying Ratings:	BBB, Ba1, BBB- by Standard and Poor's Rating Services, Inc. ("S&P"), Moody's Investors Service, Inc. ("Moody's") and Fitch Ratings ("Fitch"), respectively.
4.	Trustee and Co-Trustee:	Bank of Guam and U.S. Bank National Association, respectively. Bank of Guam is the Depositary for the Construction Fund and the Capitalized Interest Account.
5.	Insurer:	Assured Guaranty Municipal Corp, as provider of a municipal bond insurance policy with respect to a portion of the Bonds.
6.	Bond Counsel:	Orrick, Herrington & Sutcliffe LLP ("Bond Counsel")
7.	Bidding Agent:	Kensington Capital Advisors, LLC
8.	Purpose of Bonds:	The Bonds were issued for the purposes of (i) financing the 2010 Projects, generally consisting of a new administration building and various generation, transmission and distribution facilities; (ii) making a deposit to the Bond Reserve Fund to increase the amount therein to the Bond Reserve Fund Requirement; (iii) funding capitalized interest with respect to a portion of the Bonds through October 1, 2013; and (iv) paying expenses incurred in connection with the issuance of the Bonds.
9.	Type of Funds:	Construction Fund and the Capitalized Interest Account as established under the Indenture.
10.	Type of Agreements:	Fully Flexible Collateralized or Uncollateralized Deposit Agreement
		The Agreement will be between the Trustee and the winning bidder (the "Provider") and will be in a form acceptable to the Issuer, the Fiduciaries, the Insurer, and Bond Counsel.
11.	Initial Deposit Amount:	Construction Fund: \$91,595,200 Capitalized Interest Account: \$16,990,261.86
12.	Additional Deposits:	No deposits will be made to the Agreement subsequent to settlement other than reinvestment of interest earnings to the extent described under "Interest Earnings" below.
13.	Settlement Date:	June 29, 2011 (anticipated)
14	Agreement-Maturity-Date:	-January-1,-2014
15.	Basis of Award:	The highest yielding bona fide bid for the investment (determined net of any broker fees) and which provides conditions acceptable to the Issuer will be accepted for the Agreement, provided that the Issuer reserves the right in its sole discretion to reject any and all bids, to disregard any defect in a bid and to accept the bid deemed to be in

16. Eligible Bidders: Obligations of insurance firms or other corporations, including financial institutions,

otherwise in connection with the bid process.

the best interests of the Issuer. No party will have any recourse against the Issuer or its agents in connection with the acceptance or rejection of any bid for any reason, or

Guam Power Authority

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whose investments or unsecured obligations, as applicable, are rated in the "AA" category without regard to gradation, or better by either Moody's or S&P and with short term ratings of at least "A1" by Moody's or "P1" by S&P.

Eligible bidders must also be otherwise acceptable to the Issuer.

17. Interest Earnings:

Calculated and paid Monthly on a 30/360 day count basis with the first interest payment being paid on July 1, 2011 and monthly thereafter to maturity.

Withdrawals:

Fully flexible pursuant to the Indenture. Exhibit B attached hereto outlines reasonably expected withdrawals from the Construction Fund. (Actual draws will deviate from the estimated draws.) Draws will be limited to no more than 4 per month.

No withdrawals will be made for reinvestment purposes. Other funds which are, or become, available to the Issuer or the Trustee for the same purposes specified in the Indenture as the funds invested under the Agreement, will not be used until the finds invested under the Agreement have been completely expended.

The minimum withdrawal amount will be \$10,000.

18. Notification:

Two (2) business days

19. Documentation:

All bidders must be prepared to execute a final Agreement that conforms to the requirements of these Bid Specifications and is in a form acceptable to the Issuer, the Fiduciaries, the Insurer and Bond Counsel. The winning bidder will be required to circulate a draft of the Agreement and all other related documents to all persons on the distribution list for receipt no later than two (2) business days following the Bid Date. All documents and other information given by the Provider or any guarantor are public records and may not contain confidentiality provisions. The name of the Provider and other information concerning the investments may be disclosed in ongoing disclosure reports.

The Agreement must provide for immediate termination in the event of insolvency of the Provider and for termination upon demand of the Trustee (which demand shall only be made by the Trustee at the direction of the Issuer or the Insurer, unless an event of default with respect to the Bonds is then pending) after any payment or other covenant default by the Provider.

Consistent with the provisions of the Indenture, the Agreement must provide that the written consent of each Credit Provider (as that term is defined in the Indenture) is required for material amendments to the Agreement.

20. Downgrade Provisions:

The Agreement must provide that the Provider is obligated to deliver to the Issuer and the Trustee prompt written notice of any suspension, withdrawal or downgrade of the Provider's rating. If during the term of the Agreement the Provider's sole rating, or the highest of the Provider's ratings in the case of a Provider with multiple ratings, is suspended, is withdrawn, drops below "AA-" but not below "A-" or drops below "Aa3" but not below "A3", and, in the case of a Provider with multiple ratings, the Provider's lowest rating is "A-" or "A3", then the Provider will have the option to remedy the downgrade within ten (10) business days of the downgrade, by (i) delivering to the Trustee additional Permitted Collateral in the case of a collateralized investment agreement or Permitted Collateral in the case of an unsecured investment agreement (as provided in paragraph 22), (ii) assign the Agreement to an eligible Provider acceptable to the Issuer and the Insurer, or (iii) obtain a replacement or additional guarantee, letter of credit, surety bond or similar undertaking acceptable to the Issuer and the Insurer

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If the Provider fails to remedy a downgrade event within ten (10) business days, it will repay the principal of and accrued but unpaid interest on the investment if requested to do so by the Issuer or Trustee within 30 days of such failure.

Furthermore, the Agreement must provide that if during the term of this Agreement, the Provider's rating or , in the case of a Provider with multiple ratings, the lowest of the Provider's ratings, is suspended, is withdrawn, or drops below "A-" or "A3", the Issuer has the right, but not the obligation, to require the provider within five (5) business days of receipt of notice, to (i) deliver to the Trustee additional Permitted Collateral in the case of a collateralized investment agreement or Permitted Collateral in the case of an unsecured investment agreement (as provided in paragraph 22), or (ii) repay the principal of and accrued but unpaid interest on the investment; provided, however, that, notwithstanding the foregoing, the Insurer shall have the right to cause the repayment of principal and accrued interest on the investment by the Provider upon the occurrence of the downgrade specified in this paragraph.

If a remedy is not performed within 10 business days, the Agreement, at the Issuer's or the Insurer's direction, will be terminated, in which case the Provider will repay the principal of and accrued but unpaid interest on the investment.

#### 21. Collateral Requirements:

In the event that the Provider is executing a collateralized investment agreement or in the case that collateralization becomes necessary as outlined in the downgrade requirements for an uncollateralized investment agreement, and with permitted securities approved by the Issuer, a third party custodian will act as collateral agent (the "Collateral Agent"). The Agreement will require that the collateral must be maintained at a market value of at least 104% for full faith and GNMA securities and at least 105% for FNMA & FHLMC senior debt agencies. Collateral will be valued by the Collateral Agent no less frequently than weekly with deficiencies not cured within two (2) business days resulting in a Provider Event of Default. All fees and expenses related to any Collateral Agent will be the responsibility of the Provider.

If required by the Trustee or the Issuer in connection with any such collateralization, delivery of such collateral shall be accompanied by an opinion of counsel that the Collateral Agent has a perfected first priority security interest in the collateral, any substituted collateral and all proceeds thereof. All legal expenses incurred by any party in connection with the preparation of this legal opinion shall be paid by the Provider.

## 22. Provider Event of Default:

Events of Default under the Agreement will include:

- (a) Failure to make a payment when due (including failure to deliver Permitted Collateral);
- (b) Failure to observe any other covenant or condition of the Agreement, including failure to adhere to the Downgrade Provisions set forth above;
- (c) the Provider admits its inability to pay or a petition of bankruptcy or similar insolvency action is filed; or
- (d) Any representation of or warranty furnished in connection with the Agreement is false or misleading.

#### 23. Termination Payment:

The Construction Fund or Capitalized Interest Account Termination Payment shall be calculated by obtaining quotations from at least three (3) leading dealers in the relevant markets ("Dealers") of the amount the Dealer would charge or pay to substitute itself for the Provider in the Agreement. The Construction Fund or Capitalized Interest Account Termination Payment will be the arithmetic mean of the

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quotations, without regard to the quotations having the highest and lowest values. If the Dealer would receive a payment from the Provider to assume the obligations, then the Provider would owe that amount to the Trustee (for the account of the Issuer). If the Dealer would make a payment to the Provider to assume the obligations, then the Trustee (with funds provided by the Issuer) or the Issuer would owe that amount to the Provider.

Any Termination Payment or other payment required to be made to the Provider under the Agreement shall be payable solely from the assets of the Issuer not subject to the lien of the Indenture nor the subordinate Indenture of Trust, dated as of June 1, 2010, by and among the Issuer, Bank of Guam and U.S. Bank National Association. The Provider shall have no lien upon any assets of the Issuer, the Fiduciaries or any other party in connection with the Agreement.

24. Early Redemption or Defeasance:

During the life of the Agreement the Issuer may effect an early redemption, refunding or defeasance of Bonds in accordance with the Indenture. The Provider shall be entitled to notice, but not approval, of any full or partial redemption, refunding or defeasance of the Bonds. In the event of a full or partial refunding or defeasance, the Agreement will transfer to the refunding bonds and the remaining non-refunded Bonds (if applicable) so long as standard conditions are met.

25. No Right of Set-off:

The Agreement must state that it is unconditional and must expressly disclaim any right of set-off.

26. Governing Law:

New York Law, provided that the Issuer's authority to enter into and perform its obligations under the Agreement shall be governed by the laws of Guam

27. Transferability:

Rights and obligations under the Agreement may be transferred or assigned only with the prior written consent of the parties to the Agreement, the Insurer and the Issuer. In the event that the Agreement is transferred by the Provider, documentation and opinions similar to those required at settlement shall be required with respect to the successor provider.

28. Non-Delivery:

If for any reason the settlement does not occur, or does not occur as scheduled, the Provider will have no recourse against the Bidding Agent, the Issuer, the Fiduciaries, Bond Counsel or any other counsel or member of the financing team.

29. Bidding Agent Fee:

The Provider shall be responsible for paying a Bidding Agent Fee to the Bidding Agent, which is an amount equal to the lesser of (i) 0.2% of the amount to be deposited over the life of the agreement or (ii) \$35,000, with a minimum fee of \$4,000, as follows:

Construction Fund and Capitalized Interest Account:

\$35,000

The Bidding Agent Fee is due and payable by the Provider upon receipt of funds to be invested on behalf of the Issuer. Kensington Capital Advisors will be sending \$14,400 of the fee to Pacific Public Finance Group.

30. Bid Submittal:

Bids should be submitted to Kensington Capital Advisors, LLC, Attention: Jeff Klein, Charlie Jacobs and Jim Moore verbally by telephone call to (704) 644-3681 on June20,, 2011 at 3:00pm ET. Written bids are required and should be faxed to (435) 921-0457 using the Letter of Representation & Bid Form provided in Exhibit A. The bid must be provided in such form and contain each and all of the representations specified therein within Exhibit A hereto.

Any additional or non-conforming provisions to your bid must be pre-approved. All

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bid conditions must be submitted in writing by June 10, 2011 at 1:00PM ET If no additional or non-conforming provisions are declared, the bid and the Agreement shall be constrained to the conditions set forth herein.

All expenses associated with the Provider's performance of the Agreement, including but not limited to the Provider's legal fees, brokers' fees, any custodial fees or expenses or related counsel fees, and electronic funds transfer charges, are the responsibility of the Provider. All bids should be net of all fees and expenses, including, but not limited to, any legal fees incurred by the Provider.

- 31. Legal Opinions:
- (a) The Provider will be required to furnish an opinion of counsel as to customary matters of organization, existence, power and authority, authorization, execution, delivery and enforceability. In addition, foreign institutions shall deliver an opinion of foreign counsel to the effect that (i) the Agreement has been duly authorized, executed and delivered by the Provider and constitutes the legal, valid and binding obligation of the Provider enforceable in accordance with its terms, (ii) the choice of the laws of the state set forth in the Agreement is valid under that country's laws and a court in such country would uphold such choice of law, and (iii) any judgment rendered by a court in the United States would be recognized and enforceable in such country without re-examination. If the requisite ratings are being provided by a guarantor, a similar opinion of counsel of the guarantor will also be required at closing. All opinions must be in a form reasonably acceptable to Bond Counsel, the Insurer and the Issuer.
- (b) If requested by the Provider, Bond Counsel will render its customary legal opinion to the effect that the Agreement constitutes a permitted investment under the Bond Indenture and related matters, at a cost to be borne by the Provider of no less than \$5,000.
- (c) If requested by the Provider, the Trustee will provide a certificate as to the incumbency of its officer signing the Agreement and its authority to enter the Agreement, but counsel will provide no legal opinion.

#### 32. Reporting:

The Provider will send monthly reports to the Issuer and the Trustee setting forth the name of the Issuer, the balance the Issuer has invested with the Provider, each withdrawal during the month and the amounts and dates of interest accrued and paid by the Provider under the Agreement during each reporting period.

The Provider must make its annual report available to the Trustee annually.

#### 33. Certain Representations:

By submitting a bid, each potential provider represents that it did not consult with any other potential provider about its bid, that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the Issuer, the Bidding Agent or any other person (whether or not in connection with the Bonds), and that the bid is not being submitted solely as a courtesy to the Issuer, the Bidding Agent or any other person for the purposes of satisfying the requirements of applicable statutory or regulatory requirements, including but not limited to Treasury Regulations Section 1.148-5(d)(6)(iii)(B)(1) or (2) (i.e. the requirement to receive three bids from providers that do not have a material financial interest in the Bonds, at least one of which is from a reasonably competitive provider).

All bidders will have an equal opportunity to bid. No bidder will have the opportunity to review other bids before providing a bid.

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34. Provider's Closing Certificate:

The Provider will be required to execute and deliver a Provider's Certificate acceptable to Bond Counsel, stating, among other things, that the Agreement was entered into at fair market value and disclosing the amount paid to any third parties in connection with the Agreement. Each bidder will be required to represent whether or not it (or a related person) has a material financial interest in the Bonds. A draft of the form of Provider's Certificate is attached as Exhibit C.

35. Reservation of Rights:

Submission of a bid by a Provider is acknowledgment that the closing and settlement of the Agreement with the winning Provider is subject to final documentation acceptable to the Issuer, Bond Counsel, the Insurer and the Fiduciaries. The Issuer, Bond Counsel, the Fiduciaries, any other counsel and other members of the financing team shall not be liable for any damages or harm suffered by the winning Provider in the event the Agreement does not close.

The Issuer reserves the right to amend, modify or withdraw these Bidding Specifications, to waive or revise any requirement of these Bidding Specifications, to acquire any supplemental information from any responding party, to reject any bids submitted hereto in order to obtain a higher yielding bid than those previously submitted, to accept or reject any or all bids, and to negotiate or hold discussion with any responding party in the preparation of its bid.

36. Indenture Amendments:

The Issuer will agree to provide Provider with a copy of any amendment to the Indenture. The Issuer will not, without Provider's prior written consent, execute an amendment to the Indenture that would have a material adverse effect on Provider, as provider of the investment contract; provided, however, that for purposes of this provision, supplements to the Indenture that provide for the issuance of additional bonds in accordance with the Indenture shall be deemed not to have a material adverse effect on the Provider and shall not require the Provider's consent.

37. Sovereign Immunity Waiver:

The Issuer will represent that claims against the Issuer are to be made pursuant to Guam's Government Claims Act, which constitutes a waiver of sovereign immunity with respect to matters of contract.

Guam Power Authority

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### EXHIBIT A \$150,440,000 Guam Power Authority Revenue Bonds 2010 Series A

### LETTER OF REPRESENTATIONS AND BID FORM

Kens	ington Capital Advisors, LLC	Attention:	James Engel		
6420	Rea Road, Suite 344	Phone:	(704) 644-3681		
Char	·lotte, NC 28277	Fax:	(435) 921-0457		
"Agree	ereby submit our bid and agree to enter into a Fully Flexible, Collater ement") at the fixed rate set forth below, subject to all the terms and condig this bid we represent as follows:  We are a provider of investment contracts of the type described in the Bid	tions set forth in the			
2.	You have not provided us any information that induced us to bid a yield Bid Specifications.	l/amount lower thar	the yield/amount induced by the		
3.	No qualified administrative costs (as defined in the Treasury Regular provider to third parties in connection with the Agreements other than the as customary and reasonable outside counsel &es if applicable.				
4.	We did not consult with any other potential providers about our bid.				
5.	Our bid is not being submitted solely as a courtesy to the Issuer, the Bidding Agent or any other person for purposes of satisfying applicable statutory or regulatory requirements, including but not limited to Treasury Regulations Section 1.148-5 (d)(6)(iii)(B)(1) or (2) (i.e. the requirement to receive three bids from providers that do not have a material financial interest in the Bonds, at least one of which is from a reasonably competitive provider).				
6.	The bid was determined without regard to any formal or informal agreement that the Provider has with the Issuer, the Bidding Agent or any other person (whether or not in connection with the above referenced Bonds).				
7.	We do/ do not [CHECK ONE] have any material financial interest in or with respect to the above referenced Bonds.				
8.	We received the Bid Specifications in a timely manner and had sufficient time to formulate a competitive bid.				
9.	We did not have the opportunity to review other bids before providing a bid.				
10.	0. The Bid Specifications contain all the material terms that we took into account in formulating our bid.				
Lega	al Entity of Bidder & Credit Ratings:				
Fixed	Rate:% (30/360, monthly, reinvested) (net of bit	dding agent fee)			
Date:	Name/Titl	e:			
By:	Phone & F	₹ax•			
~ <i>J</i> .	Authorized Representative Phone & Fax:				

By signing this document the Provider acknowledges that the closing and settlement of the Agreement with the selected bidder is subject to final documentation acceptable to the Issuer, Bond Counsel, and the Fiduciaries. The Issuer, the Bidding Agent, or any other counsel or member of the financing team will not be liable for any damages or harm suffered by the selected bidder in the event the Agreement does not close.

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### **EXHIBIT B**

\$150,440,000 Guam Power Authority Revenue Bonds 2010 Series A

Projected Construction Fund and Capitalized Interest Account Draws<sup>1</sup>

Proie	ect Fund
	Withdrawal
7/1/2011	2,525,000.00
8/1/2011	2,859,000.00
9/1/2011	2,786,000.00
10/1/2011	2,196,000.00
11/1/2011	2,395,000.00
12/1/2011	3,876,000.00
1/1/2012	
2/1/2012	4,423,000.00
3/1/2012	4,064,000.00
3/1/2012 4/1/2012	4,292,000.00
5/1/2012	3,799,000.00
6/1/2012	4,726,000.00 4,342,000.00
7/1/2012	3,386,200.00
8/1/2012	4,889,000.00
9/1/2012	3,054,000.00
10/1/2012	3,529,000.00
11/1/2012	3,334,000.00
12/1/2012	3,725,000.00
1/1/2013	3,389,000.00
2/1/2013	3,034,000.00
3/1/2013	2,988,000.00
4/1/2013	3,436,000.00
5/1/2013	3,181,000.00
6/1/2013	3,141,000.00
7/1/2013	3,068,000.00
8/1/2013	2,616,000.00
9/1/2013	2,542,000.00
Total	91,595,200.00

CAI	Pl Fund
Date	Withdrawal
9/29/2011	3,999,600.00
3/30/2012	3,999,600.00
9/29/2012	3,999,600.00
3/30/2013	3,394,600.00
9/29/2013	1,596,861.86
Total	16,990,261.86

<sup>&</sup>lt;sup>1</sup> Subject to change. Actual draws will vary from the projected draws.

Guam Power Authority

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# **EXHIBIT C**Form of Investment Provider's Certificate

## CERTIFICATE OF INVESTMENT AGREEMENT PROVIDER

, 2011 (tl	(the "Provider")  he "Agreement"), between		a certain Investment Agree e Bank of Guam, as Trust	
=	ls of the Guam Power Auth "Issuer"), hereby certifies as		2010 Series A ("Bonds")	issued by the Guam
(a) has no materia	The Provider is a reasonal financial interest in the Bo		ovider of investment contractivestment provider.	cts and the Provider
\$ Provider's leg expenses, in c	The Provider is not pading any brokerage or selling paid to Kensington gal counsel], investment advocumention with supplying the connection with the Agreement	g commissions, legal ar Capital Advisors, Ll visory fees, recordkeep the Agreement. [The P	LC, [and a legal fee to _ ping, safekeeping, custody a	n a brokerage fee of, the and similar costs or
Issuer or any as a courtesy	The Provider did not contestermined without regard to other person (whether or no to the Issuer or any other The Provider had no opposed	any other formal or in t in connection with th person for purposes of	ne Bonds), and the bid was not satisfying applicable state	Provider has with the not submitted solely tutory or regulatory
	ersigned, do hereby certify s certificate for and on behal		of the Provider, and as suc	h are authorized to
In Witness W	HEREOF,	has signed this ce	ertificate on, 20	)11.
	· ·		Vame: Title:	<u> </u>
		Ву		
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