

GUAM PUBLIC UTILITIES COMMISSION
REGULAR MEETING
July 28, 2016
SUITE 202, GCIC BUILDING, HAGATNA



MINUTES

The Guam Public Utilities Commission [PUC] conducted a regular meeting commencing at 6:50 p.m. on July 28, 2016, pursuant to due and lawful notice. Commissioners Johnson, Perez, McDonald, Pangelinan, Montinola, Cantoria 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 May 26, 2016. 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 GTA Docket 15-06, GTA's Petition for Rehearing, ALJ Recommendation and Proposed Order on Rehearing. Legal Counsel Horecky indicated that he had served as Arbitrator/ALJ in this matter. The Commission previously ruled on February 25 that GTA had a contractual obligation to continue to provide dark fiber under the ICA contract for the remainder of the term. GTA requested a rehearing. The ALJ recommended a rehearing, as he believed there were issues concerning interpretation on the ICA that needed to be argued more extensively. The parties were given a full opportunity to address their positions.

The ALJ conducted a one day rehearing on the matter. Witnesses, testimony and exhibits were presented by both sides. Section 8.1 of the ICA contains two provisions which are the root of the controversy here. The first provides that "GTA shall provide PDS with access to unbundled dark fiber IOF in accordance with and subject to the rates, terms and conditions provided in the pricing attachment." This first sentence of Section 8.1 of the ICA is an unconditional obligation. The second applicable provision in Section 8.1 states that "for the avoidance of any doubt notwithstanding any other provision of this agreement, a GTA tariff or otherwise, GTA shall not be required to provide and PDS shall not request or obtain dark fiber transport that does not connect a pair of GTA UNE wire centers." One provision indicates that GTA has an unambiguous unconditional obligation to provide dark fiber IOF to PDS in accordance with the pricing attachment, and the second provision indicates that, under certain circumstances, GTA does not have to provide dark fiber.

Looking at the history of the ICA since 2006, the PUC has continually ordered GTA to provide dark fiber to PDS at 19 colocation centers. In 2010, the parties again agreed in the ICA that dark fiber IOF would be provided. From 2010 to 2014, GTA provided dark fiber IOF to 19 facilities in accordance with the first sentence of §8.1. However, as of 2010, only two of the dark fiber lines connected a pair of wire centers. 17 of the facilities agreed to by GTA and PDS in 2010 were not connecting a pair of wire centers. Remote service centers, which had previously been wire centers, were discontinued even before the first ICA in 2006. From the first ICA to the present time, GTA has provided dark fiber IOF to 17 facilities that are not connected by a pair of wire centers.

In the first sentence of §8.1 of the Network Elements Attachment, GTA has agreed in each successive ICA that it would provide dark fiber IOF regardless of the fact that dark fiber did not connect a pair of wire centers. The three ICAs are the subject of arbitration Orders. This arbitration is binding upon the parties. GTA did not appeal any of these arbitration awards. In August 2014, GTA agreed in §8.1 to two provisions, the first indicating that it would provide dark fiber IOF to PDS, and the second indicating that if it didn't connect two wire centers, GTA does not have such obligation. §8.1 is ambiguous. If you accept GTA's view that the second clause of §8.1 removes any obligation to provide dark fiber IOF, the first sentence is essentially deleted from the contract. That sentence says that GTA does have to provide dark fiber IOF and it contains no restriction or limitation concerning connecting a pair of wire centers.

If GTA's interpretation is correct that the second sentence obviates the obligation in the first sentence, there would be the deletion of a provision of the contract that the parties agreed to. The ALJ does not feel comfortable striking a different deal than that which the parties agreed to, or to deleting a provision of the contract.

GTA argued that it did not agree to provide dark fiber IOF. All three ICAs contain the provision that it will provide dark fiber IOF. The Pricing Attachment in Exhibit A, includes a clear requirement that there would be dark fiber at 19 colocation centers. There is a specific charge for dark fiber IOF provided in the Pricing Attachment. When one combines §8.1, the Pricing Attachment, and Exhibit A, it is undeniable that GTA agreed to provide dark fiber IOF. The relevant date for contract interpretation of the intent of the parties is the date that the contract was entered into, August 10 or 11, 2014. As of August 10 or 11, 2014, GTA was providing dark fiber IOF to 19 facilities. The parties knew that dark fiber IOF would be provided, both before the Third ICA was signed, as well as thereafter. As of August 10, to the present, GTA has provided dark fiber IOF to 19 facilities in accordance with Exhibit A. When the parties signed the agreement, the third ICA, they intended that GTA would continue to provide dark fiber IOF for the three year term of the contract. GTA promised, unconditionally, to provide dark fiber IOF for the three year term of the third ICA, regardless of whether such fiber connected wire centers or not. The first sentence is unconditional.

The issue is how to interpret the differing sentences of §8.1 together. This is a case of ambiguity as to how the two different provisions are applied. In the second sentence of §8.1, the "avoidance of doubt" provision does not apply to the first sentence of §8.1. The parties had already agreed that dark fiber IOF would be provided in the first sentence and to what facilities it would be applied. The second sentence, the avoidance of doubt clause, does not affect the duty of GTA in the first sentence. The second sentence refers to the fact that GTA shall not be required to provide dark fiber. With regard to the first sentence of §8.1, GTA was not "required" to agree to provide dark fiber IOF. It did so voluntarily and agreed to provide it to 19 wire centers.

The second sentence is not applicable because GTA was not "required" to provide dark fiber IOF. The "avoidance of doubt" clause indicates that it is applicable "notwithstanding **any other provision** of this agreement...." That likely means that such clause refers to provisions other than obligations established in §8.1. Such clause means that it would apply to a new request from PDS for dark fiber that did not connect a pair of wire centers; however, it was not intended to abrogate or result in the deletion of the agreement that GTA had already made in the first sentence.

Also relevant to this issue is the course of conduct of the parties over the history of the ICA. Where contract provisions are ambiguous, course of conduct dealings may be considered. Over the entire term of three ICAs, GTA continuously agreed to provide dark fiber to facilities that did not connect a pair of wire centers. The ALJ is entitled to consider evidence under the PUC rules that might not be admitted under the technical rules of evidence for a court. The ALJ does not find GTA's waiver argument to be compelling. Section 1.4 of the Contract does not appear to be applicable; Section 48 does apply to the first sentence of §8.1. That provision can't be waived. It is a part of the contract that the parties agreed to. On August 11 GTA agreed that it would provide dark fiber to 19 facilities whether they were wire centers or not.

With regard to billing, GTA attempted to change the billing structure to PDS and basically increase the rate for dark fiber about six times, from roughly \$8,600 to \$54,000 per month. However, the testimony showed that GTA's bill was at best an "estimate." GTA does not really even know at present what service PDS would use, OC1, OC3, or OC12. PUC has approved certain rates for commercial services, but it has never determined or approved the application of one of the commercial rates in the tariff to PDS in this case. GTA has admitted that its billing is only an estimate, and that it does not know what services are needed now by PDS.

The ICA, §1.4, also provides that no waiver, amendment or modification shall become effective unless it is formerly filed with and approved by the Commission. This section indicates that GTA cannot amend the contract to remove its obligation to provide dark fiber IOF unless it first comes to the PUC and obtains approval from the PUC to delete the first sentence of §8.1. There is no amendment by operation of law. That interpretation is also supported by §4.5, which indicates that if a party believes that a

provision of the ICA has become invalid or unenforceable, it is required to promptly renegotiate that provision with the other party and amend the agreement to make such a mutually acceptable provisions in the agreement as may be required to conform to applicable law. GTA did not follow the approach required by §4.5 of the ICA.

Although GTA did change its network infrastructure in January 2015 to one wire center, there is nothing in the ICA which suggests that such change automatically alters the first sentence of §8.1. Nearly all of the facilities were not connecting wire centers even before GTA changed its infrastructure in January 2015. The network change does not affect GTA's obligation. The ICA is for a three year term and must be upheld.

The Order prepared for the Commissioners traces the history of this proceeding and the original PUC Order which upheld the contractual obligation. That Order would now also be upheld. The primary finding is that GTA has a continuing obligation under §8.1 of the third ICA, Exhibit A and the Pricing Attachment to provide dark fiber IOF to PDS at the 19 colocation facilities for the remainder of the term of the third ICA. This ruling would affirm the February 25, 2016 Order of the PUC and make such Order "final."

The last remaining issue is regulatory fees. The ALJ recommends that the regulatory fees in this matter should be split between the parties; GTA prevailed on some issues, PDS prevailed on others. The holding in the February Order should remain in effect that both parties would share in the expenses of this arbitration proceeding.

The Chairman thanked ALJ Horecky and gave the parties an opportunity to address the Commission. Elyze Iriarte, Attorney for Teleguam Holdings thanked the Commission for entertaining these issues. The PUC could, if it requires a full presentation of the parties, allow the parties to do so at its next meeting. If that is not possible, GTA will review whatever Order the PUC issues and then decide whether to pursue any remedies. GTA recognizes that it did have a contractual obligation to provide dark fiber IOF to PDS when there were two wire centers. However, when it upgraded its network to save energy and to benefit the public, there was a collapse of the switch which resulted in there being only one wire center. The parties again started to look at the language in §8.1. GTA does not agree with the statement that it argued it never had an obligation to provide dark fiber IOF.

It is, however, tempting to clarify what its obligation is now that there is only one wire center. Both the definition of dedicated transport and §8.1 say that dark fiber IOF only exists if there is a pair of wire centers. That is no longer the case. That is something that the PUC recognized in its February Order. There are at least two provisions of the ICA indicating that GTA is no longer obligated to provide dark fiber IOF; it no longer exists. In contractual analysis, if the intent can be derived from the four corners of the document, you do not need to look at outside circumstances. GTA does not believe that there is any ambiguity in §8.1. The intent of the parties is clear in §8.1. In §48 of the ICA, it indicates that a failure or delay by a party to enforce any provision of the agreement may not be construed to be a waiver of such provisions, rights, remedies or options. Even if GTA had been doing something since 2006, that is not a waiver

according to §48. If GTA decides that it is now time to enforce §8.1 because there is no longer a pair of UNE wire centers, Section 48 kicks in even though in the past GTA had not realized it was doing so in its prior agreement. If the PUC is inclined to adopt the ALJ's Order, GTA requests that the PUC address the issue of a fourth ICA, which negotiations will be starting pretty soon as the current ICA expires on August, 2017. The Order should address that the decisions do not bind GTA in the future ICA to a position that no longer exists. The PUC has already found that there is only one wire center. GTA does not want to be bound in the future ICA to a decision that it does not agree with and thinks should be renegotiated privately between the parties. At this point GTA has other uses in mind for the fiber. PDS is like a holdover tenant whose lease has expired. It doesn't want to leave, to build a new house, or look for another landlord. PDS has not started building. That is why the Order will not be binding on negotiations.

Mr. John Day of PDS indicated that GTA had committed to providing PDS with dark fiber IOF since the very first ICA. The network change that GTA recently made has no impact on the majority of the dark fiber that it was providing PDS. GTA was required to provide dark fiber IOF because they voluntarily agreed to do so. GTA never sat down with PDS and engaged it concerning the issue of phasing out dark fiber or moving away from dark fiber. GTA tried to implement a change on its own arbitrarily and to ram it down PDS' throat. The PUC is here to protect competition. That is what the Order does.

PDS hasn't built out dark fiber IOF as a replacement because it has a contract with another carrier to provide it with those services. PDS supports the proposed Order and hopes that the Commission will adopt it. This issue is for ICA No. 4, not ICA No. 3 because dark fiber IOF was already agreed to. ICA No. 4 will begin in one year when this issue will be resolved.

ALJ Horecky indicated his view that this Order would not bind anything on the fourth ICA. Each arbitration decision addresses the ICA that is before it. GTA indicated that it realized it was providing dark fiber IOF in error, which it really did not have to. It discovered that after the network infrastructure change. The problem is that GTA already agreed to provide dark fiber IOF in the first sentence of §8.1. Just because one discovers after it agreed to do something that it acted in error does not mean that it is entitled to change course. An agreement has already been made. When GTA agreed in August of 2014 to provide dark fiber IOF for 19 facilities, 17 of those facilities were not connecting wire centers. The ALJ does not support a continuance as this matter has been fully addressed by the parties.

Commissioner Pangelinan asked whether there was a difference between dark fiber IOF and dark fiber transport. Ms. Iriarte indicated that GTA was currently providing dark fiber transport; it is not technically dark fiber IOF which connects a pair of UNE wire centers. That doesn't exist. Commissioner Perez asked whether GTA was still able to

provide dark fiber service which is needed by PDS even with the one wire center still up. Ms. Iriarte indicated that dark fiber IOF is not technically a service. It is a transmission facility. GTA does not offer that service to anybody else. Commissioner Perez indicated that GTA already set precedence by providing this service. The Chairman asked Mr. Day if, for the upcoming fourth ICA, the parties don't come to an agreement on this dark fiber, did PDS have other alternatives for being able to stay in business. Mr. Day indicated that the parties can negotiate any issues with four to five months of negotiation. If issues can't be resolved, the PUC will make decisions through arbitration. Dark fiber may or may not be resolved. PDS has alternatives. He is taking steps now to re-deploy its own fiber optic facilities to provide additional capabilities in the core part of the island. That may reduce PDS service area to the further ends of the island. It will cover the central portion of the island and the norther portion. In the timeline of ICA No. 4, PDS will have alternatives if dark fiber is not available that will not be debilitating to its operations.

Commissioner Pangelinan is also struggling with §8.1. He indicates however, that after reading the first section, it goes on to impose conditions or qualifications on the first sentence. Dark fiber is only provided where existing facilities are available, and only to the extent required by applicable law. GTA is not required to provide it if it doesn't meet the definition of dark fiber transport. He is not convinced that the section is ambiguous. Commissioner Pangelinan would generally defer to the ALJ as he has spent hours reviewing this proceeding.

The ALJ agrees that, in reading either sentence in isolation, they do not appear to be ambiguous. However but to try to resolve them together, that is where the ambiguity arises. The parties can always agree in an arbitration to do more than the law requires. Even if the contract says GTA does not have to provide dark fiber that doesn't connect a pair, it can obligate itself to do more than the law requires. Commissioner Pangelinan felt that there is a way to read the two provisions together. But there could probably be another way to interpret it too. The ALJ did not feel, as an arbitrator, comfortable in deleting the first sentence from §8.1 of the contract. The Chairman indicated that the number of wire centers were decreased from three to one after the contract was signed. At the beginning of the contract all the provisions were agreed to as pricing. He feels that the time to really revisit this issue would be at the time of the next contract, which is only a year away.

Commissioner Niven indicated that he understood Commissioner Pangelinan's point and thought that it was a very close question; the whole paragraph in Section 8.1 taken as a whole could be read to mean that GTA shall provide dark fiber except that GTA shall not be required to provide it where there are not two wire centers. However, he appreciated the ALJ's analysis and indicated that it was a close question. Commissioner McDonald indicated that the Commission was saying that this Order in ICA No. 3 does not in any way bind ICA No. 4 and that such language perhaps be put in the Order. ALJ Horecky concurred that such language could be placed in an Order, and that it did

not appear that an Order on the third ICA would bind the parties on the fourth ICA. The ALJ added that the Commission could indicate it in the Order that whatever is ruled on the third ICA would not bind GTA to continue providing dark fiber. PDS President John Day indicated that was his understanding, that each new ICA is "a plain sheet of paper." Counsel Iriarte for GTA emphasized her fear that this docket could affect the negotiations on the next ICA and bind the contents of the next ICA. The Chairman asked Ms. Iriarte if she felt more comfortable if language was added to the Order that it is not necessarily binding for the fourth agreement. Ms. Iriarte indicated that was GTA's suggestion.

Commissioner McDonald moved to add the language in the Order for this Docket 15-06 that this Order on ICA No. 3 does not bind either party for negotiations for ICA No. 4. All other provisions of the Order would remain the same. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the Proposed Order with the addition that said Order would not bind the parties in their negotiations on ICA No. 4. Commissioner Pangelinan abstained on the ground that he was not prepared to vote. The approved Order is made *Attachment "B"* hereto.

3. Guam Waterworks Authority

The Chairman announced that the next item on the Agenda was GWA Docket 16-03, Petition for Approval of Procurement Fuel for GWA Transportation Fleet, ALJ Report, and Proposed Order. ALJ Alcantara indicated that the matter came before the Commission pursuant to GWA's request for procurement of Diesel and Gasoline fuel for its transportation fleet. In its Petition GWA submits that its existing fuel fleet contract expires at the end of September, and that it must issue a new IFB for a new contract before such expiration. GWA believes that procurement for a multi-year supply contract with fixed terms and variable annual costs allows GWA to obtain the needed fuels at the lowest possible cost.

The estimated annual cost for the fuel is about \$300,000. The new cost for the three year contract plus two yearly options for renewal could potentially cost GWA over \$1M for the next five years. GWA estimates that it will purchase approximately 50,000 gallons of diesel fuel per year, and approximately 115,000 gallons of automotive gasoline a year. The ALJ recommends that the PUC approve GWA's Petition to issue the IFB. Upon motion duly made, seconded and unanimously carried, the Commissioners approved GWA's Petition to issue an IFB for fuel for the transportation fleet and the Order made *Attachment "C"*.

The Chairman announced that the next item of business was GWA Docket 16-04, Petition for Approval of Use of 2015 Bond Funds, ALJ Report, and Proposed Order. ALJ Alcantara indicated that in November 2015, GWA had petitioned PUC for approval to issue up to \$160M bonds. In December 2015, PUC approved GWA's issuance of bonds. When it closed on the bonds, GWA was able to secure about \$140M for capital improvement projects, which included an additional \$11.5M in 2015 bond funds that

are made available to GWA. On April of this year, GWA petitioned the PUC for approval of the use of the additional \$11.5M in bonds. GWA now seeks PUC approval to program the remaining \$128M in bonds.

The bond funds will fund 20 potable water projects which include tank replacements and repairs in Piti and Hyundai, Yigo, Mangilao, Astumbo, Agana Heights, and Barrigada; as well as needed deep wells, existing wells, new fire hydrants, and continuation of GWA's meter replacement program.

\$28M will be for seven wastewater projects including: wastewater system planning, wastewater system replacement allocation, sewage pump station upgrades, planning and design for pneumatic release of STP improvement project, treatment facility of pneumatic Merizo STPs, pneumatic Merizo STP replacement, and Baza Gardens STP replacement. The bond proceeds will also fund about \$8.75M for five electrical engineering projects including upgrades to water wells and water booster pump stations, completion of Phase 3 of the SCADA program and Phase 4 as well. The bond proceeds will also provide funding for four miscellaneous projects including construction costs for, and renovation of, its laboratories, land survey use and improvements throughout the utility, improvements to its information and technology infrastructure.

The ALJ recommends that the PUC approve this request for the projects identified in GWA's recent CIP. The Order includes a requirement that GWA submit to PUC a report detailing the status of all federal stipulated order projects including timeline of events and deadlines for outstanding projects. GWA should also be required to report to PUC concerning the status of all of its capital improvement projects including timeline of events and deadlines for outstanding projects. GWA should further be required to submit to the PUC an accounting for the remaining bond funds from prior bond issues.

GWA GM Miguel Bordallo then introduced the new GWA Attorney, Kelly Clark.

The Chairman asked whether GWA saved \$2.5M on the Piti and Hyundai tanks. The price for those went down from about \$8M to \$5.5M. GM Bordallo indicated that the savings are from construction on some of the existing tanks that are ongoing. The Chairman indicated to GWA CFO Cruz that the Commission had previously given extra money to GWA on a rate increase to build up both leak detection and fire hydrants. It asked for a progress report on these two items. GM Bordallo indicated that fire hydrants had been purchased. GWA is now prioritizing the implementation and installation of those fire hydrants. GWA is putting together a scope of work for those hydrants. In regard to leak detection, GWA continues its efforts at fixing the leaks. GWA has brought on additional staff to augment its pressure line unit. Resources are being improved to bring the pressure line unit back into leak detection to get the program moving. There is a shortage of personnel. GWA is picking up some additional leak detection equipment.

The Chairman noted that not a lot of money seemed to be spent on leak detection. GM Bordallo indicated that the money spent on repairing lines is placed under the line replacement project. ALJ Alcantara indicated that \$11.5M approved by the PUC is being used for leak detection for the prior years. The Chairman asked whether GWA would be back up to full new water meters by about 2018. GM Bordallo indicated GWA was close to being there now. GM Bordallo indicated that new system meters were being established with a system to track regular water moving through the system. The focus is on problem areas. The Chairman asked whether they were up to date on new meters on the production wells. GM Bordallo indicated that the meters had been replaced at our production facilities but GWA was not done with that yet. The Chairman asked whether GWA was working with GPA to have generators at all the wells functioning up towards 100%. GM Bordallo indicated that it was. GPA has done a complete system report of the GWA facilities and started with the corrective repairs for the system. There are not yet fully functioning generators. GWA is very close to being fully restored. GWA is doing capital improvement projects to identify generators that are going to be replaced.

Commissioner Perez asked about the wastewater treatment plants whether GWA was meeting the standards. GM Bordallo indicated that GWA was achieving compliance with the primary treatment standards and permit limitations for Agana and Northern Districts. GWA was in discussions with USEPA about upgrading Northern District wastewater treatment plant. GWA submitted a grant application to DOD, Office of Economic Adjustment, to upgrade that plant completely. The application is being reviewed. The funding for those grants has been provided to Congress. If it's approved, GWA will begin its efforts to upgrade the Northern District to secondary treatment.

Commissioner Perez asked what amount of funding GWA was seeking. GM Bordallo stated that the total funding for all of the projects is in excess of \$100M. The initial funding request will only cover a portion of the design. About \$60M is being requested to cover the design portion through the Northern District and for design build and work for the intercept for lining that wall. The Chairman asked GM Bordallo concerning the likelihood that, in the future, the Agana wastewater treatment plant would be moved out of Agana. GM Bordallo was not sure if that would happen in his lifetime. EPA is requesting that Agana also be taken to secondary treatment. Commissioner Niven asked GM Bordallo if GWA was already providing to the CCU the information requested in the reporting requirements of the Proposed Order, and whether GWA could provide those reports to the PUC. GM Bordallo indicated that on the first two items, GWA was providing them to CCU on a regular basis. CFO Cruz indicated that in its monthly financial statements, GWA was providing information on the prior bond issuances to the CCU. GM Bordallo indicated such information could be provided to the PUC precisely in two pages.

Commissioner Perez asked whether there was a Maui well other than the one in Tumon. GM Bordallo stated that he was only aware of the Maui well that goes under the Northern part of Guam, under the Airport. It has not been in service for many years. That well is being studied from the masterplan update. GWA has taken over the Tumon well since June 10th and it is now producing about 1.1M gallons a day to the distribution system. It has provided beneficial impacts to the customers. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the programing of the remaining \$128M in the 2015 bond issuance and adopted the Order made *Attachment "D"* hereto.

The Chairman announced that the next matter of business was GWA Docket 16-05, Petition for Approval of Contract with Mega United for Compliance Lab Construction Project, ALJ Report, and Proposed Order. ALJ Alcantara indicated that GWA's current lab space has been dedicated for a hazardous work place by the Guam Occupational Safety and Health Division as well as the U.S. OSHA Guam Office. GWA engaged consultants to design a new lab to replace the existing laboratory. GWA issued an invitation for bids for services related to the construction of the new GWA compliance laboratory.

Upon a review of the bid, Mega United was selected as the most responsive bidder. The contract with Mega involves construction of a new 5,000 square foot laboratory adjacent to GWA's Upper Tumon Office. Mega United is required to complete the project within 300 days from the date of execution of the contract. The contract contains the usual terms of GWA's construction contracts. The total cost is slightly over \$2M, however, the CCU Resolution authorized a 10% contingency on top of the contract price for a total cost of about \$2.52M. The funding source will be 2013 and 2015 bond funds.

Commissioner Perez asked whether there was normally a 20% contingency with contracts. ALJ Alcantara indicated that there was. Commissioner Montinola indicated that GWA was asking for a 10% contingency, but will that mean it could spend another additional 20%. Commissioner Perez indicated that should be made clear in the Order. ALJ Alcantara suggested that the contract price be approved without the additional 10% and that the language allow the normal 20% contingency. Commissioner Montinola moved to proceed with the ordinary 20% contingency on the contract and to approve the amount of \$2,092,385. The Chairman asked whether the laboratory equipment in the structure was included or just the building. GM Bordallo indicated that it was just the building. After discussion, Commissioner Montinola moved to clarify, to change the total from \$2,520,083.50 to \$2,092,095 and strike the 10% contingency allowing for the PUC 20% contingency in the contract review procedure. Upon motion duly made, seconded and unanimously carried, the Commissioners authorized expenditure of \$2,092,095 for the compliance laboratory under the Mega United contract and adopted the Order made *Attachment "E"* hereto.

4. Guam Power Authority

The Chairman indicated that the next item of business was GPA Docket 15-17, Review of Complaint of First Green Solutions, ALJ Report, and Proposed Order. ALJ Alcantara indicated that the matter was before the PUC pursuant to First Green Solution's Complaint against GPA. This contends that GPA has inaccurate and inconsistent billing practices to customers having power factor ratings that exceed the established power factor rate of 0.85 as set forth in GPA's tariff. GPA indicated that the current smart meters directly read kWh, kWh and kW, and that the smart meter readings for kWh and kWh are sent to its customer care and billing software, and that the power factor is then calculated by the software. GPA further indicated that if the power factor percentage was below the 83% or above 87%, the CCMV software calculated a penalty for less than 83% or credit if the factor were above 87% pursuant to rate Schedule P. First Green's Simplified Complaint rejected GPA's position that kWh is "an actual measurement done by the meters." First Green contended that kWh is calculated internally in the meter. First Green maintained that all power utility companies provide only voltage and current to their customers, which are measured as kWh, and that no utility provides actual kWh as that has to be calculated to its quantity.

On March 31, 2016, the PUC ordered that GPA's smart meters be tested by L&G (Landis and Gyr) to determine whether the meters were operated accurately. The presentation was held at GPA on May 11, 2016 by representatives of L&G. It presented the history of the company and what the meters measure. At the presentation, L&G stated that the meters measured electricity in volts and amps, and that based on these readings, the meters automatically generated measurements, for instance, watts, kWh and kWh. These measurements cannot be altered by the meter, meaning that GPA has no way of programming the meter's readings. Historically, any errors in meter readings are within the 2%.

Based on the administrative record before the Commission, the ALJ indicated that he made the following findings; that regarding whether the GPA smart meters were accurately taking measurements of calculations, there does not appear to be any evidence indicating that the smart meters are either taking inaccurate measurements or erroneously calculating kWh and kWh. Such calculations cannot be altered in a L&G meter. GPA is not able to alter how the measurements are taken or calculated. Generally, the smart meters appear to be operating precisely how they are engineered to operate, and any discrepancies appear isolated. In response to the January 25 PUC Order, GPA states that the current smart meters directly provide readings for kWh, kWh and kW. There is no evidence to suggest that GPA is not in compliance with its tariff. Smart meters takes measurements as well as generate calculations and those readings are sent automatically from the smart grid to customer care and billing software, which calculates the power factor using the formula kWh divided by kWh. The record demonstrates that GPA's billing calculation and process generally comply with the requirements of Schedule P.

Based upon the information presented by the parties and the administrative record, the ALJ recommends that the PUC dismiss First Green's Complaint. However, it is also recommended that PUC investigate the fairness or effectiveness of the tariff Schedule P, which was established in March of 1984. The tariff should include incentives for customer efficiency and better compensate rate payers to invest in power efficiency technology.

Mr. Mark Quenga, Operations Manager for First Green Solutions indicated that he wished to make his statement to the PUC. Mr. Quenga requested that the PUC Commissioners reject the conclusion of the ALJ that GPA is following the tariff as written and that the information contained in First Green's complaint has been verified as true of the technicians of the smart meter. kWh is not a measured value but a value that is derived from measuring volts and amps multiplied by the actual power factor that has derived from the power meter itself. Disregarding the verbiage of the tariff or regarding the basing of demand and energy charges on an average power factor of 0.85, GPA is unfairly charging customers who have taken steps to increase the power efficiency and offering credits that are supposedly inadequate. Not only large power customers are affected, but also customers with a smart meter, residential, small business and large businesses who have taken steps to increase their power efficiency or the power factor.

It is the value of kWh that rises with the power factor, not the actual usage of power by the consumer. This is evidenced by the fact that the value of kWh remains constant despite the rising power factor in kWh. First Green has asked for resolution to include restitution for the customers wronged by the billing practices of GPA since the inception of the smart meter. It has asked GPA to comply with the written tariff and change the current billing practice to include the average power factor and the formulation of kWh. The Commission has enough information to make a fair resolution. To not do so is to retard progress towards reduction of Guam's use of carbon based energy by those who have increased their efficiency within homes, businesses and government agencies.

GPA Legal Counsel Botha made a statement on behalf of GPA. First Green is really seeking to change the tariff and GPA procedures. The Order should be adopted. Should the Commission deem it appropriate for an appropriate rate study to determine not only this tariff but other tariffs that have been in effect for the same 30 year period, that should be changed to benefit all of the community and public consumers, and rate payers, not just a particular group that has its own interest at heart.

The Chairman indicated that the L&G presentation was a good one. At the end of the meeting, the Chairman concluded that there was not a problem with the meters per se. There is probably a problem with a 30-year old tariff that would need to be revisited specifically for large power customers. Schedule P probably needs to be opened up. Whoever is increasing efficiency needs to be rewarded properly for it. However, the

Chairman does not believe there is a problem with the smart meters after that meeting. He is comfortable with the explanation given by the L&G people.

Commissioner Niven indicated that he did not have a problem with the Proposed Order but suggested that the Commissioners provide guidance about how to proceed from here. In looking at the tariff, the Commission has not set out any timetable or other procedure for that. Commissioner McDonald asked whether the tariff has been examined. The Chairman indicated that it had not.

Mr. Quenga felt that the original factors of the tariff understood that power factor plays a part in the formulation of kWh that those who increase their power factors and their efficiency will be hurt through demand and energy charges if such are not based on the average power factor for the region. That is why the tariff includes statements on the selection of the power factor. The Chairman indicated that the tariff was likely written for analog meters. The Chairman indicated that, at the presentation, he understood from the analysis that kWh can be increased by knocking down the reactive power. It does not necessarily swing to be shorter but can swing to be longer too. Mr. Quenga indicated that it was a value that increases not the actual power consumption, not the actual power consumption of the users. It is the value of kWh that they use to bill that consumer.

The Chairman indicated that the Commission would take a look at other communities in the United States to see what they are doing with large schedule commercial accounts and the new digital meters. The Commission will look at how the other states are measuring power. The present tariff is not rewarding enough to people who are improving their efficiency. Mr. Barry Wilson, associated with First Green, asked who would lead a study for determining what's going on in the mainland. The Chairman asked Legal Counsel to comment. Legal Counsel indicated that consultants are expensive, and normally parties would split the cost. Mr. Wilson indicated he was not speaking of a consultant, but of an independent party. Counsel indicated that even with an independent party, someone has to pay that party.

Mr. Wilson suggested an electrical engineer. Counsel discussed various ways in which such costs could be handled. Mr. Wilson indicated to the Chairman that it was not First Green that had suggested that the study be done on the tariff. First Green is not saying that there needs to be study. The Chairman suggested to the Commission that it ask GPA to investigate first using its consultant Black & Veatch. GPA Legal Counsel Botha indicated to the Chairman that it sounds like a rate proceeding to him. Such proceedings have notice requirements. It is costly. Such a study for a single tariff should not be examined in isolation. The Chairman thinks GPA could look at this group in isolation first. The PUC might then find that it is a bigger project. Now GPA could isolate and focus on Schedule P itself. GPA Legal Counsel indicated the cost could be half a million to a million dollars. GPA Counsel did indicate that Black & Veatch could at least take a look at the schedule first.

Commissioner Pangelinan asked why GPA could not examine the tariff Schedule P in isolation. GPA Counsel Botha indicated that there are subsidies between rate classes. i.e. commercial customers subsidize residential customers and so does the government. If GPA looks at it in isolation, there are other commercial customers, such as Schedule J and G for smaller commercial customers. If a large credit is given to Schedule P customers, the amounts would have to be obtained from other class of customers. Commissioner Niven suggested that a revenue neutral Schedule P study could be done so that it does not affect other rate classes one way or the other. Commissioner Niven moved to amend the Proposed Order to include a requirement that GPA perform a study of Schedule P that is revenue-neutral and focuses on the power factor. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the Order dismissing First Green's Complaint, but require that GPA conduct a revenue-neutral study of Schedule P in a revenue-neutral fashion that seeks to more appropriately reward customers for energy efficiency savings. The Commissioners adopted the Order made *Attachment "F"* hereto.

The Chairman announced that the item for consideration was GPA Docket 16-05, GPA's Petition for Approval of the Navy Lease for the 45-Megawatt Solar PV Development, PUC Counsel Report, and Proposed Order. The PUC Counsel indicated that, technically, GPA's application was only for the Commission to approve a lease with the U.S. Navy for approximately 164 acres of federal land. This is a contract review matter. However, the Commission needs to examine the substance a little more to understand why GPA is requesting approval. If approval is given for the lease, it will lead to solar projects being implemented and issues concerning who will pay for the solar power, how it will be paid for, and whether, for example it will be paid through LEAC.

The lease would be 37 years for 164 acres including five sites, parcels of lands. The purpose would be for GPA to act as a construction manager or agent for the Navy to develop solar projects. On each of the five parcels would be different sized solar projects. In terms of megawatt production, the projects would add up to 37 megawatts. GPA would serve as an engineering procurement and construction partner, like a manager, for the projects. It would put the bids out for the project. GPA would select the contractors to do each of the solar projects. It would undertake review of the contract developers' work on each project, on how the developer interconnects with the transmission lines to the nearest power station, the upgrading of the substations, and even transmission line upgrades. This is unusual in that GPA would become an agent or contractor for one of its customers. GPA responded to Navy's request for qualifications in 2015 and was selected by Navy to lease out the land and to build the solar renewable projects.

The Lease which GPA seeks to enter into with Navy provides for a schedule of payments. The Schedule basically provides for progressive payments, with \$1.2M in the first year as lease payment up to over \$2M in the 37th year. GPA may not have to pay such payments for the first three years if it satisfactorily performs all of its tasks,

such as procuring contractors for the solar projects etc. It is even possible that over the entire 37 years of the Lease, there won't be actual money being required to be paid by GPA. This is referred to under the contract as "in-kind consideration." This consideration will involve GPA's procuring developers for each of the solar projects, coordinating, managing and providing studies for the projects. However, if GPA does not follow through with its obligations, it could be required to make those lease payments, which of course would be passed on to the rate payers.

The current federal regulations require Navy to increase its renewable energy production up to 50% of its total. In the future, Navy could possibly procure up to 160MW of solar. Thus, the decision on this project may have implications for future Navy renewable solar projects. If the PUC approves this project, someone will have to pay for the power. Navy is currently the largest GPA customer which provides 17% of GPA's revenues. GPA wishes to be involved in the Navy solar projects, or otherwise GPA could lose at least some of the revenues that it presently receives from Navy. GPA has fixed costs, for debt service, cost of generators, employee cost, etc. If revenue from the Navy decreases, GPA will need to seek such revenues from other classes of customers. So, if private contractors are providing solar power for the island wide power system, there will be issues concerning interconnections for battery storage, and integration into the IWPS. GPA wishes to be in control of the process by which such renewable power is fed into the island wide power system. All of the power from the Navy solar projects will be fed directly into the island wide power system. The developers of each solar project will charge GPA a per-kilowatt hourly rate. The ultimate issue is how the power will be paid for.

At present the LEAC rate is determined based upon residential usage on fuel expenditures, only through civilians. The Navy is not included in LEAC. It has its own separate fuel clause under the utility service contract where it pays for its own fuel. For these solar renewable projects, Navy might not be paying for such power if its payment is coursed through LEAC.

GPA has satisfied Counsel's concerns regarding Phase 2 of its renewable projects. GPA is presently proceeding ahead with Phase 2 for an additional 60 megawatts of renewable energy.

The Chairman asked whether energy storage would be added to all of the renewable projects. GPA Legal Counsel Botha indicated that Phase 2 renewables project have gone out to bid. He is insisting that the bidders provide battery storage. GPA is in the process of amending its Phase 1 energy storage bid to include energy storage for the NRG solar plant, the plant at the Talafofo Substation. GPA is in the process of acquiring roughly an additional half-acre from the Chamorro Land Trust for this purpose. GPA is now insisting that any new large solar community development have batteries. GPA is, notwithstanding the Navy's future plans for solar development, at present still predicting a total not to exceed 120 megawatts of solar power for Phases 1, 2, & 3.

The Chairman asked GPA Counsel whether GPA would still hold the contractor responsible for hooking into the grid at the nearest substation for all of the Navy renewable projects. Mr. Botha indicated that it would. GPA would work with the contractors on building the lines, as most of the sites are at Big Navy. Developers will be able to use the transmission lines at the Orote Substation.

The PUC Counsel indicated that he was satisfied with GPA's progress on Phase 2 and that the PUC could now move onto Phase 3. The project is only the 37MW for now. Since then GPA has not really examined the need for the additional load of 37MW. An alternative to undertaking this project could be downsizing for GPA. Overall, Counsel feels that there are good arguments in favor of the 37MW renewable project with Navy. GPA will maintain control over the power going into the IWPS. This will assist GPA in maintaining its customer base. As previously indicated, the issue is how the cost will be paid for. GPA will be incurring costs, for consultants to investigate the integration of Navy renewables into the IWPS, the interconnection cost, substation costs, employee/procurement costs, and costs for management of construction and developers. However, Counsel does recommend that the PUC approve the 37MW project. The main reason is that GPA had earlier included this 37MW in its goal of 120MW of renewables. This project is in reality a part of the 120MW plan that GPA has had from the beginning. It was a part of the Integrated Resource Plan. Furthermore, the solar renewable power will benefit all customers in the IWPS, not just the Navy. Additional renewable energy could also reduce the need for conventional generation.

The cost issue is important. If the PUC approves this project, GPA must then undertake the solar projects, and, at the end, somebody must pay for them. They are all interconnected. That's why Counsel had addressed the issue of whether it is appropriate to pay for the solar projects through LEAC. Ordinarily energy costs are not placed in LEAC--LEAC is a fuel clause and involves fuel costs. However, the PUC did approve placing energy charges for the Dandan solar plant through LEAC. The monthly costs for the Dandan solar power are approaching \$900,000 a month and as much as \$11.5M per year. This will become a bigger issue down the road. If the PUC approves use of LEAC for this project, that could establish precedence for other projects. Overall, this project should be approved because it is a part of the original plan. It is appropriate to authorize payment of the solar power produced by the Navy projects through LEAC.

The Proposed Order would basically incorporate Counsel's recommendations, approve the project, authorize a pass through to LEAC of energy costs, approve the lease, require filing of the Final Lease with PUC, and require GPA to go in the contract review process with PUC for each solar project with the Navy.

GPA Counsel Botha indicated that GPA annual revenues from Navy are approximately \$61.5M per year; GPA produces 317 gigawatt-hours for Navy. If the Navy did this on its own, all the power produced would remain within the fence. If GPA did not receive

these revenues, it would have to gain them from somewhere else through a base rate increase. If a private developer does these projects, GPA does not receive any of the benefits. The costs would be spread out to the rest of the ratepayers. The Chairman indicated that, the fact that Navy has trust in GPA and is willing to work with it, keeps the door open for that avenue to eventually bear fruit with GWA.

Commissioner Perez asked how the lease fee for GPA was calculated. GPA Counsel Botha indicated that Navy does not ordinarily charge GPA for leases. However, the new rules now require that leases be "at market value." Navy had to put together an appraisal. The appraiser said that the property was worth a certain amount. The Tumon properties were valued very highly, and were later taken out of the project. Values on Navy land are less. As long as GPA provides the "in-kind consideration" Navy doesn't have to charge GPA. The offset is allowed. There is also a way that solar power could be isolated in the grid for the benefit of Navy. The additional cost to GPA will not be great.

Commissioner Perez asked whether GPA would be locked into this lease for 37 years. GPA Counsel Botha indicated that if the project does not take off, GPA can return the property to Navy. This will be at no cost to GPA.

Commissioner Niven stated he was not sure that the PUC needed to lock in the LEAC approach at this point. Neither the GPA Petition nor the CCU Resolution mentions LEAC or other cost recovery mechanism. It was suggested that paragraph 48 and Ordering Paragraph No. 4 be eliminated from the Order. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the Order made *Attachment "G"* hereto with the revisions suggested.

The Chairman announced that the next item of business was GPA Docket 16-10, GPA LEAC Filing, PUC Counsel Report, and Proposed Order. Counsel indicated that GPA was not requesting any change in the LEAC. The factor of \$0.086613 per kilowatt-hour would remain in effect for the next six month period. GPA used May fuel prices in setting the LEAC when it submitted its Petition. Counsel asked GPA to recalculate the fuel prices, and as of July 19, the average price per barrel for residual fuel oil has gone up from \$42.27 to \$45.00. GPA indicates that if the LEAC factor remains the same, it will have an under-recovery of \$4.6M at the end of the six month period. However, GPA itself intends to pay for the under-recovery of \$4.6M with insurance proceeds from the Cabras explosion. GPA has already received \$50M. There do appear to be funds available from the insurance proceeds to pay off the \$4.6M under-recovery so that the ratepayers will not be burdened with that.

GPA Counsel Botha confirmed that GPA had received \$50M from the insurers. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the Order establishing the LEAC rate for the next six month period, made *Attachment "H"* hereto.

Counsel indicated that there was one more matter not previously on the agenda, GPA Docket 16-11, GPA Petition for Approval for Macheche CT Repairs. PUC Counsel Report, and Proposed Order. Counsel indicated that this matter was expedited because the engine had failed. The repair cost is over \$2M. GPA needs the assistance because of the need to maintain adequate power supply. The Macheche CT is not operational now and has resulted in the loss of 22MW to generation capacity. The reserves for the system are only about 47MW. A GPA Borescope report indicated that there's damage to the rotor blades of the CT and that it needs a new engine. The new engine would cost \$2.7M. The funding source identified is revenue CIP funds. There are still sufficient funds in the CIP to pay for this repair. Counsel recommends approval. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the expenditure of \$2.7M for the Macheche CT Repairs and adopted the Order made *Attachment "I"* hereto.

4. **Administrative Matters**

Counsel indicated that the GWA Status Report on System Development Charges was only provided to the Commissioners for information.

Counsel stated that PUC Administrator is primarily responsible for preparing the Citizen Centric Report and has done an excellent job. She and Counsel worked together on this matter. It is required to be submitted for all entities of the Government of Guam to the Office of the Public Accountability. It indicates the matters which the PUC handled over the last year. Expenditure and revenue matters concerning the Commission are noted in the Report. Revenues were up for 2015 because assessments went up. Regulatory fees were slightly higher. 2014 and 2015 are fairly comparable. The Report has been filed with the OPA.

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



Jeffrey C. Johnson
Chairman

THE GUAM PUBLIC UTILITIES COMMISSION
REGULAR MEETING
SUITE 202, GCIC BUILDING
414 W. SOLEDAD AVE., HAGATNA, GUAM
6:30 p.m., July 28, 2016

Agenda

1. Approval of Minutes of May 26, 2016
2. Guam Waterworks Authority
 - GWADocket 16-03, Petition for Approval of Procurement of Fuel for GWA Transportation Fleet, ALJ report, Proposed Order
 - GWADocket 16-04, Petition for Approval of Use of 2015 Bond Funds, ALJ Report, Proposed Order
 - GWADocket 16-05, Petition for Approval of Contract with Mega United for Compliance Lab Construction Project
3. Guam Power Authority
 - GPADocket 15-17, Review of Complaint of 1st Green Solutions, ALJ Report, Proposed Order
 - GPADocket 16-05, GPA's Petition for Approval of the Navy Lease for 45 MW Solar PV Development, PUC Counsel Report, Proposed Order
 - GPADocket 16-10, GPA LEAC Filing, PUC Counsel Report, Proposed Order
4. Teleguam Holdings LLC
 - GTADocket 15-06, GTA's Petition for Rehearing, ALJ Recommendation, Proposed Order on Rehearing
5. Administrative Matters
 - Informational Filings
GWA Status Report for System Development Charges (2010-2016)
2015 PUC Citizen Centric Report
6. Other Business

ATTACHMENT A

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN THE MATTER OF:

Formal Complaint of Teleguam
Holdings, LLC, Regarding PDS Dark
Fiber Informal Complaint of October 23,
2015

) GTA Docket 15-06

) FINAL ARBITRATION ORDER UPON
) LIMITED REHEARING

INTRODUCTION

This is an Arbitration proceeding conducted pursuant to Rule 4(h) of the Commission's Implementation Rules in Connection with Interconnection Agreements between GTA and Competing Local Exchange Carriers and CMRS Operators (PUC Order, Docket 05-01, adopted August 13, 2007) (hereinafter the "Interconnection Implementation Rules"). It concerns a dispute between Teleguam Holdings LLC ["GTA"] and Pacific Data Systems Inc. ["PDS"] regarding the provision of Dark Fiber Inter Office Facility [also referred to herein as "DF-IOF"] at various colocation sites.

This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Order issued by the Administrative Law Judge ["ALJ"] herein on July 26, 2016, a copy of which is made Attachment A hereto. The Order addressed the "Limited Rehearing" conducted by the ALJ concerning GTA's Petition for Rehearing, and the resolution of the issues raised therein.

The PUC issued its initial Order in this matter on February 25, 2016. The Order incorporated the Recommendations of the ALJ dated February 18, 2016, and adopted the Findings of Fact and Conclusions of Law. The ALJ Recommendations were based upon an evidentiary hearing conducted on February 2 and 3, 2016. The PUC found in Ordering provision 7 that GTA had a continuing contractual obligation under its most recent Interconnection Agreement with PDS [the "ICA"], Exhibit A and the Pricing Attachment to provide Dark Fiber IOF to PDS.

In Ordering Provisions 8, 9, 10, and 11, respectively, the PUC found as follows:

"GTA, both before and after the network changes, provided Dark Fiber IOF to seventeen routes involving Remote Switching Centers, even though such routes were not between a pair of wire centers.

The "analogous" commercial rates" which GTA sought to impose upon PDS for Dark Fiber Transport were not valid and effective, as they had not been reviewed or approved by the PUC pursuant to the Guam Telecommunications Act of 2004.

GTA was required to bill PDS for Dark Fiber Transport at the rates established in the ICA dated August 11, 2014.

The rates established in the ICA dated August 11, 2014, will remain in effect until the expiration of the current ICA in August 2017 or unless otherwise changed or altered by the PUC."

On March 8, 2016, GTA filed a Petition for a Rehearing on issues contained in the PUC's February 25, 2016 Order. Specifically, GTA challenged Ordering Provisions No. 7, 8, 9, 10, and 11 of the February 25 PUC Order. In its Petition, GTA contends that neither Exhibit A nor the Pricing Attachment to the ICA, obligated GTA to provide Dark Fiber IOF to PDS. The Pricing Attachment only concerns pricing and not "any promise to provide Dark Fiber IOF." According to GTA, §8.1 of the Network Element Attachment "unambiguously" states that GTA had no obligation to provide any Dark Fiber IOF to PDS, as "GTA shall not be required to provide, and PDS shall not request or obtain, Dark Fiber Transport that does not connect a pair of GTA UNE Wire Centers."

On April 26, 2016, the ALJ recommended that a limited rehearing be conducted on certain issues, including whether §8.1 of the Network Elements Attachment precluded an obligation by GTA to provide Dark Fiber to PDS because such Dark Fiber did not connect a pair of wire centers. On April 28, 2016, the PUC ordered that the ALJ conduct a Limited Rehearing on the issues set forth in the ALJ Report. On May 19, 2016, the ALJ heard testimony and received evidence regarding a limited rehearing of issues in this proceeding, as outlined in the ALJ's Report dated April 26, 2016. On July 26, 2016, the ALJ filed the ALJ Order re: Limited Rehearing, which is Attachment A hereto.

FINDINGS AND RECOMMENDATIONS

The findings and recommendations contained in the ALJ Order dated July 26, 2016, are adopted by the PUC. GTA has a continuing obligation under §8.1 the Third ICA, Exhibit A, and the Pricing Attachment to provide Dark Fiber IOF to PDS at the 19 collocation facilities for the remainder of the term of the Third ICA.


ORDERING PROVISIONS

Having considered the record of the proceedings herein, the pleadings of the parties, and the ALJ Order dated July 26, 2016, and good cause appearing, the Guam Public Utilities Commission hereby **ORDERS** as follows:

1. The ALJ Order dated July 26, 2016, including the findings and recommendations therein, is adopted by the PUC in its entirety.
2. The requests by GTA in its Petition for Rehearing, including GTA's request that the PUC change or revise Ordering Provisions 7, 8, 9, 10 and 11, of its February 25, 2016, Order, and the numerous findings of fact and conclusions of law of the ALJ Recommendation dated February 18, 2016, are denied. All other relief requested in the GTA Petition for Rehearing, other than for a limited rehearing, is denied.
3. The PUC Order in this matter dated February 25, 2016, is hereby affirmed. Said Order constitutes a "final order" under Rule 4 (h) (10) of the Interconnection Implementation Rules, which accepts in whole the recommendations of the ALJ [the Arbitrator].

4. This Order shall not be binding upon the parties in their negotiations concerning the Fourth ICA. Each party shall be free to take the position of its choice without regard to the determinations in this Order.
5. GTA and PDS shall equally share the regulatory fees and expenses incurred in the Docket, including without limitation, consulting and counsel fees and expenses, and the fees and expenses for conducting the hearing/arbitration process. GTA should be responsible for the fees incurred on its Motion for Reconsideration. Each party prevailed on some issues in this proceeding, and neither acted in "bad faith".
6. Each party shall bear its own attorney's fees.

SO ORDERED this 28th day of July, 2016.




Jeffrey C. Johnson
Chairman



Rowena E. Perez
Commissioner


Michael A. Pangelinan
Commissioner



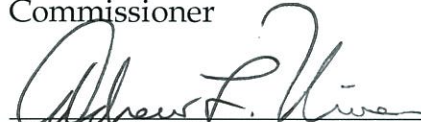
Filomena M. Cantoria
Commissioner



Joseph M. McDonald
Commissioner



Peter Montinola
Commissioner



Andrew L. Niven
Commissioner



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE: PETITION FOR APPROVAL)	GWA DOCKET 16-03
OF PROPOSED BID FOR)	
PROCUREMENT OF DIESEL)	
AND GASOLINE FOR THE)	ORDER
GWA TRANSPORTATION)	
FLEET.)	
_____)	

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC”) pursuant to the June 7, 2016 Petition for Approval of the Procurement of Diesel and Gasoline for the GWA Transportation Fleet (the “Petition”), filed by the Guam Waterworks Authority (“GWA”).

DETERMINATIONS

Pursuant to 12 G.C.A. § 12105,¹ 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 provides that “[a]ll professional service procurements in excess of \$1,000,000” and “[a]ny contract or obligation . . . which exceeds \$1,000,000” require “prior PUC approval under 12 G.C.A. § 12004, which shall be obtained before the procurement process is begun”²

¹ Formerly 12 G.C.A. § 12004.

² GWA’s Contract Review Protocol (“GWA CRP”), Administrative Docket 00-04, p. 1 (Oct. 27, 2005).

With respect to multi-year contracts, “[t]he term of a contract or obligation (procurement) will be the term stated therein, including all options for extension or renewal”; and the “test to determine whether a procurement exceeds the \$1,000,000 threshold for the PUC review and approval (the review threshold) is the total estimated cost of the procurement, including cost incurred in any renewal options.”³

On June 7, 2016, GWA filed its Petition requesting PUC approval of the procurement of diesel and gasoline for the GWA Transportation Fleet. On July 25, 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.

In the Petition, GWA submitted that its existing fleet fuel contract will expire at the end of September.⁴ As part of the Petition, GWA attached its proposed Invitation for Bid (the “IFB”) as “Exhibit A” to Resolution No. 35-FY2016 issued by the Consolidated Commission on Utilities (“CCU”). Therefore, GWA further submitted that it “must issue a new IFB for a new contract before expiration of existing fuel supply contract in order to insure continuity of operations”; and, that “an open, competitive procurement for a multi-year supply contract with fixed terms and variable annual costs is appropriate and allows GWA to obtain the needed fuels at the lowest possible cost.”⁵

³ GWA CRP, p. 2.

⁴ Petition for Approval of the Procurement of Diesel and Gasoline for the GWA Transportation Fleet, p. 1 (June 7, 2016).

⁵ CCU Resolution No. 35-FY2016, p. 1.

GWA submitted that the estimated annual cost for the purchase of the necessary transportation fleet fuel is about \$300,000.⁶ Accordingly, the cost for a three (3) year contract, with the exercised options, could potentially cost GWA over \$1 million for the next five (5) years.⁷

The IFB lists two types of fuel that the bidder must provide, specifically diesel fuel oil and automotive gasoline, regular unleaded.⁸ With respect to quantity, GWA estimates that it will purchase approximately 50,000 gallons of diesel fuel oil per year, and approximately 115,000 gallons of automotive gasoline, regular unleaded per year.⁹

With respect to contract price, the IFB indicates that the total price per gallon shall be inclusive of all costs.¹⁰ In addition, “[t]he contract price for each year shall be at the same price as contract price offer and all other terms remain unchanged unless other terms are agreed upon between the parties.”¹¹

According to the Bid, the contract term is for three (3) years with the price fixed, with two (2) options to renew for additional one (1) year terms, upon mutual agreement of both parties.¹²

The instant petition was supported by CCU Resolution No. 35-FY2016 (the “Resolution”). In the Resolution, the CCU found that GWA’s contract for transportation fleet

⁶ Petition, p. 1.

⁷ Petition, p. 1.

⁸ IFB, p. 11.

⁹ IFB, p. 11.

¹⁰ IFB, p. 12 (emphasis omitted).

¹¹ IFB, p. 12 (emphasis omitted).

¹² IFB, p. 12.

fuel will expire, and therefore GWA must issue an IFB for a new contract “in order to insure continuity of operations.”¹³ The CCU further found that GWA has “previously evaluated alternatives for procurement of these fuels, and determined that an open, competitive procurement for a multi-year supply contract with fixed terms and variable annual costs is appropriate and allows GWA to obtain the needed fuels at the lowest possible cost”¹⁴

The Resolution further indicated that the funding source of the contract would be from GWA’s operational revenues.¹⁵ The Resolution also authorized GWA to issue the bid for the purchase of diesel fuel and regular unleaded gasoline for its transportation fleet, as well as petition the PUC for approval of such bid.¹⁶

CONCLUSION AND RECOMMENDATION

In the July 25, 2016 ALJ Report, the ALJ found that GWA’s use of a multi-year contract for the purchase of fuel for its transportation fleet, particularly diesel fuel oil and automotive gasoline, regular unleaded, was reasonable and necessary given that fuel for its transportation fleet is vital to its daily operations. In addition, the ALJ found that GWA has provided adequate documentation to support the procurement. Therefore, the ALJ recommended that the PUC approve the subject IFB.

The ALJ recommended that the PUC approve GWA’s Petition and that GWA should be authorized to proceed with the procurement related to the purchase of diesel fuel oil and automotive gasoline, regular unleaded, as set forth in the IFB submitted by GWA.

¹³ CCU Resolution No. 35-FY2016, p. 1 (May 24, 2016).

¹⁴ CCU Resolution No. 35-FY2016, p. 1.

¹⁵ CCU Resolution No. 35-FY2016, p. 2.

¹⁶ CCU Resolution No. 35-FY2016, p. 2.

The Commission hereby adopts the findings contained in the July 25, 2016 ALJ Report and, therefore, issues the following:

ORDERING PROVISIONS

After careful review and consideration of the above determinations, the July 25, 2016 ALJ Report, and the record herein, for good cause shown, on motion duly made, seconded and carried by the undersigned Commissioners, the Guam Public Utilities Commission hereby ORDERS the following:

1. That GWA's June 7, 2016 Petition for approval of the procurement of diesel and gasoline for GWA's Transportation Fleet is hereby GRANTED.
2. That 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. §§ 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]

SO ORDERED this 28th day of July, 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

P163018.JRA



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

PETITION BY THE GUAM)	GWA DOCKET 16-04
WATERWORKS AUTHORITY FOR)	
APPROVAL OF USE OF ADDITIONAL)	ORDER
2015 BOND PROCEEDS)	
_____)	

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC”) pursuant to the Petition for Approval of Use of 2015 Bond Proceeds (“Petition”), filed by the Guam Waterworks Authority (“GWA”) on June 21, 2016.

DETERMINATIONS

On March 1, 2013, GWA filed its Five Year Financial Plan relative to fiscal years 2014 through 2018 (“Rate Plan”). The Rate Plan contemplated the issuance of three new bonds during 2013, 2015, and 2018, in order to generate \$350 million in capital expenditures for upgrades or rehabilitation of existing facilities, or construction of new facilities.¹ The PUC approved the Rate Plan on October 29, 2013; and on October 7, 2013, Public Law 32-069 (“P.L. 32-069”) was signed into law, which generally authorized GWA to issue an additional \$450,000,000 in revenue bonds.

On October 27, 2015, the Consolidated Commission on Utilities (the “CCU”) adopted and approved GWA’s Updated Capital Improvement Plan for fiscal years (“FY”) 2015-2020 (“GWA CIP FY2015-2020”); and on November 24, 2015, the CCU

¹ GWA’s 5 Year Financial Rate Plan (“Rate Plan”), p. 6 (Mar. 1, 2013).

approved GWA's issuance of water and wastewater system revenue bonds in a principal amount not to exceed \$160,000,000.² Thereafter, on November 25, 2015, GWA filed a Petition for PUC approval to issue up to \$160,000,000 in bonds. On December 10, 2015, through two orders, the PUC approved GWA's issuance of bonds for the purpose of financing capital improvement projects for an amount not to exceed \$160,000,000.

On April 11, 2016, GWA petitioned the PUC for approval of the use of an additional \$11,569,463 of 2015 Bond funds, which became available to GWA when it closed on the bond. On April 28, 2016, the PUC approved GWA's request to program the additional \$11,569,463 of 2015 Bond funds.

On July 26, 2016, the Administrative Law Judge of the PUC Joephet R. Alcantara (the "ALJ") filed a report regarding the instant Petition, which included his findings and recommendations based on the administrative record before the PUC. The ALJ found the following.

A. Bond Review

Pursuant to 12 G.C.A. § 12105,³ GWA cannot enter into any contractual agreements or obligations which could increase rates and charges without the PUC's express approval. Additionally, pursuant to GWA's Contract Review Protocol, filed in PUC Administrative Docket 00-04 on October 27, 2005, all externally funded loan

² Petition to Approve the Issuance of \$161M in Water and Wastewater Revenue Bonds and to Approve the Associated Documents, Exhibit A (CCU Resolution No. 09-FY2015), p. 3 (Nov. 25, 2015).

³ Formerly 12 G.C.A. § 12004.

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.⁴

B. Petition

In its Petition, GWA submitted that when it closed on the 2015 bond, it was able to secure \$140,019,463 for capital improvement projects, which included an additional \$11,569,463 of 2015 Bond funds available to GWA. Since GWA already requested, and was given, PUC approval for use of the \$11,569,463, GWA sought PUC approval to program the remaining \$128,450,000 in bond funds.

GWA submitted that some of the major projects included in the request for use of the 2015 bond proceeds involve the following: a new Water Booster pump station; repair of deep wells; continuation of its master meters project; water distribution system upgrades; Ugum Water Treatment Plant Reservoir; Agana Heights and Chaot Tanks; tank repairs; tank replacement in Piti and Hyundai; fire hydrant replacement program; lift station upgrades; wastewater collection system; Umatac-Merizo replacement; SCADA improvements; and land survey costs; to name a few.

With the Petition, GWA again submitted to the PUC its GWA CIP FY2015-2020. In a prior docket, the PUC reviewed GWA's supplement to the GWA CIP FY2015-2020. In the Petition, GWA further requested that all bond projects in excess of one million dollars (\$1,000,000) be approved by the PUC.

⁴ See Contract Review Protocol for Guam Waterworks Authority, Administrative Docket 00-04, p. 1 (Oct. 27, 2013).

C. Bond Projects

Based on the GWA CIP FY2015-2020, the following are a few itemized projects that require bond fund programming for about twenty (20) potable water projects, which include tank replacements and repairs in Piti and Hyundai, Yigo, Mangilao, Astumbo, Agana Heights and Chaot, and Barrigada; new deep wells, as well as the rehabilitation of existing wells; new fire hydrants; and continuation of GWA's meter replacement program, leak detection program, potable water system planning, among others.

The major potable water projects involve the replacement of the tanks in Piti and Hyundai, budgeted at \$10.5 million; completion of the master meters project, budgeted at \$3,616,000; Ugum Water Treatment Plant reservoir, which GWA has budgeted \$6,410,000 from the bond proceeds; with a huge chunk of the proceeds for Water System Reservoirs 2005 Improvements, which GWA has budgeted \$42,350,000 from such proceeds.

Also indicated was \$28,727,000 for seven (7) wastewater projects that include the following: wastewater system planning; wastewater system replacement and rehabilitation; sewage pump station upgrades; planning and design for the Umatac-Merizo STP Improvement; and planning and design of a new wastewater treatment facility at the Umatac-Merizo STP; Umatac-Merizo STP replacement, which GWA has budgeted \$8 million from the bond proceeds; Baza Gardens STP replacement, which GWA has budgeted \$13.7 million from the bond proceeds; among others.

GWA submitted that the bond proceeds will also fund \$8,750,000 for five (5) electrical engineering projects, which include upgrades to water wells and water booster stations, and Phases 3 and 4 of GWA's SCADA program. GWA has budgeted \$1,177,000 to finish off Phase 3, and has budgeted \$6.5 million for Phase 4 of its SCADA program.

Additionally, GWA submitted that the bond proceeds are further intended to fund \$3.825 million for four (4) miscellaneous projects, which include \$627,000 for the construction costs to the renovation of the Laboratory, land surveys, \$700,000 for general plant improvements throughout the utility, and \$500,000 for information technology ("IT") improvements. The IT improvements will involve desktop replacement, network and security system improvements, virtual server and storage solutions, among others. Accordingly, the bond proceeds will fund \$128,450,000 worth of projects.

Based on a review of the administrative record, the PUC's prior review and approval of the 2015 Bond, and for other reasons set forth herein, the ALJ recommended that the PUC approve GWA's request for use of the \$128,450,000 for capital improvement projects as identified in GWA CIP FY2015-2020. Accordingly, the ALJ recommended the PUC's approval of the Petition.

GWA should be reminded that any contract in excess of one million dollars (\$1,000,000) requires PUC approval prior to any issuance of invitations for bids or requests for proposals pursuant to GWA's Contract Review Protocol. In addition, GWA should be required to submit to the PUC a report detailing the status of all Federal Stipulated Order projects, including a timeline of events and deadlines for any outstanding

projects. In addition, GWA should be required to submit to the PUC a report detailing the status of all Capital Improvement projects, including a timeline of events and deadlines for any outstanding projects. GWA should further be required to submit to the PUC an accounting of any remaining bond funds from prior bond issues. These reports should be submitted to the PUC by the next PUC hearing.

The Commission hereby adopts the findings contained in the July 26, 2016 ALJ Report and, therefore, issues the following:

ORDERING PROVISIONS

After careful review and consideration of the above determinations, the July 26, 2016 ALJ Report, and the record herein, for good cause shown, on motion duly made, seconded and carried by the undersigned Commissioners, the Guam Public Utilities Commission hereby ORDERS the following:

1. That GWA's request for use of the \$128,450,000 for capital improvement projects as identified in GWA CIP FY2015-2020 is APPROVED and GWA's June 21, 2016 Petition for the approval of use of 2015 Bond Proceeds is GRANTED.

2. GWA shall submit to the PUC a report detailing the status of all Federal Stipulated Order projects, including a timeline of events and deadlines for any outstanding projects, by the next PUC hearing.

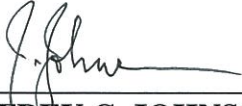
3. GWA shall also submit to the PUC a report detailing the status of all Capital Improvement projects, including a timeline of events and deadlines for any outstanding projects, by the next PUC hearing.

4. GWA shall submit to the PUC an accounting of any remaining bond funds from prior bond issues, indicating what has been spent and what remains in the account for such bonds, by the next PUC hearing.

5. 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]

SO ORDERED this 28th day of July, 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

P163022.JRA



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE: REVIEW AND APPROVAL OF) GWA DOCKET 16-05
CONTRACT WITH MEGA)
UNITED CORPORATION) ORDER
FOR COMPLIANCE LAB)
CONSTRUCTION PROJECT)
_____)

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC” or the “Commission”) pursuant to the July 11, 2016 Petition for Approval of the Compliance Laboratory Construction Project (the “Petition”) with Mega United Corporation (“Mega United”), filed by the Guam Waterworks Authority (“GWA”).

DETERMINATIONS

GWA’s current laboratory was designated a “Hazardous Workspace” by the Guam Occupational Safety and Health division and the U.S. Occupational Safety and Health Act (“OSHA”) Guam office,¹ and as a result, GWA engaged consultants to design a new laboratory to replace the existing laboratory.² Thereafter, based on design drawings and specifications provided by its consultants, GWA issued Invitation for Bid IFB-03-ENG-2016 (the “IFB”) for services related to the construction of a new GWA compliance laboratory.³

¹ Draft Guam Consolidated Commission on Utilities (“CCU”) Resolution No. 43-FY2016 (“CCU Resolution”), p. 1 (July 26, 2016).

² CCU Resolution, p. 1.

³ CCU Resolution, p. 1.

In response to the IFB, GWA received six bids.⁴ Upon the review of the bids by GWA's PMO, Brown & Caldwell, the PMO determined that Mega United was the lowest responsive bidder.⁵ In fact, the bid was lower than the designer's cost estimate.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

On July 11, 2016 GWA filed the Petition wherein GWA sought approval of its contract with Mega United. On July 25, 2016, the Administrative Law Judge of the PUC Joephet R. Alcantara (the "ALJ") filed a report regarding the Petition, which included his findings and recommendation based on the administrative record before the PUC.

⁴ Petition for Approval of the Compliance Laboratory Construction Project with Mega United Corporation by GWA (the "Petition"), p. 1 (July 11, 2016); CCU Resolution, p. 2.

⁵ Petition, p. 1; CCU Resolution, p. 2.

⁶ Petition, Exhibit B, p. 2.

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.*

The ALJ found that the contract involves the construction of a new 5,000 square foot laboratory adjacent to GWA's Upper Tumon office¹⁰ since its current laboratory was designated a "Hazardous Workspace" by the Guam Occupational Safety and Health division and the OSHA Guam office.¹¹ Specifically, the project will require Mega United to furnish all labor, tools, equipment, and materials to construct this new laboratory.¹² In addition, Mega United will also be required to demolish and remove the remaining existing concrete slabs, pavement, foundations at the location, as well as install a new parking lot.¹³

The ALJ further found that the scope of work includes the construction of the laboratory building, specifically the foundation, roof, walls; doors, windows, typhoon shutters; plumbing, electrical; and paint; at a cost of \$1,482,665. Additionally, the scope of work further includes construction of the generator building and tank enclosure, at a cost of \$290,000. Mega United will also be responsible for site clearing, demolition, parking lots, landscaping, at a cost of \$166,000; and permit fees, bonding and insurance, and other required expenses, at a cost of \$154,320.

The ALJ additionally found that the proposed contract is based on GWA's usual construction contract, containing the usual contract terms. For instance, the contract contains a liquidated damages clause, which provides that the contractor shall pay GWA

¹⁰ CCU Resolution, p. 1.

¹¹ CCU Resolution, p. 1.

¹² CCU Resolution, p. 2.

¹³ CCU Resolution, p. 2.

one thousand dollars (\$1,000) per day as liquidated damages by failing to complete the work within the three hundred (300) day period.

The ALJ found that, pursuant to the proposed contract, Mega United is required to complete the project within three hundred (300) days from the date of the contract is executed by both GWA and Mega United.

The ALJ further found that the total cost of the contract is \$2,092,985. However, pursuant to the draft CCU Resolution, the CCU intends on authorizing a ten percent (10%) contingency on top of the contract price, for a total cost of \$2,520,083.50. GWA submits that the funding source for the project is the 2013 and 2015 bond funds.¹⁴

GWA submitted for the PUC's review proposed Resolution No. 43-FY2016, to be issued by the CCU at its July 26, 2016 meeting. The Resolution indicated that the terms and the fee proposal are fair and reasonable,¹⁵ and therefore authorized GWA to enter into the contract with Mega United.¹⁶ Accordingly, the CCU will authorize funding for the subject contract in the amount of \$2,520,083.50, which includes a ten percent (10%) contingency.¹⁷

Based on the documentation provided by GWA in this docket, and for the other reasons set forth herein, the ALJ recommended that the PUC approve the contract between GWA and Mega United Corporation, for the work related to the construction of

¹⁴ Petition, p. 1.

¹⁵ Petition, Exhibit 1, p. 3.

¹⁶ Petition, Exhibit 1, p. 3.

¹⁷ Petition, Exhibit 1, p. 3.

the Compliance Laboratory, Generator Building and Tank Enclosure, as well as a ten percent (10%) contingency, for a total cost of \$2,520,083.50.

The Commission hereby adopts the findings contained in the July 25, 2016 ALJ Report and, therefore, issues the following:

ORDERING PROVISIONS

After careful review and consideration of the above determinations, the July 25, 2016 ALJ Report, and the record herein, for good cause shown, on motion duly made, seconded and carried by the undersigned Commissioners, the Guam Public Utilities Commission hereby ORDERS the following:


1. That GWA's July 11, 2016 Petition for approval of the \$2,290,985.00 contract with Mega United Corporation, for the work related to the construction of the Compliance Laboratory, Generator Building and Tank Enclosure, with the two additional option bid items, is GRANTED; GWA is therefore authorized to enter into contract with Mega United Corporation, for an amount not to exceed \$2,290,985.00, which amount shall be subject to the twenty percent (20%) contingency permitted under GWA's Contract Review Protocol.

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.

SO ORDERED this 28th day of July, 2016.



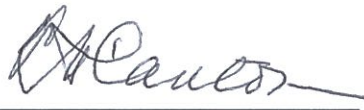
JEFFREY C. JOHNSON
Chairman



ROWENA E. PEREZ
Commissioner



JOSEPH M. MCDONALD
Commissioner



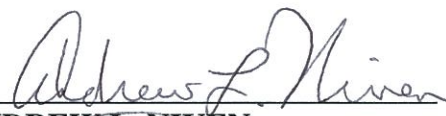
FILOMENA M. CANTORIA
Commissioner



MICHAEL A. PANGELINAN
Commissioner



PETER MONTINOLA
Commissioner



ANDREW L. NIVEN
Commissioner

P163024.JRA

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



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

DETERMINATIONS

On April 20, 2015, 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 power efficiency.”²

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

¹ Complaint by 1st Green Solutions Guam, LLC against Guam Power Authority (the “Complaint”), p. 1 (Apr. 20, 2015).

² Complaint, p. 2.

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. On October 26, 2015, Lummus filed its report detailing its findings and recommendations related to its review (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. On January 25, 2016, the PUC considered the matter and issued an Order requiring GPA to submit certain documentation related to how GPA arrives at its power factor calculations. On February 24, 2016, GPA submitted material responding to the PUC's January 25, 2016 Order. On March 21, 2016, 1st Green filed a response with the PUC, styled as a "Simplification to [the] Complaint," narrowing the issues in this matter ("Simplified Complaint").

On March 31, 2016, the PUC ordered that GPA's Smart Meters be tested by Landis+Gyr ("L&G") to determine whether the meters were operating accurately. Thereafter, on May 11, 2016, a presentation was held by representatives from L&G at the Gloria B. Nelson Public Utilities Complex. L&G presented on the history of the company, what its meters measured and calculated, as well as answered some questions from the PUC, 1st Green, and members of the public. The L&G presentation was attended by members of the PUC, 1st Green, GPA, and other members of the community.

On July 28, 2016, the ALJ issued an ALJ Report detailing his review of the instant matter. In the ALJ Report, the ALJ found the following.

1. January 25, 2016 PUC Order

In its January 25, 2016 Order, the PUC requested that GPA “provide the PUC with documentation detailing how it arrives at power factor adjustment for its customers . . . ” In addition, the PUC further requested that GPA 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 . . . ”

2. GPA’s February 24, 2016 Response (“GPA’s Response”)

A. Information Related to the Smart Meters

With regard to its Smart Meters, GPA stated that “[t]he current smart meters *directly read* KWH, KVAH, and KW”; and that “[t]he smart meter readings for KWH and KVAH are sent to the [Customer Care & Billing (“CC&B”)] billing software, and the power factor is then calculated by CC&B.”³

GPA further explained that “[i]f the power factor percentage is either below 83% or above 87% the CC&B software calculates either a penalty (<83%) or a credit (>87%) pursuant to Rate Schedule P which provides for either a penalty or credit of the power factor is either above 87% or below 83%.”⁴

According to GPA, “[t]he smart meters directly read KWH, KVAH, and KW. There is no computation or calculation of these readings.”⁵ And then, “[t]he readings are sent

³ GPA’s Response, p. 1 (Feb. 24, 2016) (emphasis added).

⁴ GPA’s Response, p. 1.

⁵ GPA’s Response, p. 2.

automatically through the smart grid to the CC&B billing software, which calculates power factor using the formula KWH/KVAH.”⁶

B. Information Related to the Old Analog Meters

According to GPA, “[t]he analog meters required a KWH reading to be obtained from the kWh meter, inputted into a manual reading device, and then uploaded to the Utiligy software.”⁷ Further, “a KQH usage was obtained from a kWh analog meter” and that a “formula was then calculated to obtain KVARH and KVAH which was then used to calculate power factor using the formula KWH/KVAH.”⁸

C. Documentation

GPA also filed with its material a spreadsheet explaining how power factor is calculated by its CC&B software, as well as how it was calculated by its Utiligy program. GPA provided a few of Onward Beach Resort’s electric bills as examples. GPA also provided a copy of “Schedule P,” (hereinafter referred to as the “Tariff”) a “Meter Read Flow Chart Between CC&B and MDMS,” a Smart Grid Process Flow, and a Memo that described how to calculate power factor under the old analog meters.

3. 1st Green’s March 21, 2016 Simplified Complaint

In a document styled as a “Simplified Complaint,” 1st Green rejected GPA’s position that KWH is “an actual measurement done by the meters.”⁹ Instead, 1st Green contended that “KWH is *calculated* internally in the meter.”¹⁰

⁶ GPA’s Response, p. 2.

⁷ GPA’s Response, p. 2.

⁸ GPA’s Response, p. 2.

⁹ Simplified Complaint by 1st Green Solutions Guam, LLC against Guam Power Authority, p. 1 (Mar. 21, 2016).

In particular, 1st Green maintained that “[a]ll power utility companies provide only Voltage (Volts) and Current (Amps) to their customers,” which are measured as KVAH, and that “[n]o utility company provides actual KWH as that has to be calculated to determine its quantity.”¹¹ “KVARH also has to be calculated to determine its quantity.”¹² “The actual only provided item to all power utility customers is KVAH,” which is made up of KWH and KVARH.¹³ 1st Green further contended that “many utility companies no longer bill based on KWH, they bill based on KVAH.”¹⁴

Moreover, 1st Green maintained that “[a]ll improvements in power factor are the result of decreased KVARH and this proportionally reduces the amount of required KVAH that is supplied by the utility” since less KVAH is needed.¹⁵ Accordingly, 1st Green contended that “[t]he accurate billed usage of KWH *should never be influenced* (increased or decreased) in direct proportion to the power factor.”¹⁶

1st Green added that “[i]f this is occurring, then there must be a method implemented to counteract the [effect] the power factor is influencing the billed KWH usage.”¹⁷ Therefore, if this is the case, then “GPA Smart Meters are actually billing less KWH for lower

¹⁰ Simplified Complaint, p. 1 (emphasis added).

¹¹ Simplified Complaint, p. 1.

¹² Simplified Complaint, p. 1.

¹³ Simplified Complaint, p. 1.

¹⁴ Simplified Complaint, p. 1.

¹⁵ Simplified Complaint, p. 1.

¹⁶ Simplified Complaint, p. 1 (emphasis added).

¹⁷ Simplified Complaint, p. 1.

power factors at .85 and billing more KWH when power factor is increased above .85 in direct proportion to the same KVAH usage.”¹⁸

4. March 31, 2016 PUC Order and May 11, 2016 L&G Presentation

On March 31, 2016, the PUC ordered that GPA’s Smart Meters be tested by L&G to determine whether the meters were operating accurately. Pursuant to this Order, a presentation was held on May 11, 2016, by representatives from L&G at the Gloria B. Nelson Public Utilities Complex. L&G presented on the history of the company, what its meters measured and calculated, as well as answered questions from the PUC, 1st Green, and members of the public. The L&G presentation was attended by members of the PUC, 1st Green, GPA, and other members of the community.

At the presentation, L&G stated that the meters measure electricity in volts and amps, and that based on these readings, the meters automatically generates measurements, for instance, Watts, KWH and KVAH. L&G explained that these measurements cannot be altered in an L&G meter, meaning that GPA has no way of programming the meters’ readings. L&G further stated that historically any errors in readings have been within two percent (2%). L&G also stated that it is possible that KWH can increase if the power factor increases.

The ALJ further made the following findings.

5. Smart Meters

Regarding whether GPA’s Smart Meters are accurately taking measurements and calculations, based on the administrative record, which includes the presentation by L&G, there does not appear to be any evidence indicating that the Smart Meters are neither taking accurate measurements, nor erroneously calculating KWH and KVAH. Specifically, L&G has stated that

¹⁸ Simplified Complaint, p. 1.

the Smart Meters measure volts and amps, and that based on its readings, automatically generates watts, KWH and KVAH. In addition, L&G has stated that such calculations “cannot be altered in a Landis+Gyr meter.” Accordingly, GPA is not able to alter how the measurements are taken or calculated. The record reflects some instances where there may have been a few discrepancies with a few meters; however, generally, the Smart Meters appear to be operating precisely how they are engineered to operate, and that such discrepancies appear isolated. In addition, 1st Green has stated that it never complained that the meters were not accurately taking measurements.

6. GPA Appears to be in Compliance with its Tariff

Regarding whether GPA’s billing calculations are not in compliance with the terms of its Tariff, pursuant to its January 25, 2016 Order, the PUC required that GPA provide “documentation detailing how it arrives at power factor adjustment for its customers within thirty (30) days of this Order” along with “documentation detailing how kWh was computed under the former analog meters, as well as how kWh is computed under the new Smart Meters.” In response to the Order, GPA stated that “[t]he current smart meters directly read KWH, KVAH, and KW”; and that “[t]he smart meter readings for KWH and KVAH are sent to the CC&B billing software, and the power factor is then calculated by CC&B.”¹⁹ GPA further explained that “[i]f the power factor percentage is either below 83% or above 87% the CC&B software calculates either a penalty (<83%) or a credit (>87%) pursuant to Rate Schedule P which provides for either a penalty or credit of the power factor is either above 87% or below 83%.”²⁰

¹⁹ GPA’s Response, p. 1 (Feb. 24, 2016).

²⁰ GPA’s Response, p. 1.

Based on the record, it is clear that “[t]he smart meters directly read KWH, KVAH, and KW.”²¹ According to GPA, these readings are then automatically processed “through the smart grid to the CC&B billing software, which calculates power factor using the formula KWH/KVAH.”²²

Accordingly, with respect to whether GPA has been in compliance with its Tariff, there is no evidence to suggest otherwise. It is clear from the record that the Smart Meters take measurements as well as generate calculations, specifically KWH, KVAH, and KW, and that these readings are then “sent automatically through the smart grid to the CC&B billing software, which calculates power factor using the formula KWH/KVAH.”²³ The language of “Schedule P” specifically provides that “[t]he above demand and energy charges are based upon an average monthly power factor of 85%.” Further, the Tariff also provides that “[f]or 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 0.15%.” In general, GPA’s billings reflect that customers are consequently credited, or penalized, based on whether the customer’s monthly power factor is below 85% or above 87%, which according to the language of the Tariff, GPA is permitted to do. Based on the record, these facts show that GPA’s billing calculations and process generally comply with the terms of its Tariff.

Based on the information presented by the Parties, the administrative record before the PUC, which includes the presentation by Landis+Gyr to the PUC, the ALJ recommended that the PUC dismiss 1st Green’s Complaint for the reasons set forth above.

²¹ GPA’s Response, p. 2.

²² GPA’s Response, p. 2.

²³ GPA’s Response, p. 2.

However, the ALJ further recommended that the PUC investigate the fairness or current efficacy of the Tariff, which was established on March 21, 1984 and is therefore over thirty (30) years old, so that the Tariff provides an incentive for, and can better compensate, ratepayers who invest in power efficiency technology, as well as encourage other consumers to improve their power efficiency.

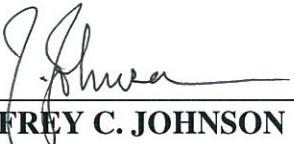
The Commission hereby adopts the findings made in the July 28, 2016 ALJ Report and therefore issues the following:

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 instant matter is hereby DISMISSED.
2. That the instant docket remain open so that the PUC can immediately investigate the fairness or effectiveness of the Tariff. GPA shall perform a revenue neutral study on Schedule P, which shall focus on a power factor scheme that more fairly compensates energy-efficient customers.
3. 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 28th day of July, 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

P163020.JRA

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN THE MATTER OF:) GPA Docket 16-05
)
The Petition of the Guam Power Authority))
for Approval of the Navy Lease for 45MW) **ORDER**
Solar PV Development.)
)
_____)

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Petition of the Guam Power Authority ["GPA"] for Approval of a Lease with the United States Navy [hereinafter "Navy"] for approximately 164 acres of federal land.¹
2. The purpose of the Lease is to enable GPA to undertake a 37MW Solar PV Development.²
3. Because the lease payments under the proposed Lease would exceed \$1.5M over the term of the lease, GPA is required, under the Contract Review Protocol, to obtain prior PUC approval before entering into the Lease.³
4. GPA seeks to enter into a thirty-seven year lease (as Lessee) with the Navy for five parcels of land on the following areas: South Finegayan; WWTP Site; CDF Site; existing 250 KV Site; and Commissary Site.⁴
5. GPA would develop a total 37MW PV Solar on the leased premises. Separate PV Solar facilities would be built on each of the five sites.
6. GPA would be the Engineering, Procurement and Construction ["EPC"] Partner for Navy on the development project. GPA would undertake the solicitation of bids

¹ GPA Petition for Approval of the Navy Lease for the 45MW Solar PV Development, GPA Docket 16-05, filed April 11, 2016, at p. 1.

² Id.

³ Contract Review Protocol for Guam Power Authority, Administrative Docket, dated February 15, 2008, at par. 1(e).

⁴ Proposed Lease between the United States of America and the Guam Power Authority, submitted with the Petition, Attachment A.

from firms and the procurement to provide Solar PV facilities at each of the leasehold sites.⁵

7. GPA is also responsible for engineering and construction of the renewable energy power plants on the leasehold properties, including renewable integration, energy storage, and interconnection to GPA's grid.⁶
8. GPA will be responsible for all project and post-project coordination between the solar PV facility owners/operators and Navy.⁷

BACKGROUND

9. PUC Counsel filed his Report dated July 11, 2016. The PUC adopts the Background section of the Report and its conclusions/recommendations.⁸
10. In 2015, Navy issued Request for Qualifications No. LO-15149. The Request solicited the lease of approximately 192 acres of federal land for solar renewable energy development. GPA submitted its responsive proposal on July 6, 2015.⁹
11. The Navy issued a Notice of Award to GPA.¹⁰
12. The Lease provides a rent schedule for payments by GPA over the 37 year period. A copy of the Rent Schedule is attached to the Counsel Report as Exhibit "1".¹¹
13. The Lease includes provision of potential "In Kind Consideration (IKC)" payment by GPA, which could offset payments due under the Lease. The "In Kind Consideration" is based upon GPA's development of the solar facilities.¹²
14. GPA's interest in this project arises at least in part from the fact that Navy is GPA's largest customer, accounting for over 16% of its revenues. If the Navy pursued its renewable projects without the involvement of GPA, there could be large impacts to

⁵ Id. at p. 9.

⁶ Id.

⁷ Id.

⁸ PUC Counsel Report, GPA Docket 16-05, dated July 11, 2016.

⁹ Letter from John Benavente, GPA General Manager, to John W. Baxter, Navy Renewable Energy Program Office Real Estate Lead, dated July 6, 2015, Re: GPA Proposal to Department of Navy (DON) Request for Qualifications No. LO-15149.

¹⁰ Email from Jennifer Sablan, GPA Project Engineer, to PUC ALJ Frederick J. Horecky, dated July 5, 2016.

¹¹ Attachment D, Rent Schedule, attached to the SPORD Whitepaper dated April 28, 2016.

¹² Attachment D, Id. at p. 10.

other customers' tariffs to make up the difference. Were the Navy to delink from the GPA island wide system, this could result in major rate increases for other customer classes.¹³

15. GPA and Navy have engaged in an even far more broad reaching discussion of an extensive number of renewable energy projects, including an additional 160MW of renewable energy projects, referred to as "Phase 4". Additional projects could involve microgrids for the Airforce and Navy and a biomass/Waste to Energy Plant.¹⁴ These plans are not yet operational and are in the planning stage.
16. GPA has assumed, as with the prior NRG renewable energy project, that the Navy Phase 3 energy charges will be a LEAC pass-through to GPA ratepayers.¹⁵
17. In Resolution No. 2016-11, the Guam Consolidated Commission on Utilities authorized the GPA General Manager to petition the PUC for approval of the Lease with the Navy for renewable energy projects.¹⁶

DETERMINATIONS

18. Although GPA previously cancelled its Phase 2 Renewable Acquisition, it now indicates that it will proceed ahead with the reissuance of its bid for Phase 2. GPA will rebid with the addition of renewable integration and energy storage to ameliorate the impacts of power intermittency upon GPA's power system.
19. GPA has increased the amount of renewable capacity it would consider awarding from 40MW to 60MW. GPA, in such rebid, will also require renewable integration and energy storage systems concurrently with intermittent renewable resources.¹⁷
20. The PUC is satisfied that GPA will proceed with its Phase 2 Renewable Acquisition, as it had previously committed to undertake. It is now appropriate for the PUC to consider GPA's request for approval of the Phase 3 Lease with Navy.

¹³ SPORD Whitepaper dated April 28, 2016, at p. 8.

¹⁴ Id. at p. 6.

¹⁵ Id. at p. 11.

¹⁶ Guam Consolidated Commission on Utilities Resolution No. 2016-11, Relative to the Approval of Navy Lease for 45MW Solar PV Development, adopted February 23, 2016.

¹⁷ Id. at p. 4.

21. GPA primary justification for this project rests upon the need to maintain Navy revenues and to avoid the potential adverse rate impacts to other classes of customer if GPA were not a part of the Navy renewables project.
22. GPA's justification for adding this new generation capacity does not address the usual rationale for the development of such capacity, which is a demonstrated need for such capacity.
23. GPA has not addressed the issues of load or capacity at all; it has not demonstrated that there is a need in the system for the additional capacity represented by the 37MW of energy.
24. GPA has concluded that it must maintain the Navy customer to preserve revenues; otherwise, it contends that it would be required to raise rates for the other ratepayer classes. While GPA could have other options such as downsizing its functions, and allowing the private sector to provide this additional generation, GPA has provided some justifications for participating in the Navy solar project.
25. At present GPA has also not provided a complete or accurate picture of how much this project will cost. In carrying out its EPC functions, GPA will be expending considerable resources and personnel. GPA has suggested that it might later itself consider handling O & M functions for the renewable facilities.
26. Also, GPA has, at its own cost, engaged a number of consultants to investigate the costs of integrating the Navy renewables into the IWPS, interconnection costs and substation upgrade costs.
27. GPA has not presented a clear picture of how costs will be shared between it and Navy.
28. However, for various reasons, the PUC concludes that GPA's participation in this 37MW Navy renewables project may be advantageous to Guam and in the best interest of the ratepayers. GPA has justified an opportunity to bid such projects and determine whether they can be incorporated into the power system.
29. GPA has a legitimate concern that the loss of its biggest customer would require other rate classes to be burdened in terms of increased rates. Many of GPA's costs, particularly bond principal and interest payment, are fixed. Loss of its largest customer could mean that other rate classes would have to bear a larger proportion of the fixed costs.

30. A major factor warranting approval is that the 37MW Navy Renewables project is already a part of the 120MW of renewables which GPA has contemplated incorporating into the IWPS for a number of years.
31. The 37MW Phase 3 Renewable Project with the Navy is part and parcel of the 120MW projects that GPA intends to introduce into the island wide power system.¹⁸
32. The power produced by the Navy Renewables Project in the 37MW will be fed into the GPA island wide power system. It will not be used solely for Navy power needs. GPA ratepayers will also benefit by the addition of renewable energy into the system.
33. There are also distinct advantages in having GPA control the development of the new renewables and their integration into the IWPS. If a private developer were developing the Navy renewable systems, without GPA participation, the issue of integrating such power into the IWPS could present complex issues and potential problems.
34. From the perspective of integrating the entire island wide power system, it does make sense for GPA to be responsible for the overall coordination and integration of the Navy renewables into the island wide power system, and for assuring that there is sufficient energy storage.
35. GPA has indicated its belief that using energy storage systems that charge during the day using renewable production and discharge during the GPA night system peak "will enable it to reduce conventional generation reserve requirements".¹⁹
36. Thus, an additional benefit of GPA's Navy Solar Project is that it will enable it to reduce conventional generation reserve requirements. GPA should indicate how this project and other solar projects will affect its current requests for 180MW of new conventional generation capacity.
37. There are also potential issues concerning the cost of the annual lease payments due under the proposed Lease, which range from \$1,205,000 in the first year up to \$2,039,000 in the 37th year of the lease. The Lease does provide for potential

¹⁸ Discussion between GPA officials and PUC Counsel Horecky at GPA on June 6, 2016.

¹⁹ Attachment I to SPORD Whitepaper, prepared by John J. Cruz Jr., SPORD Manager, Guam Power Authority, dated April 28, 2016.

payment abatement during the first 3 years of the term based upon GPA's progress towards successful completion of the projects.

38. Under Section 3.2.1 of the Lease, is also possible that GPA can satisfy rent payments throughout the full term of the lease based upon "in-kind consideration", which includes GPA performance of its duties and obligations under the Lease and actions as the EPC.
39. Ratepayers could face risks in non-performance by GPA of either the initial project completion requirements for 3 years, or for completing the tasks of the 37 year term. If GPA was unable to complete the projects or otherwise incapable of performing its duties during the term of the Lease, GPA ratepayers could have to pay the bill for the lease payments.
40. GPA will ameliorate risks in Phase 3 such as default in completing the solar projects and ratepayer potential liability for lease payments and other non-performance by using certain contracting mechanisms with the private parties that construct the solar projects. GPA will require bid and performance bonds, and will include liquidated damage provisions in the contracts with the private developers.
41. Under the circumstances, it appears that GPA has thought out the nature of the risks involved to ratepayers and is taking prudent steps to ameliorate such risks. GPA correctly points out that its customers always bear some or all of the risk for GPA and its contractors' non-performance.²⁰
42. There is a substantial issue concerning the funding of the Phase 3 Navy 37MW Renewable Projects. As indicated, GPA intends to fund the Phase 3 energy charges from the Navy renewable facilities through a LEAC "pass-through" to GPA customers. The LEAC factor is based upon civilian fuel costs, not Navy costs. Navy does not pay fuel charges based upon the LEAC factor. Under the Utility Services Contract, Appendix B, Fuel Clause Applicable to Navy, Navy pays to GPA the actual cost of fuel which it consumes in the IWPS.²¹
43. The PUC did approve such a pass-through in LEAC of the energy charges resulting from the Phase 1 NRG solar project in Dandan. The original PUC decision was made in an effort to encourage the development of renewables and to provide an

²⁰ Id. at p. 11.

²¹ Guam Power Authority-Utility Services Contract, July 2012, Appendix B, Fuel Clause Applicable to Navy Agreement.

expeditious method of paying for such project without necessitating a base rate increase.

44. The current monthly cost of the energy produced by the NRG solar plant is between \$800,000 and \$1M plus per month. The costs for the energy produced by the NRG plant are approximately \$11M per year.²² The amounts due to NRG escalate every year.
45. The monthly payments for the power generated by the Navy 37MW renewable facilities will be well in excess of \$1 million per month and could mount to \$1.3-\$1.5M per month. The development of the Navy 37MW renewable facilities will conceivably add \$18M annually to the cost of LEAC, a cost that will be borne by the ratepayers of Guam.
46. It can be argued that the cost of renewable energy is not properly included within LEAC, as it is not a fuel cost. It is a cost of power production. Similar cost of energy production, such as those for the Piti 8 and 9 plants, are paid for in base rates and not through LEAC.
47. However, there will obviously need to be some method of payment by ratepayers for renewable energy produced, whether through LEAC or otherwise.
48. The PUC will address the issue of funding for the costs of the renewable energy from the projects at a later time.

ORDERING PROVISIONS

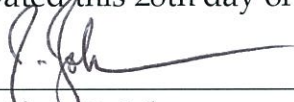
After review of the record herein, including GPA's Petition for Approval of the Navy Lease for 45MW Solar PV Development and the PUC Counsel Report, for good cause shown, on Motion duly made, seconded and carried by the undersigned Commissioners, the Guam Public Utilities Commission **HEREBY ORDERS** that:

1. GPA's Petition to enter into the Navy Lease for 37MW Solar PV Development is approved.
2. GPA shall file its final Lease Agreement with Navy for this project, along with all attachments, with the PUC.

²² GPA LEAC Filing, GPA Docket 16-10, Schedule 12, filed June 20, 2016.

3. GPA must obtain prior approval for each procurement of a solar plant under Phase 3 in accordance with the Contract Review Protocol.
4. Approval of the Lease herein does not constitute or provide PUC consent for the development of any other Navy PV solar project.
5. GPA is ordered to pay the Commission's regulatory fees and expenses, including, without limitation, consulting and counsel fees and the fees and expenses of conducting the hearing proceedings. Assessment of PUC's regulatory fees and expenses is authorized pursuant to 12 GCA §§12103(b) and 12125(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.


Dated this 28th day of July, 2016.




Jeffrey C. Johnson
Chairman



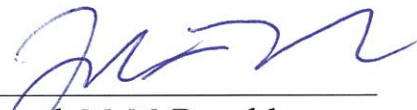
Rowena E. Perez
Commissioner



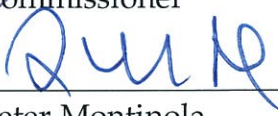
Michael A. Pangelinan
Commissioner



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 16-10

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 June 20, 2016, to the PUC.¹ GPA requested that the Levelized Energy Adjustment Clause Factor ["LEAC"], for the six-month period commencing August 1, 2016, stay at the same level it was set for the prior six month period (February 1, 2016, to July 31, 2016): \$0.086613 per kWh effective for meters read on or after August 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 (August 1, 2016 through January 31, 2017) should remain the same. Although the filed schedules would indicate an over 1% increase in the total bill for the average residential customer utilizing 1000kWh per month,⁴ and an under recovery by GPA of "less than \$1.8M",⁵ GPA does not see a need to increase the current LEAC factor. There has been some reduction in GPA fuel costs resulting from more efficient generators coming on line including Cabras Unit #2 in April 2016, and the return of Cabras #1 to full load in July 2016.⁶

In determining its forecasted fuel pricing for the next six month LEAC period, in its Petition GPA utilized the average of the five days forward pricing from Morgan Stanley Asia noon Call dated May 5 through May 11, 2016.⁷

At its January 25, 2016, Meeting, the PUC held that in LEAC proceedings, an updated LEAC fuel forecast price should be prepared based upon average of the five day period which is ten days before the meeting at which the PUC determines the LEAC factor.⁸

¹ GPA LEAC Filing, GPA Docket 16-10, filed June 20, 2016.

² Id. at p. 1.

³ Id.

⁴ Schedule 1 to GPA LEAC Filing, GPA Docket 16-10, filed June 20, 2016.

⁵ Letter from GPA General Manager John Benavente to ALJ Horecky, GPA Docket 16-10, filed June 20, 2016.

⁶ GPA LEAC Filing, GPA Docket 16-10, filed June 20, 2016, at p. 1.

⁷ Letter from GPA General Manager John Benavente to ALJ Horecky, GPA Docket 16-10, filed June 20, 2016.

⁸ PUC LEAC Order, GPA Docket 15-27, dated January 25, 2016, at p. 2.

On May 24, 2016, the Guam Consolidated Commission on Utilities, in Resolution No. 2016-34, authorized GPA Management to Petition the PUC for the LEAC rate to remain at \$0.086613/kWh effective for the period from August 1, 2016 through January 31, 2017.⁹

DETERMINATIONS

1. Counsel requested that GPA Assistant CFO Cora Montellano recalculate the 5 day average of the MS fuel forecast. On July 19, 2016, Ms. Montellano provided the most recent updated "Proposed LEAC Rate".¹⁰
2. To determine updated applicable fuel prices herein, GPA used the average of 5 days forward pricing from Morgan Stanley Asia Noon Call dated July 12-18, 2016.
3. The updated analysis indicates that fuel prices have increased since GPA filed its Petition on June 20. As of the filing of the Petition, the average price per Barrel for Residual Fuel Oil was \$42.27. However, as of the date of the updated analysis on July 19, 2016, the average price per Barrel of RFO was \$45.43.¹¹
4. GPA now estimates that, by keeping the LEAC rate the same for the upcoming 6-month period, there will be a \$4.6M under-recovery at the end of the period.¹²
5. In this filing, GPA is accepting an under-recovery balance (in excess of \$2M) that would normally authorize it to seek a rate adjustment from the PUC in accordance with GPA Rate Schedule "Z".
6. However, Exhibit "1" (attached to the PUC Counsel Report) indicates that a portion of the Cabras 3 & 4 insurance proceeds from GPA's claim on the Cabras explosion will be offset against the projected under-recovery of \$4.6M.¹³ Assistant CFO Montellano clarified that GPA has received \$50M to date on its insurance claim. The under-recovery will be paid off with the insurance funds.¹⁴

⁹ CCU Resolution No. 2016-66, adopted May 24, 2016, at p. 2.

¹⁰ Exhibit 1 to the PUC Counsel Report, GPA Docket 16-10, dated July 22, 2016.

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Email from Assistant CFO Montellano to PUC Counsel Fred Horecky re: GPA Docket 16-10, dated July 27, 2016

7. It is appropriate to offset the fuel cost under-recovery of \$4.6M with funds from the Extra Expense & Business Interruption insurance proceeds that resulted from the Cabras 3 & 4 explosion. The explosion has caused increased fuel costs through reliance upon Aggreko generation capacity and the use of less fuel efficient generators.
8. GPA has already received insurance funds in the amount of \$50M from the insurers. The LEAC under-recovery shall appropriately be paid from such insurance proceeds.¹⁵
9. The application of such proceeds will mean that the under-recovery of \$4.6M at the end of the LEAC period will be offset with insurance proceeds.
10. This proposed LEAC factor will keep the total bill at the same level over the next six months for a residential customer utilizing an average of 1,000 kilowatt hours per month.¹⁶

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 regular meeting held on July 28, 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 continued, unadjusted from the prior LEAC period, effective August 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 proposed LEAC factor will keep the total bill at the same level over the next six months for a residential customer utilizing an average of 1,000 kilowatt hours per

¹⁵ Phone Conference between GPA CFO Cora Montellano and PUC Counsel Fred Horecky, July 22, 2016.

¹⁶ Exhibit 1 to the PUC Counsel Report, GPA Docket 16-10, dated July 22, 2016.

month.

2. GPA should file for a change in the LEAC factors to be effective February 1, 2017 on or before December 15, 2016.
3. GPA indicates that there will be an under-recovery of \$4.6M at the end of the LEAC period. GPA shall pay such under-recovery from the insurance proceeds already received by GPA for the Cabras explosion.
4. The application of insurance proceeds will mean that the under-recovery of \$4.6M, or such amount as readjusted at the end of the LEAC period, will be offset with insurance proceeds.
5. GPA is ordered to pay the Commission's regulatory fees and expenses, including, without limitation, consulting and counsel fees and the fees and expenses of conducting the hearing proceedings. Assessment of PUC's regulatory fees and expenses is authorized pursuant to 12 GCA §§12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

Dated this 28th day of July, 2016.



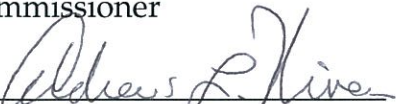
Jeffrey C. Johnson
Chairman



Joseph M. McDonald
Commissioner



Peter Montinola
Commissioner



Andrew L. Niven
Commissioner



Rowena E. Perez
Commissioner



Michael A. Pangelinan
Commissioner



Filomena M. Cantoria
Commissioner

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN THE MATTER OF:) GPA Docket 16-11
)
The Petition of the Guam Power Authority)
for Approval of Macheche CT Repairs) **ORDER**
)
)
)
_____)

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Petition of the Guam Power Authority ["GPA"] for Approval of the Macheche CT Repairs.¹

BACKGROUND

2. The Macheche Combustion Turbine (CT) power plant was installed in 1993; it is rated for 22MW and is used to support peak loads and base load unit outages for the island wide power system (IWPS).²
3. On July 1, 2016, the unit was shut down after a turbine blade borescope inspection revealed corrosion on the turbine blades. The unit has been in operation for more than 20 years utilizing the original turbine engine.³
4. GPA's Performance Management Contractor (PMC) for the Combustion Turbines, TEMES, has recommended that the Macheche turbine engine be replaced at a cost not to exceed \$2.7M⁴
5. The time frame for completion of the project is estimated at about three months.⁵

¹ GPA Petition for Approval of the Repairs for the Macheche CT, GPA Docket 16-11, filed July 27, 2016; see also Letter from GPA General Manager John Benavente to Frederick J. Horecky, PUC Legal Counsel, dated July 22, 2016; this letter request is treated as a Petition.

² The Guam Consolidated Commission on Utilities Resolution No. 2016-41, Authorizing Management of the Guam Power Authority to Implement and Complete the Repairs Required to Place Macheche Combustion Turbine Plant in service, approved July 26, 2016.

³ Id.

⁴ Id.

⁵ GPA Petition for Approval of the Repairs for the Macheche CT, GPA Docket 16-11, filed July 27, 2016, at p.1.

6. GPA management has requested that the PUC expedite this request. The loss of the Macheche CT, GPA is experiencing difficulty in meeting sufficient energy reserves and needs to restore the unit within 45 days to meet the annual peak demand period.⁶
7. General Electric has prepared a Borescope Inspection Report dated July 22, 2016. The Report indicates that the unit is not available for continued operation and is not serviceable at the present time.⁷

DETERMINATIONS

8. At present GPA only has a reserve of 48MW. The loss of the 20MW produced by the Macheche unit leaves a deficiency in reserve capacity. The additional capacity of the Macheche unit is needed to meet the upcoming annual peak demand period.⁸
9. GPA proposes to fund the Macheche CT repairs from Revenue CIP (Capital Improvement Project) funds.⁹
10. The FY2016 CIP Cap is \$12,067,780.¹⁰
11. GPA has sufficient funds in its CIP fund to pay for this project. It is reasonable, necessary and prudent for the PUC to approve the repair of the Macheche CT to provide additional system generation capacity as soon as possible.

ORDERING PROVISIONS

After review of the record herein, including GPA's Petition for Approval of the the Macheche CT Repairs and the PUC Counsel Report, for good cause shown, on motion duly made, seconded and carried by the undersigned Commissioners, the Guam Public Utilities Commission **HEREBY ORDERS** that:

⁶ Letter from GPA General Manager John Benavente to Frederick J. Horecky, PUC Legal Counsel, dated July 22, 2016; this letter request is treated as a Petition.

⁷ GE Borescope Inspection Report dated July 22, 2016.

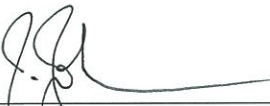
⁸ Letter from GPA General Manager John Benavente to Frederick J. Horecky, PUC Legal Counsel, dated July 22, 2016; this letter request is treated as a Petition.

⁹ Issues for Decision, submitted to the CCU, July 26, 2016.

¹⁰ Id. at p. 3.

1. The Macheche CT repairs, as requested in GPA's Petition, are approved.
2. GPA is authorized to expend the amount of \$2.7M from the FY2016 CIP Budget to pay for such repairs and the installation of the engine.
3. 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 28th day of July, 2016.



Jeffrey C. Johnson
Chairman




Rowena E. Perez
Commissioner




Michael A. Pangelinan
Commissioner



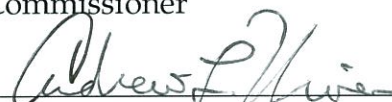
Filomena M. Cantoria
Commissioner



Joseph M. McDonald
Commissioner



Peter Montinola
Commissioner



Andrew L. Niven
Commissioner