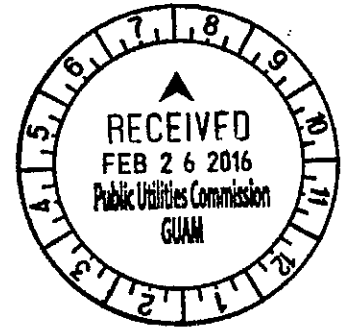


GUAM PUBLIC UTILITIES COMMISSION
SPECIAL MEETING
JANUARY 25, 2016
SUITE 202, GCIC BUILDING, HAGATNA



MINUTES

The Guam Public Utilities Commission [PUC] conducted a special meeting commencing at 6:44 p.m. on January 25, 2016, pursuant to due and lawful notice. Commissioners Johnson, Perez, Cantoria, Pangelinan, Montinola and Niven 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 December 10, 2015. Upon motion duly made, seconded and unanimously carried, the Commission approved the minutes subject to correction.

2. Teleguam Holdings, LLC

The Chairman announced that the next item of business on the agenda was the Formal Complaint of Teleguam Holdings regarding the PDS Informal Complaint of June 22, 2015, which disputed UNE Loop Services, ALJ Recommendation, and Proposed Order. Counsel indicated that corrections of typographical errors were made in the Amended Recommendation of the Administrative Law Judge, filed on January 20, 2016. This proceeding is a contested matter between Teleguam Holdings [GTA] and Pacific Data Systems [PDS]. It involves the provision of Loop service, which is service between the wire center and the customer's premises. In June, PDS disputed GTA's claim that it was changing what had been "loop" services into "sub-loop" services. The dispute relates to the definition of a "wire center", which is an issue in the arbitration case between the parties.

If a loop comes out of a wire center, it is a loop; if it comes from premises other than a wire center, it is a "sub-loop." The controversy between PDS and GTA concerns the denomination of these "loops." However a number of decisions of the PUC and prior stipulations of the parties had established that pricing for "sub-loops" will not be decided until permanent prices are arrived at in the arbitration case. To date, there has been no final pricing for "sub-loops." The parties have previously agreed that there would be no "sub-loop" service until permanent prices are decided in the arbitration.

In January of 2015, GTA indicated that its network infrastructure had changed, and that what had been loops would henceforth be called sub-loops. PDS indicated that, since GTA had changed loops to sub-loops, it was not going to pay for the loop service. PDS filed an informal dispute in June, basically refusing to pay for the service that it was

being provided. In October, PDS did agree to pay for certain loops, those coming from the wire center in Agana. PDS understood that those were clearly "loops" and not "sub-loops." But otherwise, PDS was not willing to pay for the loop service.

The ALJ conducted a contested hearing where evidence was presented, and there was a briefing by the parties. The ALJ has prepared an Order for the Commission. It incorporates the findings of the ALJ Recommendation. Its basic finding is that sub-loop service has not been established to date and does not exist at present. PDS knew or should have known from prior orders issued by the ALJ and the Commission that there was no sub-loop service. Any doubt concerning that matter was clarified by the PUC Order in August 2015; after that Order was issued PDS was still not willing to pay for the loop service.

The basic holding of the Order is that when a party such as PDS receives service from GTA and then sells such service to its customers, it cannot refuse to pay for the services. Relevant authority to that affect has been sighted in the Recommendation of the ALJ. There is an additional issue for consideration at present, which was raised after the ALJ Recommendation was issued. The ALJ is recommending that the PUC award GTA its attorney's fees for in-house counsel. GTA's in-house counsel Mr. Quenga did participate in the proceeding. Legal authority was provided to establish that attorney's fees can be awarded for the services of in-house counsel.

PDS also agreed to pay Mr. Quenga's fees. However, GTA had also asked for roughly \$8,000 in outside counsel fees. The ALJ indicated that no outside counsel for GTA participated in the proceeding, and there was no appearance by an outside counsel or documentation to show that outside counsel was involved. The ALJ recommends to the PUC that GTA would be awarded attorney's fees in the amount of \$1,850.00 for its in-house counsel.

Counsel also indicated that the actual bills that GTA sent to PDS for loop service never changed. The billing was always exactly the same and did not change the denomination of loops to sub-loops; the billings again proved that GTA was still providing the same service to PDS. The Proposed Order would incorporate the ALJ Recommendations. PDS would be required to pay all arrears on unpaid amounts on loop services outside of Agana with interest of the rate of 1 ½ percent per month from the date such amounts were due.

The interest rate comes from the Interconnection between the parties. There is still some interest due on amounts which PDS paid in October. If PDS does not pay all amounts due by the date ordered, GTA will not have to accept any new orders from PDS and can terminate loop services. Rates for loop service will be all "trued-up" when final rates are established in the arbitration case. PDS should be responsible for all of the commission fees and expenses in the proceeding. The basic idea is that a company has to pay for the service it receives.

The Chairman then asked if there was anyone from GTA or PDS who would like to make a statement. Dan Tydingco, Executive Vice President of GTA, stated that GTA was grateful that the PUC had taken an interest in this particular dispute resolution. GTA attempted to resolve the dispute without having to go to the PUC. Unfortunately it did have to go to the PUC and the ALJ; PDS owes GTA \$140,000. He thanked the Commission. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the ALJ Recommendation and adopted the Order made *Attachment "B"* hereto.

3. Guam Waterworks Authority

General Manager Miguel Bordallo of GWA then introduced himself to the Commission. The Chairman welcomed him aboard. The Chairman announced that the next matter for consideration by the PUC was GWA Docket 15-11, Review and Approval of Contracts with Total Chemical Resources and JMI Edison, ALJ Report, and Proposed Order. Counsel indicated that this was a routine contract review matter. From prior proceedings, the PUC is aware that GWA needs certain chemicals for the Agana and Northern Wastewater Treatment Plants. The federal rules require that these plants provide chemically enhanced primary treatment. GWA has previously been before the PUC for approval of the chemicals on a number of occasions.

There were 20 bidders who responded to GWA's request for chemicals. Awards are being made, one to Total Chemical, for cationic coagulant, aluminum chlorohydrate, ACH, and anionic Polymer. This contract is for roughly \$3M over three years. JMI received the award for cationic chemicals, also for three year contract, at roughly \$600,000. The total for the three year chemical contracts is about \$3.6M. These chemicals are necessary to ensure that the wastewater treatment plants remain in compliance with the Clean Water Act. The PUC had previously found that these chemicals are significant and necessary for the operations of GWA.

The contracts were approved by CCU Resolution. The funding source is internal funds from the FY2016 Wastewater Operations Budget. The ALJ determined that the purchase of the chemicals from Total Chemical and JMI is reasonable and necessary, given that the chemicals are indispensable and required for GWA's daily wastewater operations. Based upon his review, the ALJ recommends that the Commissioners approve the Order so that chemicals may be purchased. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the award of the chemical contracts to Total Chemical and JMI and Order made *Attachment "C"* hereto.

The Chairman announced that the next item for consideration was GWA Docket 15-12, Review and Approval of Contract with Giant Construction Corporation for the Line Replacement Project, ALJ Report, and Proposed Order. Counsel stated that GWA was seeking to hire Giant Construction for Phase 4 of the Line Replacement Program. Although GWA did not come to PUC for approval of this procurement, the PUC had previously approved the line extension program in the 5-year CIP Plan. Giant will

provide construction services for lateral upgrade and replacement of existing old and leaking water lines with new pipes, ranging in size from 2 inches to 8-inch diameter and to reduce water loss in the potable water system. The contractor will be required to perform design, construction services and replacement of water lines in 10 designated areas. The areas are all over the island and the cost is approximately \$7.887M. This is funded by 2010 and 2013 Bond Proceeds.

The PUC has long recognized that line replacement by GWA is a means to reduce water loss, which also reduces costs and improves system reliability. This project and the award for Giant Construction have been approved by the CCU. ALJ Alcantara reviewed these materials and concluded that there is a need for the line replacement and that the continuation of these efforts was reasonable and necessary and would eventually result in savings for GWA by reducing water loss. ALJ Alcantara recommends that the PUC approve the Order submitted, which will authorize the contract.

Commissioner Perez asked about the cost of \$154,000 + for “an unknown location”. ALJ Alcantara indicated that was in GWA’s bid. GM Bordallo stated that the bid included known and unknown locations, but he is uncertain where these unknown locations are. Commissioner Perez was curious as to how bids were determined if the location is not identified. GM Bordallo indicated that the bid documents estimated total minimal fee for those unknown locations. Bidders included a median price cost in their bids so that the appropriate adjustments could be made and processed.

Commissioner Montinola asked whether the \$154K is a contingency. Mr. Bordallo indicated that it was based upon available information when the documents were prepared. Commissioner Montinola asked Counsel to clarify the contract contingency. Counsel indicated there is a 20% contingency for the contract review protocol. ALJ Alcantara stated that GWA did not include the 5% contingency as part of the bid. It was further explained that when the PUC approves a contract amount, the utility can actually exceed that by up to 20% without coming back to the PUC. ALJ Alcantara clarified that in the Ordering provision only the amount is approved without a contingency.

GM Bordallo indicated that Exhibit D to the bid includes a breakdown of the amount offered to the bidders for prices for up to 60 locations for the 2-inch and smaller lines at the individual locations. Bidders had the opportunity to provide GWA with their new price quotes for conditions specified. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the contract between Giant Construction and GWA, and adopted the Order made *Attachment “D”* hereto

4. Guam Power Authority

The Chairman announced that the next item on the Agenda was Review of Complaint by the 1st Green Solutions Guam, LLC, Lummus Report, ALJ Report, and Proposed

Order. ALJ Alcantara indicated that this matter came before the PUC on April 20, 2015, pursuant to a letter from Green Solutions which the PUC considered as a formal complaint. PUC initially remanded the matter back to GPA for a solution at the agency level, but the parties were unable to arrive at a resolution.

On June 17, 2015 Green Solutions did a follow up letter to the PUC again requesting review of the complaint against GPA. The ALJ referred the matter to PUC's energy consultants, Lummus Consulting, for its technical review and investigation. On October 26, 2015 Lummus filed its Report detailing its findings and recommendations. On December 2, 2015 the 1st Green commented on the Lummus Report; and during the last week of January, on the 22nd, GPA provided its response to the 1st Green Complaint as well as to the Lummus Report. 1st Green Solutions is a distributor of a power conditioning and energy saving technology as a universal efficiency system.

The system reduces energy cost and has provided for power protection etc., for over 20 years. One of the many benefits of the system is improvement of the power factor to 0.99 for the clients, which results in a higher efficiency in their power consumption. Very generally, 1st Green maintains that GPA has engaged in inaccurate and inconsistent billing of its customers having a power factor rating that exceeds the established power factor rate of 0.85, particularly under the old analog meters. 1st Green was noticing a 10% average savings after installation and use. However, after GPA changed-over to the smart meters, savings were not being realized.

1st Green argues that GPA is now billing for more usage than before implementation of its technology. GPA's own reporting shows significant reductions in actual power usage plus improvements in power efficiency. In its October 26, 2015 Report, Lummus identified three issues in 1st Green's Complaint: (1) whether GPA's billings calculation complies with its tariffs; (2) whether GPA is incorrectly charging customers when their power factor is over 0.85; and (3) whether GPA's new smart meters have altered how consumption is being measured and billed.

Having reviewed the complaint, Lummus issued its own findings: (1) all bills items, except the power factor, were being billed in alignment with the applicable rate schedule P; (2) a particular customer is owed at least 10 months' worth of overcharging as evidenced by the power factor adjustment files and the two power factor adjustment refund line items onto the customers' bills; (3) for no one month is the power factor rate consistent and therefore Lummus needs further information from GPA in order to understand more fully how these rates were being derived; (4) in respect to whether GPA is incorrectly charging customers in instances where the power factor is over 0.85, there are discrepancies in the form of over charges in the months following September 2014 as well as the months following that timeframe. Lummus was not able to consult with GPA regarding these apparent over charges, however; (5) with respect to whether the new smart meters have altered how consumption is being measured and billed,

Lummus determined that the meters at the Onward Agana Beach Resort should be tested by an independent third party.

The Chairman then gave Mr. Rick Sparacio of 1st Green Solutions an opportunity to comment. Mr. Sparacio thanked the Commission for considering the matter and stated that although GPA had improved its billings, there is still room for improvement. Mr. Sparacio indicated that with the analog meter GPA could not determine the power factor and could therefore not be influenced by the power factor for the resulting KWH that it was showing on the meter. GPA was measuring KWH without the influence of the power factor. GPA did not have approval or permission to change the way the KWH was being billed to its customers based on the power factor.

Smart meters came in, for billing, and GPA would take the KVA measured by the meter internally within the meter multiplying that number times the power factor to determine what the KWH will now be. When 1st Green Solutions put its USES system in, the customer power factor credit would increase as Green Solutions had improved the power factor significantly. GPA would take the reduced KVA and multiply it times the higher power factor. GPA would use the increased power factor.

The Chairman asked Mr. Sparacio about his opinion on getting an independent look at this from a third party. Mr. Sparacio thought that would partially address the problem, but 1st Green's main contention is that GPA, in switching from analog meters to smart meters, decided on its own that it could use a different formula for computing KWH than had been the formula for the analog meters. Analog meters had calculated KWH and not an increased power factor. They did not have that ability. Analog meters simply used the standard formula of 0.85. Mr. Sparacio feels that 1st Green's customers are being penalized for a higher power factor.

Where else in the world does a customer improve its power factor and then the KWH goes up. In response to a question by the Chairman, Mr. Sparacio indicated that 1st Green was closing the gap on the apparent power to the real power. The current tariff says that the energy charges and the demand charges are based on an 0.85 average power factor. There is no evidence that GPA is following its tariff for Schedule P customers on Guam whether residential or commercial, and it charged customers for more KWH if they have a higher power factor. It's built into the meter. The meter is built in this way. GPA is over charging millions of dollars.

The Chairman asked how many customers 1st Green Solutions had on island. Mr. Sparacio indicated there were over 50 customers using the USES system. Some are major resorts and hotels. All these hotels and business centers have reported a definite reduction in maintenance cost. Replacement of lights, compressors or chillers has gone down significantly. With Smart meters, the customers are all seeing a bit of a rise or no change. With the analog meters, there was a 12% reduction in cost. Smart Meters are generating a higher KWH on their output and it seems like customers are being penalized for improving their power quality. There should be an investigation of the

formula that was used by the analog meters for determining KWH. For analogs, KWH was not influenced by the power factor whether the power factor went up or down, it did not change the KWH that was being measured by the analog meters. The power factor improvement should not influence KWH at all.

The Chairman asked Mr. Sparacio whether GPA contended that the power factor was automatically calculated within the digital smart meter. Mr. Sparacio indicated that was GPA's contention. The challenge is primarily with Schedule P, which indicates a specific power factor of 0.85. The same theory applies to other rate schedules. The factor increase has nothing to do with how much power the customers consume. It is based on the KVA. The Chairman asked whether the KVA line is being lengthened and the reactive power lines coming down and stretching out the billing. Mr. Sparacio agreed. The KWH does not go down. This has not been calculated correctly. GPA should not be using the improved power factor to determine what the KWH will be.

The Chairman asked GM Benavente of GPA to comment. Mr. Benavente indicated that the meter reads KWH but it doesn't use the power factor. Smart meters are more accurate for the outgoing system. Line losses went down from 7% to 4%. GPA needs to look at the cost of service and the tariff. He agrees that, if he were wrong on this matter, there would be a problem. GPA will reconfirm with the manufacturer whether the meter uses a certain power factor number. Mr. Sparacio indicated that he would be satisfied if GPA would determine the power factor at the facility before 1st Green installed its system. Mr. Benavente indicated that GPA needed to start with whether variables are being measured independently for kilowatt hours and KVAR. The power factor can vary. He indicated that the smart meters measured KWH and KVAR.

Commissioner Montinola asked about demand side management and energy efficient products. Consumers save power or improve their efficiency, then does the smart meter increase the customer billing or change the billing because the customer is trying to save. GM Benavente indicated smart meters are only KWH meters, residential meters that just measure kilowatt hours. There is no calculation for the power factor. Two variables are measured independently and then the calculation is made. Smart meters are not programmed to do this calculation. The Chairman asked whether GPA responded to the questions of PUC consultant Lummus. GPA Legal Counsel Botha indicated that it did answer all of Lummus's questions. GPA responded with information from the manufacturer of the meters Landis & Gyr.

The Chairman asked whether the parties could find an independent party to provide more information on this. GM Benavente indicated that GPA needs to find out whether the meter calculates these variables. The question is whether the meters are accurate. The variable GPA is attempting to calculate is the power factor. The power factor should not influence KWH. Mr. Sparacio feels that the power factor is influencing the KWH being billed. Mr. Benavente stated that GPA must determine whether the meter

is in fact doing a calculation. The Chairman asked Mr. Sparacio if 1st Green improved efficiency, it was being penalized for having more kilowatt hours. Mr. Sparacio agreed.

GPA Counsel Botha stated that he believed the billings for Julale Shopping Center and the Onward Beach Resort are correct and that the calculations were done properly. Mr. Sparacio stated that 1st Green was not contesting whether the power factor credit was accurate. Its contention is that the power factor is influencing the amount of KWH that is being billed. Mr. Benavente stated that the specific question was whether two variables are influencing each other. Mr. Sparacio indicated his company has avoided going public; however he believes that all of these over charges will have to be reimbursed back to clients.

Mr. Jetan Sahni from the Onward group indicated that there were many errors in GPA's billings. GPA has changed the Onward meter twice. There is something wrong in the system of billing. The billing method encourages inefficiency. The PUC needs to resolve the formula for measuring KWH. Customers improve efficiency, for example through inverter AC, there is an increase in efficiency because the power factor increases. The PUC needs to be proactive to determine how to address the situation. The PUC needs to make a determination quickly. KWH is being impacted by the power factor directly. Onward was penalized because it improved its power factor from 0.83 to 0.99. If the PUC determines that the power factor is influencing KWH, it has to be fixed. If it is not the case, then there should be another solution on the rate schedule to help customers in businesses who agree to raise their power factor.

The Chairman asked Jetan if Onward Agana was still on the analog meter when it converted to a USES system. Mr. Sahni indicated that Onward had just moved to digital so it could not get readings off the analogs. After Onward got its system, there were rate increases for the first two months. Then the meters were replaced twice, and the rates dropped suddenly then they went back up again. GPA Accounting indicated that its system was not calculating power factors properly. GPA claims that the meter is only measuring KWH. GPA needs to make a decision now. GPA is not giving Lummus or Onward the proper data. There are discrepancies in its billing system.

Onward should receive credit for being more efficient with its power. John Kim, the CFO of GPA, questioned why the analog meters would be viewed as recording correctly, whereas the smart meters did not. The Chairman pointed out that the analog meters had many issues and problems. The Chairman indicated that there was a wide variety of discretion with the analog meters. However, with the smart meters, it's to be determined how exactly kilowatt hours and power factors are measured out of the meter. He would like this information from GPA and Landis by next month. Proper information is needed in order for PUC to charge tariffs fairly. This particular tariff may need to be revisited. The PUC does want to get to the bottom of the issue and it doesn't make a lot of sense where the customer installs something for greater efficiency

yet experiences an increase in the bill. The PUC will move forward on this and explore it further.

Commissioner Niven asked whether there should be a deadline for the ordering provision (in the Proposed Order) requiring GPA to provide the PUC with documentation detailing how it arrives at power factor adjustment for its customers. Mr. Sparacio indicated that there were four items that he would like to see the Order improve: whether GPA has discovered how the KWH was computed with the analog meters and how it's computed with the smart meters; and whether GPA has permission to do what they are doing. Commissioner Perez agreed to include the question of kilowatt hours computed with the analog meters and how they are being computed with the smart meters. Upon motion duly made, seconded and unanimously carried, the Commissioners agreed that such matters would be included in the Order.

Commissioner Perez asked why the matter had taken so long to resolve, since it has been ongoing since 2014. Commissioners Perez and Cantoria requested a deadline in the motion. The Chairman asked Mr. Benavente whether GPA would agree to a 30 day deadline for producing the information, that is how the kilowatt hours are computed with the analog meters and also with the smart meters. Legal Counsel Botha believed that GPA had already provided this information on the analog meters. Mr. Sparacio indicated that GPA did not provide information concerning how the analog meters did the calculations.

The Chairman indicated that the Order would require GPA to provide information as to how kilowatt hours are computed with both analog and digital meters. The Chairman again explored the possibility of an independent party researching the issues involved. Mr. Sparacio was not certain that this would help resolve the matter. He believes that the meter is programed to bill in a certain way. The discussion followed as to whether it was necessary to include a provision in the Order of having three independent contractors to examine the issues, and who would pay for these contractors. Mr. Sparacio indicated that the issue could be resolved if Mr. Benavente determines that the power factor is influencing KWH.

Commissioner Perez asked who calibrated the meters. Mr. Benavente indicated that the meters were calibrated before they are installed and then GPA calibrates them over time. Commissioner Montinola asked what data the meters are calculating and how the meter relays information to the billing statement. Commissioner Montinola suggested that one approach would be to reduce the power factor back down to 0.85. Upon motion duly made, seconded and unanimously carried, the Commissioners approved to delete Ordering Provision No. 2. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the Order as amended, which is made *Attachment "E"* hereto.

The Chairman announced that the next matter on the agenda was GPA Docket 15-22, Application of GPA to Approve the Procurement of a Performance Management

Contract for the Combustion Turbine Power Plants, PUC Counsel Report, and Proposed Order. Counsel indicated that, at the last meeting in December, the PUC tabled this matter because, at that time, the Commissioners did not have a clear understanding of how the cost for rehabilitation of the Dededo, Macheche and Yigo CTs would be paid. The Commission was not sure where the funds for the contract were coming from. The cost presented by GPA for rehabilitation of the CTs was about \$10M. There were also annual costs for the PMC, and fixed management fees/operation and maintenance budgets for each of the plants.

There was a workshop on January 20th between GPA and certain PUC members at which GM Benavente provided a presentation with an overview of the explosion of the Cabras Plants, what had been done since then, and how the idea of a PMC for the combustion turbines fits in. The CCU Board Packet also included additional information including a resolution indicating that the CCU will approve the PMC for the combustion turbines. After attending the workshop, and considering the additional information, Counsel is comfortable that GPA has now answered the questions about cost. GPA should be able to carry out its plan to proceed with the award of the CTs to TEMES (Taiwan Electrical and Mechanical Engineering Services).

As a result of bids received, GPA determined that TEMES is the lowest most responsive bidder. TEMES is currently the PMC for Cabras 1 & 2, and also the provider of Piti 7. Counsel has prepared an Order for the Commissioners. The first point is that the PMC is really a part of GPA's overall plan for restoring the 79 megawatts that were lost as a result of the Cabras Explosion. GPA wishes to maintain sufficient generation capacity if it loses the two largest plants. The Dededo CTs, Macheche and Yigo will restore more than 40 megawatts. If GPA is to meet its goal of having 436 megawatts by the end of this year, it will need the 40 megawatts that the Dededo CTs will provide.

The second point is cost. The rehabilitation costs for Dededo CTs 1 & 2 will actually be \$6M. The Military role is still not clear. GPA has come up with a funding source, which includes the 1999 and 2010 bonds. GPA will reprogram about \$5.9M from those bonds to cover the rehabilitation costs. GPA will make a separate application to the PUC for reallocation of the bond funds. Several projects, including the Agat underground lines and the fuel lines from the Port, will be reprogramed.

This is a possible funding source and satisfies Counsel's concerns about how the rehabilitation will be funded. Another cost is the Annual Fees for the PMC, including fixed management fees and operation and maintenance budget for the three plants. The cost for five years will be \$1.2M per year. GPA feels that this cost can be handled through internal revenue funds. GPA already has approximately \$800,000 which was going to be used for the Cabras 4 Plant which can now be put into the PMC. Overall, it appears that GPA can handle these costs through its annual revenue budget.

TEMES has considerable experience on Guam and has provided good service to GPA. TEMES can assist with rehabilitating the plants and then increasing the amount of

generation capacity which they provide. TEMES will undertake the operation, management and maintenance of the CTs, and will fund the projects upfront and then be reimbursed by GPA. GPA has provided a strong justification for using a PMC. While it might be more preferable for an IPP to run the CTs, there is a time factor here which suggests a PMC model is more feasible. The PUC should approve GPA's plan.

The Proposed Order would approve an award to TEMES for five years for a PMC contract, and would authorize payment of the fixed management fees and the O&M Budget. The contract form proposed by GPA has been reviewed on many occasions by the PUC. It is a standard form which includes protections for GPA and penalties/incentives for the contractor. Counsel recommends that the PUC approve the Proposed Order.

Commissioner Perez asked how many PMCs GPA has. Counsel indicated that there is a PMC for Cabras 1&2, TEMES. For Cabras 3&4, the PUC just renewed Korea East West. Another aspect of this PMC contract is that when the Piti 7 plant is returned to GPA, and TEMES could also be a PMC for that plant (2017). Commissioners clarified that the total cost GPA would be facing for the rehabilitation and the PMC contract was roughly \$12M. Commissioner Perez asked whether the Commission was also approving the reprogramming of funds to cover the cost of the contract and the rehabilitation. Counsel indicated that GPA would have to make a formal application to the PUC for the reallocation of funds. Upon motion duly made, seconded and unanimously carried, the Commissioners approved GPA's proposal for a PMC for the Combustion Turbines and adopted the Order as amended, which is made *Attachment "F"* hereto.

The Chairman stated that the next item of business was GPA Docket 15-27, LEAC Filing dated December 15, 2015, PUC Counsel Report, and Proposed Order. Counsel indicated that GPA's Petition requested that the LEAC Factor from the prior period, which was roughly 10 cents per KWH, be maintained for this next 6 month LEAC period. GPA's basis for maintaining the same LEAC Factor was that, although there had been a slight decrease in fuel prices, an offsetting factor (as a result of the Cabras explosion) was that GPA is now using more Number 2 diesel fuel for the combustion turbines. There was an increased monthly fuel cost of roughly \$1-2M per month for fuel costs resulting from the increased use of diesel fuel.

However, in December and January, there was a substantial decrease in fuel prices. The average price per barrel of RFO went from \$46.19 in December to \$37.35 in the second week of January 2016. The average price per gallon of diesel declined in the same period from \$1.66 per gallon to \$1.21 per gallon. Counsel recommended that the Commission accept the five day average of the Morgan Stanley fuel forecast for the period of January 11-15, 2016. At the July meeting at the PUC, the Commission had adopted the methodology that, for LEAC, the Commission would base the fuel forecast

upon the average cost basis for the five day period which occurred ten days before the PUC meeting.

This formula will be followed every time the LEAC is readjusted to provide consistency and to provide an unbiased methodology for determining the LEAC Factor. Assistant CFO Ms. Montellano from GPA was helpful and provided accurate information. Exhibit 2 to Counsel's Supplemental Report indicates what the new LEAC Factor should be on meters read on and after February 1, 2016: \$0.86613 per KWH. This factor will be a 9.2% decrease in the total bill, and a 17.4% decrease in the LEAC Factor. For the average customer using a thousand kilowatts per month, the new factor will result in a dollar decrease of \$18.26 off the bill.

GPA also indicated that it would offset \$3M against LEAC based upon insurance monies it would receive as a result of the Cabras explosion. However, Counsel felt that the offset should not be done now, as GPA has not yet received the \$3M. Upon further analysis, GPA now believes that it will only receive \$2M. GPA should apply the insurance proceeds when received to reduce the LEAC Factor. Commissioner Perez asked whether the language concerning the insurance proceeds, and their application to LEAC, should be placed in the Order. Counsel indicated that requirement was in the Determinations section of the Order.

Commissioner Perez believed that the requirements should be placed in the Order. She indicated that the same provision in the Determinations should be placed in the Order, requiring GPA to apply insurance proceeds subsequently received in the amount of \$2M to offset LEAC. Upon motion duly made, seconded and unanimously carried, the Commissioners approved placing a requirement in the Ordering Provisions that GPA would be required to apply \$2M in insurance proceeds when received, to offset LEAC. The Commissioners then determined that the insurance proceeds should be used to offset the Aggreko fuel costs. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the LEAC Order made *Attachment "G"* hereto.

5. Administrative Matters

Counsel indicated that the FY2015 PUC Annual Report was being presented to the Commissioners for informational purposes. It has been filed with the Governor and Speaker. It indicates those actions that the PUC has taken over the last fiscal year. It is for FY2015. Counsel indicates that the law requests that the Commission suggest any new legislation that may be appropriate. No such changes were suggested. However, there was a suggestion that the Commission may need to look at the Alternative Energy Plan, which is somewhat outdated in the law. The law was enacted in 1984. It requires that GPA consider five plants for determining "avoided cost" for solar contracts. However, three of those plants are no longer in operation.

Commissioner Niven asked whether the statute has a 10-year sunset. Counsel indicated that it did not, but the statutory Alternative Energy Plan was supposed to cover the

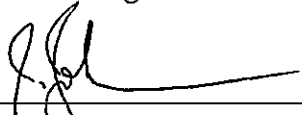
period from 1984 to 1994. Commissioner Niven pointed out that the NRG Solar Plant costs 19.8 cents per KWH, and LEAC is now down to 8 plus cents per KWH. Every KWH generated by the energy plan is costing ratepayers over 10 cents more. Counsel suggested that fuel cost may not be an appropriate way to look at the situation, as the solar plant itself does not actually run at fuel cost. Additionally, GPA did not have to incur the cost of constructing the Energy Plant, as it did with the Cabras plants. The costs need to be taken into account.

Commissioner Niven pointed out that the energy plant does not operate during peak hours, and Counsel concurred. Commissioner Niven asked whether GPA was out of compliance with the old statute. Counsel indicated GPA's position that, at the time the energy plant was approved, LEAC was much higher at around 19 cents per KWH. The energy plant has been under construction for a number of years. GPA indicated that when the energy contract was entered into there were some small savings on fuel.

Commissioner Montinola wanted to discuss calendar matters. Counsel indicated that there was additional cost of approximately \$1,000 when the PUC switched from a regular meeting to a special meeting. Process Servers had to be hired to serve every broadcast outlet on Guam. Counsel generally recommends against changing the meeting date from the regular date because of the additional cost. This meeting was changed to a special meeting because there was a deadline on the Telecom decision. It's generally a good idea to avoid special meetings.

Commissioner Perez asked how many special meetings there had been in the last year. Counsel indicated not many. The number of special meetings has been reduced considerably over the years. Commissioner Niven mentioned that the Western Conference Public Service Commissioners is in Phoenix this year from May 22 to 26 at Lake Tahoe. It is a good meeting, with Commissioners from all over the western US, Hawaii, and Alaska. Commissioner Pangelinan indicated that there was a rate school in San Diego in May. The Chairman felt that it would be appropriate if at least one of the Commissioners could attend the Western Conference.

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



Jeffrey C. Johnson
Chairman

**THE GUAM PUBLIC UTILITIES COMMISSION
SPECIAL MEETING
SUITE 202, GCIC BUILDING
414 W. SOLEDAD AVE., HAGATNA, GUAM
6:30 p.m., January 25, 2016**

Agenda

- 1. Approval of Minutes of December 10, 2015**
- 2. Guam Waterworks Authority**
 - **GWA Docket 15-11, Review and Approval of Contracts with Total Chemical Resources, Inc. and JMI Edison for Chemicals, ALJ Report, Proposed Order**
 - **GWA Docket 15-12, Review and Approval of Contract with Giant Constructions Corporation for Line Replacement Project, ALJ Report, Proposed Order**
- 3. Guam Power Authority**
 - **GPA Docket 15-22, Application of the Guam Power Authority to Approve the Procurement of a Performance Management Contract (PMC) for Combustion Turbine Power Plants, PUC Counsel Report, and Proposed Order**
 - **GPA Docket 15-27, LEAC Filing dated December 15, 2015, PUC Counsel Report, and Proposed Order**
 - **GPA Docket 15-17, Review of Complaint by 1st Green Solutions Guam, LLC, Lummus Report, ALJ Report, Proposed Order**
- 4. Teleguam Holdings LLC**
 - **GTA Docket 15-05, Formal Complaint of Teleguam Holdings LLC, Regarding PDS Informal Complaint of June 22, 2015 Disputing UNE Loop Services, ALJ Recommendation, and Proposed Order**
- 5. Administrative Matters**
 - **FY2015 Annual Report**
- 6. Other Business**

ATTACHMENT A

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN THE MATTER OF:

GTA DOCKET 15-05

Formal Complaint of Teleguam
Holdings, LLC, Regarding PDS Informal)
Complaint of June 22, 2015 Disputing)
UNE Loop Invoices

ORDER

INTRODUCTION

This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Recommendation issued by Administrative Law Judge ["ALJ"] Frederick J. Horecky on January 14, 2016, and as amended on January 20, 2016¹, which is made *Attachment A* hereto. The Formal Complaint of Teleguam Holdings, LLC ["GTA"] alleges the refusal of Pacific Data Systems ["PDS"] to pay certain Unbundled Network Element ["UNE"] Loop Invoices. The Complaint alleges that PDS has ignored GTA's repeated requests to pay undisputed invoices related to Agana Local Loops and refused to withdraw the billing dispute in light of the ALJ's Order of August 17, 2015, in PDS Docket 14-01.² On October 12, 2015, PDS filed its Answer, which denied that PDS had violated the payment provisions of Section 6.3 of the PDS-GTA Interconnection Agreement ["ICA"]. PDS alleges that, in January of 2015, GTA changed the characterization of the loop services that it was providing to PDS from "local loops" to "sub-loops".³ Since the current PDS-GTA ICA does not include any interim pricing for sub-loops, PDS believes that it is therefore entitled to withhold any payment for such sub-loop services until payment rates are established in PDS Docket 14-01.⁴

On December 30, 2015, the ALJ conducted a hearing on this matter and received

¹ Recommendation of the Administrative Law Judge, GTA Docket 15-05, filed January 14, 2016; Amended Recommendation of the Administrative Law Judge, GTA Docket 15-05, filed January 20, 2016.

² GTA Formal Complaint, GTA Docket 15-05, filed September 18, 2015, at p. 1.

³ PDS Answer to GTA Formal Complaint, GTA Docket 15-05, filed October 12, 2015, at p. 2; the underlying issues between the parties relate to a long standing dispute in PDS Docket 14-01 concerning the appropriate network infrastructure for GTA's telecommunications system. GTA submits that its TELRIC (total element long-run cost) study and rates should be based upon the existence of only one "wire center", the Agana Central Office. Only UNE "loops" from the central office would be "loops"; loops from all other locations would be "sub-loops." PDS, however, contends that there should be as many as 19 wire centers, and that loops from each of these locations would be "loops" and not "sub-loops." A "local loop" is the physical link or circuit that connects from the demarcation point of the customer premises to the edge of the service provider's network. The local loop terminates in a circuit switch housed in an incumbent local exchange carrier's central office facility. See definition of "local loop" in Wikipedia.

⁴ Id. at p. 3.

ATTACHMENT B

testimony, evidence and argument from the parties. On January 6, 2016, both Parties submitted briefs.⁵ On January 14, 2016, and January 20, 2016, respectively, the ALJ issued his Recommendation and Amended Recommendation [hereinafter referred to as "ALJ Recommendation"] to the PUC pursuant to the Rules for Practice and Procedure before the Commission and Interconnection Implementation Rule 4 (h).

FINDINGS OF FACT

The PUC hereby adopts the STATEMENT OF THE FACTS set forth in the ALJ Recommendation as the PUC findings of fact. Said STATEMENT OF FACTS is incorporated herein by reference.

DETERMINATIONS

The PUC makes the following determinations:

1. There are no rates established for "Sub-loops" under the ICA and to date the parties have not agreed to any rates for "Sub-loops". There is not now, nor has there ever been, any service for "Sub-loops" approved by the PUC. During Phase I of the Arbitration in PDS Docket 14-01, the parties agreed that they would arbitrate rates for 10 UNE Loop services and 2 "Sub-loop" services in Phase II of the Arbitration.⁶
2. PDS stated during Phase I that there was no present need to arbitrate the two UNE's for sub-loops, that sub-loops did not exist at present, and that PDS would not be using sub-loops in the near future.⁷ In their Pricing Attachment, submitted to the PUC along with their negotiated ICA, on August 11, 2014, the parties agreed that the two sub-loop service rates to be arbitrated in Phase II were for services for which no interim rates have been established.
3. PDS and GTA further agreed to suspend any orders for these sub-loop services until permanent rates are established pursuant to GPUC Order in Docket 14-01.⁸ The Pricing Attachment indicated that there would be no sub-loop services until permanent rates were established by the PUC in PDS Docket 14-01. No interim rates had been established for any sub-loop services, and no sub-loop services would be available until permanent rates were established pursuant to PUC Order in Docket 14-01.
4. On January 7, 2015, GTA and PDS signed a Stipulation regarding permanent pricing negotiations for UNE rates. PDS agreed that rates for two sub-loop services would be

⁵ PDS Brief, GTA Docket 15-05, filed January 6, 2016; GTA Brief, GTA Docket 15-05, filed January 6, 2016.

⁶ Id.

⁷ PUC Order Approving Interconnection Agreement, PDS Docket 14-01, dated August 28, 2014, at p. 4.

⁸ See PDS Hearing Exhibit C, ICA Pricing Attachment p. 1.

based upon Permanent Rates established through the TELRIC Study and the PUC Rate Arbitration.⁹

5. The parties agreed and stipulated that “sub-loops were off the table until permanent rates were established. “Statements” by GTA or “positions taken in dockets” were ineffective to create any new “sub-loops” or to implement a new network infrastructure which includes sub-loops. PDS has represented in this proceeding that GTA was precluded from requiring PDS to accept sub-loop service, and that such service would not exist until permanent rates were established for sub-loop services.

6. Based upon the precedent of the PUC as set forth in its prior holdings, there was no basis upon which PDS could reasonably have concluded that GTA had established new sub-loop service or rates. The PUC had already established that there was no sub-loop service. The PUC held that there would be no sub-loops until permanent rates for such services were established in Phase II of the Arbitration Proceedings.

7. A review of all of the applicable billings from GTA to PDS indicates that the billings themselves do not in any manner indicate that PDS was being billed for “sub-loop” service. PDS submitted all of the GTA billings through August 2015.¹⁰ PDS admits that: “Our review of the GTA UNE Billings (See Exhibit C) that have been made to PDS since January 2015 show that GTA has been billing all UNE circuits as local loops consistent with past GTA billings.”¹¹ PDS’ brief submitted on January 6, 2016, also indicates that “GTA had continued billing PDS at the local loop rate...”¹²

8. During the hearing, Mr. John Day, the President of PDS, testified that PDS had continued to receive the disputed services without interruption (with a possible exception of a two week period in October where GTA would not process orders). All the services which GTA had previously provided to PDS and its customers, continued to be provided.

9. PDS’ alleged justification for non-payment to GTA is without merit or basis. PDS’ position that it should derive the benefit of the loop service provided by GTA, without making any payment, is unpersuasive. A “Maxim of Jurisprudence” is that “the law

⁹ See PDS Hearing Exhibit D, PDS-GTA Stipulation regarding Permanent Pricing Negotiations from PDS Answer to GTA Complaint.

¹⁰ Exhibit C to PDS Answer, GTA Docket 15-05, filed October 12, 2015.

¹¹ PDS Answer, GTA Docket 15-05 filed October 12, 2015, at p. 2.

¹² PDS Brief, GTA Docket 15-05, filed January 6, 2016.

respects form less than substance.”¹³ The primary substantive point is that PDS has continued to receive services from GTA. PDS cannot be allowed to refuse to make any payment upon a formalistic or technical basis.

10. PDS should also be required to make payment under what has been referred to as the “constructive order doctrine.” Under such doctrine, a party receiving services is deemed to have ordered the services “when the receiver of services (1) is interconnected in such a manner that it can expect to receive access services; (2) fails to take reasonable steps to prevent the receipt of services; and (3) does in fact receive such services.”¹⁴ As in the Alliance Communications case, PDS was interconnected to receive the services, it took no steps to prevent the receipt of such loop services, and it did in fact receive such services. It is required to pay for such services.¹⁵ Also, here PDS did order all of the services that GTA was providing to it.

11. Any issue concerning “sub-loops” was resolved in the ALJ Order on Issues Involving TELRIC Study, issued on August 17, 2015.¹⁶ The ALJ held that when permanent prices were developed and implemented, only then could GTA incorporate the “sub-loop” terminology into the interconnection agreement and alter its billing. The ALJ held that GTA was required to utilize the network infrastructure that was in effect when the PUC adopted the ICA on August 28, 2014. This holding rendered PDS’ argument that GTA had implemented “sub-loops” as “moot.” PDS should have withdrawn its dispute and immediately commenced repayment of invoices for all loop services provided by GTA.

12. PDS argued in its Answer, during the hearing, and in its brief that the ALJ Order on Issues Involving the TELRIC Study “was limited to the GPUC Docket 14-01 Phase II Proceedings.....”¹⁷ To the contrary, the Order applied broadly to the issue of when GTA could lawfully implement rates for sub-loops. Any doubt about GTA’s position concerning the provisioning of loops was resolved by GTA’s August 26, 2015 letter. GPA indicated that it had continued to provide services to existing PDS UNE loops and that, consistent with the ALJ’s Order, PDS should resume payments for UNE loops and withdraw its present dispute.¹⁸

¹³ §3528 of the Civil Code of the Territory of Guam (1970)

¹⁴ Alliance Communications Cooperative, Inc. v. Global Crossing Telecommunications, Inc. et al., 2007 WL 1964271 (2007).

¹⁵ *Id.* at p. 4.

¹⁶ ALJ Order on Issues Involving TELRIC, PDS Docket 14-01, issued August 17, 2015.

¹⁷ PDS Answer at p. 3.

¹⁸ *Id.*

13. From the commencement of PDS' Dispute in June 2015, there was no basis for PDS to refuse to pay for loop services out of the Agana Central Office. There was never a reasonable basis for contending that such services were "sub-loop" services and not "loop" services. PDS' failure to pay for the undisputed Agana UNE loops since June 2015 was a violation of ICA General Terms and Conditions Section 6.3, which requires payment of undisputed billing amounts. Even where a party receiving a bill disputes the amount purportedly due, the ICA does not permit that party to refuse to pay anything at all for the billed services. Rather, the party remains obligated to "pay all **undisputed** amounts."¹⁹

14. At a practical level, it is not fair or equitable that PDS should continue to receive UNE loop services from GTA, and even order new loop services, without making any payment. The actual UNE service provided to PDS and its customers was the same. GTA should not be obligated to provide free services to PDS. GTA should not be required to wait to be paid for the services that it has provided since January 2015 until "permanent rates" are determined at some point in the future.

ORDERING PROVISIONS

PUC is required to issue a final order accepting or rejecting, in whole or in part, the recommendation of the arbitrator [ALJ] within ten (10) days after the recommendation has been filed.²⁰ Having considered the record of the proceedings herein, the pleadings of the parties, and the ALJ Recommendation, and good cause appearing, the Guam Public Utilities Commission hereby ORDERS as follows:

1. The ALJ Recommendation, which is incorporated herein by reference, is hereby adopted and approved.
2. PDS shall immediately pay to GTA all arrears and unpaid amounts owed for UNE loop services outside of Agana with interest at the rate of one and one half percent (1-1/2%) per month from the date each such amounts were due until the date upon which they are paid in full.
3. PDS shall immediately pay to GTA interest at the rate of one and one half percent (1-1/2%) per month on all arrears and unpaid amounts on the Agana UNE loops from June through October 2015.
4. If PDS fails to pay any amounts due hereunder within 30 days from January 25, 2016, GTA may request authorization from the PUC, on an expedited basis, to

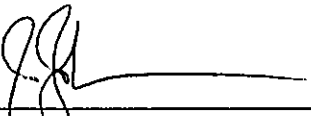
¹⁹ Cortel Virginia LLC v. Verizon LLC et al., 2015 WL 7075479, p. 10.

²⁰ IIR 4(h)(10).

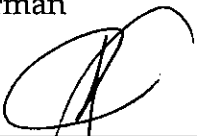
terminate UNE loop services for PDS and to decline to accept any new orders from PDS in accordance with the procedures of Section 6.2.1 of the ICA .

5. All payments by PDS hereunder are subject to true-up in accordance with applicable FCC Rules and Regulations, the ICA, PUC Orders and Guam law.
6. GTA may request an assurance of payment in accordance of Section 9 of the ICA if payments by PDS are not made within thirty days of this Order.
7. In accordance with Amendment Rule 1.B.III (RULES GOVERNING REGULATORY FEES FOR TELECOMMUNICATIONS COMPANIES), the PUC's regulatory expenses may be allocated against each party as the PUC deems appropriate. All of the regulatory expenses in this proceeding are allocated to PDS. In this case GTA was required to bring its formal complaint against PDS due to PDS' failure to pay for services actually rendered by GTA.
8. GTA is awarded attorney's fees in the amount of \$1,850.00


SO ORDERED this 25th day of January, 2016.




Jeffrey C. Johnson
Chairman



Rowena E. Perez
Commissioner




Michael A. Pangelinan
Commissioner

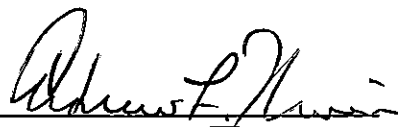


Filomena M. Cantoria
Commissioner

Joseph M. McDonald
Commissioner



Peter Montinola
Commissioner



Andrew L. Niven
Commissioner



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE: REVIEW AND APPROVAL OF CONTRACTS WITH TOTAL CHEMICAL RESOURCES, INC. AND JMI EDISON FOR CHEMICALS	GWA DOCKET 15-11 ORDER
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INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC” or the “Commission”) pursuant to the December 16, 2015 Petition for Approval of the Contracts with Total Chemical Resources, Inc. (“Total Chemical”) and JMI Edison (“JMI”) for the purchase of Anionic Polymer, Inorganic Coagulant, and Cationic Polymer chemicals (the “Petition”), filed by the Guam Waterworks Authority (“GWA”).

DETERMINATIONS

According to GWA, it is mandated to use Chemically Enhanced Primary Treatment at the Northern District Wastewater Treatment Plant (“Northern District”) and the Hagåtña District Wastewater Treatment Plant (“Hagåtña”).¹ On September 24, 2015, GWA issued Invitation for Bid 2015-10 (“IFB-2015-10”) soliciting bid proposals for the necessary chemicals to operate the WWTPs.² According to GWA, twenty (20) bidders responded; GWA thereafter determined that the lowest responsive and responsible bidder

¹ Petition by Guam Waterworks Authority for Approval of the Contracts with Total Chemical Resources, Inc. and JMI Edison for wastewater chemicals (“Petition”), p. 1 (December 16, 2015).

² Petition, p. 2.

ATTACHMENT C

for inorganic coagulant aluminum chlorohydrate (“ACH”) and anionic polymer was Total Chemical, and that the best offer for cationic polymer was made by JMI.³

On December 10, 2015, the Guam Consolidated Commission on Utilities (the “CCU”) authorized GWA to enter into contracts with JMI and Total Chemical, as indicated in CCU Resolution No. 12-FY2016.⁴

Pursuant to 12 G.C.A. §12105,⁵ GWA may not enter into any contractual agreements or obligations which could increase rates and charges without the PUC’s express approval. In addition, GWA’s Contract Review Protocol requires that “[a]ll professional service procurements in excess of \$1,000,000” require “prior PUC approval under 12 G.C.A. §12004, which shall be obtained before the procurement process is begun”⁶

According to IFB-2015-10, GWA sought pricing per pound for (“ACH”), anionic polymer, and cationic polymer.⁷ Based on GWA’s record before the PUC, GWA is required to purchase “ACH and polymer chemicals to ensure that GWA’s Northern District and Hagåtña Wastewater Treatment Plants (‘WWTP’) remain in compliance with the Clean Water Act”⁸; as well as to “operate GWA’s Northern District Wastewater

³ Petition, p. 2.

⁴ Petition, pp. 2-3 and Exhibit A.

⁵ Formerly 12 G.C.A. §12004.

⁶ GWA’s Contract Review Protocol (“GWA CRP”), Administrative Docket 00-04, p. 1 (Oct. 27, 2005).

⁷ GWA’s Invitation for Bid No. IFB-2013-06 (“IFB-2013-06”), p. 13 (May 24, 2013).

⁸ Petition for Approval of GWA’s Proposed Bid for Chemicals Regarding the Northern District Wastewater Treatment Plant and the Hagåtña Wastewater Treatment Plant (“July 30, 2015 Petition”), GWA Docket 15-05, p. 1 (July 30, 2015).

Treatment Plant (NDWWTP) and Hagåtña Wastewater Treatment Plant (HWWTP) and keep GWA in compliance with federal laws, permits and federal guidelines.”⁹

On August 27, 2015, the PUC approved GWA’s bid for the WWTP chemicals, and authorized GWA to proceed with the procurement of the chemicals indicated in the bid.

In its Petition, GWA maintained that it is required under federal court order to use chemically enhanced primary treatment at both its Northern District and Hagåtña wastewater treatment plants.¹⁰ According to GWA, its need for these chemicals were “well established” in its petition requesting approval of the procurement of such chemicals, which the PUC granted last year.¹¹

After GWA issued its Invitation for Bid, twenty (20) bidders responded. Thereafter, GWA determined that the lowest responsive and responsible bidder for ACH and anionic polymer was Total Chemical, and that the best offer for cationic polymer was made by JMI. Accordingly, GWA accepted Total Chemical’s bid to provide Anionic Polymer at an estimated annual cost of \$156,468.20, and for a three-year contract in the amount of \$469,404.60; including its bid to provide ACH for an estimated annual cost of \$851,739.68, and for a three-year contract cost of \$2,555,219.04; and thereby totaling \$3,024,623.64 for the Total Chemical contract.¹²

⁹ July 30, 2015 Petition, p. 2.

¹⁰ Petition, p. 1.

¹¹ Petition, p. 3.

¹² Petition, p. 2.

Additionally, GWA accepted JMI's proposal for Cationic Polymer for an estimated annual cost of \$200,188.45, and for a three-year contract in the amount of \$600,565.35.¹³

GWA submitted that the contract amounts are based solely on the prices provided by the lowest responsible and responsive bidder for each type of chemical.¹⁴

GWA also submitted that the total cost of the two contracts for the chemicals is \$3,625,288.99.¹⁵ Specifically, the cost of the three-year contract with Total Chemical Resource is \$3,024,634.64; and the cost of the three-year contract with JMI-Edison is \$600,565.35.¹⁶ The funding source for the chemical purchases is GWA's FY2016 Wastewater Operations Budget.¹⁷

The petition was supported by Resolution No. 44-FY2015 issued by the Consolidated Commission on Utilities (the "CCU") at its December 10, 2015 meeting. In the Resolution, the CCU found that pursuant to federal court order, GWA was required to upgrade the Northern District WWTP to use chemically enhanced primary treatment, and therefore must purchase such chemicals as part of its treatment process.¹⁸ The CCU further found that the terms of the bid proposal submitted by Total Chemical were fair and

¹³ Petition, p. 2 and Exhibit A.

¹⁴ Petition, p. 3.

¹⁵ Petition, p. 3; CCU Resolution No. 12-FY2016, p. 3.

¹⁶ Petition, p. 3; CCU Resolution No. 12-FY2016, p. 3.

¹⁷ CCU Resolution No. 12-FY2016, p. 3.

¹⁸ CCU Resolution No. 12-FY2016, p. 1.

reasonable; and authorized GWA to enter into contracts with Total Chemical, and with JMI, for a total cost of \$3,625,188.99.¹⁹

On January 22, 2016 the Administrative Law Judge of the PUC Joepheth R. Alcantara (the “ALJ”) filed a report regarding the Petition, which included his findings and recommendation based on the administrative record before the PUC.

The ALJ found that GWA’s purchase of the chemicals from Total Chemical and JMI was reasonable and necessary given that these chemicals are indispensable and required for GWA’s daily wastewater operations, specifically to operate its Northern District and the Hagåtña District WWTPs, and keep GWA in compliance with federal laws, permits and federal guidelines. Therefore, the ALJ recommends that the PUC approve the subject contracts.

Based on the documentation provided by GWA in this docket, and for the other reasons set forth therein, the ALJ recommended that the PUC approve the contracts between GWA and JMI for a total cost not to exceed \$600,565.35, and between GWA and Total Chemical, for a total cost not to exceed \$3,024,623.64.

The Commission hereby adopts the findings contained in the January 22, 2016 ALJ Report and, therefore, issues the following:

ORDERING PROVISIONS

After careful review and consideration of the above determinations, the January 22, 2016 ALJ Report, and the record herein, for good cause shown, on motion

¹⁹ CCU Resolution No. 12-FY2016, pp. 3-4.

duly made, seconded and carried by the undersigned Commissioners, the Guam Public Utilities Commission hereby ORDERS the following:

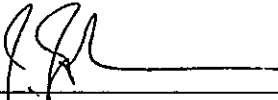
1. That GWA's December 16, 2015 Petition for Contracts with Total Chemical Resources, Inc. and JMI Edison for the purchase of Anionic Polymer, Inorganic Coagulant, and Cationic Polymer chemicals is GRANTED; GWA is therefore AUTHORIZED to enter into the separate contracts with Total Chemical Resources, Inc. for an amount not to exceed \$3,024,623.64 and JMI Edison, for an amount not to exceed \$600,565.35.


2. GWA is ordered to pay the Commission's regulatory fees and expenses, including, without limitation, consulting and counsel fees and the fees and expenses associated with the instant proceeding. Assessment of the PUC's regulatory fees and expenses is authorized pursuant to 12 G.C.A. §§12002(b), 12024(b) (renumbered as 12 G.C.A. §§ 12103(b) and 12125(b)), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

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SO ORDERED this 25th day of January, 2016.



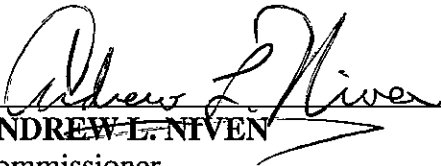
JEFFREY C. JOHNSON
Chairman

ROWENA E. PEREZ
Commissioner

JOSEPH M. MCDONALD
Commissioner

FILOMENA M. CANTORIA
Commissioner

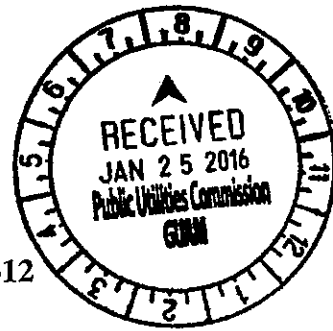
MICHAEL A. PANGELINAN
Commissioner

PETER MONTINOLA
Commissioner

ANDREW L. NIVEN
Commissioner

P163002.JRA

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN RE: REVIEW AND APPROVAL OF)
CONTRACT WITH GIANT)
CONSTRUCTION)
CORPORATION FOR)
PHASE IV OF THE LINE)
REPLACEMENT PROJECT)
_____)

GWA DOCKET 15-12

ORDER

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC” or the “Commission”) pursuant to the December 31, 2015 Petition to Approve the Contract for Phase IV of the Line Replacement Program with Giant Construction Corporation (“Giant Construction”) (the “Petition”), filed by the Guam Waterworks Authority (“GWA”).

DETERMINATIONS

On July 22, 2015, GWA issued bid No. IFB-02-ENG-2015 to seek a contractor for Phase IV of the Line Replacement Project.¹ On September 11, 2015, GWA held its bid opening and reviewed bids from seven (7) vendors.² GWA first determined that Black Construction was the lowest qualified bidder; later, however, GWA learned that Black Construction’s bid was actually ten (10) million dollars more than what was indicated in the bid documents.³ GWA then selected the second lowest qualified bidder, Reliable Builders.⁴ However, GWA later concluded that Reliable Builders was not

¹ Petition to Approve the Contract for Phase IV of the Line Replacement Program with Giant Construction Corporation, (“Petition”) (December 31, 2015), Exhibit 1.

² Petition, p. 1.

³ Consolidated Commission on Utilities (the “CCU”) Resolution No. 01-FY2016, p. 2.

⁴ CCU Resolution, p. 2

ATTACHMENT D

responsive since it failed to submit unit costs as required in the bid package.⁵ Thereafter, GWA finally determined that Giant Construction was the lowest responsive and responsible bidder.⁶

Pursuant to 12 G.C.A. §12105,⁷ GWA may not enter into any contractual agreements or obligations which could increase rates and charges without the PUC's express approval. In addition, GWA's Contract Review Protocol requires that "[a]ll professional service procurements in excess of \$1,000,000" require "prior PUC approval under 12 G.C.A. §12004, which shall be obtained before the procurement process is begun"⁸ Further, all externally funded loan obligations and other financial obligations, such as lines of credit, bonds, etc., in excess of \$1,000,000, and any use of such funds, must be approved by the PUC.⁹

The subject procurement sought the services of a contractor to "provide construction services for service lateral upgrade and replacement of existing old and leaking waterlines with new pipes ranging in size from 2" to 8" diameter to reduce water loss in the potable water system."¹⁰ The contractor is required to perform design and construction services related to the replacement of water lines in the following areas: (1) Chalan Koda/Mataguac, Yigo; (2) Agafa Gumas, Yigo; (3) Santa Rosa Subdivision, Santa Rita; (4) Assumption Drive, Piti; (5) Chalan Famha, Chalan Pago; (6) Hahasu,

⁵ CCU Resolution, p. 2.

⁶ Petition, p. 1.

⁷ Formerly 12 G.C.A. § 12004.

⁸ GWA's Contract Review Protocol ("GWA CRP"), Administrative Docket 00-04, p. 1 (Oct. 27, 2005).

⁹ *Id.*

¹⁰ CCU Resolution, p. 1.

Dededo; (7) Flores Pago, Latte Heights, Mangilao; (8) Chalan Enrique Rosario, Yigo; (9) Achu Mal (Areca Palms), Mangilao; (10) Chalan Aguon (Manenggon), Yona; and (11) an unknown location.

GWA submitted that the total cost of the contract is \$7,887,046.50 and that the contract would be funded by 2010 and 2013 Bond proceeds.¹¹ The breakdown of costs for the upgrades and repair are as follows: (1) \$2,319,400.00 for Chalan Koda/Mataguac, Yigo; (2) \$951,150.00 for Agafa Gumas, Yigo; (3) \$1,813,380.00 for Santa Rosa Subdivision, Santa Rita; (4) \$179,955.00 for Assumption Drive, Piti; (5) \$757,050.00 for Chalan Famha, Chalan Pago; (6) \$386,500.00 for Hahasu, Dededo; (7) \$98,140.00 for Flores Pago, Latte Heights, Mangilao; (8) \$851,380.00 for Chalan Enrique Rosario, Yigo; (9) \$196,700.00 for Achu Mal (Areca Palms), Mangilao; (10) \$178,550.00 for Chalan Aguon (Manenggon), Yona; and (11) \$154,841.50 for an unknown location.

In its Petition, GWA submitted that “[t]he PUC has long recognized the need for GWA to engage in line replacement as a means to reduce water loss which reduces costs and improves system reliability.”¹² The subject project will continue the efforts of phases 1 through 3, and will further the line replacement upgrades throughout the island.¹³ Specifically, this phase of work will consist of “furnishing all construction labor, tools, equipment and materials including coordination with GWA Water Operations and Engineering as well as the Department of Public Works”¹⁴

¹¹ Petition, p. 2.

¹² Petition, p. 2.

¹³ Petition, p. 2.

¹⁴ CCU Resolution, p. 1.

GWA maintained that it did not seek prior PUC approval of the bid related to this contract “due to confusion over the source of funding for the projects”¹⁵; that “[a]fter the bids had been received, GWA Management determined that bond funds would be the sole funding source for the project.”¹⁶ This project has been approved and reviewed by the Commission under CIP PW 09-03, Water Distribution System Pipe Replacement.¹⁷

The petition is supported by Resolution No. 01-FY2016 issued by the CCU at its August 27, 2015 meeting. In the Resolution, the CCU found the following: that GWA was successful in Phases I through III of its line replacement projects, which upgraded and replaced old and leaky waterlines island-wide.¹⁸ The CCU further authorized GWA to enter into a contract with Giant Construction, and approved the funding of the project for an amount of \$7,887,046.50, along with a 5% contingency, thereby authorizing a total amount of \$8,281,398.83.¹⁹

On January 22, 2016, the Administrative Law Judge of the PUC, Joephet R. Alcantara (the “ALJ”) filed an ALJ Report regarding the Petition, which included his findings and recommendations based on the administrative record before the PUC. In the ALJ Report, the ALJ found the following.

The ALJ found that indeed “[t]he PUC has long recognized the need for GWA to engage in line replacement as a means to reduce water loss which reduces costs

¹⁵ Petition, p. 2.

¹⁶ Petition, p. 2.

¹⁷ CCU Resolution No. 01-FY2016, p. 3 (Oct. 27, 2015).

¹⁸ CCU Resolution, p. 1.

¹⁹ CCU Resolution, p. 4.

and improves system reliability”²⁰ and that the continuation of such efforts are reasonable and necessary, and will eventually result in savings for GWA by reducing its water loss. The ALJ further found that GWA has provided sufficient documentation to support its selection of Giant Construction as the qualified lowest bid, and that the submission of seven (7) contractors for the subject bid makes this selection fairly competitive.

The ALJ also found that the Commission had already reviewed and approved the project under CIP PW 09-03, Water Distribution System Pipe Replacement. Therefore, the ALJ recommended that the PUC ratify the subject procurement and approve GWA’s contract for Phase IV of its Line Replacement Project with Giant Construction.

Based on the documentation provided by GWA in this docket, and for the other reasons set forth therein, the ALJ recommended that the PUC approve the contract between GWA and Giant Construction to complete Phase IV of GWA’s Line Replacement Project, for a cost of \$7,887,046.50.

The Commission hereby adopts the findings made in the January 22, 2016 ALJ Report and therefore issues the following:

ORDERING PROVISIONS

Upon careful consideration of the record herein, 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. That the contract between GWA and Giant Construction to complete Phase IV of GWA’s Line Replacement Project, is hereby APPROVED for a cost of \$7,887,046.50.

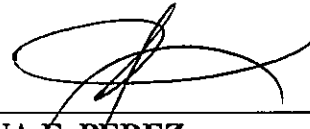
²⁰ Petition, p. 2.

2. GWA is 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 this docket. Assessment of the PUC's regulatory fees and expenses is authorized pursuant to 12 G.C.A. §§ 12002(b) and 12024(b) (renumbered as 12 G.C.A. §§ 12103(b) and 12125(b)), and Rule 40 of the Rules of Practice and Procedure before the PUC.

SO ORDERED this 25th day of January, 2016.



JEFFREY C. JOHNSON
Chairman



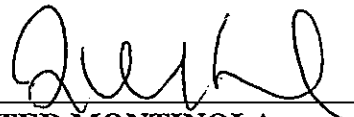
ROWENA E. PEREZ
Commissioner



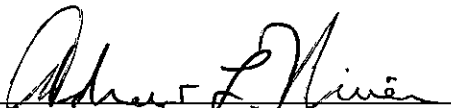
FILOMENA M. CANTORIA
Commissioner



MICHAEL A. PANGELINAN
Commissioner

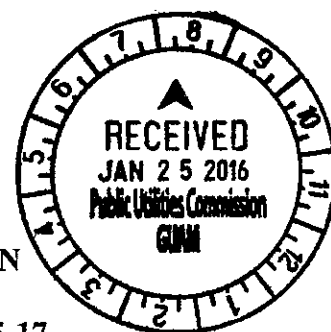


PETER MONTINOLA
Commissioner



ANDREW L. NIVEN
Commissioner

P163004.JRA



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

REVIEW OF COMPLAINT BY)	GPA DOCKET NO. 15-17
1 st GREEN SOLUTIONS GUAM, LLC)	ORDER
_____)	
)	
)	

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC”) pursuant to the April 20, 2015 Letter (the “Complaint”) addressed to the PUC from 1st Green Solutions Guam, LLC (“1st Green”), which generally contends that the Guam Power Authority (“GPA”) has inaccurate and inconsistent billing practices for customers having power factor ratings that exceed the established power factor rate of .85 as set forth in GPA’s tariff. The PUC has considered the instant filing as a formal Complaint.

BACKGROUND

On April 20, 2016, 1st Green lodged a formal complaint against GPA with the PUC, alleging that GPA was inaccurately and inconsistently billing customers “having power factor ratings that exceed the established power factor rate of .85” within the approved tariff.¹ Specifically, 1st Green contended that “GPA is billing for more kWH usage now than they were before the implementation of USES which, per our own recordings, is providing significant reductions in actual power usage plus improvements in

¹ 1st Green Complaint, p. 1 (Apr. 20, 2015).

ATTACHMENT E

power efficiency.”² “Our client’s investments in the USES Technology are not reducing the kWh in GPA billings. This is the opposite of what is occurring throughout the rest of the world.”³

Thereafter, the Administrative Law Judge of the PUC assigned to the matter (the “ALJ”) remanded the matter to GPA for resolution at the agency level. However, the parties were unable to arrive at a resolution.

On June 17, 2015, 1st Green issued a follow-up letter to the PUC, again requesting review of its Complaint against GPA. Thereafter, the ALJ forwarded the matter to the PUC’s energy consultants, Lummus Consultants (“Lummus”), for its technical review and investigation. Lummus and the ALJ engaged in telephone conferences with 1st Green, and Lummus issued requests for information to both GPA and 1st Green. On October 26, 2015, Lummus filed its report detailing its findings and recommendations related to its review of the instant matter (the “Lummus Report”).

On December 2, 2015, 1st Green lodged a response to the Lummus Report with the ALJ. On January 22, 2016, GPA provided its response to 1st Green’s Complaint.

DETERMINATIONS

1st Green is a distributor of a “power conditioning and energy saving technology” known as the “Universal Shunt Efficiency System (USES) Power Conditioning System.”⁴ According to 1st Green, this technology “has been very successful in reducing energy costs and providing full power protection against spikes and surges

² 1st Green Complaint, p. 2 (Apr. 20, 2015).

³ 1st Green Complaint, p. 2.

⁴ Lummus Report, p. 2.

through the world for over 20 years in thousands of facilities and homes.”⁵ 1st Green added that “[o]ne of the many benefits of the USES system is improvement of the power factor to .99 for most of our clients which results in a higher efficiency in their power consumption.”⁶

In its Complaint, 1st Green maintained that GPA has engaged in “inaccurate and inconsistent billing of customers having power factor ratings that exceed the established power factor rate of .85”⁷ Particularly, under the old analog meters, 1st Green was noticing a 10% average kWh reduction after the USES installation, but that after GPA’s “change-over to the smart meters . . . the kWh savings are not being realized.”⁸

1st Green, therefore, argued that “GPA is billing for more kWh usage now than they were before the implementation of USES which, per our own recordings, is providing significant reductions in actual power usage plus improvements in power efficiency.”⁹ 1st Green maintained that its “client’s investments in the USES Technology are not reducing the kWh in GPA billings,” which 1st Green argues “is the opposite of what is occurring throughout the rest of the world.”¹⁰ “So instead of saving money from the reduction of energy use and increase in power efficiency, customers are being billed with higher kWh on their energy bills since having the smart meter installed.”¹¹

⁵ 1st Green Solutions, Letter to the PUC, p. 1 (Apr. 20, 2015).

⁶ 1st Green Solutions, Letter to the PUC, p. 1.

⁷ 1st Green Solutions, Letter to the PUC, p. 1.

⁸ 1st Green Solutions, Letter to the PUC, p. 1.

⁹ 1st Green Solutions, Letter to the PUC, p. 2.

¹⁰ 1st Green Solutions, Letter to the PUC, p. 2.

¹¹ 1st Green Solutions, Letter to the PUC, p. 1 (June 17, 2015).

Based on literature published by AC/DC Dynamics, power factor can be explained as follows.¹²

UNDERSTANDING POWER FACTOR

To understand power factor, we'll first start with the definition of some basic terms:

- **KW is Working Power** (also called **Actual Power** or **Active Power** or **Real Power**).

It is the power that actually powers the equipment and performs useful work.

- **KVAR is Reactive Power.**

It is the power that magnetic equipment (transformer, motor and relay) needs to produce the magnetizing flux.

- **KVA is Apparent Power.**

It is the "vectorial summation" of KVAR and KW.

¹² <http://www.acdc.co.za/downloads/Understanding%20Power%20Factor.pdf>.

Let's say you are at the ballpark and it is a really hot day. You order up a mug of your favourite brew.

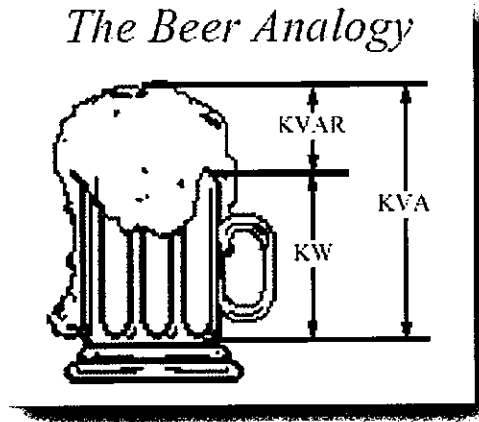
The thirst-quenching portion of your beer is represented by KW (Figure 1).

Unfortunately, life isn't perfect. Along with your ale comes a little bit of foam. (And let's face it...that foam just doesn't quench your thirst.) This foam is represented by $KVAR$.

The total contents of your mug, KVA , are this summation of KW (the beer) and $KVAR$ (the foam).

Fig 1

The Beer Analogy



Power Factor (P.F.) is the ratio of Working Power to Apparent Power.

$$P.F. = \frac{KW}{KVA}$$

Looking at our beer mug analogy above, power factor would be the ratio of beer (KW) to beer plus foam (KVA).

$$\begin{aligned} P.F. &= \frac{KW}{KW + KVAR} \\ &= \frac{\text{Beer}}{\text{Beer} + \text{Foam}} \end{aligned}$$

Thus, for a given KVA:

- The more foam you have (the higher the percentage of KVAR), the lower your ratio of KW (beer) to KVA (beer plus foam).

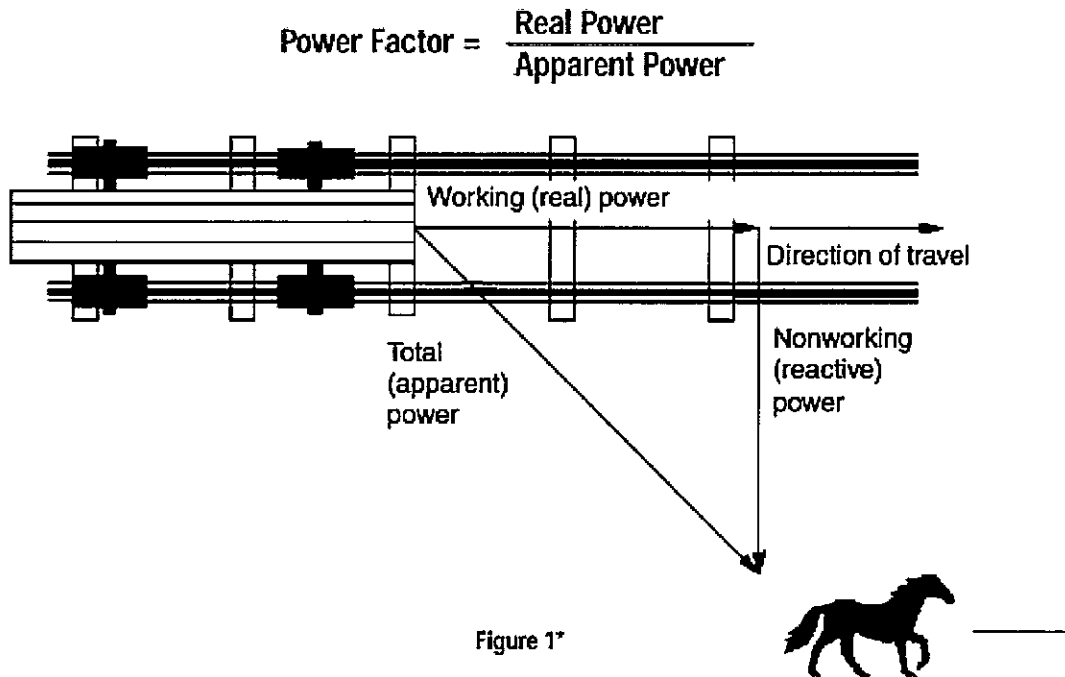
Thus, the lower your power factor.

- The less foam you have (the lower the percentage of KVAR), the higher your ratio of KW (beer) to KVA (beer plus foam). In fact, as your foam (or KVAR) approaches zero, your power factor approaches 1.0.

Another example, published by conEdison, further explains power factor as follows.¹³

¹³ http://www.coned.com/reactivepower/understanding_power_factor.pdf.

In Figure 1, a horse is pulling a railroad car down a railroad track. The railroad ties are uneven, so the horse must pull the car from the side of the track. The horse is pulling the railroad car at an angle to the direction of the car's travel.



The power required to move the car down the track is the working or real power (kW). The effort of the horse is the total or apparent power (kVA). Due to the angle of the horse's pull, not all of its effort is used to move the car down the track. The car will not move sideways, therefore, the sideways pull of the horse is wasted effort — the nonworking or reactive power (kVAR).

The angle of the horse's pull is related to power factor, which is defined as the ratio of real power to apparent (total) power. If the horse is led closer to the center of the track, the angle of side pull decreases and the real power approaches the value of the apparent power. Therefore, the ratio of real power to apparent power (the power factor) approaches one. As the power factor approaches one, the reactive (nonworking) power approaches zero.

In the ideal horse-pulling-the-railcar analogy, if the reactive power (kVAr) is near zero, then real power (kW) and apparent power (kVA) would almost be equal, which means the horse would not waste as much energy pulling the car. The angle formed between real and apparent power would approach zero. The cosine of the angle would then approach one, resulting in a power factor that approaches one.

The closer a system's power factor is to one, the more efficient the system is.

Based on GPA's tariff for "Large Power Service" (customers with demand of 200 kW or more), specifically "Schedule P," the calculation of "power factor" is described as follows.

The above demand and energy charges are based upon an average monthly power factor of 85%. For each 1% the average power factor is above 87% or below 83%, the monthly bill is computed under energy charges shall be decreased or increased, respectively, by .15%. The power factor will be computed to the nearest whole percent.

On October 26, 2015, Lummus submitted its findings in its Report. Based on its review, Lummus identified three (3) issues raised in 1st Green's Complaint. First, that GPA's billing calculations do not comply with its tariff.¹⁴ Second, that GPA is incorrectly charging customers when their power factor is over .85.¹⁵ And third, that GPA's new smart meters have altered how consumption is measured and billed.¹⁶ Based on its review of the Complaint, as well as data provided by both 1st Green and GPA, Lummus arrived at the following findings.

Regarding its review of GPA's billing calculations to determine whether GPA is in compliance with its tariff, Lummus reviewed GPA's tariff, billing procedures,

¹⁴ Lummus Report, p. 3.

¹⁵ Lummus Report, p. 3.

¹⁶ Lummus Report, p. 3.

and a sampling of bills referenced in 1st Green's Complaint.¹⁷ Based on its review of a sampling of twenty-five (25) bills, Lummus found that "all bill items, except the power factor bill item, are being billed in alignment with the applicable Rate Schedule P"; that "this bill item does not appear as though it is being billed in alignment with the applicable Rate Schedule P."¹⁸

Lummus found that for one particular customer, there was "at least ten months worth of overcharging" "as evidenced by the ten power factor adjustment files and the two 'power factor adjustment' refund line items" on two of the customer's bills.¹⁹

Lummus, however, found that GPA's practice of applying the power factor adjustment to energy-related bill items—such as (1) the energy bill for up to 55,000 kWh, (2) the energy bill for over 55,000 kWh, (3) the fuel recovery charge billing, and (4) the emergency water well and wastewater charge—appeared in line with Schedule P.²⁰ Lummus found that since this practice is not clearly specified in the tariff, it recommended that GPA document how the power factor adjustment is being applied, as well as clarify the language in its rate schedules, such that the application of the power factor adjustment is articulated clearly.²¹

Moreover, Lummus found that it could not confirm whether GPA was "developing power factor adjustment rates that are in alignment with its Schedule P."²² Lummus concludes that "[i]n no month is the Power Factor Rate consistent, therefore

¹⁷ Lummus Report, p. 4.

¹⁸ Lummus Report, p. 5.

¹⁹ Lummus Report, p. 5.

²⁰ Lummus Report, p. 5.

²¹ Lummus Report, p. 5.

²² Lummus Report, p. 5.

Lummus Consultants need[] further information from GPA in order to understand more fully how these rates are being derived.”²³

Regarding whether GPA is incorrectly charging customers in instances where the power factor is over .85, based on its review, Lummus determined that there were “discrepancies in the form of overcharges in the months following September 2014 as well as in the months following.”²⁴ Lummus has not been able to consult with GPA regarding these apparent overcharges.²⁵

Regarding whether the new smart meters have altered how consumption is measure and billed, based on its review, Lummus determined that the meters at Onward Agana Beach Resort should be tested by an independent third party.²⁶ Lummus further noted, however, that “[t]he main purpose of a utility’s power factor provision is to provide an incentive to improve power factor, usually as a penalty if power factor is below a prescribed level and, less frequently in practice, as a credit if power factor is greater than a specified reference level.”²⁷

Based on its investigation, and in line with its findings above, Lummus recommended the following. Regarding whether GPA’s billing calculations are not in compliance with the terms of its tariff, Lummus noted that GPA’s bills “could be made more clear with respect to the specific bill items that are subject to the power factor

²³ Lummus Report, p. 6.

²⁴ Lummus Report, p. 8.

²⁵ Lummus Report, p. 8.

²⁶ Lummus Report, p. 10.

²⁷ Lummus Report, p. 9.

provision.”²⁸ In addition, Lummus added that “demand charges” should not be subject to the power factor adjustment; and that energy and demand charges vary as the customer’s power factor rises or falls below 85%.²⁹ Lummus concluded that it was unable to confirm whether GPA is developing monthly power factor adjustments that are consistent with Schedule P.³⁰

With respect to whether GPA is incorrectly charging customers when the power factor is over 85%, based on its review, Lummus found that GPA “has overcharged for power factor” at least in September, 2014, and that “there may also have been overcharges in January and February 2015,” which were months where the power customer’s power factor appeared to be at or near 100%.³¹ Accordingly, Lummus advised that GPA “adhere to the power factor provisions of its own tariff.”³²

With respect to whether GPA’s new smart meters have changed how consumption is measured and billed, particularly whether or not GPA’s smart meters accurately measure kWh, Lummus recommended that the meters serving Onward Agana Beach Resort “be tested by an independent party.”³³ Lummus further recommended that 1st Green and GPA submit three contractors “that could perform the tests and have the Commission select one in common from each list and allow each party to be present during

²⁸ Lummus Report, p. 11.

²⁹ Lummus Report, p. 11.

³⁰ Lummus Report, p. 11.

³¹ Lummus Report, p. 11.

³² Lummus Report, p. 11.

³³ Lummus Report, p. 11.

the testing”; and that the contractor “should first submit its approach to testing the meter so that each party understands and accepts the approach before the test is completed.”³⁴

On January 22, 2016, GPA filed its response to 1st Green’s Complaint. In its response, GPA generally maintains that “[t]he data responses provided to Lummus in its investigation” indicate that 1st Green’s allegations “are not supported by any factual basis.”³⁵

In particular, GPA submitted that the current smart meters take readings for kWH, kVAH, and kW; and that the data is then billed using the CC&B software that generates energy charges, demand charges, and power factor charges.³⁶ GPA further submitted that its previous “legacy meters” “were not as accurate as the current smart meters.”³⁷ In addition, GPA maintained that “[t]he power factor is the tariff provides for either a penalty or credit if the power factor is either above 87% or below 83%” and that GPA correctly applies the tariff.³⁸

GPA contended that “1st Green wants to apply a tariff from some power company in the states, and states that GPA is incorrectly applying the existing Rate Schedule P.”³⁹ GPA submitted that this is “incorrect” based on the bills, and since the smart meters “directly read KWH, KVAH, and KW, and do not require manual calculations to comp up with power factor, as 1st Green Solutions is suggesting.”⁴⁰

³⁴ Lummus Report, pp. 11-12.

³⁵ GPA Response, p. 1 (Jan. 22, 2016).

³⁶ GPA Response, p. 1.

³⁷ GPA Response, p. 2.

³⁸ GPA Response, pp. 1-2.

³⁹ GPA Response, p. 2.

⁴⁰ GPA Response, p. 2.

On January 24, 2016, the ALJ issued an ALJ Report detailing his review of the instant matter. In the ALJ Report, the ALJ found that, regarding whether GPA is in compliance with its tariff, based on its investigation, it appeared unclear to Lummus how GPA calculated its power factor adjustment, and therefore could not confirm whether GPA was “developing power factor adjustment rates that are in alignment with its Schedule P.”⁴¹ Lummus stated that it needed more information from GPA in order to understand how the rates were being derived.⁴² Accordingly, GPA should be required to provide the PUC with documentation detailing how it arrives at power factor adjustment for its customers.

The ALJ further found that, regarding whether GPA is incorrectly charging the customer in instances where the power factor is over .85, as a result of Lummus’ investigation, there is evidence to suggest that there were instances of “discrepancies in the form of overcharges.”⁴³ The ALJ recommended that the meters serving Onward Beach Resort “be tested by an independent party,”⁴⁴ as recommended by Lummus. As recommended by Lummus, both 1st Green and GPA submit three contractors “that could perform the tests and have the Commission select one in common from each list and allow each party to be present during the testing”; and that the contractor “should first submit its approach to testing the meter so that each party understands and accepts the approach before the test is completed.”⁴⁵ The cost of such testing should be split evenly between the

⁴¹ Lummus Report, p. 5.

⁴² Lummus Report, p. 6.

⁴³ Lummus Report, p. 8.

⁴⁴ Lummus Report, p. 11.

⁴⁵ Lummus Report, pp. 11-12.

parties. Both parties should further be required to cooperate fully and provide any and all needed access for the independent metering to be performed.

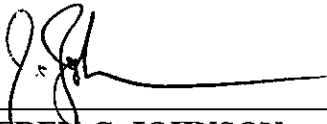
The Commission hereby adopts the findings made in the January 24, 2016 ALJ Report and the October 26, 2015 Report prepared by Lummus and therefore issues the following:

ORDERING PROVISIONS

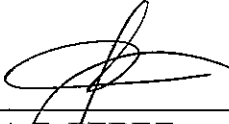
Upon careful consideration of the record herein, and for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby ORDERS the following:

1. That GPA shall provide the PUC with documentation detailing how it arrives at power factor adjustment for its customers within thirty (30) days of this Order.
2. That GPA shall provide the PUC with documentation detailing how kWh was computed under the former analog meters, as well as how kWh is computed under the new Smart Meters within thirty (30) days of this Order.
3. That both parties are required to cooperate fully and provide any and all needed access for the independent metering to be performed.
4. GPA is 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 this docket. Assessment of the PUC's regulatory fees and expenses is authorized pursuant to 12 G.C.A. §§ 12002(b) and 12024(b) (renumbered as 12 G.C.A. §§ 12103(b) and 12125(b)), and Rule 40 of the Rules of Practice and Procedure before the PUC.

SO ORDERED this 25th day of January, 2016.



JEFFREY C. JOHNSON
Chairman



ROWENA E. PEREZ
Commissioner

JOSEPH M. MCDONALD
Commissioner



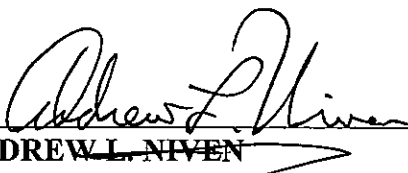
FILOMENA M. CANTORIA
Commissioner



MICHAEL A. PANGELINAN
Commissioner



PETER MONTINOLA
Commissioner



ANDREW L. NIVEN
Commissioner

P163006.JRA



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:) GPA Docket 15-22
)
The Application of the Guam Power)
Authority for Approval of an Award of a) **ORDER**
Performance Management Contract)
(PMC) for the Combustion Turbine Power)
Plants.)

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Application of Guam Power Authority ["GPA"] for Approval of an Award of a Performance Management Contract (PMC) for the Combustion Turbine Power Plants.¹
2. GPA intends to award a five year PMC contract to Taiwan Electrical and Mechanical Engineering Services ["TEMES"] for the Management, Operation, and Maintenance of the Dededo Combustion Turbine Units 1 & 2, the Yigo Combustion Turbine, and the Macheche Combustion Turbine.²
3. The five year PMC contract will cost approximately \$5.9M, which includes the annual fixed management fees and the operations and maintenance budget.³

BACKGROUND

4. The PUC considered the matter of a procurement for the Combustion Turbine PMC at its meeting of December 10, 2015.⁴
5. At that time the PUC deferred action on the matter, finding that GPA had not adequately explained how it would fund the rehabilitation costs for the three CTs,

¹ The "Application" herein is the PUC Presentation provided by GPA at the Workshop on January 20, 2016, and the CCU Materials from the Board presentation forwarded by Board Secretary Lou Sablan on January 20, 2016 (which includes proposed CCU Resolution 2016-02).

² Guam Consolidated Commission on Utilities Proposed Resolution No. 2016-02, "Authorizing Management of the Guam Power Authority to Award Services for A Performance Management Contract Procure Services for GPA's Combustion Turbine Power Plants"; it is anticipated that the CCU will adopt such Resolution at the CCU Meeting tomorrow on January 26, 2016.

³ Id.

⁴ PUC Order, GPA Docket 15-22, dated December 10, 2016.

ATTACHMENT F

which were estimated at \$10M, or how it would fund the \$1.2M annual cost for the PMC.⁵

6. The PMC Contract will cover the management, maintenance, and operation of various Combustion Turbine Power Plants (in particular, the Dededo CT Plants 1 & 2, the Yigo CT, and the Macheche CT).⁶
7. On January 20, 2016, GPA GM Benavente and Staff conducted a workshop for the PUC to further explain the need for the PMC for the CTs, and how GPA planned to pay for the costs of the PMC. GPA also presented the various slides, "PUC Presentation", on issues concerning the PMC.⁷
8. On January 20, 2016 GPA submitted to the PUC proposed Resolution No. 2016-02, notice of the award of the PMC Contract to TEMES, and the proposed Contract.⁸
9. In accordance with the proposed Contract, the PMC could potentially be used to operate the Piti 7 facility (the TEMES Combustion Turbine Plant); GPA's Energy Conversion Agreement with TEMES expires in 2017 resulting in the turnover of the Piti 7 facilities to GPA.⁹

DETERMINATIONS

10. GPA lost 79MW in generation capacity as a result of the Cabras explosion. The goal is to achieve a targeted total system capacity of 436MW by December 31, 2016. That total will give GPA a sufficient reserve capacity "cushion" in the event that the two largest plants go down or offline.¹⁰
11. It is critical to achieving sufficient system capacity that the availability of the Dededo CTs, and upgraded capacity for the Macheche and Yigo CTs, be ensured.¹¹

⁵ Id.

⁶ GPA Petition to Approve the Procurement of a Performance Management Contract (PMC) for Combustion Turbine Power Plants, GPA Docket 15-22, filed November 17, 2015, at pgs 1-2.

⁷ PUC Presentation, workshop for the PUC on January 20, 2016; copies have been provided to the PUC Commissioners in their meeting packets.

⁸ Guam Consolidated Commission on Utilities Proposed Resolution No. 2016-02; a copy thereof with Exhibits has also been presented to the PUC Commissioners.

⁹ Id.

¹⁰ PUC Presentation, *supra*.

¹¹ Id.

12. Without the availability of the CTs, GPA would simply not be able to provide the total desired generation capacity. The retention of a PMC for the operation of the Dededo, Yigo, and Macheche CTs is likely the quickest and most efficient means of restoring those plants to full generating capacity.
13. The principal issue raised in the prior PUC proceedings concerns the projected costs for rehabilitation of the CT Plants (Dededo, Yigo, and Macheche). There are also costs associated with each Plant over the five year period, such as for Fixed Management Fees and O & M expenses.
14. GPA has demonstrated that the availability of the CT Units are critical for GPA. Their availability will allow GPA to meet the PUC approved reliability requirement of 1 day Loss of Load in 4.5 years. The retirement of Cabras 4 requires GPA to obtain 40MW of additional capacity. The commissioning of the Dededo CTs will allow GPA to achieve its reliability criteria and the regulatory requirements.¹²
15. As for funding, Exhibits B & C of the Proposed CCU Resolution No. 2016-02 propose funding sources for the rehabilitation of the plants, and the plant operating cost. In available O&M Funds, GPA already has approximately \$800,000 for the PMC contract for FY2016. For the roughly \$5.9M plant rehabilitation costs, GPA plans to reprogram 1999 Bond Funds and 2010 Bond Funds.
16. GPA plans to reprogram funds from such projects as Underground Fuel Pipeline Conversion & Fuel Metering, Underground Extension to Port Authority, Agat Village Poll Hardening & Hybrid, and Cabras Plant CIPs. The total reallocation will involve approximately \$6,032,000.¹³ GPA will be required to apply to the PUC for approval of the reallocation.
17. GPA will fund the annual Fixed Management Fees and the O&M Budgets for the CTs from revenue funds. The annual cost of Fixed Management Fees and O&M Budget are between \$1.1M and \$1.25M.¹⁴
18. Through reallocating internal funds, GPA should be able to cover the costs of the PMC. There should be no ratepayer impact.

¹² PUC Presentation, January 20, 2016.

¹³ Exhibit C to CCU Resolution No. 2016-02.

¹⁴ Issues for Decision, attachment to CCU Resolution No. 2016-02.

19. GPA has presented a strong justification for the benefits of a PMC-type contract for GPA's CT units. GPA and the PMC can work together on operations and maintenance issues.¹⁵
20. The PMC will provide engineering, procurement and project management services to complete the rehabilitation and repair of the Plants. The administrative fees for the PMC will be no more than 5% of total project costs.¹⁶
21. The proposed form for the PMC contract follows that of prior contracts for the Cabras Plant PMCs. It contains the same general provisions which protect GPA and the ratepayers and similar performance guarantees.

ORDERING PROVISIONS

After review of the record herein, including GPA's Application for Approval of a Award of a PMC Contract for the Combustion Turbine Power Plants, the PUC Presentation, and the CCU proposed Resolution FY2016-02, and having hear the recommendation of Counsel, for good cause shown, on motion duly made, seconded and carried by the undersigned Commissioners, the Guam Public Utilities Commission **HEREBY ORDERS** that:

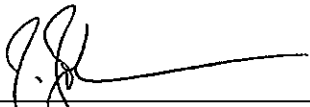
1. The award of the PMC Contract to TEMES is approved.
2. GPA is authorized to expend the amount of \$5,980,246, for the first five years of the Contract, to fund the Fixed Management Fee and O&M Budget for the Dededo CT, Macheche CT, and Yigo CT Plants.
3. The approval herein is conditioned upon adoption by the Guam Consolidated Commission on Utilities of Resolution No. 2016-02 at its meeting on January 26, 2016.
4. GPA shall file its application to reprogram 1999 & 2010 Bond Funds with the PUC.
5. GPA shall file a final copy of the PMC Contract between GPA and TEMES with the PUC.

¹⁵ PUC Presentation, supra.

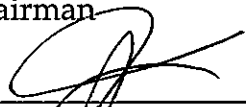
¹⁶ Id.

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 PUC's regulatory fees and expenses is authorized pursuant to 12 GCA §§12103(b) and 12125(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.


Dated this 25th day of January, 2016.




Jeffrey C. Johnson
Chairman



Rowena E. Perez
Commissioner

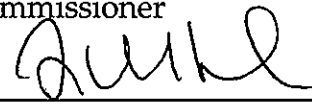


Michael A. Pangelinan
Commissioner

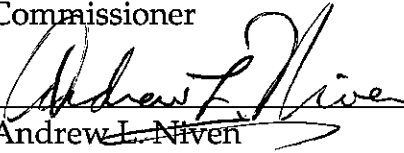


Filomena M. Cantoria
Commissioner

Joseph M. McDonald
Commissioner



Peter Montinola
Commissioner

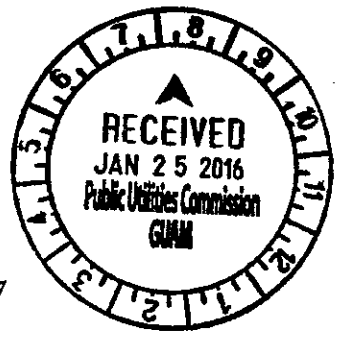


Andrew L. Niven
Commissioner

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

GUAM POWER AUTHORITY
LEVELIZED ENERGY ADJUSTMENT
CLAUSE [LEAC]

GPA DOCKET 15-27



ORDER

In accordance with the protocol established by Guam Public Utilities Commission [PUC] Order dated January 29, 1996, as amended by Order dated March 14, 2002, Guam Power Authority [GPA] transmitted its LEAC Filing, dated December 15, 2015, to the PUC.¹ GPA requested that the Levelized Energy Adjustment Clause Factor ["LEAC"], for the six-month period commencing February 1, 2016, stay at the same level it was set for the prior six month period (August 1, 2015, to January 31, 2016), \$0.104871 per kWh effective for meters read on or after February 1, 2016.² There would be no change in the LEAC factor for this LEAC period.³

GPA submits that the LEAC factor for the upcoming six month period (February 1, 2016 through July 31, 2016) should remain the same. Although there has been "a slight decrease in fuel prices", GPA believes that certain events triggered by the Cabras 3&4 shutdown on August 31, 2015 (most importantly, a substantial increase in use of the more expensive Diesel No. 2 Fuel), dictates that there be no change in the Fuel Recovery Factor.⁴

GPA's Petition demonstrates that, since the Cabras 3&4 explosion, GPA costs for No.2 Diesel Fuel have risen substantially. Since the explosion, GPA has been required to utilize the more expensive No.2 Diesel Fuel in order to run the fast track generators and CTs. The cost for No.2 fuel has risen from approximately \$2M per month to between \$4 and \$5M per month.⁵ Although fuel prices have decreased, GPA is now incurring more fuel costs due to the use of the expensive No.2 Diesel Fuel for the fast track generators and the CTs.

GPA also indicates that, in accordance with prior discussions with the ALJ and the PUC Commissioners regarding the fuel pricing issue, GPA has, in its Petition, used the

¹ GPA LEAC Filing, GPA Docket 15-27, filed December 15, 2015.

² Id. at p. 1.

³ Id.

⁴ Id. at p. 1; see also Letter from General Manager Benavente to ALJ Horecky, dated December 14, 2015, re: Levelized Energy Adjustment Clause Petition for the period of February 1, 2016 through July 31, 2016, dated December 14, 2015, at p. 1.

⁵ See Attachment I, Schedule 1 and Attachment II, Schedule 1 attached to GPA's Petition.

ATTACHMENT G

average of the 5 days forward pricing from Morgan Stanley Asia Morning Call dated November 24 through November 30, 2015.⁶

On December 10, 2015, the Guam Consolidated Commission on Utilities, in Resolution No. 2015-66, authorized GPA Management to Petition the PUC for the LEAC rate to remain at \$0.104871/kWh effective for the period from February 1, 2016 through July 31, 2016.⁷

DETERMINATIONS

1. To determine applicable fuel prices herein, GPA used the average of 5 days forward pricing from Morgan Stanley Asia Morning Call dated November 24 through November 30, 2015.
2. Although GPA indicated that it would use the average of the 5 consecutive days' pricing "closest to the LEAC filing date", the 5 day period utilized by GPA (November 24 through November 30, 2015) was two weeks before GPA filed its Petition on December 15, 2015.⁸
3. GPA indicates that it used the earlier November pricing period because the LEAC Petition had to be approved by the CCU Commissioners in November.⁹
4. The utilization by GPA of the MS fuel forecast pricing for the period of November 24 through November 30, 2015 does not appear to be appropriate: (1) the selected period occurred fifteen days before GPA filed its petition; and (2) there was a substantial drop in fuel prices during December 2015 and January 2016.
5. Counsel requested that GPA Assistant CFO Cora Montellano recalculate the 5 day average of the MS fuel forecast. On January 21, 2016, Ms. Montellano provided the most recent updated "Proposed LEAC Rate".¹⁰
6. The "updated" calculation for LEAC (using the average of the MS Noon call dated January 11-15, 2016) indicates that its average price per barrel for No.6 RFO declined from the price utilized by GPA in its Petition from \$46.19 per

⁶ See Letter from General Manager Benavente to ALJ Horecky, dated December 14, 2015, at p. 2.

⁷ CCU Resolution No. 2015-66, adopted December 10, 2015, at p. 2.

⁸ Letter from General Manager Benavente to ALJ Horecky, dated December 14, 2015, at p. 2.

⁹ Phone conference between PUC Counsel Horecky and Asst. CFO Montellano, December 28, 2015.

¹⁰ Exhibit 2 to the Supplemental PUC Counsel Report.

barrel to \$37.35 per barrel. In addition, the average price per gallon of Diesel (No.2) declined from \$1.66 per gallon to \$1.21 per gallon.¹¹

7. At its July 16, 2015, Meeting, the PUC suggested that the LEAC fuel forecast price should be based upon the five day period which is ten days before the meeting at which the PUC determines the LEAC factor. Based upon the updated 5 day Morgan Stanley Fuel Price Forecast for the period of January 11-15, 2016, the applicable LEAC factor effective February 1, 2016, would be reduced from \$0.104871 per/kWh to \$0.086613 per/kWh, a decrease in the LEAC of 17.4%.
8. GPA had previously applied \$3M in insurance proceeds to reduce the beginning Fuel Cost under recovery for the LEAC period February 1 to July 2016. GPA assumed that the insurance proceeds would become available at some point in the future.¹²
9. Since the Cabras explosion resulted in increased fuel costs for GPA, insurance proceeds should be used to cover such costs (i.e. reliance upon No.2 Diesel for the fast track generators and CTs). However, as of yet, the insurance company has not agreed to pay any specific amounts nor are such funds presently available to GPA to offset fuel costs.
10. Given the absence of any commitment for such funds or their availability, it is prudent for GPA not to presently assume that such funds are available to offset the LEAC. The Proposed LEAC Rate was updated to take out the assumption that \$3M would immediately be available.
11. Upon further refinement of the calculations, Ms. Montellano calculated that only \$2M would be available for fuel costs from the insurance proceeds, rather than the \$3M initially anticipated. GPA anticipates that a total \$15M will be available as "Extra Expense Coverage" to cover the costs of the Aggreko temporary generation services. The annual costs for the Aggreko services for 2016 are estimated at approximately \$13M, leaving only \$2M for fuel expense.¹³
12. The updated Proposed LEAC factor, without the \$2M insurance proceeds, would be \$0.086613/kWh for residential customers on meters read on or after February 1, 2016. This updated calculation, without the \$2M, is set forth in the fifth

¹¹ Id.

¹² CCU Resolution No. 2015-66, adopted December 10, 2015, at p. 2.

¹³ See "Monthly Payment Schedule-Aggreko", attached as Exhibit "2" to the PUC Counsel Report.

column on Exhibit 1 to the Supplemental PUC Counsel Report [W/O \$2M Updated Effective 2/01/2016].

13. Should GPA subsequently receive insurance proceeds for fuel costs related to the Cabras explosion, it will then apply such proceeds to the LEAC.
14. This proposed LEAC factor represents a 9.2% decrease in the total bill and a 17.4% decrease in LEAC for a residential customer utilizing an average of 1,000 kilowatt hours per month. The average monthly decrease for such residential customer would be \$18.26.¹⁴

ORDERING PROVISIONS

After carefully reviewing the record in this proceeding, having considered the LEAC Filing of GPA and the PUC Counsel Report, and after discussion at a duly noticed special meeting held on January 25, 2016, for good cause shown and on motion duly made, seconded and carried by affirmative vote of the undersigned Commissioners, the Guam Public Utilities Commission hereby **ORDERS** that:

1. The current singular LEAC factors are hereby adjusted effective February 1, 2016, as shown in the following table:

LEAC	
<u>Delivery Classification</u>	<u>\$ per kWh</u>
Secondary -	\$ 0.086613
Primary - 13.8 KV	\$ 0.083997
Primary - 34.5 KV	\$ 0.083755
Transmission - 115 KV	\$ 0.082724

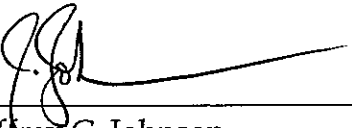
This change represents a 9.2% decrease in the total bill for a residential customer utilizing an average of 1,000 kilowatt hours per month (\$18.26 per month).

2. GPA should file for a change in the LEAC factors to be effective August 1, 2016 on or before June 15, 2016.
3. Should GPA subsequently receive insurance proceeds for fuel costs related to the Cabras explosion, it will then apply such proceeds to the LEAC.

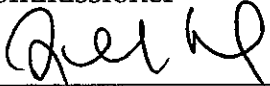
¹⁴ Exhibit 2 to the Supplemental PUC Counsel Report.

4. 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.

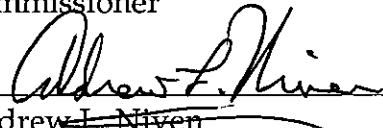
Dated this 25th day of January, 2016.



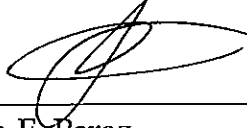
Jeffrey C. Johnson
Chairman

Joseph M. McDonald
Commissioner


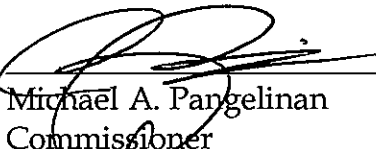
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