GUAM PUBLIC UTILITIES COMMISSION
REGULAR MEETING
May 25, 2017
SUITE 202, GCIC BUILDING, HAGATNA

MINUTES

The Guam Public Utilities Commission [PUC] conducted a regular meeting commencing at 6:30 p.m. on May 25, 2017, pursuant to due and lawful notice. Commissioners Johnson, Perez, McDonald, Pangelinan, Montinola, Cantoria, and Niven were in attendance. The following matters were considered at the meeting under the agenda made *Attachment "A"* hereto.

1. Approval of Minutes

The Chairman announced that the first item of business on the agenda was approval of the minutes of April 27, 2017. Upon motion duly made, seconded and unanimously carried, the Commission approved the minutes subject to correction.

2. Guam Power Authority

The Chairman announced that the next item of business on the agenda was GPA Docket 13-14, Demand Side Management, GPA Proposal for Expanded Demand Side Management Programs, a PUC Counsel Report, and a Proposed Order. Counsel indicated that the DSM program originated in 2013 at the request of the PUC for the setup of a program which would encourage energy-efficient equipment to conserve energy and lead to a lesser need for additional generation. In 2014-15, four DSM projects were agreed upon by GPA and PUC, involving air-conditioning, central and split-unit, and washer/dryer. It was contemplated that additional DSM projects would be developed. In 2015 GPA's Consultant Leidos did an extensive report on new possible DSM programs. It was received by PUC in September 2016.

Since early this year, GPA and PUC have been working collaboratively to come up with recommendations for new DSM programs. GPA Assistant General Manager of Engineering and Technology John Cruz has been working with ALJ Horecky and Commissioners to develop a proposal for new DSM programs. Although Leidos had recommended 18 possible new DSM programs, the Parties decided that only some of those should be adopted until a long-term funding source is identified for DSM. The programs are listed in the ALJ Report. The first is energy audits, which would be done by GPA customer services, online, or by third parties hired by GPA. These would be free to customers. Such audits are cost effective as they can assist customers to determine what energy conservation measures can be undertaken for homes or businesses.

A second program involves commercial air-conditioning, high efficiency packaged roof top units, 20-ton assumed, 15 SEER or better. With such units there could also be thermal-assisted solar collectors for the air-conditioners, no more than four. Assistant General Manager Cruz should be commended for his good work on this program. For the commercial air-cons, the rebate will be $1,000.00 per air-conditioner, and then $500.00 per solar collector. The collectors are attached to the air conditioners, and they increase the energy efficiency of the air-conditioners. Third is a commercial building energy management system. This includes equipment and systems in buildings designed to monitor and control electromechanically devices that in turn control heating, ventilation, lighting systems, fire alarms, security and maintenance function etc. The rebate for that would be $1,500.00. For this commercial air-conditioning, high efficiency split ducted air conditioning systems, 10-ton assumed, 18 SEER or better. There would be a $500.00 rebate per air-conditioner. For the solar thermal assister air-conditioning, the collectors, two would be allowed per 10-ton air-conditioning system. Fifth is residential air-conditioning, variable refrigeration flow and commercial variable refrigerant flow. These are new types of air-conditioning system that allow the refrigerant to be speeded up. The VRF air-conditioners are more efficient and allow fans or portion of the air-conditioners that are not needed to shut down. This could have an impact in reducing power usage for air-conditioning.

Also included is commercial lighting. For internal lighting there would be T5 LED lamps and a T8 lamp; the T5 rebate is $4.00 per lamp, and T8, $8.00 per lamp. Outdoor lighting will also be included, such as LED flood lights and LED parking lot street lights. For water heating, there will be low-flow shower heads, with a rebate of $12.97 per shower head. There will be rebates for energy star electric water heaters and tank less water heaters. For residential or commercial solar energy storage systems, there will be a pilot project with 100 customers. The amount of rebate has not yet been determined. Finally, there will be rebates for smart inverter systems and upgrades. The DSM program will not be static, and should expand over the years. This is in accordance with the original PUC Order in the matter. The Commission has previously indicated that it is in the interest of ratepayers to have GPA offer customers a reasonable array of DSM and energy conservation matters. The ALJ recommends that the PUC approve these initiatives.

The Chairman asked whether the outdoor commercial lighting included solar LED flood lights. The ALJ indicated that it did. GPA Assistant GM Cruz indicated that GPA had spent nearly $500,000 to date on the DSM program. The Chairman asked whether the rebates for the initial programs would be increased. Mr. Cruz indicated that the rebates were evaluated every six months, and that a few rebates have already been raised. The rebates should be revisited. Commissioner Niven asked what type of milestones would be coming up, such as the CCU Resolution that needs to be passed, and what future funding sources would need to be considered. Assistant GM Cruz indicated that there was a Resolution for DSM for the June 6 meeting. Mr. Cruz indicated that when GPA was down to its last one half million for DSM, it would

provide a report to PUC as to proposed funding source. The GM may internalize it or not. GPA reports to the CCU on DSM every month. It should be forwarding the report to PUC and will have GPA Counsel do so.

Commissioner Niven asked when the program would go public. Assistant GM Cruz indicated that it would after June 6. GPA is already getting equipment listings from vendors, and getting them registered. The Chairman asked whether there was a rebate picked on the water heaters yet. Mr. Cruz indicated it would be as much as the washer/dryer, about $100.00. Commissioner Montinola asked whether this was based on the first 100 people. The Chairman indicated that's for the batteries. A rebate amount hasn't been determined for the ESS for batteries. Mr. Cruz indicated that GPA is receiving cost information concerning the smart inverters. Conversion to smart inverters saves GPA money in the long run. Mr. Cruz further indicated that GPA had put out a purchase order for marketing services for DSM. There should be more and more requests for rebates coming in. Commissioner Pangelinan confirmed that the CCU had not yet approved this. He suggested that language was needed in the Ordering provisions of the proposed order to make approval subject to a resolution by the CCU. The ALJ agreed to include such a provision in the Order. Subject to such addition in the Order, upon motion duly made, seconded and unanimously carried, the Commissioners approved the ten new additional programs for Demand Side Management and adopted the Order made *Attachment "B"* hereto.

3. Pacific Data Systems Inc.

The Chairman indicated that the next item of business was PDS Docket 14-01, GTA Application for a Reopening and Rehearing of the PUC Order dated April 13, 2017, ALJ Recommendation, and Proposed Decision. The ALJ first indicated the procedure for presentation by the Parties this evening. Serge Quenga for GTA indicated that its Consultant Douglas Meredith was on the bridge conference line. PUC Consultants Carl Thorsen and Joel Steadley were also on the line. The ALJ indicated that whether to grant a reopening or rehearing is "highly discretionary" with the PUC. It is not required to do so. The ALJ found no legitimate reason to reopen or rehear this matter. The PUC "final arbitration award" was entered on April 13, 2017. The final order is generally not subject to rehearing, and the purpose of arbitration is to end the controversy.

GTA seeks to challenge ALJ recommendations in this application. However, the ALJ recommendations have already been incorporated in the PUC Order. GTA's challenge of ALJ recommendations does not have much purpose now. An application for rehearing should not simply re-argue matters that have already been presented to the ALJ or the PUC. GTA now seeks a second or third bite of the apple. These are the same arguments in the application that Consultant Meredith made to the PUC on April 13. There is nothing new in the present motion. GTA claims "that it was precluded" from presenting evidence or raising issues concerning time division multiplexing. The ALJ

submits that GTA was not prohibited from presenting any evidence concerning additional costs that it would incur.

This issue emerged when the ALJ indicated his initial recommendations on January 12, 2017. There it was indicated that TDM would be a part of the model. For four months thereafter to the issuance of the final PUC Order, GTA did not submit additional evidence or information concerning the TDM costs. TDM DLC inputs which had previously been used by the Federal Communications Commission in its hybrid cost model platform were included. Both in the January 23 Order, and at the hearing on January 27, the ALJ indicated his concerns about missing equipment in the model and indicated that GTA should submit any missing equipment costs. He gave GTA a chance to submit whatever costs it had. Four months was more than a sufficient period for GTA to come up with the information on the costs. To date, nothing has been received other than the model inputs.

The present application didn't include any newly discovered evidence with information about contemplated TDM costs. A rehearing is not supposed to be used as a discovery purpose or an expedition to try to find new evidence about TDM costs. A rehearing is not granted to Parties to rehash arguments already decided or factual or legal matters which have already been deliberated and decided by the PUC.

The ALJ indicated that, with regard to asphalt repair for conventional trenching, GTA was requesting reconsideration of the ALJ recommendation that a 6-inch conventional trench requires 27-inches of asphalt repair. GTA now claims that a 6-inch repair requires 18-inches of asphalt on each side of the trench for a total of the 42-inches. The same argument was made at the April 13 hearing.

However, GTA did not make this argument during the arbitration. To the contrary, GTA argued that "corrected data showed that the asphalt repair for a 6-inch trench is 27-inches not 18-inches." So, 27-inches is what GTA was recommending. In response to GTA's contention on January 25, the ALJ corrected his recommendation which initially found that a 6-inch trench requires 18-inches of repair. The March 12 ALJ recommendation revised this finding to adopt GTA's position and indicate that the total width of repair should be 27-inches, not the 18-inches originally stated. The ALJ attempted to implement exactly what GTA asked for. If GTA is claiming a mistake, that is due to the fact that it did not properly explain its position or didn't adequately present it concerning what was necessary for conventional asphalt trench repair.

In its application, GTA again argues that the hybrid loop architecture adopted by the ALJ, using time division multiplexing equipment "does not result in a forward-looking model and is not consistent with FCC requirements." The model adopted by the PUC, which includes TDM equipment, was already determined by the PUC to be part of the forward-looking model. State Commissions such as Guam PUC have "wide latitude" in applying the "most efficient technology standard under the existing rules." The Commission properly found that GTA's sole reliance upon copper home-run loops in

providing the UNEs to PDS is not forward-looking and resulted in a far more expensive loop. The FCC has repeatedly held that the most efficient wireline technology deployed today in new builds is fiber to the premises.

GTA's model is also not cost-efficient because it failed to incorporate the provision of fiber in providing loops to PDS for loops longer than 12,000 feet. In the FCC Verizon Virginia decision, the FCC expressly recognized that equipment that is no longer state-of-the-art could be used under the TELRIC pricing and could be justified by pricing considerations. In comparing pricing resulting through TDM hybrid loops with a home-run copper network, the TDM base weighted average UNE loop prices are approximately 17% less than all copper loop alternatives. That is a primary reason that fiber was adopted and TDM because they reduced the cost to other carriers by 17%.

What GTA really seeks in its application is to introduce new evidence concerning the cost of TDM and how such cost will affect the price of UNE loops. A party seeking a rehearing based upon newly discovered evidence is ordinarily required to include such evidence in its application. However, GTA's application does not include any newly discovered evidence. There would be no purpose served by a rehearing as GTA has not even suggested what further records or inputs it could provide. A rehearing proposed would interminably delay this proceeding that has already lasted for 3 years. New discovery concerning the cost of TDM could delay this proceeding for another year or two.

GTA further alleges that the final arbitration decision fails to state that sub-loops from the field feeder distribution interface to the customer premises and UNEs ordered from a field FDI are priced at a sub-loop price. These should be "expressly" indicated in the Order. However, since the Parties have both indicated that they understand this already, the ALJ does not believe there is a further need for explanation in the Order. The ALJ did address all loop rates that the Parties asked him to address – 12 rates, 10 loops and 2 sub-loops. GTA is now arguing that PDS should be forced to choose certain of the two-wire rates because there is an apparent difference between distance-based loops and other loops based on technology. That argument wasn't raised below, and it would not be appropriate to order PDS to do so now. Finally, GTA seeks an order regarding recovery of costs of the TELRIC study. The ALJ already ruled that such costs are the obligation of the incumbent carrier in providing the TELRIC study. Nothing suggests that PDS should have to share in the expense of that study. If GTA seeks to recover such costs through NECCA, USAC or elsewhere, it could do so in a separate application. The order prepared by the ALJ for the PUC would deny GTA's application for reopening and rehearing. GTA would be required to pay the PUC regulatory cost for this application. Since many of GTA's argument were already made, reargument of matters already decided was required.

Serge Quenga, GTA Counsel, indicated that GTA respectfully disagreed with the ALJ's Report and Proposed Order. The PUC April 13 Order identified specific ALJ

recommendations. GTA found it necessary to identify such ALJ recommendations in its application for rehearing. At page 3 of the ALJ report, the ALJ states this is GTA's second or third bite of the apple and that GTA raised the same issues at the PUC hearing of April 13. GTA disagrees that it has had "multiple bites" of the apple. The matter of the rehearing was not an issue before the PUC on April 13. Rehearing could not formerly be considered by the PUC during the April 13 hearing because the determination had been reached. This application for rehearing is brought pursuant to Rule 37 of the PUC 's rules of Procedure. However, which requires that an application for a rehearing be submitted after the decision has been issued by the Commission. GTA had no real formal opportunity to request a rehearing until after a PUC decision was reached. Pursuant to Rule 37, it did so in the application submitted to PUC on April 24.

GTA does not agree with the ALJ finding that GTA had a full and fair opportunity to raise all issues concerning TDM. TDM was not a material issue prior to or during the hearing on the merits. It did not become a critical part until after the hearing on the merits. In January after the hearing, GTA was ordered to conform its model to include TDM and to use the ALJ's conforming models to develop rates. GTA complied in good faith while stating its objections in reserving its rights to seek reconsideration. GTA was directed to work within the confines of the Cost Quest model or previous submissions to the FCC or state commissions for any missing TDM equipment. Unfortunately, the Cost Quest model data for prior state proceedings was proprietary and not available for use in this docket. GTA was left with attempting to look for this data in old FCC cases and was able to find the inputs that were submitted. GTA understood the instructions of the ALJ to prohibit GTA's ability to obtain the information from any other sources. The ALJ claims that he gave the Parties a 5 month period to present whatever additional inputs into the model they desired and that GTA was not prevented from introducing new evidence. In an email dated March 13th the ALJ has created his final recommendations herein the ALJ stated that "there shall be no further briefings or issues raised at the present time concerning the inputs…" GTA was ordered to input the recommendation and prepare final rates by March 17. GTA submitted the conforming rates on March 17. GTA did not have a reasonable opportunity to fully develop TDM inputs and request that the PUC allow it to do so upon the rehearing of this matter.

On asphalt trenching or repair, GTA provided corrections to erroneous stipulations in the ALJ's recommendations; it does so in this application. As to the other points addressed by the ALJ, GTA feels that its application for a rehearing adequately addresses those issues. Mr. Quenga appreciates the time that the ALJ has put into this work. He reserved the rest of his time for a reply or rebuttal.

John Day, President of PDs, then spoke concerning the application. He felt that there had been a huge passage of time in this docket. The selection of the Cost Quest model was made by GTA. It is burdened to come up with a TELRIC model. It selected a

model from Cost Quest within 9 months after the order from the ALJ instructing the development of such a model. It did not contract with Cost Quest until the month before the model was due. The Cost Quest model chosen by GTA had limitations – some of inputs were proprietary. PDS spent tens of thousands of dollars on consultants fixing the GTA model and all the mistakes/problems that occurred. There were 9 months of discovery. The model was received in February and the first hearing on the merits in December. There was a lot of time and effort that went into these proceedings. When the ALJ issued his first instructions in January there was a back and forth process. Both Parties had feedback on those recommendations. There was a back and forth process that went on for several months until the final model inputs were derived.

There are many things in the model that PDS is not happy about. One example is GTA's labor rate of $24.00 per hour. GTA is paying guys $50,000 per year to shovel dirt into a hole. That cannot be true, but that is the labor rate determined in the model. PDS is not going to start peeling apart that onion. It's done. There are lots of things PDS may not agree with. But overall the decision is fair. PDS is ready to move on. GTA would like to push its rates up higher. The final TELRIC rates are almost double the national average. GTA appears to want to push them even higher than that. PDS would like the PUC to respect and honor the work that has been done in this docket. The PUC's Consultants and the ALJ have done a very good job in trying to get their arms around a very complex and difficult process. The TELRIC process is complex. This is the first time it has ever been done on Guam. Looking at the decision from a 10,000 foot view, it is a good decision, a reasonable model given the circumstances. PDS accepts the ALJ's ruling that a request for rehearing should be denied.

GTA Counsel Quenga, in his rebuttal, focused on the Cost Quest model. That model was vetted by the FCC and used by PDS. There is no issue with the Cost Quest model at this time. However, inputs by both Parties, does not include TDM inputs. TDM was not a material component of anyone's model. It was only after the Parties submitted their models, and after the hearing on the merits, that the model was developed by the ALJ and the PUC Consultants. TDM inputs were not argued and debated at the hearing on the merits. GTA should be allowed to introduce this evidence on a rehearing on the issue.

ALJ Horecky referred to GTA Counsel's argument that GTA didn't have an opportunity to file an application for rehearing until after the PUC made its decision. That is correct, but is not the point. The point is that the same arguments that GTA made before the ALJ and the Commission on April 13th were the same arguments raised in the petition for rehearing. Attachment 1 to GTA's application for rehearing is the same presentation it made before the PUC on the evening of April 13.

The primary problem with GTA's application for rehearing is that it is simply rearguing matters that were already addressed by the PUC in its April 13 decision. PUC has ruled on every matter brought up tonight about the conventional trenching, the repair for

asphalt, on TDM, and what constitutes a forward-looking model. All the arguments raised in GTA's application for rehearing were already addressed by the PUC. It's not an appropriate purpose for an application for rehearing to argue matters that were already decided or to take a second bite of the apple.

GTA's arguments raised in its application for a rehearing were first made before the ALJ, and then again on April 13 before the PUC. The same arguments are now being presented again to the PUC. GTA was informed that TDM would be an aspect of the model on January 12. There was a lot of evidence discussed even after January 12 and the hearing on the merits. There was one formal hearing, and many evidentiary submissions after January 12th as to what equipment was necessary in the system. For GTA to attempt to say that there was no more consideration of evidence or inputs is wrong. At the January 27 hearing, the ALJ indicated that any further inputs should be brought to the PUC. The ALJ was actually concerned about missing equipment in the model and whatever GTA felt had to be put in the system to adopt the model that the ALJ had ruled in favor of. GTA was given a big opportunity and did take advantage of it from January through March, when it submitted many briefs and documents attached with evidentiary materials about the configuration of the system, what it should be, what additional equipment, whether battery storage or otherwise was needed. Many facts and evidentiary matters were discussed.

GTA argued that it was limited to only using inputs from the cost quest model. There was no order to that affect. In fact, the ALJ Order of January 27, 2017, indicated that GTA could submit any inputs that it had, without limitation. While GTA was initially given three or four days to produce such inputs, time for input submission was extended considerably thereafter. Only an Order from the ALJ could have prohibited GTA from introducing information, and there was no such Order. GTA was never prohibited from submitting additional cost information. GTA had two additional months to come up with any additional costs. What GTA stated was that it had no cost information for TDM.

There would appear to be no purpose for a rehearing if GTA could not produce additional cost information. Why should there be a rehearing to allow GTA to come up with information it states it does not have. No purpose would be served by reopening the hearing.

The Chairman asked GTA whether would still have other potential remedies beyond the PUC if the PUC approved the Order as written. The ALJ indicated that there would always be legal remedies. Commissioner Pangelinan asked GTA Counsel whether it meant that it did not have an opportunity to submit any evidence unless it were submitted at the hearing on the merits, i.e. that GTA did not have the opportunity to submit the information at other hearings. GTA Counsel Quenga clarified that GTA's argument was that the model in and of itself was not forward looking and not TELRIC compliant. That argument was rejected, and GTA was left with having to come up with

the inputs necessary to incorporate the TDM component into the model, which it attempted to do within the scope of the restrictions imposed by the ALJ in his recommendations. GTA believed that would be any inputs that were available for the Cost Quest model and any other inputs that could be found in the public record either before the FCC or other state commissions in any hearings similar to this one. The only inputs GTA Consultants could find were those used in an FCC matter concerning universal service funding, not necessarily related to the TELRIC issues. That is the information that was submitted to the ALJ in good faith.

Commissioner Pangelinan asked whether GTA wanted to argue that TDM should not even be included in the model at all. GTA Counsel Quenga indicated that argument could still be made if the matter goes beyond the administrative level. GTA reserved that objection and chose to focus on the inputs which could make the TDM component work in the model as directed by the ALJ. Commissioner Pangelinan indicated that he did not understand what the limitations were because GTA knew it could present what it felt would be the appropriate inputs, but was just limited by the source of where it could find the information for those inputs. Counsel Quenga indicated GTA did look back into its history, but TDM was a technology that GTA phased out many years ago. It was unable to find records of equipment that had been purchased by GTA in the past. Without information from GTA's own records, or information from other proceedings where the Cost Quest model was involved, GTA could not look outside that box.

Consultant Meredith indicated that the ALJ produced a recommendations matrix in January. That matrix identified instructions on how to deal with the missing equipment. The ALJ is correct that he was concerned about missing equipment and that the missing equipment should be included. However the recommendation specifically stated that the missing equipment should only be allowed to be included in the model to the extent that inputs were identified by, and used by, the Cost Quest model in other proceedings. GTA was limited to the amount of information it could present. It was only on February 7 when the ALJ sent an email stating that TDM should be used instead of IT. GTA was limited to using the Cost Quest model inputs.

The ALJ indicated that the Order of January 23 is open ended and allowed GTA to present any additional inputs to the model that were required. At the hearing on January 27, the ALJ expressed the same concern about missing equipment and again inviting GTA to submit any inputs on missing equipment. It was not restricted to model or otherwise. GTA was not restricted from submitting any evidence it desired or information in general concerning inputs. Numerous memoranda were filed by the parties with voluminous attachments concerning specific equipment that had to be included at the co-location centers, where the interface would be, what kind of locks that would be on equipment. There was a lot of discussion concerning equipment and specific items that were required to be put into the model. GTA did not submit that on TDM.

Consultant Meredith indicated that everything GTA did with regard to producing a conforming model was ordered by the ALJ. Its objective was to produce rates that conformed to what the ALJ was requesting. All information was limited to and restricted to the original ALJ matrix. At no time did the ALJ specify he was modifying the original standing order that only Cost Quest information in other proceedings should be used. If GTA information was limited to that construct it never received instructions from the ALJ that the limitation to use Cost Quest information in other proceedings was lifted. The ALJ indicated again that on January 23, GTA received an Order that it must present its position concerning what additional inputs to the model, if any, are required.

Commissioner Montinola asked whether, if the PUC allowed the hearing, how much longer it would take to resolve the matter. The ALJ indicated it could be years. They stated that it is unknown what information GTA wants to provide. If GTA is going to explore what TDM costs, it would be discovering new information which it has said it does not have right now. An open proceeding would involve a discovery expedition into what exists how they are concerning TDM. It could take a long time. Consultant Meredith stated that it has information currently on hand. If it were afforded the opportunity to present information on the record, so that PDS could examine and respond to it, and it could be reviewed by the ALJ, and would likely not take more than a month or two.

The ALJ indicated it was improper for GTA to file an application for rehearing without providing the additional information it claims it had. The application for rehearing a party is required to submit any new evidence that it has would justify a rehearing. GTA hasn't provided anything. Its application doesn't even meet the requirement for a rehearing. It indicates GTA has been dilatory in not providing something which they claim they now have. The Chairman clarified that a new ICA is upcoming later this year. The ALJ concurred, in August. Commissioner McDonald indicated that he wasn't present at the April 13 hearing before the PUC. Upon motion duly made and seconded, the Commissioners approved the proposed Order denying a rehearing. The Commissioners adopted the Order made *Attachment "C"* hereto.

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

Jeffrey C. Johnson
Chairman

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION
REGULAR MEETING
GCIC BUILDING, 3rd Floor
414 W. SOLEDAD AVE., HAGATNA, GUAM
6:30 p.m., May 25, 2017

Agenda

1. Approval of Minutes of April 27, 2017

2. Guam Power Authority
   - GPA Docket 13-14 (Demand Side Management), GPA Proposal for Expanded Demand Side Management Program, PUC Counsel Report, and Proposed Order

3. Pacific Data Systems, Inc.
   - PDS Docket 14-01, GTA Application for Reopening and Rehearing of PUC Order dated April 13, 2017, ALJ Recommendation on GTA Application, and Proposed Decision

4. Administrative Matters

5. Other Business

ATTACHMENT A

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:	)	GPA Docket 13-14
	)	
GPA Demand Side Management,	)	
Program Implementation	)	**ORDER**
	)	
	)	
	)	

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the request of the Guam Power Authority ["GPA"] to implement additional Demand Side Management Program initiatives.[1]

BACKGROUND

2. This Docket concerning the implementation of a DSM program at GPA was initiated and established by the PUC in August 2013.

3. On July 31, 2014, the PUC ordered the ALJ to conduct proceedings and work collaboratively with GPA to develop a DSM Program.[2]

4. On February 26, 2015, the PUC approved GPA's plan to implement certain DSM programs, including Central AC, Ductless AC, Washer, and Dryer.[3]

5. In its Order dated October 27, 2015, the PUC authorized GPA to utilize the sum of $1,806,014.00 from the Working Fund for purposes of funding the DSM Program.[4]

6. In June of 2015, GPA Consultant Leidos submitted its Final Report to GPA concerning GPA's Energy Sense Program Plan; Leidos proposed an additional 18 programs that GPA could consider as DSM initiatives.[5]

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[1] Communications between GPA Assistant General Manager, Engineering and Technical Services, John Cruz, and PUC Administrative Judge Frederick J. Horecky, commencing in March 2017; Guam Consolidated Commission on Utilities and PUC members have also requested that new DSM programs be considered.

[2] PUC Order, GPA Docket 13-14, dated July 31, 2014.

[3] PUC Order, GPA Docket 13-14, dated February 26, 2015, at Ordering Provision No. 3, pg. 4.

[4] PUC Order, GPA Docket 13-14, dated October 27, 2015, at Ordering Provision No. 1.

[5] Leidos Consultants Final Report, June 2015, Energy Sense Program Plan (Guam Power Authority). PUC received this Report in July 2016, along with the GPA Revised Petition for Contract Review and GPA Response to PUC Order, GPA Docket 15-05, filed July 14, 2016.

7. Since March, 2017, the PUC Administrative Law Judge ["ALJ"], Assistant General Manager, Engineering and Technical Services, and certain PUC Commissioners have had discussions and meetings concerning which DSM initiatives to implement in addition to those already in the Program.[6]

8. The proposed expansion of the DSM Program was presented to the Guam Consolidated Commission on Utilities at a workshop on April 13, 2017. See CCU Workshop Issues for Discussion (Presentation), attached hereto as Exhibit "1" to the ALJ Report.

9. The Parties have determined that it was perhaps too ambitious to adopt all 18 DSM proposals at the present time, particularly as a long term funding source has not yet been identified. However, both GPA and the ALJ have agreed upon the following list of ten new DSM initiatives to be implemented:

   A. Energy Audits (through GPA Customer Services, Online Energy Audits, or third party hired by GPA)
   B. Commercial A/C: High Efficiency Packaged Rooftop Unit (20 ton assumed, 15 EER or better); Solar thermal assisted AC per collector (no more than four collectors)
   C. Commercial Building Energy Management System
   D. Commercial A/C: High Efficiency Split, Ducted A/C System (10 ton assumed, 18 SEER or better); Solar thermal assisted AC per collector (no more than two collectors)
   E. Residential A/C: Variable Refrigerant Flow A/C
   F. Commercial A/C: Variable Refrigerant Flow A/C
   G. Commercial Lighting
      1. Internal Lighting – Tube LED Lamp, T-5 Lamp, and Low Wattage – T-8 Lamp
      2. Outdoor Lighting – LED Floodlights and LED parking lot streetlights
   H. Water Heating: Low Flow Showerheads; Energy Star Electric Water Heaters; Tankless Water Heaters
   I. 100 Customer ESS pilot program residential and commercial
   J. Smart Inverter New System and Upgrade Rebates

[6] Meetings were conducted on March 17 and May 17, 2017; there have been numerous communications between the Parties concerning which DSM initiatives to implement.

DETERMINATIONS

10. In its Workshop, the CCU requested that PUC proceed ahead with approval of additional DSM initiatives, so that the program can be expanded as soon as possible.[7]

11. However, since no CCU Resolution has yet been approved, any PUC approval should be subject to final approval by CCU through a Resolution.

12. From the inception of the DSM Program, it was anticipated that GPA and PUC would expand the Program and implement new DSM initiatives[8], and would implement additional DSM initiatives; GPA was required to submit its DSM implementation plan.

13. It is in the interest of GPA and the ratepayers of Guam to implement the additional DSM initiatives proposed herein. DSM Programs should foster energy conservation and hopefully reduce the need in the long term for as much additional generation capacity.

ORDERING PROVISIONS

Upon consideration of the record herein, the Request of GPA to implement new Demand Side Management Initiatives, the ALJ Report, and for good cause shown, on motion duly made, seconded, and carried by the affirmative vote of the undersigned Commissioners, the Guam Public Utilities Commission HEREBY ORDERS that:

1. The PUC hereby approves the additional ten DSM program initiatives listed herein, subject to prior approval by CCU through a Resolution.

2. GPA and the ALJ are instructed to continue to discuss proposals for the long-term funding of DSM Programs and to develop a plan for such funding.

3. GPA is ordered to pay the Commission's regulatory fees and expenses, including,

[7] Statement of GPA Assistant General Manager, Engineering and Technical Services, John Cruz to ALJ Horecky on May 22, 2017.
[8] PUC Order, GPA Docket 13-14, dated July 31, 2014, at par. 8 and Ordering Provision No. 1.

without limitation, consulting and counsel fees and the fees and expenses of conducing the hearing proceedings. Assessment of PUC's regulatory fees and expenses is authorized pursuant to 12 GCA §§12103(b) and 12125(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

Dated this 25th day of May, 2017.

Jeffrey C. Johnson
Chairman

Joseph M. McDonald
Commissioner

Rowena E. Perez
Commissioner

Peter Montinola
Commissioner

Michael A. Pangelinan
Commissioner

Andrew L. Niven
Commissioner

Filomena M. Cantoria
Commissioner

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:	)	**PDS DOCKET 14-01**
PACIFIC DATA SYSTEM INC.'S PETITION FOR ARBRITRATION OF INTERCONNECTION AGREEMENT	)	**ORDER DENYING GTA'S APPLICATION FOR REOPENING AND REHEARING**

I. INTRODUCTION

This is matter comes before the Guam Public Utilities Commission ["PUC"] upon the Application of Teleguam Holdings LLC ["GTA"] for "Reopening and Rehearing."[1] On April 13, 2017, the PUC issued its final Arbitration Order pursuant to Rule 4(h) of the Commission's Implementation Rules in connection with Interconnection Agreements between GTA and Competing Local Exchange Carriers and CMRS Operators (PUC Order, Docket 05-01, adopted August 13, 2007). On May 12, 2017, Pacific Data Systems Inc. ["PDS"] filed its Opposition to TeleGuam Holdings, LLC's Application for Reopening and Rehearing.[2] On May 24, 2017, the Administrative Law Judge ["ALJ"] filed his Report on GTA's Application, recommending that the PUC deny said Application[3], a true and correct copy of which is attached hereto as Exhibit 1 and incorporated herein by reference.

[1] GTA Application for Reopening and Rehearing, PDS Docket 14-01, dated April 24, 2017.

[2] PDS Opposition to Teleguam Holdings LLC's Application for Reopening and Rehearing, PDS Docket 14-01, filed May 12, 2017.

[3] ALJ Report, PDS Docket 14-01, dated May 23, 2017.

ATTACHMENT C

II. DETERMINATIONS

The PUC concurs with the Report of the ALJ and denies GTA's Application for Reopening and Rehearing. The Application is denied for the reasons set forth in the ALJ Report dated May 23, 2017. The PUC finds that there is no legal basis to "reopen" this proceeding, and that GTA fails to state any proper basis for "rehearing". The matters which GTA seeks to raise in its Application have already been argued multiple times before the ALJ and the Commission. Reargument or Rehearing is not designed to afford party successive opportunities to reargue issues previously decided. GTA presented the same arguments in its Application for Rehearing that were presented to the PUC at the hearing on April 13, 2017. The PUC rejected those arguments in its final Arbitration Order of April 13, 2017.

GTA has failed to demonstrate that its claims concerning Asphalt Repair require rehearing for the reasons set forth in the ALJ Report. With regard to Hybrid Loop Inputs, the PUC finds that GTA had a full and fair opportunity to present any information and position statements concerning TDM equipment and the "forward-looking model" in the proceedings in this matter. Significantly, in its application for rehearing, GTA claims that it seeks to present new evidence in a rehearing concerning the cost inputs for TDM technology and would obtain "a complete set of bids or estimates for equipment and site preparation." At the same time, GTA claims that it has no cost information concerning TDM. A rehearing should not be an opportunity for an expedition to discover new evidence.

If GTA had "newly discovered evidence" justifying a rehearing, it should have presented such information with its Application. What it really hopes to accomplish is to use a rehearing for gathering information anew concerning TDM. GTA could well have obtained such information at an earlier stage of this proceeding and should have included it in its Application for Rehearing. The other grounds alleged by GTA for "Rehearing" do not provide a sufficient basis or justification for such rehearing, as set forth in the recommendations of the ALJ.

III. ORDERING PROVISIONS

Having considered the record of the proceeding herein, the Application of TeleGuam Holdings LLC for Reopening and Rehearing, the Opposition of PDS, and the ALJ Report, and good cause appearing, the Guam Public Utilities Commission **HEREBY ORDERS** as follows:

1. The ALJ Report dated May 23, 2017, including the recommendations therein, is adopted by the PUC in its entirety.
2. The TeleGuam Holdings LLC Application for Reopening and Rehearing is denied for the reasons set forth herein and in the ALJ Report.
3. The PUC Arbitration Order dated April 13, 2017, is a final Arbitration Order pursuant to Rule 4(h) of the Interconnection Implementation Rules.
4. For the reasons set forth in the ALJ Report, GTA shall bear the regulatory fees and expenses incurred with regard to its Application for Reopening and Rehearing. Each Party shall bear its own attorney's fees.

SO ORDERED this 25th day of May, 2017.

Jeffrey C. Johnson
Chairman

Joseph M. McDonald
Commissioner

Rowena E. Perez
Commissioner

Peter Montinola
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Michael A. Pangelinan
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BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:	)	**PDS DOCKET 14-01**
PACIFIC DATA SYSTEM INC.'S PETITION FOR ARBRITRATION OF INTERCONNECTION AGREEMENT	)	**ALJ REPORT**

I. INTRODUCTION

This is matter comes before the Guam Public Utilities Commission ["PUC"] upon the Application of Teleguam Holdings LLC ["GTA"] for "Reopening and Rehearing"[1]; notwithstanding the fact that the PUC issued its **final** ARBITRATION ORDER on April 13, 2017[2], GTA essentially seeks to vacate the Order, present new evidence in continuing proceedings, and reargue the major findings and conclusions *ab initio*. For the reasons set forth herein, the Administrative Law Judge ["ALJ"] recommends that the PUC reject GTA's Application for Reopening and Rehearing.

II. THERE IS NO LEGAL BASIS TO "REOPEN" THIS PROCEEDING

GTA requests that this proceeding be "reopened." However, an application for "reopening a hearing" can only be made **"prior to Decision or Order made by the Commission."**[3]

III. GTA FAILS TO STATE ANY PROPER BASIS FOR "REHEARING"

A. Final Order

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[1] GTA Application for Reopening and Rehearing, PDS Docket 14-01, dated April 24, 2017.

[2] PUC Arbitration Order, PDS Docket 14-01, dated April 13, 2017, a true and correct copy of which is attached hereto as Exhibit "1".

[3] Rule 36 of the Rules for Practice and Procedure of the Guam Public Utilities Commission.

The Arbitration Order of the PUC dated April 13, 2017, is final. As the PUC is aware, from its inception this proceeding has been an arbitration conducted pursuant to Rule 4 of the Interconnection Implementation Rules.[4] GTA and PDS voluntarily agreed that certain disputes, such as the one in this case involving the establishment of UNE rates for 10 loops and 2 sub-loops, would be governed by the arbitration procedure set forth in Rule 4(h). In this proceeding, the PUC is required to "issue a final order accepting or rejecting, in whole or in part, the recommendation of the arbitrator within ten (10) days after the recommendation has been filed." (emphasis added). The April 13, 2017 Arbitration Order of the Commission is a "**final**" Order.

The purpose of arbitration is to end the controversy and avoid future litigation. Board of Education of Toledo City School District v. Toledo Federation of Teachers, AFT Local 250, 2016 WL 6835493 (Ct. App. of Ohio 2016). Arbitration decisions are generally deemed final by the courts, when arbitration is a decision-making process agreed to by the parties. DeLucca v. National Education Association of Rhode Island, 102 F.Supp.3d 408, 415 (D. Rhode Island, May 5, 2015). When a board of arbitrators issues its award and disposes of the claims before it, its decision is final unless and until it is appealed. Hairston v. Allen, 153 A.3d 999, 1002(Superior Ct. of Pennsylvania, 2017).

B. Review of ALJ "Recommendations" no Basis for Rehearing

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[4] Interconnection Rules in Connection with Interconnection Agreements between GTA and Competing Local Exchange Carriers and CMRS Operators, Docket 05-1, adopted August 13, 2007.

GTA indicates that the purpose of its motion is "to formally challenge the recommendations of the ALJ" as there is no formal procedure to do so in the rules. A motion for rehearing is not appropriate to challenge ALJ Recommendations. The ALJ recommendations are just that—"recommendations." They are required to be filed with the Commission.[5] However, in this case, the PUC issued its final Arbitration Decision/Award. GTA's challenge of ALJ Recommendations has no meaning or purpose, as there is now a final Arbitration Order of the PUC. The recommendations of the ALJ were incorporated in the final Arbitration Order of the PUC herein and now constitute the PUC Findings of Fact and Conclusions of Law.[6]

C. Impermissible Attempt to Reargue Matters previously raised –a Second or even Third Bite at the Apple

GTA's application for Rehearing is no more than an attempt to reargue **for a third time** issues that were previously argued before both the ALJ and the PUC. Nearly all of the arguments raised by GTA were fully presented to the Arbitrator, the ALJ, during the arbitration proceedings. The same arguments were made to the PUC in its hearing on April 13, 2017. At that time, GTA's consultant Douglas Meredith raised each and every one of the same arguments that GTA again seeks to present to the Commission in this Application for Rehearing.

As proof that the current Application is an attempt to reargue matters already presented to the PUC, GTA has attached to its Application "a true and correct copy of

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[5] Rule 4(h)(9) of the Interconnection Implementation Rules.

[6] PUC Arbitration Order, PDS Docket 14-01, dated April 13, 2017, at p. 5.

the presentation made by GTA at the PUC special meeting of April 13, 2017..."[7] In its Application, GTA again incorporates the very same arguments that it already presented to the PUC on April 13, 2017. With regard to reargument or rehearing, parties are not supposed to use motions or applications "as an opportunity to have a second bite of the apple." Countrywide Home Loans Servicing, L.P. v. Peterson, 171 Conn. App. 842, 849 (App. Ct. Conn. 2016). A motion to reargue is not to be used as an opportunity to have a second bite of the apple. Meridian Partners LLC v. Dragone Classic Motorcars, Inc., 171 Conn.App.355, 364 (App. Ct. Conn. 2017).

As the PUC can readily ascertain from a review of GTA's Application, every argument that it raises therein is essentially the same argument set forth in Attachment 1 to its Application, which was the GTA Presentation for PUC Special Meeting April 13, 2017. Most of the same arguments were previously raised before the ALJ. The PUC already considered all of the arguments which GTA raises in its Application, but determined that it would issue the Final Arbitration Order on April 13, 2017. Reargument or rehearing is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided. Setters v. A1 Properties and Developments (USA) Corp., 139 A.D.3d 492 (Supreme Court, App. Div., New York 2016).

D. Full and Fair Opportunity for GTA to raise all Issues, including TDM, before the ALJ

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[7] See Attachment 1 to GTA Application for Reopening and Rehearing

Apparently GTA now claims that inputs decided by the ALJ, such as the use of "Time Division Multiplexing" (TDM), were not at issue during the hearing on the merits and therefore were not properly argued, considered and verified. GTA further claims that it was "unable to introduce evidence supporting its position." The primary issue during the hearing was which network model should be adopted by the PUC. Each party presented its model and what inputs should be included in a model satisfying the TELRIC requirements.

However, the five month period after the initial hearing gave both parties a full opportunity to present whatever additional inputs to the model they desired. In no manner was GTA ever "prevented" from introducing any evidence it felt appropriate. To be sure, from January 2017 until the case was decided, GTA introduced a substantial number of evidentiary materials into the record.

GTA was fully advised by the ALJ Recommendations provided to GTA on January 12, 2017, that TDM was an item of equipment required in the provision of UNE loops. At page 18 of the ALJ Recommendations, there is a reference to "other missing equipment in the PDS proposed model." There the ALJ/PUC consultants indicate GTA's claim that the PDS model "has missing components in the REC location to convert the optical signal to a **TDM** electrical signal to hand off to PDS collocated equipment." For the period of January 12, 2017 until April 13, 2017 a period of three months, GTA had every opportunity to submit whatever information it desired to the ALJ, concerning the use of, or costs imposed by TDM equipment.

GTA claims that the PUC consultants somehow prevented GTA from submitting information concerning TDM. Such a claim is specious. "Consultants" have no authority to prevent anyone from introducing information or evidence into a hearing. The ALJ, and not Consultants, control and authorize what information may be submitted. In fact, on numerous occasions, the ALJ made it expressly clear that GTA had a full opportunity to present any additional equipment costs to the ALJ and that such costs would be considered in the final recommendations to the PUC. In the "Order Re: Reconciliation of the ALJ Recommendations", dated January 23, 2017, the ALJ expressly indicated to the Parties that "GTA must present its position concerning **what additional inputs to the model, if any, are required,** by January 25, 2017.

Furthermore, at the hearing with the parties on January 27, 2017, the ALJ again made it explicitly clear that he was concerned about missing equipment and again indicated that GTA should submit missing equipment costs. However, the time period and opportunity for GTA to present information or evidence concerning "missing equipment" was extended considerably. For a period of more than two months thereafter, GTA continued to submit an extensive number of briefs and comments to the ALJ which included evidence concerning the necessary model inputs. GTA itself presented an extensive number of additional equipment costs.

At any time between January 13, 2017, and April 13, 2017, GTA could have submitted to the ALJ any material it wished concerning the cost of TDM and what additional inputs were required to the model. In its filing dated February 9, 2017, GTA included complaints concerning the use of TDM technology and claims that it did not

have property records for such technology etc. However, it did identify inputs for TDM DLC which had previously been used by the FCC in its Hybrid Cost Proxy Model platform. GTA was able to use such inputs to calculate a per line investment adder for DLC equipment at the nodes and RECs for loops equal to or greater than 12,000 feet.

Even at the hearing on April 13, 2017, GTA submitted new arguments and materials in its presentation to the PUC that had not been presented to the ALJ. However, after more than four months opportunity to gather any evidence or information concerning the alleged costs of TDM, it failed to present any information to the PUC as to what the alleged costs were. GTA was able to find TDM inputs that could be used. If it wanted to submit additional information, it had four months to do so before the PUC issued its final Order in this case.[8] In its brief dated February 23, 2017, GTA again reiterated its objection to use TDM technology and repeated its same arguments. However, at no time, until the final PUC Arbitration Order was issued, did GTA ever submit any additional TDM costs which it wished to include in the inputs.

Had GTA at any time submitted additional costs which it claimed for TDM, the ALJ could have considered those, and if justified, included them in the Model. It is telling that, even in its current Application for Rehearing, GTA has failed to include any new evidence concerning TDM costs which it claims would be incurred regarding the TELRIC Model. Why should GTA be accorded a rehearing when it has presented no new evidence concerning TDM costs and has not even indicated whether it could, or

[8] See Teleguam Holdings, LLC's Comments on Revised Model, submitted February 9, 2017.

how it would obtain such information? Granting GTA's request would be a recipe for endless delay and prolongation of these proceedings.

E. Rehashing of Argument by GTA disallowable at the Discretion of the PUC

A motion for reargument or rehearing is not an opportunity for a party to rehash arguments already decided. State v. Brinkley, 132 A. 3d 839, 842 (Superior Ct. Deleware, Kent County, 2016). Petitions cannot be granted for reargument of matters, either factual or legal, which have been deliberated and decided upon by a tribunal. Special Counsel v. Sullivan, 7 M.S.P.B. 329 (Merit Systems Protection Board 1981). A decision not to allow rehearing is **highly discretionary** with the PUC. Mower, LD III LLC v. Simpson, 392 P.3rd 861, 871 (Ct. App. Utah 2017).

IV. ASPHALT REPAIR

GTA requests reconsideration of the ALJ recommendation that a 6-inch conventional trench in asphalt requires 27 inches of asphalt repair. GTA now claims that a six-inch conventional trench in asphalt must have 18 inches of shoulder on each side for a total repair of 42 inches. This claim purports to be based on the direct testimony of Andrew Labrunda. In his testimony, Mr. Labrunda presented a chart (Chart 4) which depicts that a 24-inch trench requires 18 inches of shoulder asphalt on each side of the trench.

PDS responded that, while the depiction in Chart 4 does reflect 18 inches of asphalt on each side of a 24-inch trench, it does not state this is a requirement for all

widths of conventional trenching.[9] However, neither party has presented evidence concerning the shoulder asphalt requirements for a six-inch trench in asphalt. Additionally, there are no independent sources provided by GTA regarding the cost of a six-inch trench even though GTA uses six-inch asphalt trenching in its cost model. There are estimates from Ryder Corporation for a 2 inch micro trench and an 18 inch conventional trench.

In view of the lack of on record guidance from DPW concerning six-inch trench requirements and the lack of a firm cost estimate for a six-inch asphalt trench from an independent source, the PUC should not grant any rehearing on this matter. GTA's claim that the ALJ "miscalculated" repair costs for asphalt repair was already argued before the PUC on April 13, 2017, yet not accepted by the PUC in its Arbitration Order.

GTA contends that the ALJ "failed to consider the Guam DPW requirement for 18 inches of repair on each side of a conventional trench in asphalt." As pointed out by the PDS Opposition, Mr. Labrunda's testimony never indicated that such a requirement exists.[10] Contrary to GTA's position, the record indicates that the ALJ made every effort to accommodate GTA's trenching costs and in fact adopted GTA's position statements indicating that a 6 inch trench requires 27 inches for repair.

In his Recommendations issued January 12, 2017, the ALJ found that a majority of the trenches would be 6 inches or less, and that GTA's estimate should be revised to reflect such fact. The ALJ did find that the repair and feathering of a 6 inch trench

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[9] PDS Opposition to Teleguam Holding, LLC's Application for Reopening and Rehearing, PDS. Docket 14-01, filed May 12, 2017, at p. 4.
[10] Id. at p. 3.

should require 18 inches of effort. Thereafter, in its Comments on Producing the ALJ's Conforming Model dated January 25, 2017, GTA stated as follows in Par. 4 with regard to Excavation costs:

> **Conventional trenching in asphalt.** The GTA model now uses a corrected estimate for the asphalt repair of a six-inch trench.
>
> The ALJ recommendation incorrectly states that the Ryder estimate for asphalt repair of a 2-inch trench is 6 inches. The Ryder estimate (See Attachment 1 -- Ryder Estimate Paving Costs.pdf) shows that the asphalt repair for a 2-inch trench is one foot six inches. A "like-for-like comparison" of these corrected data shows that the asphalt repair for a six-inch trench is 27 inches, not 18 inches. GTA uses the corrected like-for-like asphalt repair of 27 inches in the conforming model. (See Attachment 2 – Conforming Cable Costs.xlsx for this calculation.) (emphasis added).

In the ALJ Revised Set of Recommendations dated March 12, 2017, the ALJ adopted the exact position which GTA had set forth in its January 25, 2017 and other position statements. The ALJ indicated that GTA had requested that he revisit the calculation of trench width for a 6-inch trench indicating that the total width of repair should be 27 inches, not the 18 inches in the original ALJ recommendation. In the ALJ Revised Recommendation, he recognized that the repair for a 6-inch trench had previously been miscalculated, and he adopted the GTA estimate of 27 inches for the repair of a 6-inch trench.[11]

Despite the fact that the ALJ adopted the GTA recommendation, GTA now attempts to reargue the issue and once again asks the ALJ to further change the recommendation. The PUC already adopted the ALJ recommendations. Any alleged mistake by the ALJ is due to the fact that GTA did not properly or fully present its

[11] ALJ Revised Set of Recommendations-Addendum, PDS Docket 14-01, dated March 12, 2017, at p. 27-28.

position in these proceedings, as indicated in the PDS Opposition. GTA's request that the "ALJ reconsider his determination" is inappropriate. The ALJ already made his recommendation to the PUC in March, and that recommendation was adopted by the PUC on April 13, 2017. GTA's request that the ALJ "reconsider his determination" is an exercise in futility as the PUC already adopted its final Arbitration Order.

V. HYBRID LOOP INPUTS

GTA argues that the "ALJ's and PUC Consultant's order to incorporate a hybrid loop architecture using Time Division Multiplexing (TDM) equipment does not result in a forward-looking model and is not consistent with FCC requirements". GTA seeks to reargue the same matters raised during the April 13, 2017, hearing. The PUC has already adopted the ALJ/PUC Consultant Recommendations concerning the least cost, most efficient technology, in its final Arbitration Order.

GTA's claim that TDM equipment does not result in a "forward-looking model" has been argued and reargued numerous times in this proceeding. This argument has already been rejected by the ALJ, the Consultants, and the PUC itself in its Order. GTA has raised nothing new in its current Application concerning this issue. The controlling legal principle is that "State Commissions such as the Guam PUC '**have wide latitude in applying the "most efficient technology" standard under the current rules...**'[12]

The Commission found that GTA's sole reliance upon copper homerun loops in providing the UNEs to PDS was not at all forward-looking and resulted in a far more expensive loop because it did not also utilize fiber. There was an express finding that

[12] PUC Arbitration Order, PDS Docket 14-01, par. 73 under Conclusions of Law.

GTA's model is not compliant with the "most efficient technology" standard, as the FCC has repeatedly held that the most efficient wire line technology deployed today in new builds is fiber to the premises. An efficient carrier today would design an all internet protocol (IP) fiber network, not a circuit switch copper network. An IP fiber network is cheaper.

The PUC was justified in finding that GTA's model was not cost efficient because it failed to incorporate the provision of fiber in providing loops to PDS for loops longer than 12,000 feet.[13] TDM technology is the appropriate method for allowing for the unbundling of hybrid loops by GTA. Without the use of such technology, it can be argued that GTA would have no duty to unbundle hybrid loops. Furthermore, the FCC has established that use of technology that is not "state-of-the-art"may be justified on pricing or other considerations.

GTA also continues to assert that the pricing of a UNE loop should match what is provisioned. In the FCC's Verizon Virginia decision, in paragraph 34, the FCC stated "We agree with Verizon that it is rational for a company to continue to use equipment that is no longer state-of-the-art. The TELRIC rules, however, recognize that the value of such equipment in a competitive market will be no higher than the market value of newer, more efficient equipment that performs the same functions. In other words, even if there are valid reasons for Verizon not to deploy particular equipment, the prices Verizon could charge for network elements in a competitive market still would be affected by the deployment of more efficient equipment unless there are reasons why

[13] Id. at pars 7-12, pgs. 7-8.

no carrier would deploy the particular equipment." The FCC is unmistakably clear that the TELRIC pricing methodology completely divorces provisioning from pricing.

TDM may well be an older telecommunications technology (although it is clearly still in use), but when the prices resulting from the TDM analysis are compared to an all copper home run network, it is telling that **the TDM based weighted average UNE loop prices are approximately 17% less than all copper loop alternative** (Compare GTA submissions -- Attachment 1 UNE Loop Rates – All Copper with Inventory pricing (All ALJ recommendations except for FTTN) to Revised ALJ recommendations UNE Loop rates). GTA's all copper home run network can neither stand the test of forward looking nor being most cost efficient.

The value of GTA's all copper network is not the value of the copper. Rather, the value is constrained by the prices that would result from a side by side comparison with a newer, more efficient network. Clearly, if the "TDM" technology results in prices measurably less than the all copper network it replaced, then the copper network is worth no more than its replacement and should be devalued accordingly. Today, fiber is penetrating ever deeper into the GTA and other networks for both cost and functionality reasons. The FCC has recognized, in the context of next generation networks, that fiber to the premises is the least cost, most forward looking technology of choice. One is left to wonder how much lower contemporary network costs are compared to TDM.

In its Application to rehear certain findings concerning the Hybrid loop inputs, GTA has not introduced any new evidence upon which a case could be made for

rehearing. GTA has not provided any justification for a "rehearing" on issues involving TDM. Its position is internally inconsistent. On one hand, it argues that it needs a "rehearing" to provide the ALJ with a working TDM model for TDM equipment required at all nodes and at each REC. On the other hand, GTA repeatedly states that it has no records for TDM feeder technology and has no information as to the costs for such equipment and technology.

In its present Application, GTA has not presented one shred of new evidence or information concerning the cost inputs for TDM technology. What it really requests is a new hearing for additional fact finding and discovery purposes--so that it can go out and attempt to obtain information concerning pricing of TDM. Ordinarily, a motion for rehearing based upon "new evidence" would specifically include evidence that GTA intends to introduce upon a "rehearing." GTA, however, has presented absolutely no evidence, new or otherwise, that would justify a "rehearing". For a period of at least four months, and continuing to the present, GTA has not produced any information or evidence which it would plan to introduce upon a rehearing.

GTA's Application for rehearing based upon new evidence concerning TDM technology is legally deficient and inadequate. The purpose of a motion for reconsideration is to bring to the tribunal's attention **newly discovered evidence.** O'Connor v. County of Cook, 787 N.W. 2d 185, 191(App. Ct. Illinois 2003); to prevail on a motion for reconsideration, the movant must establish either **newly discovered evidence** or a manifest error of law or fact. Schapiro v. Pokos, 802 N.W. 2d 204,210 (Ct.

App. Wisc. 2011). In this case GTA has failed to present any newly discovered evidence concerning TDM technology; the application simply fails to support any rehearing.

This proceeding has been delayed for nearly three years. What GTA proposes is an open ended, substantial further delay in this proceeding without having provided any evidence to support its request. To the contrary, GTA has indicated that it has no other records on TDM. What would be the purpose of a further rehearing if GTA has not even suggested what further records or inputs it could provide?

GTA also claims that the FCC inputs it used did not necessarily contain adequate power systems to be placed at the nodes to offer customers on Guam uninterrupted voice service if commercial power were unavailable. Again, the ALJ repeatedly invited GTA during the proceedings to provide any missing equipment cost information. GTA was fully allowed to cost missing hardware components if the need for such hardware could be justified.

With regard to line powering requirements, GTA was directed to demonstrate that power was not included in the PDS hybrid network. If it was not included, the ALJ recommendation stated that "it must be included in the TELRIC model."[14] GTA again admits that it "does not have current prices for actual TDM electronics, and that it wishes to obtain a "complete set of bids or estimates for equipment and site preparation..."[15] Why has GTA failed to obtain such information to date?

GTA has apparently not made any progress in obtaining such information, but

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[14] ALJ/PUC Consultant Initial Analysis at p. 19.

[15] GTA Application for Reopening and Rehearing, PDS Docket 14-01, dated April 24, 2017, at pgs. 6-7.

now seeks an open ended rehearing, to begin its information gathering process anew and perhaps to delay the ultimate resolution of this proceeding for years more. It should be noted that the current Interconnection Agreement only extends until August of this year. At that time GTA and PDS will negotiate a new ICA including UNE loop rates. Based only upon its claim that it has no information on the cost of TDM technology, GTA has not provided any valid reason for a "rehearing."

VI. REJECTION OF HOMERUN COPPER LOOPS

GTA has argued against the rejection of homerun copper loops throughout this proceeding. The issue has been argued and reargued, over and over again. The ALJ recommendation, as well as the PUC Arbitration Order, is appropriately based upon the criteria set forth in the Federal Communications Commission Verizon-Virginia TELRIC Order.[16] GTA argues that the "pricing of a UNE-loop should match what is provisioned." However, GTA has not taken into account the basic principle that pricing for TELRIC is not based upon what loops GTA currently provides to PDS today; the pricing for loop rates is based upon the cost that the incumbent would incur today if it built a local network using the "least-cost, most efficient technology currently available."

GTA claims that eight state commissions adopted "forward-looking" scenarios that included homerun coper. However, such approach was only one of many different

[16] See Blessing Responsive Testimony at p. 32, citing Verizon-Virginia.

scenarios adopted by such commissions. PDS points out that homerun copper loops scenarios were not adopted in more than 85% of the nation's jurisdictions.[17]

VII. SUB-LOOP RATES

GTA claims that the Findings of Fact and Conclusions of law "failed to explicitly state that sub-loops are from field FDI to the customer premises and that UNEs ordered from a field FDI are priced at the sub-loop price." It further alleges that both PDS and GTA agree with this explicit requirement.

GTA never even raised this issue until the hearing before the PUC on April 13, 2017. Both Parties understand the requirement such that there is no need to reopen the hearing on this basis. The Parties are free to amend their ICA to contain mutually agreeable language on this issue.

VIII. 2-WIRE UNE LOOPS

GTA now contends that it was "ordered" to develop rates for loop configurations where some of the UNEs overlap with the definition of other UNEs. Some rates are based upon the type of wire, where others are based on specific distances. GTA claims that PDS is not prohibited from "price shopping 2-wire rates." PDS should allegedly not be allowed to use the weighted average for some locations and the distance rates for other locations within the same REC. PDS should be required to use the weighted average to the 2-wire rate.

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[17] PDS Opposition to Teleguam Holding, LLC's Application for Reopening and Rehearing, PDS. Docket 14-01, filed May 12, 2017, at p. 8.

GTA never raised this issue in a timely fashion. To set the record straight, it was not the ALJ as Arbitrator who determined which loop rates would be arbitrated. It was GTA and PDS who indicated that they could not agree on rates for UNE rates for 10 loops and 2 sub-loops. Based upon the request of the Parties for arbitration, the PUC ordered that GTA would perform a TELRIC STUDY to develop UNE rates for the 10 loops and 2 sub-loops.[18] The PUC properly has approved the 12 UNE rates for 10 loops and 2 sub-loops, as it was requested by the parties to do in this arbitration.

There is no further need to address this matter and it should be left to the resolution of the parties.

IX. TRUE-UP PROVISIONS: COSTS OF THE TELRIC STUDY

The ALJ already established that the issue of whether the cost of the TELRIC study could be included in the final UNE rates "would be decided during the true-up portion of the proceedings."[19] The ALJ previously determined that it is not appropriate to require PDS to share the expense of the TELRIC study.[20] Whether GTA can recover these TELRIC costs through NECA, USAC, or other mechanism is for GTA to present in a separate application to the PUC if it desires. The issue should not be determined in the instant proceeding.

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[18] PUC Order PDS Docket 14-01, dated August 29, 2014 at par. 25.

[19] ALJ Order Re: Phase II Arbitration Issues, PDS Docket 14-01, p. 3, dated March 17, 2015.

[20] Id.

X. PDS REQUEST THAT REGULATORY EXPENSES FOR GTA'S APPLICATION FOR REHEARING BE ALLOCATED TO GTA

PDS has requested that GTA be liable for the Commission's regulatory expenses on this Application for Rehearing pursuant to Amended Rule 1.b.iii (Rules Governing Regulatory Fees for Telecommunications Companies). That rule authorizes the PUC to allocate regulatory expenses in proceedings, including dispute resolution under Rule 4 of the Interconnection Implementation Rules, against such party or parties as the Commission deems appropriate.

XI. CONCLUSION

For the reasons set forth herein, the ALJ recommends that the PUC deny GTA's Application for Reopening and Rehearing. GTA's Application contains matters that have already been extensively argued previously in this proceeding and were rejected by the PUC in its Arbitration Order. For that reason, GTA should bear the regulatory expense incurred with regard to its Application. A Proposed Order is submitted herewith for the consideration of the Commissioners.

Dated this 23rd day of May, 2017.

/s/ Frederick J. Horecky

Frederick J. Horecky
Administrative Law Judge