

**GUAM PUBLIC UTILITIES COMMISSION
REGULAR MEETING
FEBRUARY 26, 2013
SUITE 202, GCIC BUILDING, HAGATNA**



MINUTES

The Guam Public Utilities Commission [PUC] conducted a regular meeting commencing at 7:20 p.m. on February 26, 2013, pursuant to due and lawful notice. Commissioners Johnson, Perez, Pangelinan, McDonald, Cantoria, and Montinola were in attendance. The following matters were considered at the meeting under the agenda made *Attachment "A"* hereto.

1. Approval of Minutes

The Chairman announced that the first item of business on the agenda was approval of the minutes of January 29, 2013. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the minutes subject to technical corrections.

2. Port Authority of Guam

The Chairman announced that the next item of business was PAG Docket 12-01, Status Report Re: Demolition of Gantry Crane No. 2, ALJ Report and Proposed Order. PUC Legal Counsel stated that, in the prior PUC Orders approving the POLA Cranes, there was a provision that requires the Port to file a report with the PUC by February 15, 2013, regarding its plans for the Gantry Crane No. 2. The Port did file a status report indicating that it is still examining the issue of how the crane will be used, what type of disposition would be made of it, and what future plans for it would be. However, the Port has requested additional time, approximately three months, to vet the issue further and to come up with an appropriate recommendation. The ALJ, having considered the Port's request, determined that it is appropriate to give the Port more time to examine the issue, particularly in light of the fact that the Port is required to address issues concerning the possible disposition and even removal of the Gantry Crane No. 2 from the Port property. The ALJ recommends that the extension requested by PAG be granted. The Proposed Order provides that the Port's report on Gantry Crane No. 2 would be due on or before May 31, 2013. Upon motion duly made, seconded and unanimously carried, the Commissioners approve the extension of the deadline for PAG's filing of its report on Gantry Crane No. 2 until May 31, 2013, and adopted the Order made *Attachment "B"* hereto.

3. Guam Power Authority

The Chairman indicated that the next matter for consideration was GPA Docket 12-09, GPA Petition to Approve Extension of Contract for Supply of RFO No. 6 with Petrobras, PUC Counsel Report, and Ratification of Order. Commissioner Pangelinan first indicated that, for the record, he is recused from participating in this matter because his

law firm represents one of the protestors to the GPA Procurement at issue on this docket. Counsel then indicated that, at the last meeting, GPA stated that there was a bid protest on its award of the fuel oil supply contract to Vitol Asia; GPA felt it would need to expeditiously sign a contract extension with Petrobras. At the last meeting, the Commissioners authorized the Chairman, pursuant to 12 GCA § 12004, to act on behalf of the Commission and execute an Order approving the contract extension. A Counsel Report had been submitted to the Chairman, which recommended that the Commission approve the contract extension with Petrobras requested by GPA. On February 8, 2013, the Chairman approved the contract extension of the existing fuel supply contract with Petrobras. However, on February 20, 2013, the PUC received a complaint from Vitol. Vitol was the company that had received an intent to award the upcoming fuel supply contract under the original Procurement.

The Chairman's Order is before the Commission for ratification. However, Attorney John Terlaje, on behalf of Vitol, has filed an objection to ratification by the Commissioners of the contract extension. He requested an opportunity to address the Commission. The Chairman then afforded Attorney Terlaje an opportunity to make a presentation on behalf of Vitol Asia, Ltd. Attorney Terlaje indicated that Petrobras, the present supplier, got a two year option under its original contract; however, Petrobras refused to negotiate an extension. That is the reason that the bid moved forward in the first place. Now, after bids came in, there are negotiations to extend the Petrobras contract; that is not a proper way to proceed. There was a proper bidding process. The Petrobras bid was denied because its bid bond was too low. The Petrobras bid was also the highest of the three. On December 12, 2012, the CCU approved GPA's extension of the contract with Petrobras for six additional months, still two and a half months before termination of the contract. Vitol Pacific was willing to negotiate and provide oil in March. On January 8, 2013, the CCU issued its intent to award the fuel oil supply contract to Vitol. On January 16, 2013, Jhersing was deemed to be nonresponsive to the bid.

On January 29, 2013, Jhersing protested the award to Vitol. The first protest was on January 29, 2013, over a month after the CCU already authorized the extension with Petrobras. However, there was no reason to extend; there was already a winner through the bids. On February 2, 2013, Petrobras sent a letter setting forth the terms and conditions of a new deal. The extension is not for the same price. The option to renew in the Petrobras contract does not contain specific language which talks about renegotiation. The option to renew would basically be the same deal. The Petrobras price for high grade oil in the new contract is four and a half times more than the other contract. For low grade oil, the amount they now have for six months is six times more than the old contract. The Petrobras price now is 25 cents less than Vitol's bid. This is very coincidental, very suspicious. On February 6, 2013, Vitol protested GPA's award to Petrobras of the six-month contract. As of today, Vitol's complaint has not been addressed, neither accepted nor denied. On February 20, Vitol protested to the Public Utilities Commission; those protests haven't been looked at yet. Attorney Terlaje didn't believe that the ALJ has looked at Vitol's protest. The ALJ has not determined whether

the protest has merit. An emergency has been declared for this new contract. This was a sole bid emergency Procurement.

It's not logical to award a six-month extension to a bidder who did not first qualify to win the bid. Mr. Terlaje requested that the ALJ review the protest and hold that the six-month contract to Petrobras be declared null and void. Attorney Terlaje indicated that he recognized that the commission was just here to ratify the contract extension. However, he contended that there was no reason to award a six-month extension. Attorney Graham Botha from GPA then indicated that there was no basis to say that Petrobras refused to extend the contract. Petrobras indicated that the market has changed and that the price for fuels has gone up. GPA didn't believe that, and that is why it originally put the fuel supply contract out to bid. With the bid, GPA determined that Petrobras was correct. The three bidding parties were within the 5% of each other. Of the bidders, Jhersing was not responsive and GPA issued a notice of intent to award the contract to Vitol. However, when GPA was attempting to resolve the issues with the bid between Jhersing and Vitol, GPA decided it was prudent to seek a six-month extension because, even though Vitol is a big supplier, it takes time to mobilize. The ship must be chartered a month in advance.

GPA determined that it was only prudent to extend the Petrobras contract for six months, even though it could have extended for a year. In the contract, there are two additional one-year terms. GPA determined that the six-month extension was a prudent period of time. When the protest was filed, there was an automatic stay of the Procurement. GPA is asking the PUC to now ratify the extension that has been put forth. This is not an emergency procurement, but a simple extension of an existing contract. Vitol has administrative remedies if it is dissatisfied with GPA's decisions. There are other remedies for procurement issues. Jhersing argued that its client was the low bidder and was able to deliver. It also argued that Vitol did not make a proper bid. Vitol also did not make any offer on the bid form on the last two year option bid. The bid form is mandatory; it requires a bid in writing in words for each year. Another bidder is saying that Vitol doesn't qualify either. GPA has not made a final decision on the matter. Where there is a procurement protest, the incumbent continues until the protest is resolved. GPA felt that this was the most prudent method for proceeding, with a six month extension period. GPA asks that the contract be ratified in the interim.

Attorney Terlaje then requested that the Commissioners address the dates. In January, GPA said that it did not need to extend the contract. However, they did not say in January that they have a protest and wanted to extend. On December 12, 2012, GPA went to the CCU and asked to extend the contract before any protest was done, before any winner was determined. That's wrong. The protest hasn't been addressed by GPA yet. GPA should deny the protest, move forward with the award. Award the bid to Vitol. PUC Counsel indicated that the Commissioners have to consider their role in this type of situation. Vitol and Attorney Terlaje make many arguments about the legality of the underlining extension, and alleged violations of Procurement law. But the PUC is not a Procurement board.

PUC Counsel reviewed the PUC's contract review authority. The statute says that the Utilities cannot enter into contractual agreements or obligations which could increase rates prior to the written approval of the Commission. The statute is not exactly clear as to what the PUC is reviewing in a contract review proceeding; one thing it does review is the rate impact, to ensure that any rate impact is reasonable and prudent. However, procurement issues, or underlining legality issues of the validity of a contract, are issues better addressed by a board other than the PUC. That would be the Office of Public Accountability, or the Superior Court, to determine the basic underlining legality of this contract extension. Contrary to Vitol's position, there are different issues here. The authority of GPA to extend the Petrobras contract is not a part of the Procurement. It is separate under the contract. The PUC previously already approved the fuel supply contract that presently is in effect between Petrobras and GPA, in 2010. The contract does establish a two-year term that would expire February 28, 2013, but subject to additional one-year terms. Under the contract GPA is granted an authority to renew the contract. The PUC upheld that legal authority in 2010 in Docket 94-04. At that time, PUC found that the proposed contract was reasonable, prudent and necessary.

Contrary to Vitol's position, the timing is not so consequential, there are two separate acts. One is the Procurement and the other is the extension of an existing contract. They are not necessarily mutually exclusive. GPA has the authority under the contract to extend it. Vitol argues that the contract is not really an extension but a renegotiation. That is a legal argument which the Commission should not be the primary party to address. That should be addressed under the procurement law. However, there does not appear to be anything in the extension provision which limits the authority of the parties to amend the contract. Fuel prices are always changing. It is highly unlikely, even with an extension, that the price is ever going to be exactly the same. But again that is a legality issue which should not be addressed by the Commission. The Commission looks at prudence of contracts, reasonableness, and impact on rate payers and rates; that's the primary focus. The underlining issues here are more appropriately addressed by another board or body.

The PUC does look at guaranteeing the continued supply of fuel oil. GPA is in a difficult situation here. GPA could not, as Attorney Terlaje suggests, just ask Vitol to provide the fuel oil. That would be a new procurement. GPA has a *prima facie* argument that it is authorized to negotiate an extension of the contract; the extension appears to be valid on its face. Whether it has legal infirmities can be addressed elsewhere. Under its statutes, GPA has the power to contract; it is not the role of the PUC to second guess contracts unless there is an untoward or unjustified rate impact. The Counsel had advised the Chairman to sign the Order approving the contract extension because of the Commission's interest in the continuous supply of fuel oil to the people of Guam. Other possible proposals suggested as alternatives tonight do not ensure continuity of fuel supply. For that reason, the Order of the Chairman approving the contract extension is before you for ratification. The time frame for addressing Vitol's complaint was very limited, but Counsel suggests that the Commission ratify the extension that the Chairman has already ordered, acting on behalf of the Commission. Counsel further suggests that the Commission deny the complaint of Vitol on the

grounds that the issues raised there are more appropriately addressed by the Procurement Appeals Board and/or the Courts.

The Chairman asked whether there was any indication that the bid challenge would take longer than six months. GPA Attorney Botha indicated that prior challenges of the PMC took over a year. In that case, GPA obtained contract extensions from the PUC every six months. It is not within the control of GPA as to how long a protest will take to resolve. GPA's intent is still to award to a permanent bidder for two years. If all three bidders are disqualified here, GPA would have to rebid. Attorney Botha indicated that GPA does have a shipment inbound for March. Extension was approved by the Chairman. GPA is required to nominate a date for the ship several weeks in advance. The March shipment is in. Upon motion duly made, seconded and unanimously carried, the Commissioners moved to ratify the Chairman's Order and to deny Vitol's complaint. Vitol's Complaint should be addressed by the OPA and the Court on the issues of procurement legality. The Commission adopted the Order made *Attachment "C"* hereto.

The Chairman announced that the next item for consideration was GPA Docket 11-12, Petition for Review and Approval of Wind and Solar Renewable Energy Purchase Agreement with Pacific Green Resources, PUC Counsel Report and Proposed Order. Counsel indicated that the Commissioners had previously had the Quantum renewable contract, a 20-megawatt solar plant, before it. That contract had been approved. Tonight there are two other contracts before the PUC for the other bidder that was awarded contracts under GPA's renewable procurement: Pacific Green Resources, LLC. One is a Wind Project Contract for 9.35 megawatts and the other for Solar Power of 5.65 megawatts. Counsel has examined the contracts in his Report. These contracts are similar in form to the one with Quantum. GPA has put significant time into the negotiations and the contracts appear to be well thought out; they appear to protect the rate payers' interest. With the PGR contracts, the cost of building the facility, construction and everything is on the contractor. PGR will build the Wind and Solar facilities at its cost. GPA buys back the power from PGR under these two purchase agreements. GPA has satisfied the pricing requirements under the law.

PGR has entered into an interconnection agreement with GPA for its facilities, and will provide a connection to the substation in Talofoto. Such connection is at the cost of the Contractor. The costs of interconnection are split between Quantum and PGR. PGR has accepted the requirements of the System Impact Study. GPA has added provisions in the contract providing for assignment by PGR to another party. It would make it easier for PGR to assign the contracts in the event that it decides to do so. The contracts do protect the interests of the rate payers and the utility. These renewable projects are in a sense required under law. The Legislature imposed portfolio standards upon GPA which require that, by 2015, at least 5% of GPA's net production of energy be renewable. GPA is attempting to comply with these portfolio standards. Counsel recommends that the Commission approve the contracts as reasonable and prudent. PGR has complied with the System Impact Study and otherwise met the requirements of the prior PUC Order of December 2011.

Commissioner Perez requested that Counsel explain the concern about assignment. Counsel stated that while many contracts allow assignment, they still retain responsibility on the part of the original Contractor to perform. So, if something goes wrong, the original Contractor still has an obligation. However, with the Solar Contract with PGR, there is a relaxed provision that would allow PGR to assign the Solar Contract and then be relieved of further responsibility. However, if PGR has its own affiliate as Contractor, PGR would still be liable. A similar provision is in the Quantum Contract. If PGR outright assigns its Solar Contract to an unrelated party, it is no longer liable for performance. PGR is likely thinking that, if it assigns the contract, it does not want further responsibility with the financing of the project. After speaking with GPA, Counsel understands the concerns. There are other protections in the Contract such as guarantees, bid bonds, and performance bonds. Commissioner Perez asked why GPA wouldn't just use the same language holding Quantum responsible. GPA Counsel Botha indicated that, on the Solar side, there has been a three party discussion. Quantum is interested in negotiating with PGR to take over the Solar 5-megawatt portion. Obviously, PGR does not want to be held responsible; if Quantum takes over, GPA has already approved it with its bonds and security to run the 20-megawatt plant. GPA believes the additional risk to Quantum in taking on another 5-megawatts is minimal. However, with any entity, whether the Contract is assigned or not, it still has 30 days after Contract signing to come up with a million and a half performance bond.

There are additional bond and insurance requirements. Also, whether it's PGR or Quantum, they are the ones putting up the \$100M to build the plant. At the end of the day, all GPA is doing is to accept the power that the plant produces and to pay for it. The risk is all on Quantum or PGR. GPA felt that it was not unreasonable for PGR to want to free itself from that obligation. Quantum is responsive and ready to move forward with Solar. The Chairman asked whether the solar sites of the two are located right next to each other. Attorney Botha indicated that they are not far away. They are building a joint substation with a cost percentage split of 57% for Quantum and 43% for PGR. Then there is the underground line to the Talofofa substation. That's a lot of money that still needs to be spent independent of the two separate plants. Both parties have to move forward on the system upgrades before they can sell power.

The Chairman asked what the size of the proposed turbines was. Attorney Botha indicated that it was 270kW. Commissioner Perez asked whether if PGR assigns its Contract to a company, and that company doesn't come through, whether it will affect us. Attorney Botha indicated that there would be sufficient requirements if anyone else such as Quantum came forward with bond and insurance requirements. The Chairman asked whether traditional PV panels would be used for the Solar. GPA General Manager Joaquin Flores indicated that the panels were not traditional – these are designed for higher winds because of typhoons. They are very strong and efficient, structurally enhanced. The Chairman asked whether they stay in place during storms. The representative from Quantum [Dirk Strausser] indicated that he was the Chief Technical Officer of Quantum. Quantum put a lot of effort into designing the solar facility. Millions of dollars were spent just in designing the facility, which is patterned for high wind. Panels are in a steel frame, clamped in steel around the panels.

Quantum has reviewed concerns of the community about panels flying around as well as earthquakes. The Chairman asked whether the Quantum and Pacific Green Resources transmission lines are all underground. GPA General Manager Flores indicated that from the new Dandan substation, most of the lines will be underground using horizontal trenching. There may be some cases where you have to go aboveground such as the Talofoto bridge.

The Chairman asked about the public hearing in Inarajan concerning wind turbines being in proximity to homes. The Quantum representative indicated that the public hearing was driven solely by the Solar project, because the application was filed with the Land Use Commission. That was a formal public hearing. The Hearing went well, and the Mayor provided testimony indicating community support. GM Flores indicated that customers were concerned about the road into the facility. Commissioner Perez asked about the wind turbine and easement. GM Flores indicated that it was not a public hearing for PGR. The wind turbines were not brought up. It was a conditional use permit only for solar generation. The Chairman asked what the acreage was. The Quantum representative stated that it was 150 acres. Commissioner Perez asked whether Quantum prepared for debris landing on the panels. The Quantum representative stated that the steel frames, and the panels are flat. The panels actually are very low impact. Commissioner Pangelinan asked about the assignment requirements of the contract. Attorney Botha indicated that within 30 days of contract signing, PGR would have to put up a million and a half performance bond, so it would either be PGR or the assignee. Commissioner Pangelinan indicated that there are protections if the assignment goes to an entirely new third party owner. If a third party buys all of PGR's assets, GPA's consent is not needed. The other requirements kick in if PGR assigns to an affiliate.

Commissioner Pangelinan indicated that if there was an assignment to an affiliate of Quantum, the contract doesn't impose the added requirement of credit worthiness on the affiliate of Quantum. Commissioner Pangelinan wondered whether the same requirements should be imposed on an affiliate of Quantum, just the same as if the affiliate is the seller. Attorney Botha indicated that it should be. Commissioner Pangelinan asked whether this was just an oversight in the language and whether the same language should be applied to an affiliate of Quantum, and Attorney Botha responded that it should. Attorney Botha indicated that GPA could include in the provision an affiliate of assignee. Mr. Enrique Cruz of PGR indicated that there was no objection from PGR and Quantum. In addition to the upgrade of the land between Dandan to Talofoto, there is another stretch of area between Talofoto and the Apra Heights substation. There is a condition that PGR put in up to 15-megawatts. There is \$7M that PGR has to put in as an upgrade. In addition to the \$15M, in Dandan there's an added few million dollars that will be shared between Quantum and PGR. GM Flores indicated that there are upgrading the cross island road for the transmission line. Commissioner Perez clarified that the assignment language would be added. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the PGR Wind and Solar contracts with GPA, and adopted the Order made *Attachment "D"* hereto.

Commissioner Montinola asked questions concerning the impacts on the rates. GM Flores indicated that it was about a \$2.00 per customer savings from the fuel bill. Commissioners then asked a few questions concerning the new GPA building, and the LNG plant. GM Flores indicated that GPA was currently negotiating with EPA concerning compliance deadlines for the existing plants. In response to Commissioner Perez's question concerning the employee salaries and increases, GM Flores indicated that all the adjustments have been suspended due to funding restrictions. He indicated that right now GPA is equivalent to the 15 percentile with pay. Further discussion ensued concerning the present pay structure. Commissioner Perez asked for the staffing pattern and information of GPA. GM Flores indicated that such information is on the GPA website.

4. PUC Website

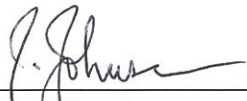
Counsel indicated that he had sent a link to the new website to the Commissioners. We are pretty far down the pike. Progress is being made, and the dockets now go back for two years. Most documents have already been inputted. There is still a process of making corrections. Administrator and Counsel have met with Ideal; we are perhaps a month away from being ready. Commissioner Montinola asked about the contract on this matter for developing the content. Counsel indicated that the annual contract was less than \$15,000 per year. It was an upfront payment of \$7-8,000 and a monthly payment of about \$585. Counsel indicated that we are locked in with Ideal for at least a year. Commissioner Perez asked whether PUC could keep its prior web address. The Chairman indicated that PUC could. Counsel stated that Ideal has to reconstruct the site because the prior contactor won't give up its source codes.

5. Administrative Matters

Counsel had submitted a proposed new "Billing Protocol" to the Commissioners. The Commissioners have had the opportunity to review the proposed protocol. The Protocol would essentially allow staff and Consultants of the PUC to directly bill utilities for regulatory services rendered. Counsel indicated that this protocol could streamline the billing process and reduce the administrative burden upon the Administrator. Counsel also indicated that GWA was particularly delinquent in the payment of its bills. Commissioner Perez questioned why the PUC would entertain GWA matters if they haven't paid their bills. Counsel indicated that the protocol contains requirements that all staff and Consultants would still send copies of all billings issued to the PUC, as well as payments received. PUC would be advised of all bills sent out and payments received. If staff / Consultants failed to follow this procedure, the particular staff / Consultant could lose its privilege to submit direct billings. Administrator Palomo issued that GWA is \$220,000 outstanding on its billings, which amount included the administrative fees. Commissioner Perez indicated that GWA matters should not be on the agenda if they are not making payments. They need to be held accountable. Commissioner Montinola clarified that the utilities pay the Consultants of the PUC. Counsel indicated that the utilities directly pay the PUC for Consultant billings. Discussion ensued concerning billings and procedures.

Commissioner Perez indicated that she would like additional time to consider the appropriate billing protocol. The Commissioners agreed that the issue of a new billing protocol would be tabled. Commissioner Pangelinan pointed out that with the direct billing protocol, Commissioners would not be reviewing the bills. Commissioner Pangelinan indicated that with the protocol, PUC would receive copies of the billings, but PUC could not review billings or determine whether billings were appropriate or not. Further discussion ensued concerning the billing process. Upon motion duly made, seconded and unanimously carried, the Commissioners determined that a "Docket-Hold" would be placed upon any GWA business until GWA is up to date and current with all amounts that are owed to the PUC and its Consultants.

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



Jeffrey C. Johnson
Chairman

**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION
REGULAR MEETING
SUITE 202, GCIC BUILDING
414 W. SOLEDAD AVE. HAGATNA, GUAM
7:00 p.m., February 26, 2013**

Agenda

- 1. Approval of Minutes of January 29, 2013**
- 2. Guam Power Authority**
 - **GPA Docket 12-09, Petition to Approve Extension of Contract for Supply of RFO No. 6 with Petrobras, PUC Counsel Report, Proposed Order**
- 3. Port Authority of Guam**
 - **PAG Docket 12-01, Status Report Re: Demolition of Gantry Crane 2, ALJ Report, Proposed Order**
- 4. PUC Website**
 - **Report by Administrator and Legal Counsel on progress of Ideal Advertising, website input catch up**
- 5. Administrative Matters**
 - **Protocol for Direct Billing by PUC Consultants to Utilities**
- 6. Other Business**



BEFORE THE PUBLIC UTILITIES COMMISSION

**IN RE: REVIEW OF \$12 MILLION)
 ANZ COMMERCIAL LOAN))
 FOR PURCHASE OF THE)
 POLA CRANES)
)**

PAG DOCKET 12-01

ORDER

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC”) pursuant to a Petition filed by the Jose D. Leon Guerrero Commercial Port, Port Authority of Guam (“PAG”) on June 18, 2012, whereby PAG requested review and approval of the Sales Agreement, and the Interim Maintenance Agreement, related to the acquisition of the Port of Los Angeles (“PoLA”) cranes. In its August 27, 2012 Order, the PUC preliminarily approved the Sales Agreement and the Interim Maintenance Agreement, but required PAG to file a report with the PUC, by February 15, 2013, regarding its plans for Gantry Crane #2 (“Gantry 2”).

BACKGROUND

On August 27, 2012, the PUC preliminarily approved the Sales Agreement and the Interim Maintenance Agreement. On December 19, 2012, the Administrative Law Judge of the PUC (the “ALJ”) authorized PAG to proceed with execution of the final commercial loan documents regarding PAG’s purchase of the PoLA cranes.

Based on the recommendations contained in the August 27, 2012 Report of the Tariff Investigation by Slater Nakamura, L.L.C. (“Slater Nakamura Report”), as well as the August 27, 2012 ALJ Report, all filed in this docket, the PUC ordered PAG to complete the development of its Structured Maintenance Program for its cranes; begin repairs to the PoLA cranes; develop a tariff that fully funds the acquisition, financing, maintenance, and eventual replacement of the cranes; develop a cargo throughput projection to forecast revenues from the

tariff; and file a report regarding the status, future plans, or demolition of Gantry 2. On February 15, 2013, PAG transmitted to the ALJ its status report regarding Gantry 2. On February 22, 2013, the ALJ issued an ALJ Report detailing his findings and recommendation with respect to PAG's status report on Gantry 2.

DETERMINATIONS

In its February 15, 2013 Report, PAG advised that PAG's Board of Directors, its General Manager, as well as its staff are engaged in an "internal dialogue related to the future disposition of Gantry No 2." PAG further reported that "all efforts in this regard will be aimed to explore any/all alternatives available to PAG to include, but not be limited to, the decommissioning of the asset to the eventual removal of the asset from the waterfront." PAG also submitted that part of the efforts will involve consideration of "the sensitivities and corresponding timelines associated with each of the proposed actions." PAG maintained that it "shall revert to the PUC at such time" when it has completed its "due diligence on the final disposition of Gantry No. 2 as well as obtained PAG Board approval of same." PAG estimated that "this effort may take about three months."

In his February 22, 2013 Report, the ALJ found that PAG had not yet made a determination on the final disposition of Gantry 2, and that it appears that PAG requires more time to make such a determination. The ALJ further found that, based on the record, Gantry 2 must be decommissioned, which will require its demolition and physical removal from PAG's rails.¹ Accordingly, the ALJ recommended that the PUC require PAG to transmit another report to the PUC, which shall detail PAG's ongoing efforts related to the removal of Gantry 2 from service.

¹ Slater Nakamura Report, p. 6 (Aug. 27, 2012).

The Commission hereby adopts the findings made in the February 22, 2013 ALJ Report and, therefore, issues the following.


ORDERING PROVISIONS

Upon careful consideration of the record herein, the February 22, 2013 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 the following:

1. By May 31, 2013, PAG shall file another status report with the PUC regarding the status, future plans, or demolition of Gantry Crane No. 2.

2. PAG is ordered to pay the PUC's regulatory fees and expenses, including, without limitation, consulting and counsel fees and the fees and expenses associated with this docket. 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 PUC.

SO ORDERED this 26th day of February, 2013.



JEFFREY C. JOHNSON
Chairman



ROWENA E. PEREZ
Commissioner



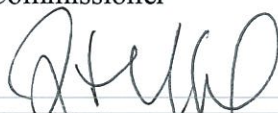
MICHAEL A. PANGELINAN
Commissioner



JOSEPH M. MCDONALD
Commissioner



FILOMENA M. CANTORIA
Commissioner



PETER MONTINOLA
Commissioner

P134016.JRA



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:

)
) GPA DOCKET 12-09
)

THE APPLICATION OF THE GUAM
POWER AUTHORITY TO APPROVE
THE CONTRACT EXTENSION WITH
PETROBRAS FOR SUPPLY OF
RESIDUAL FUEL OIL NO. 6 TO GPA

)
) ORDER
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INTRODUCTION

1. On January 11, 2013, the Guam Power Authority filed a Petition for Review and Approval of the Contract for Supply of Residual Fuel Oil No. 6 with Vitol Asia Pte., Ltd ["Vitol"]. However, at the PUC Regular Meeting conducted on January 29, 2013, GPA requested that PUC not act on the approval of the Fuel Supply Contract with Vitol Asia Pte., Ltd., as a bid protest had been filed regarding the award of the Contract to Vitol.
2. On February 4, 2013, GPA requested that PUC approve a six month contract extension with its present supplier of RFO No. 6, Petrobras. On February 11, 2013, the PUC, acting through its Chairman pursuant to 12 GCA §12004, approved GPA's Petition authorizing a six month extension of the Fuel Supply Contract with Petrobras.
3. At the regular PUC meeting conducted on February 26, 2013, this matter came before the PUC Commissioners for ratification of the Order executed by the Chairman. PUC Counsel explained the background of the matter and then indicated that on February 19, 2013, Vitol Asia Pte., Ltd. had filed a complaint requesting that PUC reject ratification of the contract and order GPA to stay execution of the contract and rescind the extension.¹
4. At the February 26, 2013, meeting, Vitol Attorney John Terlaje was given an opportunity to present argument on the Vitol Complaint. He contended that the contract extension was illegal and violated provisions of the procurement law. GPA, through its Counsel, Graham Botha, argued in favor of ratification of the contract extension.

¹ Complaint and Notice of Objection by Vitol Asia Private Ltd., filed February 19, 2013.

ORDERING PROVISIONS

The Guam Public Utilities Commission, having heard the report of its Counsel, and the arguments of Counsel for Vitol Asia Pte., Ltd. and GPA, upon motion duly made, seconded, and unanimously approved, **HEREBY ORDERS**, that:

1. The Order of the Chairman of the PUC, dated February 11, 2013, which approved GPA's six month contract extension for fuel oil supply with Petrobras Singapore Private, Ltd., is hereby ratified and affirmed.
2. The Complaint of Vitol Asia Pte., Ltd., is denied. The arguments raised by Vitol concerning the alleged illegality of the contract extension and alleged violations of the procurement law should be addressed by the appropriate bodies for resolution of such complaints, the Office of Public Accountability and/or the Courts of Guam.

SO ORDERED this 26th day of February, 2013.

Jeffrey C. Johnson
Chairman

Rowena E. Perez
Commissioner

Joseph M. McDonald
Commissioner

Michael A. Pangelinan
Commissioner

Filomena M. Cantoria
Commissioner

Peter Montinola
Commissioner

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN THE MATTER OF:

)
) GPA Docket 11-12
)

Guam Power Authority's Petition for
Contract Review of Renewable Energy
Acquisition Pursuant to GPA's Integrated
Resource Plan

)
) ORDER
)
)
)

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Filing by GPA of Renewable Energy Purchase Agreements for Wind and Solar Projects with Pacific Green Resources, LLC.¹

BACKGROUND

2. On November 19, 2011, the PUC approved the selection of Pacific Green Resources LLC ["PGR"] and award for a 14.39 MW Wind/Solar Project, and authorized GPA to enter into a contract with PGR.²
3. PUC approval for GPA to enter into the PGR contracts was subject to two conditions: (1) completion of an evaluation by GPA of the projects in the System Impact Study performed by R.W. Beck; and (2) acceptance by PGR of the System Impact Study terms and conditions.³
4. On June 11, 2012, the PUC approved the Renewable Energy Purchase Agreement between Quantum Guam Power LLC and GPA.⁴

DETERMINATIONS

5. GPA has completed and submitted the Renewable IFB System Impact Study, prepared by R.W. Beck, as required by the December 19, 2011 Order.⁵

¹ GPA Filing, GPA Docket 11-12, Renewable Energy Purchase Agreement with Pacific Green Resources, LLC, filed February 1, 2013.

² PUC Order, GPA Docket 11-12, at pgs. 1-2, issued December 19, 2011.

³ Id. at p. 4; See also letter from General Manager Joaquin Flores to ALJ Horecky dated May 31, 2012 [re: Quantum Guam Power Renewable Contract document submittal], filed May 21, 2012.

⁴ PUC Order, GPA Docket 11-12 issued June 11, 2012, at p. 2.

⁵ GPA Filing, GPA Docket 11-12, filed May 21, 2012.

6. Essentially, the System Impact Study found that renewable energy projects involving Quantum and PGR could feasibly be implemented without a detrimental impact on the system, assuming appropriate steps were taken.⁶
7. By letter dated February 1, 2013, Pacific Green Resources LLC accepted the conclusions and conditions of the Renewable System Impact Study (IR01 & IR02 Evaluation) dated May, 2012, prepared by R.W. Beck.⁷
8. GPA and PGR have utilized very similar contract agreements as to those previously approved by the PUC between GPA and Quantum. However, there are certain differences. For PGR, separate Renewable Energy Purchase Agreements are proposed for Wind and Solar performance.⁸
9. The reason that the parties have proposed two contracts, and separated the wind/solar performance, is the possibility of future assignment of the PGR contracts.⁹
10. In the contracts, the parties have increased the project capacity to fairly distribute interconnection and network upgrade costs as identified in the System Impact Study.¹⁰ The proposed contracts will increase the original capacity of 14.39 MW to 15 MW in order to fairly distribute costs to PGR based on the System Impact Study and the QGP contract documents, as the facility output was rounded up in the System Impact Study for ease in performing analyses.¹¹ The PGR wind project will now be 9.35 MW, and the solar project will be 5.65 MW.¹²
11. In addition, the proposed PGR-GPA Renewable Energy Purchase Agreements for the wind/solar projects also include certain provisions which were recently approved by the PUC for the Quantum contract with GPA (Amendment No. 1).

⁶ Id.

⁷ Letter from PGR to Guam Power Authority dated February 1, 2013; Small Generator Interconnection Agreement between Guam Power Authority and PGR.

⁸ Letter from GPA General Manager Joaquin Flores to ALJ Fred Horecky dated February 1, 2013 Re: Pacific Green Resources Renewable Contract Documents Submittal.

⁹ Discussion between GPA Counsel Graham Botha and PUC Counsel Fred Horecky on February 21, 2013.

¹⁰ Letter from GPA General Manager Joaquin Flores to ALJ Fred Horecky dated February 1, 2013 Re: Pacific Green Resources Renewable Contract Documents Submittal, at pg. 1.

¹¹ Id. at p. 2.

¹² Id.

These provisions allow for a Seller Affiliate to meet contract obligations, additional production limits and price, and clarification on insurance requirements.¹³

12. A considerable amount of work and negotiation has clearly gone into the Wind/Solar Renewable Energy Purchase Agreements between GPA and PGR. Seller will construct a solar facility capable of producing a maximum of 5.65 MW for a period of 25 contract years. At present, the "Commercial Operation" date is 24 months from the effective date of the Agreement.¹⁴
13. Seller will bear the cost for construction of the solar facility. The facility will remain the property of Seller unless a sale is agreed to by the parties in accordance with the contract. The contract provides for strict performance guarantees and penalties in the event that Seller does not meet the minimum energy production requirements. GPA purchases the power from Seller at a fixed price.¹⁵
14. Seller will also construct a wind project facility capable of producing 9.35 MW. The project will produce an estimated annual renewable minimum production of 18,988 MWh in the first contract year and for each year thereafter for a 20 year period.¹⁶ At present, the Commercial Operation date is 36 months from the effective date of the agreement.¹⁷
15. Seller will bear the cost for construction of the wind facility. GPA purchases the power from Seller at a fixed price. The contract price per megawatt hour varies from \$216.50 per MWh in year one to \$287.28 per MWh in year 25.¹⁸
16. The Solar and Wind Agreements negotiated between the parties appear to be well thought out and detailed statements and descriptions of the relationship between the parties and the services to be performed. GPA has the authority to enter into contracts under its governing statutes, assuming that a contract is prudent and reasonable (which these contracts appear to be).

¹³ Id. at p. 1.

¹⁴ Id. at p. 15.

¹⁵ Id., Appendix A.

¹⁶ Wind Renewable Energy Purchase Agreement between PGR and GPA, Article Two and Appendix A.

¹⁷ Id. at Article Four.

¹⁸ Id., Appendix A.

17. GPA has been mandated by the Guam Legislature to meet and comply with certain renewable portfolio standards. Solar and wind projects with PGR herein are a good faith effort by GPA to comply with the statutory mandate.

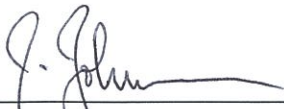
ORDERING PROVISIONS

After a review of the record herein, GPA's Filing and Petition for Approval of GPA's Renewable Energy Purchase Agreements with Pacific Green Resources LLC, 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. The System Impact Study prepared by R.W. Beck Inc. was completed in accordance with the PUC Order dated December 19, 2011.
2. Pacific Green Resources LLC has accepted all terms and conditions of the System Impact Study, as well as its cost responsibility for the interconnection upgrades required to implement its projects.
3. The requirements for contract approval set forth in the PUC December 19, 2011 Order have been satisfied.
4. The Wind and Solar Renewable Energy Purchase Agreements between PGR LLC and the Guam Power Authority are hereby approved. However, GPA and PGR shall amend Sections 11.2 of both the Wind and Solar Purchase Agreements, regarding Assignment, to include the following language at p. 34: "...with respect to any transfer to an Affiliate of Seller or Assignee." Both GPA and PGR agreed at this PUC Meeting to do so.
5. 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 26th day of February, 2013.

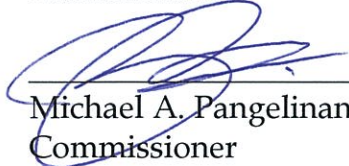
ORDER
GPA Petition for Approval of Contract
for Renewable Energy Acquisition
GPA Docket 11-12
February 26, 2013



Jeffrey C. Johnson
Chairman



Rowena E. Perez
Commissioner



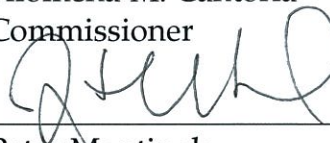
Michael A. Pangelinan
Commissioner



Joseph M. McDonald
Commissioner



Filomena M. Cantoria
Commissioner



Peter Montinola
Commissioner