

GUAM PUBLIC UTILITIES COMMISSION
REGULAR MEETING
March 31, 2016
SUITE 202, GCIC BUILDING, HAGATNA



MINUTES

The Guam Public Utilities Commission [PUC] conducted a regular meeting commencing at 6:40 p.m. on March 31, 2016, pursuant to due and lawful notice. Commissioners Johnson, Perez, McDonald, Pangelinan, Montinola and Niven were in attendance. The following matters were considered at the meeting under the agenda made *Attachment "A"* hereto.

1. Approval of Minutes

The Chairman announced that the first item of business on the agenda was approval of the minutes of February 25, 2016. Upon motion duly made, seconded and unanimously carried, the Commission approved the minutes subject to correction.

2. Docomo Pacific Inc.

The Chairman announced that the next item of business on the agenda was Docomo Docket 16-01, Joint Application of Guam Telecom and Docomo Pacific for approval by the PUC of the Transfer of Guam Telecom LLC's Certificates of Authority to Docomo Pacific, Inc., ALJ Report, and Proposed Order. For the record, Commissioner Pangelinan recused himself from the matter as the applicant is a client of his firm.

Counsel indicated that the PUC had previously considered the transfer of Certificates of Authority between telecom companies. The Certificate of Authority is a basic operating license that must be awarded by the PUC to a company that undertakes certain telecom services in Guam. In 2012 Docomo purchased Guam Telecom. Guam Telecom is the holder of two Certificates of Authority that the Commission issued for resold telecom services and private line services in 2006 and 2009. When Docomo purchased Guam Telecom, the corporate structure involved many of the old MCV/Guam Telecom Companies in the corporate structure and chain of ownership.

A few years after 2012, Docomo sought to change the corporate structure to simplify matters and to place Guam Telecom and all other companies under Docomo. With the resulting corporate mergers and other changes by the Attorneys for Docomo, the ultimate company ownership is through NTT Docomo in Japan; on Guam, there is Docomo Holdings, the holding company for Docomo Pacific Inc. If the PUC approves the requested changes, the owner of the Certificates of Authority previously owned by Guam Telecom will be Docomo Pacific Inc.

At a public hearing, the Applicants explained the reasons for these corporate changes and the transfers of the Certificates. The corporate structure had resulted in confusion in the bidding process; Docomo wished to simplify payroll and employee tax matters. Consolidation of these companies would lead to a more efficient operation.

There was no objection to the transfer of the Certificates of Authority at the Public Hearing, nor any comments filed with the Commission in opposition. Docomo requests: (1) that the Certificates of Authority of Guam Telecom be transferred to Docomo Pacific Inc.; and (2) that Guam Telecom's Eligible Telecommunications Carrier designation also be transferred to Docomo Pacific Inc.

If control of Guam Telecom was merely being transferred to another company within the Docomo chain of companies, there would be no need for the Commission to examine the transfer. However, the statute requires that the transfer of the Certificate of Authority from one company to another (which is the case here) be approved by the Commission even though there is no change in the ultimate ownership. The Commission is required by statute to examine any change in the actual holder of this Certificates of Authority.

Counsel undertook the standard analysis to determine whether the transfers of Certificates of Authority in this case are justified. The first criteria is whether the Applicant, after the transfer, will have sufficient financial, managerial and technical resources to continue to provide the telecommunication services on Guam. The Commission must assure that the successor holding the Certificate of Authority will be able to continue to provide the services. It is clear to Counsel, after reviewing information (including confidential information) that, after the transfer, Docomo Pacific will have sufficient financial resources to continue to provide the telecommunication services in Guam. The ultimate owner, NTT Docomo Japan, had revenues in 2014 of U.S. \$40 billion.

In terms of the technical and managerial resources of the new holder of the Certificates of Authority, there will be no change from the resources which Guam Telecom possessed. Docomo Pacific Inc. will continue to have the same personnel and same management. The same management resources that were previously available will continue to be available. If needed, Docomo Pacific Inc. will be able to obtain the assistance of NTT Docomo.

The Commission must also find that the transfer of the Certificates is "not contrary to the public interest...". There is no suggestion anywhere on the record that the application is contrary to the public interest. After the transfer, Docomo will continue to provide the same services and plans to spend as much as \$90M over the next 5 years to improve telecommunication services on Guam. The Transfer is in the public interest.

In this case, review by the Federal Communications Commission is apparently not required. Applicants have represented that all of the corporate mergers are complete,

and that various notices have been filed with the FCC. No further action is required by the FCC, and the PUC Order need not be dependent upon further FCC action.

In the Proposed Order, the PUC would approve the ALJ Report. It would authorize Guam Telecom to assign and transfer Certificates of Authority to Docomo Pacific Inc., as well as to transfer the ETC Designation to Docomo Pacific Inc. There is a finding that applicants have satisfied all of the requirements of the statute, and that the transfer is not contrary to the public interest. Docomo will be required to prepare an actual assignment of the Certificates of Authority and the ETC Designation. These will be filed with the Commission.

All of the companies in the Docomo group, NTT Docomo, Docomo Guam Holdings, and Docomo Pacific Inc. have agreed to comply with the terms and conditions of the Certificate of Authority and the ETC Designation. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the transfers of Guam Telecom's Certificates of Authority and ETC Designation to Docomo Pacific Inc., and adopted the Order made *Attachment "B"* hereto. Commissioner Pangelinan abstained.

3. Port Authority of Guam

The Chairman indicated that the next item of business was PAG Docket 15-04, Increase Tariff Petition of PAG for Rate Relief, ALJ Report, and Proposed Order. ALJ Alcantara indicated this Report clarified certain provisions contained in the PUC's October 29, 2015, Order, filed in this Docket. Last year the PUC approved a 7% increase in PAG's terminal tariff rates (excluding the crane surcharge). At that time the Port expressed its intent to file a multi-year rate plan in 2016. Based upon such assurance, no concrete deadline was specified by the PUC in the Order.

On February 6, 2016, Senator Tom Ada issued a letter to the Chairman of the PUC requesting clarification of the October 29, 2015 Order, specifically whether the Tariff increase would be effective for one year only, and whether the 7% increase was reasonable. In its report submitted to the PUC last year, Slater/Nakamura indicated that, although PAG presented documentation for a 5-year Tariff increase, PAG only petitioned the PUC for a single-year rate increase. While Slater recommended the approval of the requested tariff rates, it also recommended that PAG review the impact of the 7% increase to determine whether another rate increase was justified.

Slater also recommended that PAG review its plan to adjust salaries to the 50th market percentile to determine the impact on the financial stability of the Port, and that such review should be submitted to the Commission by December of 2015. Based upon the Slater recommendation, PAG should work in collaboration with the PUC as it applies any such increase to its employees' salaries. PAG should be required to submit its findings to the PUC by July 31, 2016.

With regard to its multi-year rate case, at the October 29, 2015 PUC Hearing, PAG expressed its desire to file a multi-year rate plan some time in 2016. However, since no hard and concrete deadline had been specified for submission of such a rate plan, the ALJ recommended that the PUC now require PAG to file a multi-year rate plan by October 1, 2016. Slater/Nakamura also suggested that the financial modeling for this upcoming rate plan should include the surcharge for the replacement of two gantry cranes by 2027, and that PAG develop a model that allows it to operate profitably. Slater further suggested that PAG work collaboratively with the Commission's consultants to develop a financial model that will serve as a basis for PAG's future financial rate plan submissions.

The proposed Order would require that PAG work collaboratively with the PUC's Consultants to develop a financial model for its multi-year rate plans. The model should allow PAG to operate profitably as well as include the surcharge for a replacement of two gantry cranes by 2027. PAG should also work in collaboration with the PUC as it applies any increases to employee salaries and should aim to implement salary increases only when its revenue permit. PAG should review its plan to adjust salaries to the 50th market percentile to determine the impact of such an adjustment of the financial stability of the Port and to submit its findings to the PUC by July 31, 2016.

Chairman Johnson indicated that the Port had just sent a letter to the PUC concerning this matter before the meeting. Glen Nelson, the Commercial Manager of the Port, presented a letter from Port General Manager Joann Brown. He indicated that Ms. Brown could not be present at the meeting; however, her position was that there was no need for a PUC Order. The Port was continuing to work with its Board on the financial framework for a 5-year Petition. The Port's Consultant was already reviewing the salary component of its Petition. The Port will continue to work with the PUC Consultants to move its Petition forward to review in this Docket. According to Mr. Nelson, the Port was requesting that the PUC reconsider the need for an Order.

The Chairman mentioned to Mr. Nelson that the Commission was only asking for a date certain to look at the 5-year plan. The date is the next fiscal year, October 2016. The Port has indicated it can bring a Petition to the PUC before then. The PUC is also interested in the salary component. Other utilities such as GPA and GWA have shown due diligence in balancing revenues with salary increases, even though they could have raised employee salaries in a quicker fashion.

Mr. Nelson indicated that the Board of Directors had approved a 5-year Tariff Petition. However, it only approved the first year increase. The Port still needs to determine whether it will proceed with the level of increase that it submitted last July. The Port hopes to have some relief in place by June of this year to implement the second year increase by October. The Chairman indicated that, if the Port did not make the window of October for an increase for the next fiscal year, the PUC could implement rate compression.

Commissioner Pangelinan asked if one of the reasons for the clarifying Order is to clarify the length of the 7% increase, whether it is a 1-year increase. The Chairman indicated that some language in the prior Order was nebulous. The PUC Order did not clarify whether the 7% increase was locked in for only one particular fiscal year, or continuing thereafter. Commissioner Pangelinan indicated that point was not in the ordering provisions of the proposed Order. ALJ Alcantara indicated that provision was in the Determinations.

Mr. Nelson stated that the requirement for revisiting the crane surcharge was not approved by the Port Board. The Chairman indicated that the new cranes probably would have to be funded, and that the PUC consultant Slater/Nakamura recommended that certain funds be set aside over the next few years to have money available to buy new cranes. Mr. Nelson indicated that there was already a crane surcharge.

Commissioner McDonald wished to separate the items in the Order dealing with the rate case and the financial model on the gantry crane, so that the Commissioners could vote separately on them. The Chairman indicated that Ordering Provision 2 would then deal with gantry claims. ALJ Alcantara stated that he would clarify in Provision 4 that the 7% increase was continuing. Upon motion duly made, seconded and carried, the Commissioners approved the proposed Order as revised (*Attachment "C" hereto*).

Later in the meeting, Commissioner McDonald clarified that, on the PAG Docket 15-04, he had stated that he only wished to vote separately on a per item basis. He agreed with provisions of the Order except the financial model for the two cranes; the Port already had a surcharge and had taken action. Commissioner McDonald did not agree with the portion of Order on the Financial model [the vote on the Order in PAG Docket 15-04 has been revised to show that it was not unanimous].

4. Guam Waterworks Authority

The Chairman announced that the next item on the agenda was GWA Docket 16-01, Review and Approval of Contract with GHD for Well Rehabilitation Design, ALJ Report, and Proposed Order. ALJ Alcantara indicated that this was a petition for PUC approval and ratification of GWA's contract with GHD. The contract was originally entered into between the parties in 2011 in the amount of \$984,857.00; it was for the design of three new wells as well as the design for rehabilitation of seven wells that have been out of service. There have been five prior change orders to the contract.

Change Order No. 6 is what is before the Commission now, which would increase the value of the contract by \$34,904.00 and thereby increase the total contract price to \$1,033,308. The proposed change order would add revisions incorporating GWA's supervisory control and data acquisition or SCADA system. The change order includes SCADA updates as well as updates to any specifications that account for changes to codes and standards, design requirements, and engineering design practices (since most of the engineering work design took place during the period 2010-2012).

The need to repackage design documents and modified design specifications to incorporate SCADA spurred additional design hours by the design consultants than had previously been agreed upon. The cost of this change order will be funded under GWA's 2010 Bond Funds. The Petition is supported by CCU Resolution 19-FY2016; therein the CCU found that the terms and conditions of the change order were fair and reasonable, and therefore authorized GWA to approve the change order.

An occasional drought in Guam has highlighted the need for GWA to rehabilitate some of its existing wells and locate and drill new wells. GWA has engaged in the design work to create additional deep wells and rehabilitate existing deep wells to address the needs of people residing in Guam where interruptions in water service are being experienced. The Commission has previously approved these well projects. The ALJ recommends approval for the change order.

Commissioner Perez asked whether the change order was developed just at this time when the matter was coming before the PUC for approval of the \$34,000 additional cost. ALJ Alcantara replied that was correct. Commissioner Perez asked whether this was because GWA hadn't started the design yet. ALJ Alcantara indicated that work has already been done.

Commissioner Perez asked whether the PUC was being requested to approve a cost for work that already had been done, and whether GWA had already expended the amount and was getting PUC approval after the fact. GM Bordallo indicated he did not believe that GWA had already expended the amount. The work was not complete, and GWA had not received any final design package yet. Some design work had been completed. GWA learned that it needed to revise the technical specifications to include SCADA. The contractor is waiting for approval of the additional work so that it can continue.

The Chairman asked where the wells were going to be located. GM Bordallo stated that three new wells to be constructed are in the Yigo and Agafa Gumas areas. The remaining five wells to be rehabilitated are located in various areas, including Ysengsong. The new wells are intended to serve low pressure areas.

Commissioner Niven clarified that the PUC was approving the entire contract, not just the change order. Commissioner Niven indicated that the Ordering Provision may refer to approval of the increase. He believes that the PUC is now required to approve the entire contract. Acting GWA Attorney Botha indicated that was correct. GWA is requesting that the entire contract be ratified.

Commissioner Niven requested that Ordering Provision No. 1 be revised to make it clear that PUC was approving the entire amount not just the \$34,000 increase. ALJ Alcantara agreed to make such revision. Commissioner Niven also requested a final revision on the calculation of the total contract amounts. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the GWA Well

Rehabilitation Design Contract with GHD and adopted the Order as revised, made *Attachment "D"* hereto.

5. Guam Power Authority

The Chairman indicated that the next item of business was GPA Docket 15-17, First Green Solutions Complaint, ALJ Report, and Proposed Order. ALJ Alcantara indicated that on January 25 of this year, the PUC considered this matter and issued an Order which required GPA to submit certain documentation related to how GPA arrives at its power factor calculations. GPA was requested to provide PUC with documentation detailing how it arrived at the power factor adjustment for its customers as well as documentation detailing how kWh was computed under the former analog meters as well as how kWh is computed under the new smart meters.

On February 24, 2016, GPA submitted material responding to the PUC January 25 Order. On March 21, 2016, First Green filed a response with the PUC as a "simplification to the complaint." In its response to the Order, GPA stated that the current smart meters directly read kWh, kVAh, and kw, and that the smart meter readings for kWh and kVAh are sent to its customer care and billing software and that the power factor is calculated by the software, which also calculates power factor using the formula kWh divided by kVAh. GPA further stated that if the power factor percentage is either below 83% or above 87%, the customer care and billing software calculates either a penalty or credit pursuant to rate schedule peak.

According to GPA, the analog meters required a kWh reading to be obtained from the kWh meter, inputted into a manual reading device and then uploaded to the utility software. Further, a kWh usage was obtained from a kWh analog meter and that a formula was then calculated to obtain kVAR and kVAh which was then used to calculate power factor using the formula kWh divided by kVAh. In its simplified complaint, First Green rejects GPA's position that kWh is an actual measurement done by the meters.

First Green contends that kWh is calculated internally in the meter. All power utility companies provide only voltage and currents to their customers, which are measured as kVAh and that no utility company provides actual kWh has that has to be calculated to determine its quantity. First Green also maintains that kVARh also has to be calculated to determine its quantity and that the actual only provided item to all power utility customers is kVAh, which is made up of kWh and kVARh.

First Green further contends that the acreage usage of kWh should never be influenced in direct proportion to the power factor, that all improvements in the power factor are the results of its kVARh, and that this proportion reduces the amount of required kVAh as supplied by the utility, since less kVAh is needed. GPA's smart meters are actually billing less kWh for lower power factors at 0.85 and billing more kWh with power factor is increased above 0.85 in direct proportion to the same kVAh usage. The ALJ

stated that, based upon the submission of the parties, he recommended that the smart meters be tested by an independent party as originally recommended by PUC consultant Lummus. The record before the Commission shows that there may be some discrepancies in house kWh is measured or calculated. He believes that a contractor should examine the smart meters to determine whether the meters are accurate and if they have been calibrated properly to accurately measure kVAh as well as calculate kVARh and kWh.

The Chairman asked Mr. Sparacio if the parties had reached a resolution. Mr. Sparacio indicated they had not. The Chairman asked whether GPA's contention was that kilowatt-hours are measured in the new smart meters themselves. Mr. Sparacio believes GPA admitted that it never did any programming to the smart meters. The smart meters are not programmed to the tariff. As long as the meters are not programmed to the tariff, they are not going to measure kWh, in noncompliance to the tariff.

The Landis & Gyr website indicates that the meters only measure voltage and amperage. Everything else goes through a processor within the smart meter to be calculated. The smart meter cannot measure kWh. It can only measure amperage and voltage, which is kVA, which is exactly what the power company supplies: voltage and amperage. When one takes voltage and amperage and manipulates them by including whatever the power factor is now doing, it provides a different kWh reading than the tariff states. GPA Counsel Botha indicated that GPA did not receive First Green's simplified complaint from First Green, but received a copy from ALJ Alcantara.

Mr. Sparacio proceeded to describe in detail certain power billings for Julale Shopping Center. His point was that the installation of the USIS system increased the power factor for a number of months from .90 up to .97. However, when First Green significantly reduced kVA, the amount of kWh was increasing. A customer does not have an incentive to improve the power factor in what GPA is doing to its billing. New corrected kWh should be based on the tariff, which states that all energy and demand charges will be based on an average of 0.85.

The customer is paying substantially more for a limited credit from improving the power factor. Having another company come in and verify the meters will not resolve the issue. First Green is concerned with what is happening with the actual power bills. Mr. Sparacio believes that Schedule P requires the formula to use the power factor of .85. The kWh should be multiplied by the power factor of .85, and then divided by the average monthly power factor for that month.

The analog meters were not influenced by the power factor charges. That required a separate meter to determine what the power factor was. With the analog meter, the kWh was not influenced by the power factor. The new smart meters are not measuring kWh the same way. Mr. Sparacio provided an example showing that when a customer provides a more efficient power factor, the power bill actually increases because the

client has used the same amount of kVA. GPA needs to internally program the meter to be in compliance with the tariff.

For some customers if First Green raises the efficiency of the power factor too much, the customer would not see as much of a reduction in its power bill. It is not fair to clients who are attempting to be more efficient. The Chairman clarified that if a client has a very low power factor, and efficiency is raised to .90, the bills still could go down. Mr. Sparacio indicated if a customer has a very low power efficiency factor such as .62, raising it to .90 is closer to .85. In such case the power bill would go down. However, with a customer with higher a power factor such as .99, a power bill actually goes higher.

Mr. Sahni from the Onward Agana indicated that as Onward increased its power factor, GPA would multiply the kVA times a higher power factor to establish the kWh. Although the kVA came down, the power factor went up, kWh was higher. The Chairman asked whether the power factor credits for increasing efficiency were relatively minor in the overall billing. Mr. Sahni agreed. Mr. Sparacio indicated that the customers were being penalized.

GM Benavente proceeded to speak on behalf of GPA. Commissioner Perez asked, if the customer goes below .83, whether the penalties would kick in. Mr. Sparacio said that was correct. GM Benavente spoke about the meter itself. What comes out of the meter is a measurement of energy used or the kVAH. There is a used for measuring kWh and kVAH. There are no changes as a result of power factor for that. The only reason there is a power factor is wasted energy from large power consumers. The more efficient the motor is, the better the capacity of the banks, it allows the customer to reduce wasted energy which reduces the fuel cost to the power plant.

GPA only measures kilowatt-hours. It's not doing anything else. And it does not calibrate or tweak meters. GPA is using a recognized tool to measure kilowatt-hours and the kVAH which is required to implement the rate structure. The credit is based upon the calculation of dividing the kilowatt-hours by kVAH to get the power factor. All GPA does is to measure the kilowatt-hours customers consume, measuring the kVAH, determining the power factor and applying the rates. GM Benavente indicated his belief that GPA is calculating everything correctly.

The other question is whether the incentive in the tariff is adequate and whether the value of the reduction with the increase in the power factor equates to the incentive that GPA should provide. Mr. Sparacio claimed that GPA already has the tariff to address that but the tariff "guaranteed .85." GPA Attorney Botha disputed Sparacio's contention and stated for the record that Mr. Sparacio was incorrect. The tariff has been scheduled and submitted to the PUC. Mr. Botha indicated that the tariff has been in effect for over 30 years. There's nothing about it that says calculate using 0.85.

Mr. Sparacio believes the tariff does require that all energy and demand charges be based upon an average of .85. Benavente indicated that GPA does not change anything dealing with tariff. Mr. Benavente indicates that the energy charge is based upon the meter. Mr. Benavente indicated that the meter was programmed to measure kilowatt-hours. Mr. Sparacio asked Mr. Benavente whether the meter was programmed for .85 power factor. GM Benavente indicated to him that he would have to ask Landis and Gyr. The Chairman read the portion of Tariff P which states that "the above demand and energy charges are based upon an average monthly power factor of 85%."

Mr. Benavente indicated that the tariff indicates that the charges are based on the cost of service. It does not relate to the meter itself. The cost is increased or decreased based upon the power efficiency. The power factor is not tied to the meter itself and how the meter calculates the kilowatt-hours. Other than credit or penalty, you don't measure the power factor. It does measure kilowatts in kWh.

The Chairman asked whether this was a relatively small credit. GM Benavente concurred. The Chairman indicated that when the power factor increases, there's not a real change in the billing and the amount of the power factor credit is not enough to compensate for the improvement and efficiency. The Chairman again remarked that the credit was minor -- the customers are improving their efficiency by dropping the apparent power, but the kilowatt-hours are not really changing. That's what the bill is based upon, not so much the power factor.

Mr. Sahni indicated that they had asked GPA what the formula was for determining kWh. The ALJ response was that the meter calculates kWh. However, they wanted to know how the analog meters and the new meters were making the computation. First Green does not believe that the calculation is the same now with the smart meters as it was with the analog meters.

John Cruz, GPA Manager of SPORD indicated that GPA did test the smart meters and those that didn't work were sent back. He indicated that Landis and Gyr was coming to Guam on May 4. It was with the Sales Department, but that department could hook GPA with meeting their technical people. The Chairman asked Mr. Cruz if he could share information with the PUC about the people in the technical department. The Chairman asked Mr. Cruz to share that information with ALJ Alcantara. The Chairman indicated that the PUC could make a direct contact with the technical people from Landis & Gyr.

The Chairman asked First Green if there was a consultant on island that could analyze this. Mr. Sparacio indicated that First Green has access to a utility grade anologuer. This device could be brought on island. This device would tell everything that the meter now reads. Unless when one specifically programs a meter or has a kind of computation to tell it there is a specific tariff to comply with, the meter does not know to comply with anything. It is just going to take the kVa times the power factor. That's how it will derive the kWh.

The question to the PUC is whether it believes that GPA should be basing their kWh on 0.85 power factor. Does PUC believe that is how it should be calculated?

Commissioner Pangelinan asked Mr. Sparacio how one could determine the power factor unless there was some sort of independent measure of kWh? How can the company determine that its customers are achieving better power factors? Mr. Sparacio indicated that its meters can measure reactive power which is kVARh, and kVARh is measurable quantity. It could be divided by kVAh and one does not need to know kWh to determine what is the kVAR. kVAR is the reactive power and the measurement can tell you what the power factor is. Mr. Benavente indicated that the meters for Schedule P are measuring kWh and kVAH.

The Chairman indicated the PUC would be interested in talking directly with Landis and Gyr technical people as the next step for the PUC proceeding. The Chairman indicated that the PUC is attempting to understand this matter -- the next step is talking to Landis and Gyr. GM Benavente indicated that would fine. Mr. Jay Miller, a member of the Public, stated that he knew the Landis and Gyr people, he has worked with them in the power area. Each meter is programmed by the power company.

With the analog meters, John Cruz of GPA indicated that GPA just reads the meter, and then puts the formula in for the tariff. GPA takes meter readings, the reading goes to the meter data management system, and then into the billing system where it gets calculated. Mr. Miller asked Mr. Cruz if Landis and Gyr programmed the meters. Mr. Cruz indicated they did program the meters in terms of fixed configuring with variables. They did not program kVAH or kVAR in a certain manner. The meter calculates and measures according to international standards.

Mr. Miller indicated that the programming is set by the power company. Mr. Cruz stated that the meter is programmed to recognize the master stations and to get back to the command center with all of the data. GPA does not program inside the meter. According to Mr. Miller, Mr. Cruz said that meters are programmed differently depending on what you are looking for. Mr. Cruz stated there are variables on the meter and they're configured. GPA does not program a tariff into the meter.

Mr. Miller indicated that he had a right to ask the power company how it is setting up the bill. When the customer pays a bill, he is entitled to know what is in the bill. The Chairman indicated the PUC would attempt to get to the bottom of this matter. Mr. Sparacio asked what would happen if Landis and Gyr confirmed that the meter is taking kVA times whatever the power factor is and that is determining what the kWh will be billed. Mr. Sparacio indicated that GPA should be doing something to meet the 0.85 power factor calculation as stated in its tariff. They are not complying with that factor.

Commissioner Montinola asked whether, according to Mr. Sparacio, this system has the ability to measure kVAR. He asked whether First Green power factor matched the same power factor on the bills calculated from GPA. Mr. Sparacio indicated it was very

close. Mr. Sparacio asked what the correct result was: is it kVA times power factor, equaling the correct kWh. Or, is it kVA times an adjustment by the default power factor of 0.85 divided by the new power factor?

The Chairman asked Mr. Cruz how long Schedule P had been in place. GM Benavente indicated it had been in place for 30 years. PUC Counsel indicated it had been in effect since 1984. Mr. Sahni indicated that the issue only came up since the smart meter was installed, because previous to that there was not a power factor issue. Mr. Sahni indicated that the smart meter computes the kWh using the power factor, the actual power factor. The old meters did not have that ability. It's only when the new meters came that they can actually calculate the exact power factor which was only two or three years ago. It may have been an unintended consequence.

The Chairman indicated that it might be time to revisit the tariff. He asked Mr. Cruz whether there were any other tariffs that have a similar power factor equation involved in the billing. Mr. Cruz didn't think so, he felt that only the demand factor changes in Schedule J, not the power factor adjustments. Commissioner Montinola had felt that since both GPA and First Green's power factor measurement matched, kWh is being measured properly. Commissioner Montinola indicated that logically, as the power factor goes higher, the bill, the kWh is also going to be higher. Mr. Sparacio concurred.

The Chairman reemphasized that PUC would hear from Landis and Gyr. The Commission will again discuss the matter. It could be that the tariff or Schedule P should be revisited. Landis and Gyr will be asked about the technical aspects of what the meter is measuring. Mr. Sparacio believes that .085 was placed in the tariff as a power factor to have the kWh corrected if in fact it was being influenced by an increased power factor. If you continue to increase your power factor, then the meter might read that as an increase in kWh. It's suggested that the .085 should be divided by the actual power factor.

The Commissioners discussed the Order. It was agreed that the first provision would be modified to state that the PUC will consult directly with Landis & Gyr. The second provision concerning contractors performing the tests can also be deleted. Chairman Johnson indicated there would be a discussion between Landis and Gyr, the ALJ and whatever Commissioners wish to attend. Upon motion duly made, seconded and unanimously carried, the Commissioners approved that the ALJ and interested Commissioners would meet with Landis and Gyr to discuss how the meter works.

The Chairman announced that the next item on the agenda was GPA Docket 16-02, GPA Petition for Ratification of Design Construction Contract for the GPA Wind Turbine Pilot Project, PUC Counsel Report, and Proposed Order. Counsel indicated that the Wind Turbine Pilot Project was, for the most part, from federal grant funds. The Wind Turbine was recently completed. It produces a maximum 275 kilowatts of wind power. It is located in Yona on cross island road. GPA already held the ceremony for unveiling the project, and Commissioner McDonald attended.

When the project was operational, GPA's accountant, Deloitte & Touche, raised an issue about whether this project had been properly approved by the PUC. The complicating factor here is the federal grant funds, and some confusion on the part of GPA as to whether this project had to be approved by the PUC since grant funds were utilized. Of the total cost of the project, federal grant funds were over \$2,102,000; only about \$148,000 plus of GPA internal funds were utilized.

Previously GPA went out to bid for the construction and implementation of the project; the contract was awarded to DCK Pacific Guam. In the process, however, GPA never came to the PUC for approval of the project. Under the contract review protocol, a contract above \$1.5M requires GPA to come to the PUC for approval. That is the basic rule.

Another provision deals with contracts which involve GPA receiving revenues for reimbursement of costs from an outside source. That is Section 2 of the Contract Review Protocol. Since revenue funds are not being used much, presumably the rates of customers would not be impacted. In such case GPA can evaluate the contract on its own. However, before the contract is entered into GPA should provide a resolution to the PUC authorizing the contract and an affidavit from management indicating that the contract does not produce an increased revenue requirement. Then, unless the PUC takes action, the contract is deemed approved.

GPA did not follow this procedure in advance of the contract. But once it found out from Deloitte that there was an issue raised about the contract as to whether it had been duly approved by the PUC, GPA examined the procedure; it has since provided all of the required information to the PUC. John Cruz of GPA filed a declaration indicating that there is no increased revenue requirement resulting from this contract because most of it is funded through federal grant. The Resolution and the contract have been submitted to the PUC.

Since federal grant funds were involved here, and reimbursement, GPA was probably not certain as to which procedure to use. It turns out that GPA has now complied with everything required under Provision 2 of the Contract Review Protocol. GPA has complied with the intent of the Contract Review Protocol. The Wind Turbine Project is now operating, and it is producing energy output on a daily basis as of 200 kilowatts. The project is a beneficial one. The intent of the Contract Review Protocol has been upheld.

Counsel recommends that the PUC ratify the Design Construction Contract with DCK Pacific Guam for this project. As an aside, DCK previously went out of business, and the contract was assigned to Pernix Corp. A Proposed Order would adopt the Counsel Report recommendations; it would approve the Construction Contract with DCK Pacific for the Wind Turbine Pilot project, and would authorize GPA to expend the total amount of \$2,160,777.91.

Commissioner Niven asked Counsel whether, if GPA had complied with the paragraph 2 of the Contract Review Protocol, the contract could have been deemed approved without any action by the PUC. Counsel responded that was correct. Upon motion duly made, seconded and unanimously carried, the Commissioners ratified the Design Construction Contract for the Wind Turbine Project and adopted the Order made *Attachment "E"* hereto.

The Chairman announced that the next item of business was GPA Docket 16-03, GPA Petition for Approval of Insurance Adjuster Fees, PUC Counsel Report, and Proposed Order. Counsel indicated that this matter involved the aftermath of the explosion at the Cabras 3 & 4 plants. GPA had gone out to bid for forensic accounting and insurance claims services. GPA was looking for an advisor company that could assist with the claims process and work with the insurers of GPA to obtain the largest possible settlement for the Cabras 3 & 4 claims.

In the original contract entered into, it provided for an hourly billing process. Green Span Company Adjusters International is a qualified company to provide these services. The first 9 months provided for \$240,000 initial payment, and then there were four additional possible 1-year terms under the contract. GPA and Green Span recently discussed the matter and considered the possibility of a contingent fee agreement for Green Span rather than an hourly fee. The reason was that, under the hourly approach, GPA would have to pay the money upfront.

Most of the work would be done at the beginning because these claims are being formulated now and pressed with the insurance companies. It is a labor intensive task at the beginning of the contract. Green Span suggested a contingency fee basis so that GPA does not have to expend those funds upfront. The amount of fees would be paid out of a final settlement with the insurers on the Cabras 3 & 4 claims. The fee structure discussed was that, if GPA received a settlement on its claim of up to \$100M, there would be a 3% incentive based layered contingency fee structure. If over \$100M was recovered, there would be a 5% on all money over \$100M. The maximum would \$3M for the first \$100M, and \$5M for the next \$100M. If the full \$300M was recovered, the total fee \$13M.

GPA believes that the contingency fee structure would be more advantageous. Lawyers are familiar with this type of contingency fee agreement, particularly for injury and damage claims. While it could result in a higher fee for Green Span, the advantage is that it aligns Green Span's and GPA's interest because it provides an incentive for Green Span to work hard and conscientiously with the insurance company to try to obtain the highest possible settlement. From that perspective, there is an incentive. A Proposed Order would adopt the findings of Legal Counsel and would authorize GPA to change the basis of the fee compensation with Green Span from an hourly basis to the layered contingency fee structure Counsel had described.

The Chairman asked Mr. Benavente what was occurring with Cabras 3 & 4. Mr. Benavente indicated that GPA was waiting to see what happens with the settlement. The CCU had approved the restoration of Cabras 3, but GPA wishes to confirm that it is going to receive the settlement. GPA is working with the insurance adjuster and the insurers. GPA is just waiting for the result at present. The Chairman asked whether there would be any reports coming forth as to how the damage happened. GPA's team was still investigating the matter.

Upon motion duly made, seconded and unanimously carried, the Commissioners approved the layered contingency fee structure for GPA's forensic and accounting consultants Green Span, and adopted the Order made *Attachment "F"* hereto.

Commissioner McDonald requested that GPA provide a cyber security update by the next regular meeting. He also requested an update as to what funding sources, including federal funding, there were. The Chairman asked whether any birds had been lost because of the wind turbine. GPA Counsel Botha stated that they have not seen any biological studies on that matter yet.

6. Administrative Matters

Counsel indicated that the E911 Report had been transmitted to the Public Auditor, the Speaker, and the Governor on March 14. The Report concerns the total collections for the E911 surcharge. There are still some remaining issues that Counsel must address, including the requirement that the surcharge be applied to VOIP calls.

The Slater/Nakamura Report deals primarily with reporting practices of the collection agents, receipts from the Department of Administration, and other technical aspects. Commissioner Perez asked where the money goes after it is collected. Counsel indicated that the money was administered by the Fire Department. The PUC used to be involved in the budgeting process of E911, but the legislature changed that and placed responsibility with the Fire Department.

Commissioner Niven asked how much the Report costs. Counsel indicated that the cost was \$30,000 to \$40,000. Roger Slater does a good job on this matter. The cost is paid for from the E911 fund. Commissioner Niven indicated that a more minimalist view of the Report might reduce the length and cost. Counsel agreed. Commissioner Niven asked whether PUC had received any feedback on prior year reports. Counsel Horecky indicated there had never been feedback. The Public Auditor has done a few related audits of the PUC. Counsel indicated that each collection agent deals differently with the prepaid accounts.

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



Rowena E. Perez
Acting Chairwoman

THE GUAM PUBLIC UTILITIES COMMISSION
REGULAR MEETING
SUITE 202, GCIC BUILDING
414 W. SOLEDAD AVE., HAGATNA, GUAM
6:30 p.m., March 31, 2016

Agenda

1. Approval of Minutes of February 25, 2016
2. Docomo Pacific Inc.
 - Docomo Docket 16-01, Joint Application of Guam Telecom, LLC and Docomo Pacific Inc. for Approval by the PUC of the Transfer of Guam Telecom, LLC's Certificates of Authority to Docomo Pacific, Inc., ALJ Report, Proposed Order
3. Port Authority of Guam
 - PAG Docket 15-04, Increase Tariff Petition of PAG for Rate Relief, ALJ Report, Proposed Order
4. Guam Waterworks Authority
 - GWADocket 16-01, Review and Approval of Contract with GHD for Well Rehabilitation Design, ALJ Report, Proposed Order
5. Guam Power Authority
 - GPADocket 15-17, 1st Green Solutions Complaint, ALJ Report, Proposed Order
 - GPADocket 16-02, GPA Petition for Ratification of Design/Construction Contract for the GPA Wind Turbine Pilot Project, PUC Counsel Report, Proposed Order
 - GPADocket 16-03, GPA Petition for Approval of Insurance Adjuster Fees, PUC Counsel Report, Proposed Order
6. Administrative Matters
 - E-911 Fiscal 2015 Surcharge Summary for the Guam Public Utilities Commission, GTADocket 16-01
7. Other Business

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



INCREASE TARIFF PETITION OF
PORT AUTHORITY OF GUAM
FOR RATE RELIEF

PAG DOCKET 15-04

ORDER

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC”) pursuant to the Increase Tariff Petition (hereinafter referred to as the “Rate Petition”), filed by the Jose D. Leon Guerrero Commercial Port (“PAG” or the “Port”) on June 1, 2015.

DETERMINATIONS

On March 31, 2015, PAG published its proposed rates reflecting increases to PAG’s Terminal Tariff.¹ On May 19, and May 20, 2015, PAG submitted documents to a Port User’s Group and other customers for their review and comment.² On June 1, 2015, PAG filed the Rate Petition. Thereafter, the Administrative Law Judge of the PUC (the “ALJ”) transmitted a copy of the Rate Petition to the firm of Slater Nakamura, L.L.C. (“Slater Nakamura”), the PUC’s consultants for port authority matters. The ALJ requested that Slater Nakamura begin its review of the instant rate case.

On October 19, 2015, Slater Nakamura provided the ALJ with its report on the rate investigation, which detailed its findings and recommendations. On October 27, 2015, the ALJ issued an ALJ Report and Proposed Order, detailing the PUC’s review of the Rate Petition and Slater Nakamura’s investigation. On October 29, 2015, at a regular meeting of the PUC, the

¹ Report of the Tariff Investigation for the Port Authority of Guam (“Slater Nakamura Report”), submitted by Slater Nakamura, L.L.C., p. 3 (Oct. 19, 2015).

² Slater Nakamura Report, p. 3.

Commission issued an Order approving a 7% increase to PAG's Terminal Tariff rates, excluding the crane surcharge, as petitioned by PAG.³ At the October 29, 2015 meeting, PAG expressed to the PUC that it would like to file a multi-year rate plan in 2016, and that it was confident that it could do so.

On February 6, 2015, the Honorable Senator Thomas C. Ada issued a letter to the Chairman of the PUC requesting clarification of the October 29, 2015 Order, specifically whether the tariff increase would be effective for one year only, whether the 7% increase was truly "reasonable," among other issues.

The October 27, 2015 ALJ Report and corresponding October 29, 2015 Order were based on the review of documents submitted by PAG, as well as Slater Nakamura's investigation in this rate case. In its review, Slater Nakamura noted that although PAG presented documentation for a 5-year tariff increase, PAG only petitioned the PUC for a single year rate increase.⁴

Based on its investigation, Slater Nakamura made the following findings. First, the consultants found that the requested increase to PAG's Terminal Tariff was "just and reasonable."⁵ As indicated in the Slater Nakamura Report, the following recommendations were made. First, the consultants recommended the approval of the requested tariff rates.⁶ The consultants also recommended that PAG review its plan to adjust salaries to the 50th market percentile to determine the impact on the financial stability of the Port, and that a report should

³ PUC Order, PAG Docket 15-04, p. 8 (Oct. 29, 2015).

⁴ Slater Nakamura Report, p. 4.

⁵ Slater Nakamura Report, p. 15.

⁶ Slater Nakamura Report, p. 16.

be provided to the Commission by December 2015.⁷ The consultants suggested that PAG review the impact of the 7% increase to determine if another increase is justified.⁸

When the PUC indicated in its October 29, 2015 Order that PAG was authorized to implement the proposed 7% increase, it meant that such rate increase would remain in effect until such time as the agency either returns to the PUC, or is ordered by the PUC, to request rate relief. Based on prior orders regarding the rate petitions by this agency, once a rate increase has been approved by the Commission, the utility usually does not deviate from the increase, unless such increase is approved under a multi-year rate plan, in which case the rate increases will be adjusted annually pursuant to the multi-year plan. Accordingly, the 7% tariff increase, as implemented by PAG, should remain in full force and effect until there is further action by the PUC.

With respect to an increase in employee salaries, Slater Nakamura recommended that PAG review its plan to adjust salaries to the 50th market percentile to determine the impact of such an adjustment on the financial stability of the Port, and to submit its findings to the PUC.⁹ Slater Nakamura's approach underscores a necessity to proceed with the salary adjustments with some care. Indeed, the PUC should support a more financially conservative approach towards these salary adjustments, and therefore, PAG should aim to implement salary increases when its revenues permit. Accordingly, PAG should employ an incremental approach to its salary increases, and should work in collaboration with the PUC as it applies any such increases to employee salaries. Accordingly, PAG should be required to submit its findings to the PUC by July 31, 2016.

⁷ Slater Nakamura Report, p. 16.

⁸ Slater Nakamura Report, p. 16.

⁹ Slater Nakamura Report, p. 16.

At the October 29, 2015 PUC hearing, PAG expressed its desire to file a multi-year rate plan some time in 2016, and that it was confident it could do so. PAG also indicated to Slater Nakamura that another tariff increase will be requested in June, 2016.¹⁰ Since no hard deadline has been specified for submission of a subsequent rate plan, the ALJ recommends that the PUC require PAG to file a multi-year Rate Plan by October 1, 2016.

In its report, Slater Nakamura has indicated that “[w]hile the crane surcharge may be covering current costs, it is not generating sufficient funds to pay for replacement cranes”¹¹ Slater Nakamura has therefore suggested to the PUC that the financial modeling for this upcoming rate plan should include the surcharge for replacement of two Gantry cranes by 2027, and that PAG develop a model that allows it to operate profitably. Slater Nakamura has also suggested that PAG work collaboratively with the Commission’s consultants to generally develop a financial model that will serve as a basis for PAG’s multi-year rate plan.

On March 29, 2016, the ALJ issued an ALJ Report clarifying certain provisions contained in the October 29, 2015 PUC Order.

Based on the above, the ALJ recommended the following. First, the ALJ recommended that the PUC require PAG to file a multi-year Rate Plan by October 1, 2016. PAG should work collaboratively with the Commission’s consultants to develop a financial model that will serve as a basis for PAG’s multi-year rate plan. The financial model for this upcoming rate plan should allow PAG to operate profitably, as well as include the surcharge for replacement of two Gantry cranes by 2027.

Second, the ALJ recommended that PAG should work in collaboration with the PUC as it applies any such increases to employee salaries, and should aim to implement salary

¹⁰ Slater Nakamura Report, p. 2, n.2.

¹¹ Slater Nakamura Report, p. 24.

increases when its revenues permit. Therefore, PAG should review its plan to adjust salaries to the 50th market percentile to determine the impact of such an adjustment on the financial stability of the Port, and to submit its findings to the PUC by July 31, 2016.

The Commission hereby adopts the findings made in the March 29, 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. PAG shall file a multi-year Rate Plan by October 1, 2016. PAG shall work collaboratively with the Commission's consultants to develop a financial model that will serve as a basis for PAG's multi-year rate plan.
2. The financial model for this upcoming rate plan shall allow PAG to operate profitably, as well as include the surcharge for replacement of two Gantry cranes by 2027.
3. PAG shall work in collaboration with the PUC as it applies any such increases to employee salaries, and should aim to implement salary increases when its revenues permit. Accordingly, PAG shall review its plan to adjust salaries to the 50th market percentile to determine the impact of such an adjustment on the financial stability of the Port, and submit its findings to the PUC by July 31, 2016.
4. The 7% tariff increase, as implemented by PAG, shall remain in full force and effect until there is further action by the PUC.

5. PAG is further ordered to pay the PUC's regulatory fees and expenses, including and without limitation, consulting and counsel fees, and the fees and expenses associated with this rate investigation. 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 31st day of March, 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

P163008.JRA



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE: REVIEW AND APPROVAL OF)
CONTRACT WITH GHD INC.)
FOR WELL REHABILITATION)
DESIGN)
_____)

GWA DOCKET 16-01

ORDER

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC” or the “Commission”) pursuant to the March 8, 2016 Petition for Approval of Change Order No. 6 for the Well Rehabilitation Design in the Contract with GHD Inc. (the “Petition”), filed by the Guam Waterworks Authority (“GWA”).

DETERMINATIONS

GWA is presently in contract with GHD Inc. (“GHD”), formerly known as Winzler & Kelly, in the amount of \$984,857.00 for the design of three new wells, and rehabilitation of seven wells that have been out of service.¹ Based on GWA’s Request for Proposals RFP-01-ENG-2010 (the “RFP”), the subject contract involves engineering design services for these wells.

Pursuant to 12 G.C.A. §12105,² 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

¹ Petition for Approval of Change Order No. 6 for the Well Rehabilitation Design, (“Petition”), p.1-2 (March 8, 2016).

² Formerly 12 G.C.A. § 12004.

...”³ 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.⁴

In its Petition, GWA sought ratification and approval of its contract with GHD and Change Order No. 6. The GHD contract involves the design of three new water wells, and the rehabilitation of seven wells, which originally cost GWA \$984,857.00.⁵ Since the execution of the contract, there have been five change orders. Change Order No. 1 increased the contract by \$39,771.00; and Change Order No. 2 reduced the contract by \$25,414.00. Change Order Nos. 3, 4, and 5 did not affect the contract amount. Change Order No. 6 to the contract, however, will increase the value of the contract by \$34,094.00, and thereby increase the total contract price to \$1,033,308.00.

GWA maintained that before it entered into the contract, the value of the contract remained below “the \$1M Contract Review Protocol threshold.”⁶ The Change Order involves “critical items that were not contemplated at the time the contract was entered into” and would “add additional elements . . . to accommodate revisions to the specifications to incorporate SCADA.”⁷ GWA maintained that “[t]he reason that GWA did not include the above items in the initial contract estimate was because the Scope of Work for the contract was created in April of 2011 and the SCADA project has changed

³ GWA’s Contract Review Protocol (“GWA CRP”), Administrative Docket 00-04, p. 1 (Oct. 27, 2005).

⁴ *Id.*

⁵ Petition, p. 1.

⁶ Petition, p. 2.

⁷ Petition, p. 2.

considerably since that time.”⁸ Specifically, GWA submitted that “in consultation with the U.S. E.P.A.,” it has determined that “additional work remains to be performed to ensure that proper integration of this project into GWA’s on-going efforts to implement System Control and Data Acquisition (‘SCADA’) was necessary to ensure the project will work as intended.”⁹

GWA submitted that the total cost of the contract will increase to \$1,033,308.00, which includes \$34,094.00 for the Change Order. The cost of the Change Order will be funded under GWA’s 2010 Bond funds.¹⁰

The Change Order involves revisions to the designs, which includes SCADA updates, as well as updates to any specifications to account for any changes to codes and standards, design requirements, and engineering design practices, since most of the engineering design took place during 2010-2012.¹¹ Ultimately, “the work by GWA and the design consultant to repackage the design documents and modify design specifications to incorporate SCADA integration spurred additional design hours by the design consultant above what was previously agreed upon.”¹²

The Petition is supported by Resolution No. 19-FY2016 issued by the Consolidated Commission on Utilities (the “CCU”) at its February 23, 2016 meeting. In the Resolution, the CCU found that the terms and the fee proposal were fair and

⁸ Petition, p. 2.

⁹ Petition, p. 1.

¹⁰ Petition, Exhibit 1, p. 3.

¹¹ GHD Scope of Work and Fee Proposal, p. 2 (Jan. 21, 2015).

¹² Petition, Exhibit 1, p. 2.

reasonable.¹³ The CCU further found that the terms and conditions of the Change Order were fair and reasonable, and therefore, authorized GWA to approve the Change Order.¹⁴ Accordingly, the CCU has authorized additional funding for the subject contract in the amount of \$34,094.00, and thereby approved a total contract amount of \$1,033,308.00.¹⁵

On March 29, 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.

The ALJ found that, as indicated by GWA in RFP-01-ENG-2010, “[m]ost areas in Guam are served without interruptions, although lack of developed water sources in some areas, along with annual dry seasons and the occasional drought has highlighted the need for GWA to rehabilitate some of its existing wells and locate and drill new wells.” RFP, p. 11. In addition, the ALJ found that GWA had engaged in work to design additional deep wells and rehabilitate existing deep wells “to address the needs of people residing in this territory where interruptions in water service [are] being experienced.” RFP, p. 11.

The ALJ further found that this Commission previously reviewed and approved projects related to the design of new wells, as well as projects related to the SCADA Master Plan and SCADA updates. Therefore, the ALJ recommended that the PUC ratify the subject contract between GWA and GHD Inc., which includes Change Order No. 6, so that it can continue its efforts in creating new water sources for Guam.

¹³ Petition, Exhibit 1, p. 3.

¹⁴ Petition, Exhibit 1, p. 3.

¹⁵ Petition, Exhibit 1, p. 3.

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 GHD Inc., including Change Order No. 6, to continue the work related to the design of the three wells, and for the rehabilitation of seven wells, for a total cost of \$1,033,308.00.

The Commission hereby adopts the findings contained in the March 29, 2016 ALJ Report and, therefore, issues the following:

ORDERING PROVISIONS

After careful review and consideration of the above determinations, the March 29, 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 March 8, 2016 Petition for approval of the \$1,033,308.00 contract with GHD Inc., including Change Order No. 6, for the new well and rehabilitation design is GRANTED and that such contract is hereby RATIFIED; GWA is therefore authorized to pay the amount owed to GHD Inc., not to exceed \$1,033,308.00.

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 31st day of March, 2016.



JEFFREY C. JOHNSON
Chairman



ROWENA E. PEREZ
Commissioner

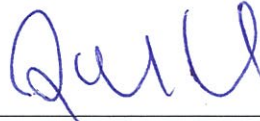


JOSEPH M. MCDONALD
Commissioner

FILOMENA M. CANTORIA
Commissioner



MICHAEL A. PANGELINAN
Commissioner



PETER MONTINOLA
Commissioner



ANDREW L. NIVEN
Commissioner

P163011.JRA

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN THE MATTER OF:) GPA Docket 16-02
)
GPA Petition for Ratification of)
Design/Construction Contract for the) **ORDER**
GPA Wind Turbine Pilot Project.)
)
_____)

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Petition of Guam Power Authority ["GPA"] for Ratification of the Design/Construction Contract for the GPA Wind Turbine Pilot Project with DCK Pacific Guam, LLC.¹

BACKGROUND

2. The construction of GPA's Wind Turbine Pilot Project was recently completed.² The Wind Turbine produces 275kw of wind power in Cotal, Yona.³
3. The project will assist GPA in determining the viability of larger scale wind turbine projects and open opportunities to work with local educational institutions in developing technical trades to support such technology on Guam and in the Region. The project will also help GPA gain experience in the construction management, operation, maintenance and grid interconnection of wind turbines; the construction of the Wind Turbine complies with Guam Public Law 29-32, which promotes the development of renewable energy.⁴
4. Beginning in 2009, the Department of the Interior Office of Insular Affairs has awarded grant funds to GPA to support the Wind Turbine Project. The initial grant

¹ GPA Petition for Ratification of Design/Construction Contract for the GPA Wind Turbine Pilot Project, GPA Docket 16-02, filed March 23, 2016.

² GPA Invitation to Ribbon Cutting Ceremony on March 11, 2016, at 10:00a.m., dated February 23, 2016.

³ Letter from John J. Cruz, Strategic Planning and Operations Research Manager, Guam Power Authority, to Fred Horecky, PUC Counsel, dated March 18, 2016.

⁴ Id.

award was for \$1,000,000.⁵ In 2012, the Office of Insular Affairs granted an additional \$505,000 for the GPA Wind Turbine Pilot Project.⁶

5. The total amount of federal grant funds for the Wind Turbine Pilot Project is \$2,102,000.00.⁷
6. On August 12, 2014, the Guam Consolidated Commission on Utilities approved the award of a contract to DCK Pacific Guam, LLC in the amount of \$1,653,523 for the design and construction of the Wind Turbine Pilot Project.⁸
7. On April 21, 2015, based upon the receipt of additional federal grant funds in the amount of \$597,000, the Guam Consolidated Commission on Utilities authorized GPA to increase the total contract amount with DCK Pacific Guam, LLC to \$2,150,895.36 for the design and construction of the Wind Turbine Pilot Project.⁹
8. DCK Pacific Guam LLC was recently purchased by Pernix Guam LLC. Pernix is now the contractor performing the Wind Turbine Contract.¹⁰
9. To date, the total contract cost with DCK Pacific Guam is \$2,160,777.91. Of that amount \$2,012,254.91 is funded by the Department of Interior Grants, and only \$148,523 will be paid for from GPA Capital Improvement Project funds.¹¹
10. The project is complete other than the provision of another contractor to provide post-construction biological surveys for the wind turbine site.¹²

⁵ Department of the Interior Office of Insular Affairs, Notification of Provisional Grant Award, Award No. Guam-CIP-2009-1, 2009.

⁶ United States Department of the Interior Office of Insular Affairs, Grant and Cooperative Agreement, dated September 16, 2012.

⁷ Letter from John J. Cruz, Strategic Planning and Operations Research Manager, to Fred Horecky, PUC Counsel, dated March 18, 2016.

⁸ Guam Consolidated Commission on Utilities Resolution No. 2014-36, Authorizing Management of Guam Power Authority (GPA) to enter into a Contract with DCK Pacific Guam, LLC for the Wind Turbine Pilot Project Design and Construction, adopted on August 12, 2014; see also GPA Purchase Order No. 20709 OP to DCK Pacific Guam, LLC..

⁹ Guam Consolidated Commission on Utilities Resolution No. 2015-26, Authorizing Management of Guam Power Authority (GPA) to Increase the Contract Amount with DCK Pacific Guam, LLC for the Wind Turbine Pilot Project Design and Construction, adopted April 21, 2015.

¹⁰ Phone Conference between Graham Botha, GPA Attorney, and Fred Horecky, PUC Counsel, on March 24, 2015.

¹¹ Letter from John J. Cruz, Strategic Planning and Operations Research Manager, to Fred Horecky, PUC Counsel, dated March 18, 2016.

11. In its annual process of auditing GPA accounts, the accounting firm of Deloitte & Touche questioned whether GPA's contract with DCK for Design/Construction of the Wind Turbine Pilot Project had been properly approved by the PUC under the Contract Review Protocol.¹³
12. Deloitte & Touche raised the issues of whether GPA filed sufficient documentation under the Contract Review Protocol to justify the contract award, and whether the Contract Review Protocol was properly followed. GPA is now requesting PUC ratification of the DCK Contract to satisfy the concerns of Deloitte & Touche.

DETERMINATIONS

13. To date, the total amount expended by GPA for the Wind Turbine Pilot Project exceeds \$2.160M. In general, GPA is required to seek PUC approval for contracts in excess of \$1.5M "before the procurement process is begun..."¹⁴
14. However, in the instant case, the overwhelming portion of the costs for the GPA Wind Turbine Pilot Project has been funded by grant funds from the Office of Insular Affairs. Only a small portion, roughly \$148,523, has been paid with GPA funds.¹⁵
15. The GPA Contract Review Protocol ordinarily requires PUC approval for contracts in excess of \$1.5M before the procurement process begins. However, there is a different procedure where GPA receives revenues or reimbursement of costs from an outside source. In such case, GPA is not required to obtain PUC approval before procuring the contract. Paragraph 2 of the Contract Review Protocol provides as follows: "For contracts that involve the receipt by GPA of revenues or reimbursement of costs in excess \$1,500,000, the following procedure will apply:
 - a) GPA is permitted to evaluate the contract without PUC approval;
 - b) Prior to entering into the contract, GPA will provide the following to PUC:

¹² Id.

¹³ Email from Lenora M. Sanz to John J. Cruz, Jr. dated March 10, 2016.

¹⁴ CONTRACT REVIEW PROTOCOL FOR GUAM POWER AUTHORITY, Administrative Docket, issued February 15, 2008.

¹⁵ Letter from John J. Cruz, Strategic Planning and Operations Research Manager, to Fred Horecky, PUC Counsel, dated March 18, 2016.

- i) The Consolidated Commission on Utilities [CCU] resolution authorizing the contract.
 - ii) An affidavit from GPA management stating that the contract does not produce an increased revenue requirement with supporting documentation.
 - iii) A narrative description of the contract.
 - c) The contract will be deemed approved unless rejected by PUC within 30 days after an adequate filing [as determined by the ALJ] has been made by GPA pursuant to subparagraph (b)."
16. The Wind Turbine Contract does involve reimbursement of GPA costs for the Wind Turbine Project through federal grant funds, and the receipt of revenues by GPA in the form of federal grant funds.
17. GPA admittedly did not follow the procedure outlined in Paragraph 2 of the Contract Review Protocol prior to awarding the contract for the project or before the project was completed. However, since learning of the audit issues raised by Deloitte & Touche, GPA has taken proactive steps to provide the materials required under paragraph 2 of the Contract Review Protocol, including the CCU Resolutions authorizing the contract, a Declaration from GPA management indicating that the contract has not produced an increased revenue requirement, and a narrative description of the contract.¹⁶
18. Under the limited circumstances of this case, the PUC should ratify the Wind Turbine Contract and approve the expenditures by GPA under the Design/Construction Contract GPA Wind Turbine Pilot Project with DCK Pacific Guam.
19. Although GPA did not technically follow the procedure under the Contract Review Protocol, it has previously informed both staff and some Commissioners of the PUC about the Wind Turbine Pilot Project at meetings of the CCU, and provided applicable Resolutions to them concerning the Project. In general, PUC Commissioners and staff have been aware of this Project for a number of years.

¹⁶ Materials provided to PUC legal counsel Fred Horecky by John J. Cruz, Strategic Planning Operations Research Manager, Guam Power Authority, dated March 10, 2016 and March 15, 2016.

20. Significantly, in a filed Declaration, GPA has indicated that this contract **"does not produce an increased revenue requirement for GPA."**¹⁷ Only \$148,523 in GPA funds has been utilized for this Contract. It is very unlikely that the amount of GPA's internally funded expenditures would necessitate a rate increase.
21. GPA must always undertake strict compliance with the Contract Review Protocol. After learning of its non-compliance with the Protocol with the DCK Contract, GPA has undertaken expeditious measures to comply after the fact. Under these circumstances, the Commission should ratify the expenditures for the Project.
22. The project is a beneficial one, and the Wind Turbine is now providing energy output on a daily basis of in excess of 200kw.¹⁸

ORDERING PROVISIONS

After review of the record herein, including GPA's Petition for Ratification of Design/Construction Contract for the GPA Wind Turbine Pilot Project, 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 Design/Construction Contract with DCK Pacific Guam for the GPA Wind Turbine Pilot Project is hereby ratified and approved.
2. GPA is authorized to expend the total amount of \$2,160,777.91 for the Contract.
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 31st day of March, 2016.

¹⁷ Letter from John J. Cruz, Strategic Planning and Operations Research Manager, to Fred Horecky, PUC Counsel, dated March 18, 2016; Declaration of John J. Cruz, filed on March 24, 2016.

¹⁸ Email from John J. Cruz to Frederick J. Horecky, dated March 10, 2016.


Order
Ratification of Contract
for Wind Turbine Pilot Project
GPA Docket 16-02
March 31, 2016

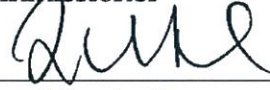

Jeffrey C. Johnson
Chairman

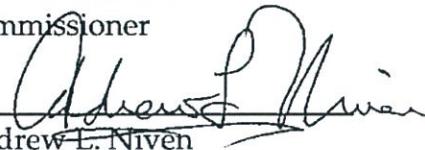

Rowena E. Perez
Commissioner


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 THE MATTER OF:) GPA Docket 16-03
)
The Petition of the Guam Power Authority)
for Approval of Insurance Adjuster Fees.) **ORDER**
)
)
_____)

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Petition of Guam Power Authority ["GPA"] for Approval of Insurance Adjuster Fees.¹

BACKGROUND

2. As the result of the explosion at the Cabras Nos. 3 & 4 plants on August 31, 2015, GPA determined that it would seek a professional Insurance Adjuster to assist it in the quantification, documentation and presentation of the loss sustained to GPA's Insurers.²
3. On February 29, 2016, GPA issued a purchase order to the Greenspan Co./Adjusters International ["Greenspan"] through GPA-RFP-16-001, provision of Forensic Accounting and Insurance Claim Services to GPA, to assist it in presenting its claim.³
4. The original contract with Greenspan included fee compensation based upon hourly charges and other negotiated expenses, with total billings in the initial year of the contract estimated to be approximately two hundred forty thousand dollars (\$240,000).⁴ The contract term is for one year, with four additional one year periods. The initial payment of \$240,000 is for nine month in FY 2016.⁵

¹ GPA Petition for Approval of Insurance Adjuster Fees, GPA Docket 16-03, filed March 23, 2016.

² Guam Consolidated Commission on Utilities Resolution No. 2016-17, Relative to Authorizing the Guam Power Authority to Convert the Fee Compensation Structure of the Contract with the Greenspan Co. Adjusters International, issued March 22, 2016, at p.1.

³ Id.

⁴ Id.; see also Purchase Order issued to Greenspan, No. 22786 OP, dated February 29, 2016.

⁵ Id.

5. GPA now seeks to change the basis of the fee compensation in the contract with Greenspan from an hourly basis plus negotiated expenses to a layered contingency fee structure plus airfare as negotiated and incurred.⁶
6. Under this "incentive-based layered contingency fee structure", three percent (3%) will be charged on all money paid on the GPA claim up to one hundred million dollars (\$100,000,000) and five percent (5%) on all money paid over one hundred million dollars (\$100,000,000).⁷
7. Thus, the maximum amount that GPA could pay to Greenspan as a fee would be thirteen million dollars (\$13,000,000). Such payment would be owed if the total amount of three hundred million dollars (\$300,000,000) was paid by the Insurers on the claim.⁸
8. When fee compensation is converted from hourly to contingency, Greenspan will credit, against that fee, any money paid on an hourly plus expenses basis.⁹

DETERMINATIONS

9. Given the magnitude of GPA's claim, is appropriate for it to retain the services of an experienced company for Forensic Accounting and Insurance Claim Services. GPA's Insurers will likely have substantial expertise and resources to address GPA's claims. Retention of an experienced Insurance Adjuster such as Greenspan will hopefully help to "level" the playing field.
10. Greenspan is a very experienced company in providing public insurance adjusting and disaster recovery consulting services. See www.greenspan-ai.com.
11. Greenspan has been in business since 1946, and its principals have a substantial amount of experience and background in negotiating insurance claims. Greenspan has represented power companies with regard to fire and disaster claims, and previously represented Continental Airlines with regard to Typhoon Paka typhoon damage claims.¹⁰

⁶ Id at p. 2.

⁷ Id at p. 1.

⁸ Id at pgs. 1-2.

⁹ Exhibit "1" to Guam Consolidated Commission on Utilities Resolution No. 2016-17.

¹⁰ Greenspan Co./Adjusters International, Response to RFP No. GPA-RFP-16-001 (January 22, 2016).

12. GPA's purpose in converting the fee compensation of the contract with Greenspan from an hourly basis to a contingency basis is to provide GPA a means for deferring the payment of fees to Greenspan and to set a cap on the amount to be incurred for Greenspan's services.¹¹
13. GPA and Greenspan discussed the "Contingency Fee Option." Greenspan's work in representing clients on claims is "front end loaded." Greenspan spends many more hours, as well as incurring costs, at the beginning of a claim as opposed to the later part: "The beginning is labor-intensive. That is why many clients prefer contingency fee arrangement. In this manner we "finance" the work. Our fees are due as GPA is paid by the Insurer(s)."¹²
14. While GPA's Insurance Policy has a "professional fees endorsement", GPA understands that it will be responsible for the appropriate contingency fee payment to Greenspan based upon the revised fee arrangement.¹³ There is no assurance that GPA will be able to recover its fees from the Insurers.
15. In addition to allowing GPA to pay Greenspan's fees out of the insurance settlement, rather than up front, another possible advantage to the contingency fee arrangement is that it will more closely align the interests of GPA and Greenspan.
16. Since Greenspan's fees will increase depending upon the amount of GPA's insurance settlement, a contingency fee structure will possibly give Greenspan additional incentive to obtain a larger insurance settlement on behalf of GPA.
17. There will be no rate impact by virtue of this contract, as the source of any fees to Greenspan will be insurance settlement proceeds. GPA management should be authorized to structure this contract with Greenspan in a manner which it believes will result in the best possible settlement.

ORDERING PROVISIONS

After review of the record herein, including GPA's Petition for Approval of Insurance Adjuster Fees, and the PUC Counsel Report, for good cause shown, on motion duly made, seconded and carried by the undersigned Commissioners, the Guam Public

¹¹ Resolution No. 2016-17, "Issues for Decision", presented to the CCU Commissioners in their Board Packets dated March 22, 2016.


¹² Exhibit "1" to Guam Consolidated Commission on Utilities Resolution No. 2016-17.

¹³ Id.


Utilities Commission **HEREBY ORDERS** that:

1. GPA is authorized to change the basis of the fee compensation in the contract with Greenspan from an hourly basis plus negotiated expenses to a layered contingency fee structure plus airfare as negotiated and incurred.
2. The approved fee structure shall be as set forth in GPA's Petition.
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.

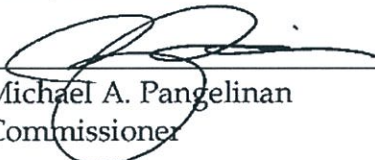
Dated this 31st day of March, 2016.



Jeffrey C. Johnson
Chairman



Rowena E. Perez
Commissioner



Michael A. Pangelinan
Commissioner

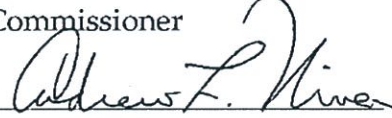
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Commissioner