

**GUAM PUBLIC UTILITIES COMMISSION
REGULAR MEETING
December 29, 2016
SUITE 202, GCIC BUILDING, HAGATNA**



MINUTES

The Guam Public Utilities Commission [PUC] conducted a regular meeting commencing at 6:39 p.m. on December 29, 2016, pursuant to due and lawful notice. Commissioners 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 Chairwoman announced that the first item of business on the agenda was approval of the minutes of November 28, 2016. Upon motion duly made, seconded and unanimously carried, the Commission approved the minutes subject to correction.

2. Guam Waterworks Authority

The Chairwoman announced that the next item of business on the agenda was GWA Docket 17-01, Request for Approval to Issue IFB for Property Insurance, ALJ Report, and Proposed Order. Counsel indicated that he was reporting on this matter for ALJ Alcantara. GWA is requesting authority to issue an Invitation for Bids for property insurance including other coverages which GWA takes. The current policy expires on April 12, 2017. It is necessary for GWA to now go out to bid to procure a new insurance policy.

GWA's Bond Indenture requires insurance for two reasons. One is for GWA's protection. It is required to procure insurance that would be standard in the industry and that would be obtained by similar plants and utilities. The second reason for insurance is protection of the bond holders, people that own GWA bonds. GWA's position is that it must go out for property insurance before the present policy expires. ALJ Alcantara determined in his Report that GWA is required to maintain insurance that ensures all of the plants, reservoirs, treatment plants and other property of GWA. ALJ Alcantara concludes that failure to do so would be in violation of the Bond Indenture.

GWA has submitted a sample IFB. It is the one that GWA used in 2012. However GWA did not submit the actual IFB that it intends to issue; the IFB submitted was previously used when insurance was obtained in 2012. GWA will update a few insurance coverages and values, and a few other items, and basically use the same format that it used in 2012.

The Order prepared by ALJ Alcantara would approve the issuance of the IFB to procure bids for commercial property insurance. Upon motion duly made, seconded and unanimously carried, the Commissioners authorized GWA to issue an IFB for property insurance and adopted the Order made *Attachment "B"* hereto.

3. Guam Power Authority

The Chairwoman indicated that the next item of business was GPA Docket 17-15, Petition for Approval of the Performance Management Contract for the Management, Operation, and Maintenance of the GPA Cabras No. 3 & 4 Power Plants, PUC Counsel Report, and Proposed Order. Counsel indicated that his report raises a lot of concerns about this current Performance Management Contract arrangement. While Counsel does not advise against approving the contract, he felt that he was unable to advise the Commission to approve the contract extension of the PMC. He had a number of concerns, the first of which was that this was a request for a 3-month extension. Previously, there had been 3-month, 6-month, and 15-month extensions. Presumably in March of this year, the PUC would once again be faced with a request by GPA to approve another extension. GPA indicates that it does not expect there to be a settlement of the Cabras No. 3 & 4 insurance proceeds before the end of 2017, and that the PMC would still be in place.

It is, of course, speculative as to when, if ever, there might be an insurance settlement. But this places the PUC in the position of having to be constantly faced by requests for extension. Whatever the PUC does with this particular extension request, it should require GPA to have a plan for the remaining time during which it will need a PMC for Cabras No. 3 & 4. GPA has been required to take actions with regard to the Cabras No. 3 & 4 clean up and removal of the engine. GPA is not relying upon the PMC for operation of Cabras No. 3 & 4. If GPA had its "druthers", it would likely wish to move on from the PMC.

The \$10M which GPA will spend for the cleanup of Units No. 3 & 4, and the removal of the engine, will come out of the settlement funds. This money reduces the amount that could be otherwise used for the purchase of new power plants. With regard to the present PMC, GPA is required to undertake these preservation efforts. Its position is that it needs the PMC to assist the off-island contractors in these tasks.

There are a few positives with the PMC. The PMC was the company that procured the two contractors that are doing the cleanup and engine removal. So, a PMC has an advantage in that it can procure contractors and materials that are needed for the fixup of Units No. 3 & 4. The PMC can undertake procurement more quickly and efficiently than GPA. The PMC can also facilitate the work of the off island contractors by knowing where everything is. However, Counsel is still troubled by the fact the PUC and the people of Guam have no explanation for what caused the explosion. There are no known present facts to indicate that the PMC for Cabras No. 3 & 4, Korea East West, was responsible for the explosion. On the other hand, there are no facts indicating that

the PMC was not responsible. The PMC was the company managing the plant when the explosion occurred, and that is troubling.

The people of Guam may never know what caused the explosion. Another issue raised by Counsel was the price for retaining of the PMC. Korea East West (KEWP) is not really performing as a PMC any longer. It is not managing a plant or operating a plant; at most it is a caretaker for a plant. It is preserving the plant until it is decided what to do with everything. It simply does not perform the same tasks that it previously performed for management of the plants.

Previously KEWP was receiving a higher fee for fixed management. With the five year contract, KEWP was paid fixed management fees of over \$100,000 per month. Now GPA has negotiated to pay KEWP \$80,000 per month. Is that amount justified since KEWP is not operating the plants? That fee may be too much for a caretaker function. The Commission must determine whether that is an appropriate amount for payment. The second part of the monthly cost is the preservation management services fee. The fee is for materials to fix the plants. It is akin to the annual budget that the PMC's ordinarily have when there is an annual budget for repairs. Usually that budget is for capital improvement projects to repair the plants. These are expenses for materials for preservation only, which is not exactly the same. That amount is \$46,000 per month, with a total monthly cost of \$127,000.

In conclusion, Counsel makes no recommendation. GPA does need to come up with a plan for the next year at least because it doesn't expect any insurance settlement until at the earliest December 2017. The PMC KEWP will likely be needed for that period of time. However this matter should not have to come before the PUC every three months. The PUC could approve a short term plan tonight but require GPA to come back with a longer term plan as to what the future of the PMC will be.

Commissioner Niven asked Counsel whether retention of KEWP is absolutely essential to perform GPA's fiduciary duty; would GPA be in breach of its fiduciary duty if the KEWP contract was not extended? Assistant General Manager of Operations, Melinda Camacho, indicated that cleanup and engine removal contracts for Cabras No. 3 & 4 were issued through KEWP. Without them, she is not sure how the process would work. As the ALJ stated, KEWP is the party that secured the contracts for the removal of the engine and for the cleanup, for the preservation of Cabras No. 3. KEWP expedites GPA services, similar to the other PMC. When KEWP issues the contract to Belcor, GPA pays KEWP so that it can retain the contract.

Commissioner Niven asked what the result would be if KEWP was out of the picture. Counsel Botha indicated it would definitely affect the entire arrangement. KEWP also did the procurement for Royce Engineering in the amount of approximately \$5.99M, for the engine removal. GPA Counsel indicated that, as part of its insurance contract, it is required to take steps to preserve Cabras Units No. 3 & 4 until a decision is made. KEWP is required to turn over the shaft for Engine No. 3 every day. Cabras No. 3 may

not be repairable due to its exposure to the elements. However, since the insurance company is taking the position that the plant could be repaired, GPA's claim could be denied if it does not undertake preservation efforts.

Commissioner Niven asked whether the functions that KEWP performs are transferrable to GPA employees. AGMO Camacho concurred with the ALJ that the PMC was not presently running the plant. It is more of a project management. PMC is facilitating procurement. GPA does have staff there helping with all the physical labor, such as mechanics and electricians. But GPA does not have the administrative staff. Since the PMC had been operating the plants, it is the resident expert at the present time. The engineering staff of GPA does not have the historical experience on the operations of the plant. KEWP has been critical in answering questions on past performance of the Cabras No. 3 & 4 power plants. It has provided expertise.

As it works towards the preservation efforts, KEWP is more involved than just day to day operations, similar to the Cabras No. 1 & 2 units. KEWP is managing timelines and making sure that things are accomplished safely. GPA staffing at the Cabras No. 3 & 4 plants may have peaked at 38 personnel. However, those personnel are presently performing duties at Cabras No. 1 & 2, at the diesel plants, and Aggreko. Nine GPA employees are still helping KEWP with the labor portion for Cabras No. 3 & 4. There's a team effort, but GPA looks to KEWP for its guidance and expertise that the work required by the insurance adjusters can get done.

GPA Counsel Botha indicated that, while funds for preservation of the Cabras No. 3 & 4 plants do come out of the insurance proceeds, the insurance adjusters agreed that preservation is a necessary step. Commissioner Niven asked whether that would mean much less money for other purposes when the settlement is reached. Counsel Botha concurred.

Commissioner Montinola asked what portion of the insurance claim might not be paid if preservation efforts aren't undertaken. AGMO Camacho indicated that it would be reimbursement for the 3-months. Commissioner Montinola indicated that he was speaking of the claim itself. He indicated that the claim could be between \$100M and \$300M. That is, by what particular amount would the claim be reduced if preservation efforts weren't undertaken? GPA Counsel Botha indicated that the insurance adjusters have not come up with an answer to that question. GPA would like an insurance settlement now so that both the insurance adjusters and GPA would save money and not have to place more money into the claim.

At present the adjusters are not ready to come to the table and discuss that issue. GPA had hoped the discussion would take place this month, but now the adjusters are saying they would come to Guam in February 2017. It does not make sense at present for GPA or the insurance company to dump more money into the plant. GPA wished to keep its plans with KEWP short term and does not wish to be locked into a longer term

arrangement in case a settlement was reached. GPA does not desire a long-term contract with KEWP.

Commissioner Montinola clarified that GPA does not know what the amount would be for reduction of the insurance proceeds if preservation was not undertaken. GPA CFO John Kim indicated that GPA requested an additional \$34M from the insurers. The largest possible coverage is the blanket coverage, \$300M. Commissioner Montinola indicated that since GPA has hired KEWP, then those fees are added on top of the insurance claim. CFO Kim indicated that was correct.

Commissioner Cantoria indicated that GPA had gotten itself into a situation where it cannot function with KEWP. She believes that since it is not known whether it caused the explosion or was negligent, KEWP should have been taken out immediately. Keeping them there is like allowing them to cover up its tracks as if it was in charge of the sabotage. GPA has allowed itself to need their services and allow the insurance to justify it to hire them and cover their tracks. KEWP has been there for many years but it is still there preserving the plants at a high cost because the insurance requires it. Ratepayers are paying for it. The insurance may not pay until 2017, so why GPA is only requesting 3-months. GPA will come back for another amount because KEWP is "squeezing your necks." There is nothing GPA can do. Didn't GPA's personnel study under KEWP?

Since GPA must use KEWP, GPA will be back in April talking about a renewal again. Commissioner Cantoria asked why GPA had come to the Commission when the monthly cost was only \$127,000 (she thought that only contracts for \$1M have to be reviewed by the commission). GPA Counsel Botha responded that this particular amount would not exceed \$1.5M, it's an extension to an existing contract that the PUC has already approved. Since it is not within the 20% additional, GPA must come back to the Commission for an extension. PUC Counsel confirmed that was correct.

Commissioner Cantoria then took the position that nothing should be paid for KEWP and that it not be hired. GPA employees under KEWP should be learning something. GPA should be able to depend upon them. Placing KEWP there is like placing a convict to cover its track. Commissioner Cantoria is a CPA, and she views this in a different manner. This is the people's money, not GPA's. GPA has not been careful about the money. It has put itself into a corner. GPA Counsel felt that Ms. Cantoria's characterization was unfair. KEWP is a large power producer in Korea, so if GPA does not have the answers on island, it can reach back to its home company.

GPA employees at the plant do not have the experience on how those plants work in different areas around the world. The insurance company is asking what steps have been taken to preserve the plants. There's a need to have KEWP reach back to its colleagues in Korea so that those questions can be answered. This is not the expertise of the engineers and employees at GPA. KEWP may have had some culpability in the explosion. GPA does not know. Insurance adjusters are exploring whether the

explosion was the result of a malfunction of the Governor. If the equipment malfunctioned, there might not be responsibility by KEWP or GPA employees. No one is trying to hide anything.

The process has been transparent with the insurance and their engineering consultants. GPA Counsel understands the issue from an audit and accounting perspective. However KEWP is not in a position to hide anything. GPA's position is that KEWP has been useful to it and is now undertaking what the insurance company has said is an acceptable expenditure. The adjusters have not approved all claims. KEWP can assist GPA in negotiating with the insurance adjusters. Without its expertise, GPA may not be able to challenge the adjusters.

GPA could hire another consultant, but it would charge GPA to learn the job again. The new consultant will not have the experience running the plants for the last few years. GPA may be able to negotiate a lower price with KEWP. Perhaps some of the services that KEWP provides could be eliminated.

Commissioner Cantoria disagreed with GPA Counsel. This is not a monopoly on knowledge by the company from Korea. Other experts around the world could have done this work. There is no monopoly on knowledge. Ms. Cantoria thinks that the PUC should not allow an extension. Commissioner McDonald asked what the fixed management fee was when KEWP was managing and operating Cabras No. 3 & 4. AGMO Camacho indicated that fee could have been around \$100,000 per month. Commissioner McDonald asked whether the preservation management fee was a real management fee or a supplies fee. AGMO Camacho indicated that it was a reimbursable fee for supplies.

AGMO Camacho indicated that if there was no fee for supplies, GPA would have to purchase the same in the fourth month. \$47,000 is only a monthly estimate. Commissioner Montinola indicated that KEWP should not be immediately shut off; perhaps a transition is needed. If KEWP is to be kept for longer than a month, there should be a report as to what it is going to do for the next few months critical for the transition. Commissioner Niven indicated that the Commissioners do not want to have to go through this again in three months even if it is approved. Commissioner Montinola believed that there needs to be a discussion of how long this is going to take and how long the KEWP contract should be.

Commissioner Niven was concerned about jeopardizing the other contracts made through KEWP. Commissioner Pangelinan asked whether KEWP just facilitated the procurement process. AGMO Camacho indicated that GPA issued the purchase order. GPA Counsel indicated that the purchase order was to pay KEWP to contract the \$5.9M with Royce Engine. Counsel Botha indicated that GPA did the procurement RFP, and that Royce and Belcor are not direct contractors of GPA. Commissioner Perez asked why GPA went out and did the contracting. GPA Counsel Botha indicated that bidders are always likely to protest to the OPA. This procurement needed to be done quickly

because the insurers had agreed to the engine removal finally after 15 months of negotiation.

Commissioner Pangelinan asked whether, if KEWP's contract was not extended, GPA would have to directly contract with these other service providers for the removal. Counsel Botha indicated that was correct. Commissioner Pangelinan indicated that even if GPA had its own employees involved, it would still need the subcontractors to be involved in the process. Again, Counsel Botha concurred. Companies like Royce are the only group of specialized companies that do this within removal work worldwide. Commissioner Pangelinan indicated that there was a structural problem identified by Commissioner Niven. Beyond just the expertise of managing the plant, it's also a contractual relationship that allows the process to continue.

Commissioner Niven indicated that, given the millions of dollars involved in the actual work, it would be problematic if something happened to KEWP. Commissioner Niven asked how long it would be until the removal process would be completed. Manager of SPORD, John Cruz, indicated it would be a minimum of six months. Commissioner Niven asked why then GPA had only requested a 3-month extension. AGMO Camacho indicated that with the 15-month contract extension, GPA had an option to extend for an additional 3-months. GPA just wished to exercise that 3-month option.

GPA Counsel Botha reminded the Commissioners that previously GPA had intended to consolidate the PMC contracts for all of the Cabras plants, 1, 2, 3 & 4. Then the explosion occurred. Given the uncertain nature of the Cabras 3 & 4 plants, it would not be fair to the contractors or GPA for a PMC to be hired for all of the plants. That plan was given up. GPA opted to extend the PMC contracts for limited periods. AGMO Camacho indicated that GPA did not know how long it would take to get approval to remove the engine and other matters. Counsel indicated that there were 12 adjusters that all have to meet to agree to approve GPA's claims. It takes many months to approve any repair, such as the roof repair.

The regular PMC contract is for 5 years. Commissioner Montinola asked about the amount of the monthly fees for KEWP. AGMO Camacho indicated that it had been about \$100,000 per month; for the last 15 months it was \$87,000 per month. She indicated that KEWP was now asking for \$80,000 per month. Commissioner Montinola indicated that KEWP was receiving \$47,000 per month for preservation fees; could it get by on 10% or 50% of that amount?. AGMO Camacho indicated that whatever the Commission decides, GPA can only go back to KEWP and determine its position on the matter. Commissioner Pangelinan asked whether any of that \$87,000 was being paid to Royce. AGMO Camacho indicated that it was not, those are separate contracts.

Commissioner Niven asked PUC Counsel whether, having heard this discussion, he had any thoughts or recommendations. Counsel indicated that he understood the difficult position that GPA was in. The two contractors doing the plant clean up and engine removal are subcontractors. It would present a problem to GPA if it can't use

KEWP. GPA would have to negotiate new arrangements. Counsel was attempting to think of a middle ground. He felt that the preservation management figures given by KEWP were very vague. He recommended that the Commission could approve a 2-month period for extension where KEWP would receive a monthly lump sum figure, such as \$100,000. GPA could decide how it is going to apportion it between management fees and preservation. The Commission could then require GPA to come back within 45 days before the expiration of the 2-month period with a plan as to what it is going to do for the rest of the year at least. This matter will have to come back before the Commission in February.

In its plan, GPA would indicate how long it intends to retain KEWP and what the monthly cost would be. It can refine the management and preservation fees and exactly what amount is needed. Then, at the end of February, the Commission could decide what it wants to do with a longer term extension. Commissioner Perez asked whether her understanding was correct that previously KEWP managed the plants at \$100,000 per month and when it turns out that it is not managing the plants, there was only a \$20,000 discount. AGMO Camacho indicated that was correct. Commissioner Perez indicated that GPA was given an 80% fee to KEWP to provide services to the people of Guam for two plants that aren't working, whereas there was a better deal when the plants were working.

AGMO Camacho indicated there was still a scope of work that needed to be completed, including the mechanical and electrical expertise of KEWP. Manager Cruz indicated that KEWP was used not only for preservation work, but only for assistance in working with GPA's insurance adjuster to get back insurance proceeds. There's continuous work that must be done such as draining the water from the engine, making sure that the electrical lines are working etc. Mr. Cruz indicated that KEWP gives GPA the expertise on the replacement cost for equipment, such as the coils, removal of the engine and extraction of water. KEWP can provide expertise concerning the equipment and its operation. Technical and mechanical details are required in the negotiations. KEWP has been instrumental on the insurance claims. It would be unfair to say that KEWP has not contributed anything to those claims.

AGMO Camacho indicated it was never GPA's plan to take over the PMC function or to train staff to be the performance management contractor. There was never a transition when the plant was operational when GPA employees would take over. It was always GPA's intent to run the plants as a PMC. Commissioner Perez asked how long the PMC had been in operation. AGMO Camacho indicated it was over 10 years, it probably started in 1996. There is no one trained at GPA to perform the PMC function. The PMC has a specific skill set.

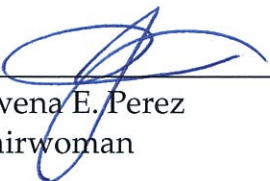
Commissioner Montinola indicated that, at this point, it was obvious that KEWP is integrated into this whole process with clean up and preservation. He recommended that for the two upcoming months, he proposed a total figure for the PMC, including

fixed management fees and preservation fees, at \$100,000. To cover both preservation and management fees. In 45 days, GPA would have to come back to the PUC to propose a new plan. PUC Counsel indicated that GPA's plan would be due around the middle of February. Counsel indicated the aspects of the required GPA plan in its Counsel Report. GPA will indicate how long it wishes to retain KEWP so that the PUC will not be back again every 3-months to address this matter. GPA can renegotiate amounts for that period and hopefully reduce the amounts. There would be \$100,000 a month for 2-months, and a report due by GPA concerning its PMC plans by February 10, 2017. Upon motion duly made, seconded and carried, the Commissioners approved the 2-month extension upon the terms explained by Counsel, by a vote of 5-1 (Commissioner Cantoria voted against the motion).

4. **Administrative Matters**

Counsel indicated that he had nothing to report on. GPA Docket 17-14, concerning GPA contracts in FY 2016 under the Contract Review Protocol, was only provided for informational purposes.

Counsel indicated that Commissioner Niven had expressed interest in determining the PUC schedule for the upcoming year and what month the Commissioners would like to take off from a Commission meeting. Counsel suggested that June might be an appropriate month, but that it was up to the Commissioners. Commissioner Niven indicated that he thought the tradition of taking one month off was fine with him. Commissioner Cantoria asked whether this was the first time the Commission had done this. Commissioner Montinola indicated that it had been done last year. Chairwoman Perez asked the Commissioners to look at this issue for further discussion. There being no further business, the Commissioners moved to adjourn the meeting.



Rowena E. Perez
Chairwoman

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION
REGULAR MEETING
SUITE 202, GCIC BUILDING
414 W. SOLEDAD AVE., HAGATNA, GUAM
6:30 p.m., December 29, 2016

Agenda

1. Approval of Minutes of November 28, 2016
2. Guam Waterworks Authority
 - GWA Docket 17-01, Request for Approval to Issue IFB for Property Insurance, ALJ Report, and Proposed Order
3. Guam Power Authority
 - GPA Docket 17-16, Petition for Approval of the Performance Management Contract (PMC) for the Management, Operation and Maintenance of the GPA Cabras 3 & 4 Power Plants, PUC Counsel Report, and Proposed Order
 - GPA Docket 17-14, GPA's Filing of FY 2016 Approved Contracts and Obligations (*for Informational Purposes Only*)
4. Administrative Matters
5. Other Business



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE:	CONTRACT REVIEW FOR PROPERTY INSURANCE INVITATION FOR BID)))))	GWA DOCKET 17-01 ORDER
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INTRODUCTION

This matter came before the Guam Public Utilities Commission (the “PUC”) pursuant to the December 12, 2016 Petition for Approval of GWA’s Insurance Bid and Authorization to Issue Policy (hereinafter referred to as the “Petition”) filed by the Guam Waterworks Authority (“GWA”). GWA seeks PUC review and approval of the invitation for bids (the “IFB”) since GWA’s current contract for commercial property insurance expires on April 12, 2017. On December 27, 2016, the Administrative Law Judge of the PUC Joephet R. Alcantara (the “ALJ”) filed a report regarding the Petition, which included his findings and recommendations based on the administrative record before the PUC.

DETERMINATIONS AND FINDINGS

1. GWA’s Petition

In its Petition, GWA requested that the PUC approve its purchase of commercial property insurance. GWA maintained that under the provisions of the 2005 Series Bond Indenture, GWA is required to “maintain insurance on its system that a reasonable prudent operator of a similar system would maintain.”¹ GWA further indicated that a risk management consultant will assist GWA in preparing the IFB, as well as updating the values of insurable

¹ Petition, pp. 1-2.

properties in preparation of the bid documents.² GWA submitted that the IFB will be similar in form to the IFB issued in 2012, but will reflect updated policy requirements, additional assets and revised values.³ The Petition is supported by Resolution No. 08-FY2017 issued by the Consolidated Commission on Utilities (the “CCU”), which authorizes GWA to issue an IFB to procure property insurance, as well as to seek PUC approval under GWA’s Contract Review Protocol.⁴

2. GWA’s Contract Review Protocol

Pursuant to 12 G.C.A. §12105,⁵ 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 current Contract Review Protocol, “[a]ll professional service procurements in excess of \$1,000,000” and “[a]ny contract or obligation not specifically referenced above which exceeds \$1,000,000” “shall require prior PUC approval under 12 G.C.A. Section 12004, which shall be obtained before the procurement process is begun.”⁶

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 threshold review) is the total estimated cost of the procurement,

² Petition, p. 2.

³ Petition, p. 3.

⁴ Petition, “Exhibit A,” CCU Resolution No. 08-FY2017 (“Resolution”), pp. 1-3 (Dec. 6, 2016).

⁵ Formerly 12 G.C.A. Section 12004.

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

including cost incurred in any renewal options.”⁷ GWA submitted that a multi-year contract for insurance is more cost effective and beneficial to GWA; and that by its best estimates, the value of the IFB will exceed \$250,000.⁸

3. Section 6.05 of the 2005 Series Bond Indenture

Based on its Petition, GWA maintained that under Section 6.05 of the 2005 Series Bond Indenture, GWA must maintain insurance on its system that would usually be “maintained by prudent operators” of similar systems.

In particular, GWA submitted that Section 6.05(A) requires that:

The Authority will maintain or cause to be maintained insurance on the System with responsible insurers in such amounts and against such risks (including accident to or destruction of the System) as are usually maintained by prudent operators of systems similar and similarly situated to the System and which it shall deem advisable or necessary to protect its interests and the interests of the Bondowners so long as such insurance is available to the Authority on the open market from responsible insurers at reasonable costs.⁹

In addition, Section 6.05(B) provides that:

The Authority will maintain such other insurance which it shall deem advisable or necessary to protect its interests and the interests of the Bondowners, which insurance shall afford protection in such amounts and against such risks as are usually maintained by prudent operators of systems similar to the System.¹⁰

⁷ GWA CRP, p. 2.

⁸ Resolution, p. 2.

⁹ Petition, p. 1.

¹⁰ Petition, p. 2.

Therefore, according to GWA, its 2005 Series Bond Indenture, along with its supplemental indentures, require GWA to maintain insurance on the system in amounts and against risks normally maintained by other water and wastewater authorities.

4. CCU Approval

The Resolution issued by the CCU authorizes GWA to issue an Invitation for Bids to procure property insurance, as well as to seek PUC approval for such insurance under GWA's Contract Review Protocol.

In the December 27, 2016 ALJ Report, the ALJ found that GWA is required to maintain "insurance on the System with responsible insurers in such amounts and against such risks (including accident to or destruction of the System) as are usually maintained by prudent operators of systems similar and similarly situated to the System and which it shall deem advisable or necessary to protect its interests and the interests of the Bondowners" pursuant to provisions of its bond indentures. The ALJ further found that procurement of commercial property insurance for GWA's systems is both reasonable and necessary. In addition, the insurance coverage sought by GWA appears necessary and reasonable to satisfy its bond indenture provisions. Failure to obtain and secure such insurance would run afoul of the provisions of its bond indentures.

The ALJ additionally found that the PUC has consistently supported GWA's purchase of commercial property insurance. As previously expressed in the October 6, 2010 PUC Counsel Report issued in GWA Docket 10-02, "[t]he need for GWA to procure property insurance is clear: property insurance is required by GWA's 2005 Bond Series Indenture." PUC Counsel Report, GWA Docket 10-02, p. 2 (Oct. 6, 2010). Significantly, too, "the availability of

property insurance will potentially benefit rate payers with regard to the protection of system assets” and that “[i]nsurance proceeds can assist recovery efforts after natural disasters such as typhoons or earthquakes.” *Id.* at 3. Based on the reasons set forth therein, the ALJ recommended that the PUC authorize GWA to issue an Invitation for Bids for commercial property insurance.

The Commission hereby adopts the findings contained in the December 27, 2016 ALJ Report and, therefore, issues the following:

ORDERING PROVISIONS

After careful review and consideration of the above determinations, the December 27, 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 December 12, 2016 Petition for Approval of GWA’s Insurance Bid and Authorization to Issue Policy is GRANTED; GWA is therefore authorized to issue an IFB to procure bids for commercial property insurance.

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 29th day of December, 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

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