

GUAM PUBLIC UTILITIES COMMISSION
REGULAR MEETING
August 30, 2018
Suite 202, GCIC BUILDING, HAGATNA



MINUTES

The Guam Public Utilities Commission [PUC] conducted a regular meeting commencing at 6:45 p.m. on August 30, 2018, pursuant to due and lawful notice. Commissioners Johnson, McDonald, Perez, Cantoria, Pangelinan, and Montinola were in attendance. The following matters were considered at the meeting under the agenda made *Attachment "A"* hereto.

1. Approval of Minutes

The Chairperson announced that the first item of business on the agenda was approval of the minutes of June 26, 2018. Upon motion duly made, seconded and unanimously carried, the Commission approved the minutes subject to correction.

2. TeleGuam Holdings LLC

The Chairperson announced that the next item on the agenda was GTA Docket 18-02, Request for Investigation of Transfer of E911 Funds, ALJ Report, and Proposed Order. Counsel summarized the ALJ Report that had been filed with the Commission. Based upon certain correspondence from Federal Communications Commission Commissioner Michael O’Rielly, Senator Telenia Nelson of the Guam Legislature had requested that the PUC investigate allegations that there have been misexpenditures of E911 Funds. It has been alleged that as much as \$4M has been expended by the Government of Guam between 2013 and 2017 for purposes not related to the E911 system.

Based upon a reading of the law, Counsel concluded that E911 funds may not be expended for any purpose other than enhanced 911 equipment and system costs. In accordance with 12 GCA § 12311, the Guam PUC is obligated to investigate “any person or entity which the Commission... determines has violated any provision of this Act,” the “Act” being the E911 law. Counsel recommended that the Commissioners authorize an investigation in this matter, under the purview of the Administrative Law Judge, to investigate the facts concerning alleged misexpenditures of E911 funds.

Commissioner Montinola moved to approve an investigation, which motion was seconded by Commissioner Cantoria. The motion carried unanimously.

The Chairperson announced that the next item of business was GTA Docket 18-03, Petition of GTA for Annual USAC Certification, PUC Counsel Report, and USAC Certification. Counsel indicated that this was the annual request by GTA to obtain a

Certification from the PUC that federal universal support funds received by GTA are only used for the purposes specified in federal law (nine services required). Counsel determined that GTA had met all requirements of federal law, including provision of a 5-year plan which showed ongoing efforts to improve its telecommunications system. Having found that GTA satisfied the requirements of law, Counsel recommended that the PUC approve the USAC petition and provide the required certifications to the Federal Communications Commission and the Universal Service Administration Company. Commissioner Montinola moved to approve the USAC certification for GTA, which motion was seconded by Commissioner Cantoria. The motion unanimously carried.

The Chairperson announced that the next item of business was GTA Docket 18-04, Petition of GTA Pulse Mobile for Annual USAC Certification, PUC Counsel Report, and USAC Certification. Counsel explained that the requirements for GTA Pulse Mobile were exactly the same as those for GTA. The CEO of Pulse certified that funds have been and will only be used for the nine core services previously indicated. Pulse Mobile has only used such funds for the purposes permitted by federal law. Pulse's five-year plan indicated that it was continuing to make capital improvements to its wireless networks. Commission Pangelinan moved to approve the USAC Certification for Pulse Mobile, which motion was seconded by Commissioner Montinola. The motion carried unanimously.

3. Guam Waterworks Authority

The Chairperson indicated that the next item on the agenda was GWA Docket 18-06, Petition for Bond Reallocation for U.S. Court Ordered Projects, ALJ Report, and Proposed Order. The ALJ indicated that GWA was requesting relocation of 2010, 2013, and 2016 bond proceeds in the following amounts: \$886,431.00 of 2010 Bond proceeds; \$6,541,991.00 of 2013 Bond proceeds; and \$30,480,170.00 of 2016 Bond proceeds. The projects involved included GWA's meter replacement program, water reservoir internal and external rehabilitation, and Baza Gardens STP replacement.

An explanation followed concerning the specific projects and amounts for which GWA wished to reallocate bond funds. The majority of the funds would be reallocated for water system reservoir improvement projects. Other projects included new production wells, production well meter replacement, fire hydrant replacement, and bayside sewer pump station rehabilitation.

In response to the Chairperson's question, GWA General Manager Bordallo indicated that there had been progress made with the replacement of the water reservoirs. Reconstruction of the reservoirs would be in reinforced concrete. Steel tanks would be reinforced with concrete. The reallocation involved an excess of \$37M.

Commissioner Montinola moved to approve GWA's bond reallocation, which motion was seconded by Commissioner Pangelinan. The motion carried unanimously.

The Chairperson indicated that the next matter for consideration was GWA Docket 18-07, Petition to Include Ugum Treatment Plant in SCADA Upgrade, ALJ Report, and Proposed Order. The ALJ indicated that GWA sought a change order, which would include the Ugum Water Treatment Plant in the SCADA system-wide upgrade. Various reports, including those of Siemens and Ernst & Young, recommended that GWA address its vulnerabilities with respect to the Ugum SCADA system and make upgrades. The total cost will be \$687,506.25. The ALJ recommended approval. Commissioner Perez moved to approve the inclusion of the Ugum Water Treatment Plant in the SCADA system-wide upgrade, which motion was seconded by Commissioner Cantoria. The motion carried unanimously.

4. Port Authority of Guam

The Chairperson announced that the next item on the agenda was PAG Docket 18-04, Petitioner for Agana and Agat Marina User Fee Rate Change, ALJ Report, and Proposed Order. The ALJ indicated that PAG was seeking an increase in the rates for Marina users. The Agana Marina user fees would increase considerably, as would commercial use fees. PUC Consultant Slater/Nakamura found that the proposed rates were extremely conservative when compared to other marinas. Such increase would be a good step towards enabling PAG to recover a greater proportion of marina-operating expenses and capital improvement costs. Slater found that the proposed marina fee increases were fair, just and reasonable.

The ALJ detailed public testimony received during a Public Hearing from the President of the Fisherman's Coop, which suggested that PAG had not justified the increase. Other individuals objected to the increases and Mr. Frank Quinata testified that PAG should make improvements before changing the rates. Based upon the Slater/Nakamura recommendations, the ALJ recommended that the proposed fees be adopted by the PUC, and that such user fees were "just and reasonable". He did suggest that perhaps the fees could be in stages.

Port GM Brown indicated that there had been substantial upgrades in the marinas over the last eight years. However, the marinas should be self-sustaining. GM Brown had no objection to phasing the new rates in. A marina user, Mr. Frank Quinata, stated that PAG should pay money for upgrades to its marina assets. Customers could be charged by head. Marina users should be charged for use of the Port facilities. Commissioner Montinola moved to table the matter until the next meeting. He believed there should be further consideration of the timing of the increases. Discussion followed, and Commissioner Pangelinan concurred that suggestions should be made concerning the phase in of rates. Commissioner Cantoria seconded the motion to table. The motion carried unanimously.

The Chairperson indicated that the next item of business was PAG Docket 18-06, Petition for Approval of Additional Funding for First Agent Engineering Services Contract, and Proposed Order. The ALJ indicated that PAG sought approval of certain

task orders to its owner's agent engineering services contract with WSP, formerly known as Parsons Brinckerhoff. The services provided under the contract include professional and technical support in the areas of design and engineering, financial consulting, and other related services concerning rate petitions. Technical services are provided concerning the Marine service life extension project. Further approval is requested by PAG for task orders involving implementation of the Terminal Operating System, program development for the dismantling and destruction of cranes no. 2 & 3, procurement of transport and installation of the replacement crane no. 3, a review of port progress on its facility and equipment maintenance, and assistance with planning and construction projects under the Port CIP.

There is also development of a health and safety program. The ALJ found that WSP has been instrumental in the development of the Port's CIP program and issuance of its inaugural bond, and that task orders No. 7 and 8 should be approved in the amount of \$1,194,615.00. In addition, the ALJ further recommended that the PUC ratify the amount of \$381,332.00 for Task Orders No. 5 and 6, Commissioner McDonald moved to approve task orders no. 7 and 8 with WSP, and the ratification of Task Orders nos. 5 and 6, which motion was seconded by Commissioner Pangelinan. The motion carried unanimously.

5. Guam Power Authority

The Chairperson announced that the next item on the agenda was GPA Docket 18-01, Approval of the Contract for Residual Fuel Oil No. 6 for Baseload Generating Plants, PUC Counsel Report, and Proposed Order. PUC Counsel indicated that GPA went out for a procurement for Fuel Oil No. 6 for its baseload power plants. The Consolidated Commission determined that Mobil Oil Guam was the lowest and most responsive bidder. The contract would be for two years, expiring November 30, 2020. The cost for the 2-year contract is over \$229M.

The proposed contract adequately protects the interest of the bidders. Counsel recommended that GPA's contract with Mobil Oil Guam be approved, and that GPA be authorized to expend up to a total of \$229,433,402.00 for the 2-year base contract. Commissioner Montinola moved to approve GPA's contract with Mobil Oil Guam and the proposed expenditure, which motion was seconded by Commissioner Cantoria. The motion carried unanimously.

The Chairperson announced that the next item of business on the agenda was GPA Docket 18-10, Supplemental Filing for Contract Extension with Tristar Terminal for Pipeline Agreement and Storage Agreement, PUC Counsel Report, and Proposed Order. Counsel indicated that the concern with both the pipeline and fuel storage agreements was the inclusion of automatic cost of living increase clauses of four percent per year.

After the March PUC meeting, at the instruction of the PUC, GPA attempted to renegotiate the issue of the automatic increases with Tristar. However, Tristar believed that there were various expenses which needed to be covered in the contracts, and that the four percent automatic cost of living increase should be retained. Counsel concluded that there was no solution by which Tristar could be compelled to remove these automatic COL clauses from the contracts. The proposed Order provides that the pipeline and fuel storage agreements would be approved, but that the Commission would not authorize inclusion of the automatic COL increase provisions in future contracts.

Discussion ensued between the Commissioners, GPA officials, and Counsel. After considerable discussion, the Commissioners concluded that there should be a requirement in the Order that GPA discuss with PAG the pipeline arrangements for Tristar, and that it can be determined whether PAG can assist in any arrangement that would mitigate the Tristar charges to GPA. Commissioner Perez moved to add such stipulation to the Order, which motion was seconded by Commissioner Montinola. The motion carried unanimously.

The Chairperson stated that the next item of business was GPA Docket 18-02, Petition for Approval of the Technical Specifications for New Generation Power Plant, PUC Counsel Report, and Proposed Order. Counsel indicated that the matter before the Commission this evening was technical plan and specifications for the proposed power plant, and the bid documents for the procurement. GPA sought approval of the functional specifications for the plants and the procurement bid documents. GPA wished to submit these documents to the prequalified seven bidders.

The selected bidder would be required to build up to 180MW in accordance with the specifications. Under the specs, financing of the development and construction of the facility would be the **sole responsibility of the selected bidder**. GPA would not be involved in the financing. Counsel concluded that the specifications are comprehensive and very detailed. They were prepared by GPA consultant Stanley and subconsultant K&M Advisors. GPA's Consultant, as well as various GPA officials, have confirmed that the technical, functional specifications are adequate for the construction of the plant, and that they will protect GPA and the ratepayers.

The proposed bid documents provide the opportunity to proponents of any technology, including renewable technologies, to bid on the procurement; the prior dictate of the PUC that the procurement be "technologically agnostic" has been observed in the interest of GPA and its ratepayers. Counsel concluded that the contract is adequate as written. He recommends that the PUC approve the bid documents as well as the functional technical specifications. GPA GM Benavente needed to issue the procurement so that it could select an IPP in 2019. He concurred with the recommendations of Counsel.

CCU Commissioner Simon Sanchez was then given an opportunity to speak. He indicated that he supported the issuance of the BOT technical specs to get the generator going. However, he did not vote for the specs because of his concerns about financing the plant. He requested that the PUC add a provision to the bid specifications called "a financial flexibility clause." This clause would provide GPA and its ratepayers a tool to ensure that GPA gets the best possible price from the partner.

Sanchez believes that GPA now has a good credit rating to issue bonds and refinance bonds. The largest cost for a plant is the fixed capacity charge. However, bidders do not disclose this number. Mr. Sanchez believes that GPA may be able to finance the new generation plant at a cheaper cost than the IPP. GPA is a tax-exempt borrower. According to Mr. Sanchez, Bond Counsel Orrick and Barclays, bond underwriter, are supportive of this approach. Non-taxable financing is two percent lower than taxable.

Under the plan proposed by Mr. Sanchez, GPA could finance 80%. After construction final plant financing could be done by GPA. Sanchez requested that the PUC approve the use of tax-exempt flexible financing by GPA. PUC Counsel stated that it would not be appropriate for PUC to force CCU to undertake financing when it had voted against it. It would only be appropriate for PUC to entertain this request if it then filed a petition with the PUC. PUC should not address this matter unless CCU proceeds to request it under the contract review protocol.

According to Counsel, in two prior orders, the PUC rejected financing of this project by GPA. Commissioner Cantoria stated that the rate at which financing was issued would depend upon the relative strength of the Government of Guam and the IPP contractor. Mr. Sanchez indicated that financing rate would not be known until 3 years from now, so it made it sense to have financial flexibility. Extensive discussion ensued between Mr. Sanchez, GM Benavente, CCU Chairman Joey Duenas, and the Commissioners.

Chairman Duenas indicated that the CCU had rejected Mr. Sanchez proposal. GM Benavente indicated a concern about this bid being delayed. Commissioner Pangelinan pointed out that if the CCU wanted financial flexibility after all the bids came in, it could come back to the PUC and request such flexibility. GM Benavente recommended that the PUC approve the Order as recommended by PUC Counsel. Commissioner McDonald moved to approve Step 2 of GPA's process for procurement of new generation, including the bid documents and the functional specifications, and adopt the proposed Order in GPA Docket 18-02. Commissioner Cantoria seconded the motion. The motion was approved by a vote of 5 to 1, with Commissioner Montinola opposing.

6. Administrative Matters

The first matter brought up by PUC Counsel was the PUC Travel Policy. Chairperson Johnson noted that the policy was out of date and needed revision as to the per diem

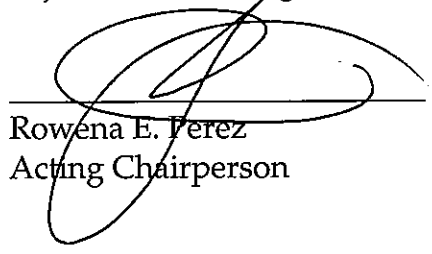
amounts. Counsel and the Administrator are now working together on revising the Travel Policy.

Counsel next referenced the pending PUC Consultant Procurements. He announced the results of the Commissioner evaluations for each of the six procurements. Counsel indicated that there was a tie for the number 2 consultant for water/power. The Commissioners concurred that three consultants should be retained. With regard to all of the procurements, the next step is for Counsel to negotiate consulting agreements with each. Counsel then discussed with the Commissioners some of the issues facing PUC in its regulation of solid waste matters. Counsel proceeded to discuss the Commissioner selections for the most qualified consultant for Port, Telecom, Legal Counsel, and ALJs. Counsel had prepared letters addressed to the consultants advising them that they were selected or not selected, and indicating that contract negotiations would ensue with those that were selected.

As to the next matter, Counsel indicated that he provided the Commissioners with copies of Bill No. 325-34, as it relates to PUC duties involving the E911 Fund. Counsel's main concern was the nature of the complaints which PUC would be required to hear under the Bill. Its scope is broad, and there needs to be further refinement. This can be accomplished in the public hearing process.

As a final matter, Counsel referenced the current PUC policy on the preparation of its Meeting Minutes. Because of the cost involved, Counsel recommended that the Minutes be compiled in a more summary form. In any event, the meeting Transcripts which are prepared separately, are provided to the Office of Public Accountability. Counsel believes that long descriptions in the minutes of the meetings is not required, because there is already a verbatim transcript. Commissioner Pangelinan suggested that the current form of the minutes could be shortened. Commissioner Pangelinan raised the question of the vacancy on the Commission. Counsel explained the actions that had already undertaken to attempt to fill the vacancy.

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



Rowena E. Perez
Acting Chairperson

**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION
REGULAR MEETING
SUITE 202, GCIC BUILDING
414 W. SOLEDAD AVE., HAGATNA, GUAM
6:30 p.m., August 30, 2018**

Agenda

- 1. Approval of Minutes of June 26, 2018**
- 2. Guam Waterworks Authority**
 - **GWA Docket 18-06, Petition for Bond Re-allocation for U.S. Court Ordered Projects, ALJ Report, and Proposed Order**
 - **GWA Docket 18-07, Petition to Include Ugum Treatment Plan in SCADA Upgrade, ALJ Report, and Proposed Order**
- 3. Guam Power Authority**
 - **GPA Docket 18-01 Petition to Approve Contract for Residual Fuel Oil No. 6 for Baseload Generating Plants, PUC Counsel Report, and Proposed Order**
 - **GPA Docket 18-10, Supplemental Filing for Contract Extension with Tristar Terminals for Pipeline Agreement & Fuel Storage Agreement, PUC Counsel Report, and Proposed Order**
 - **GPA Docket 18-02, Petition for Approval of Technical Specifications for New Generation Power Plant, PUC Counsel Report, and Proposed Order**
- 4. TeleGuam Holdings LLC**
 - **GTA Docket 18-02, Request for Investigation of Transfers of E911 Funds, ALJ Report, and Proposed Order**
 - **GTA Docket 18-03, Petition of GTA for Annual USAC Certification, PUC Counsel Report, and USAC Certification**
 - **GTA Docket 18-04, Petition of GTA/Pulse Mobile for Annual USAC Certification, PUC Counsel Report, and USAC Certification**
- 5. Port Authority of Guam**
 - **PAG Docket 18-04, Petition for Marina User Fee Rate Change, ALJ Report, and Proposed Order**
 - **PAG Docket 18-06, Petition for Approval of Additional Funding for Owner's Agent Engineering Services Contract, ALJ Report, and Proposed Order**

6. **Administrative Matters**
 - **Current PUC Travel Policy**
 - **PUC Consultant Procurements**
 - **Bill 325, providing for Complaints to PUC re: E911**
 - **PUC Policy on Meeting Minutes**
7. **Other Business**

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN THE MATTER OF:

)
) GTA Docket 18-02
)
)

ORDER

)
) Request for Investigation of Certain
) Transfers of Money from the Enhanced
) 911 Emergency Reporting System Fund.
)
_____)

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Request of the Chairperson of the Committee on Utilities, Senator Telenia C. Nelson, filed on June 26, 2018, for an Investigation of Transfers of Funds from the Enhanced 911 Emergency Reporting System Fund [hereinafter "the E911 Fund"].

BACKGROUND

2. In Public Law 25-055, enacted on June 30, 1999, the Guam Public Utilities Commission was mandated to establish and amend, as required, a monthly surcharge, to be known as the "911 Surcharge", to be paid by Local Exchange Telephone and Commercial Mobile Radio Service subscribers.¹
3. The PUC was directed by the Legislature to establish the 911 surcharge at a rate not to exceed \$1.00 per month per subscriber line and per line number for commercial mobile radio service.²
4. The purpose of the 911 surcharge is to fund the just and reasonable expenses of operating and maintaining the "911" system, which is the responsibility of the Guam Fire Department.³
5. Pursuant to the PUC Order dated October 5, 1999, the PUC established the surcharge and created the protocol under which the surcharge would be billed, collected and disbursed to the Department of Administration.⁴

¹ 12 GCA §12302(a).

² 12 GCA §12302(c).

³ 12 GCA §12302(d).

⁴ PUC Order, Docket 99-1 [911 Emergency System Surcharge], dated October 5, 1999.

6. The 911 surcharge was initially set at one dollar per month.⁵ The PUC has not altered the amount of the surcharge.
7. In the early years of the surcharge, PUC had broad responsibility for establishing the E911 Budget and regulating the Guam Fire Department's expenditures of 911 fund revenues.⁶ However, on November 7, 2001, the Public Law 26-55 was enacted; said law divested the PUC of regulatory authority over the E911 Budget and transferred such authority to the Guam Legislature.⁷
8. Since the enactment of said law, the PUC's duties regarding E911 have related primarily to the preparation of an annual report detailing the collection of E911 funds by the Department of Administration. Other responsibilities have included monitoring and supervising the activities of Collection Agents for the Telecom Companies regarding the assessment and collection of the E911 Surcharge.

DETERMINATIONS

9. According to Senator Nelson's Request for Investigation, facts have recently become apparent indicating that as much as \$4 million was transferred between 2014 and 2017 from the E911 Fund to the General fund. The PUC was not notified of any of these transfers.⁸
10. These facts initially came to light based upon a letter from a Commissioner of the Federal Communications Commission, Michael O'Rielly, to the Honorable Governor Eddie Calvo. In his letter, Mr. O'Rielly indicated that almost \$4 million was transferred out of Guam's 911 Fund.
11. Commissioner O'Rielly further requested that the Governor cease the diversion of these funds for purposes other than the 911 system, as the "citizens of Guam rely on the 9-1-1 system to work in their most dire times of need."⁹
12. In his response to Commissioner O'Rielly dated June 21, 2018, Governor Calvo indicated that on September 16, 2017, the Guam Legislature had enacted a budget bill which "authorized the appropriation of monies contained in special funds even though the appropriation was not related to the purposes of the fund..."¹⁰

⁵ Id. at p. 1.

⁶ Letter from ALJ Harry Boertzel to PUC Consultants, dated May 15, 2002.

⁷ Public Law 26-55, enacted November 7, 2001 (Section 4 of P.L. 25-55) was amended to provide that the 'Enhanced 911 Emergency Reporting System Fund...shall be subject to legislation appropriation...' (emphasis added).

⁸ Letter from Senator Telena Nelson to PUC Chairman Dr. Jeffrey Johnson, dated June 26, 2018.

⁹ Letter from FCC Commissioner Michael O'Rielly to the Honorable Eddie Calvo, Governor of Guam, dated June 20, 2018.

13. The Governor further indicated that the transfers had been made in accordance with both local and federal law. There had been no disruption of emergency response services.¹¹
14. In his letter to FCC Commissioner O’Rielly dated June 22, 2018, Speaker Benjamin J. F. Cruz disputes that the Legislature authorized the transfers from the E911 Fund to the General Fund; he stated that the transfers violate Guam and federal law.¹²
15. Applicable provisions of law codified at 12 GCA §12301 et. seq., Article 3, “911” Surcharge, establish the pre-eminent jurisdiction of the PUC to establish and amend the amount of the surcharge and, with regard thereto, to exercise all powers and duties prescribed in the PUC enabling legislation.¹³
16. There are numerous provisions in Article 3 of 12 GCA CH.12 limiting the expenditure of surcharge revenues:
 - (a) The legislative purpose of the 911 surcharge is to fund “the just and reasonable expenses of operating and maintaining the “911” system”; no other purpose is indicated (12 GCA §12302(d)).
 - (b) The *Enhanced 911 Emergency Reporting System Fund* is a fund “**created, separate and apart from all other funds of the government...**” 12 GCA §12304(b).
 - (c) The fund was created to provide a source of funding “**for costs associated with an Enhanced 911 Emergency Reporting System.**” 12 GCA §12304(b).
 - (d) All of the 911 surcharges collected by each LEC, VOIP and CMRS provider **shall be deposited in the fund.** 12 GCA §12304(c).
18. In addition, the law is very specific as to the use of E911 funds: “The money collected and the interest earned *shall* be used by the Department *solely* for enhanced 911 equipment and system costs as described in this Act “(and for other system expenses). **The Legislature intended that such funds be used for no other purpose than funding 911.** 12 GCA §12304(d).

¹⁰ Letter from Eddie Baza Calvo, Governor of Guam, to Mike O’Rielly, Commissioner, Federal Communications Commission, dated June 21, 2018.

¹¹ Id. at p. 2.

¹² Letter from Speaker Benjamin J.F. Cruz to Commissioner O’Rielly, dated June 22, 2018.

¹³ 12 GCA §12101 et seq.

19. The law unequivocally provides that “notwithstanding any other provision of law, **no moneys in the Fund shall be expended without appropriation by I Liheslatura.**” 12 GCA §13204(e).
20. Finally, the law states that “Notwithstanding any other provision of law, **no monies in the Fund shall be expended for purposes other than provided for in this Section, without the expressed approval of I Liheslatura.** The fund is *exempt* from any transfer authority.” 12 GCA §12304(f).
21. The facts set forth in Senator Telena Nelson’s letter, as well as that of FCC Commissioner O’Rielly, if correct, suggest that there may have been unlawful transfers of E911 Funds for purposes other than the operation and maintenance of the 911 system.
22. There is no indication that the Guam Legislature approved the transfers of approximately \$4 Million referenced in the letters of Senator Nelson and FCC Commissioner O’Rielly.
23. The PUC does have authority to conduct investigations concerning violations of the E911 Surcharge law. 12 GCA §12311, **Violations of This Act**, provides as follows:
 - “(a) Any person or entity which the Commission determines has violated any provision of this Act, or any Commission order, shall be given proper notice and be allowed a reasonable opportunity to cure the violation.
 - (b) Thereafter, in the event of failure to cure, the Commission may refer the violation to the Attorney General’s Office for prosecution.
 - (c) Any person or entity that, having the responsibility of complying with this Act or a Commission order, fails to cure such violation shall be fined a civil penalty *not* to exceed Ten Thousand Dollars (\$10,000.00) per infraction. Any such penalty shall be deposited into the Fund. ”
24. The mandate that the Commission determine whether violations of the Act have occurred necessarily requires it to conduct investigations regarding alleged violations.
25. The Commission could not, in accordance with principles of due process of law, determine that persons or entities have violated the Act without first investigating and without affording any person or entity accused of such violations with notice and opportunity to be heard.

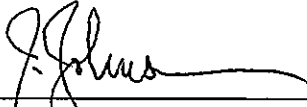
26. The Commission does have jurisdiction to conduct an investigation concerning the facts alleged herein concerning transfers of E911 funds to the General Fund, to determine whether transfers of E911 funds for purposes other than operation and maintenance of the E911 system are violations of the Act, and to consider appropriate remedies.

ORDERING PROVISIONS

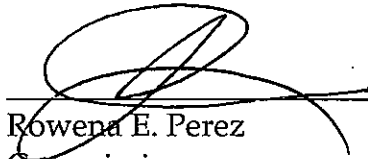
Upon consideration of the record herein, the Request from Senator Telena Nelson for an Investigation of Transfers of Funds from the Enhanced 911 Emergency Reporting System Fund, other specified correspondence, and the ALJ Report, and for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby **ORDERS** that:

1. Senator Telena C. Nelson's Request that the PUC investigate transfers of Funds from the Enhanced 911 Emergency Reporting System Fund, determine if any violations of the Act have taken place, and take appropriate corrective action as may be necessary, is granted.
2. The Administrative Law Judge is authorized to conduct an investigation of the facts alleged herein concerning transfers of E911 funds to the General Fund, to determine whether transfers of E911 funds for purposes other than operation and maintenance of the E911 system are violations of the Act, and to consider appropriate remedies.
3. Upon completion of his investigation, the ALJ shall submit his findings, conclusions, and proposed remedies to the PUC for review.
4. In accordance with law and Commission past practice, the PUC expenses in conducting the investigation hereunder shall be charged against, and paid by, the 911 Fund.

Dated this 30th day of August, 2018.



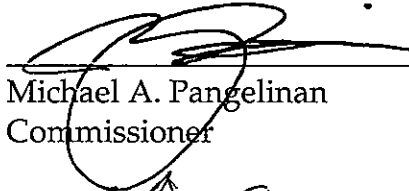
Jeffrey C. Johnson
Chairman



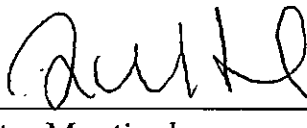
Rowena E. Perez
Commissioner



Joseph M. McDonald
Commissioner



Michael A. Pangelinan
Commissioner



Peter Montinola
Commissioner



Filomena M. Cantoria
Commissioner



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

In the Matter of:

GTA Docket 18-03

**Teleguam Holdings, LLC ("GTA")
USAC CERTIFICATION**

PUC LEGAL COUNSEL REPORT

BACKGROUND

On August 27, 2018, TeleGuam Holdings LLC (“GTA”) filed its 2018 Annual USAC filing. It petitioned the PUC to issue a Certification that GTA will use federal universal service support funds for purposes in compliance with Section 254(e) of the Communications Act.¹ GTA receives monies from interstate universal service funds [“USF”] that are designated to support local services, build needed infrastructure and improve service quality.

Each year the PUC is required to certify to the FCC and the Universal Service Administrative Company (USAC) that those funds will be used only for the purposes designated in the federal Act.² Absent such a Certification by PUC, GTA, as an “Eligible Telecommunications Carrier” (“ETC”), would be denied funds for each quarter of the year that certification is delayed.

GTA's Petition states that universal support funds received by it are all being used to support core services that are designated for USF support.³ The Chief Executive Officer has certified that all federal high-cost support received will be used only for the provision, maintenance, and upgrading of facilities and services for which support is intended.⁴

All federal high cost funds received are used to support core services.⁵ GTA indicates that the cost of providing these core services is covered by federal federal high cost fund support as intended by the federal USF programs.⁶

¹ GTA Petition for Annual USAC Certification, GTA Docket 18-03, filed August 27, 2017.

² Georgetown Consulting Group Report on USAC Certification – GTA Telecom, dated September 12, 2008.

³ GTA Petition, *supra*, at pg. 1.

⁴ GTA Petition, *supra*, attached 2018 High Cost Support Use Certification of TeleGuam Holdings, LLC (Roland S. Certeza, Chief Executive Officer).

⁵ GTA Petition, *supra*, at pg. 4.

⁶ *Id.*

On March 17, 2005, the FCC released its ETC (“Eligible Telecommunications Carrier”) Designation Order, which adopted specific requirements for ETCs granted designation pursuant to Section 214(e)(6) of the Federal Act.⁷ The FCC designated nine core services that are eligible for Universal Service Fund (USF) support: single party service; local usage; voice grade access to the public switched telephone network; dual tone multifrequency signaling; access to emergency services; access to operator services; access to interexchange services, access to directory assistance; and toll limitation service for qualifying low-income consumers.⁸

COMPLIANCE WITH FCC AND ETC DESIGNATION ORDER REQUIREMENTS

In its Petition, GTA certifies that, in accordance with 47 C.F.R. §54.101, GTA provides all of the core services that are designated for USF support. It offered all of the services designated by the FCC for support pursuant to Section 254 (c) of the Federal Act during calendar year 2017 and to date in 2018.⁹ It provides those services as part of its basic residential and business local line service under its General Exchange Tariff approved by the PUC.¹⁰ Through GTA’s tariff, its customers are able to purchase single party, unlimited local usage telephone services that utilize dual tone multifrequency signaling. In addition, GTA provides access to 911 as well as access to operator services, directory assistance and access to interexchange services. It provides toll limitation for domestic and international toll calls.¹¹

GTA has submitted information to demonstrate that it is in compliance with the FCC requirements of the ETC Designation Order:

1. Progress report on the ETC’s five-year Service Quality Improvement Plan. The Federal Communications Commission requires ETCs to submit a five-year build-out plan in a manner consistent with Section 54.202(a)(1)(c) of the Commission’s Rules by July 1, 2014 and to submit annual progress reports thereafter.¹² Section 54.202(a)(1)(ii) requires the ETCs to submit a

⁷ *In the Matter of Federal –State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 05-46 (released March 17, 2005) (the “ETC Designation Order”).

⁸ *Id.*

⁹ GTA Petition, *supra*, at p. 4.

¹⁰ GTA Petition, *supra*, at p. 2.

¹¹ *Id.*

¹² See *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*; WC Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-61 (rel. Nov. 18, 2011) (*USF/ICC Transformation Order*) at Para. 587; *Connect America*

five-year plan that describes with specificity proposed improvements or upgrades to the ETC's network throughout its proposed service area, including an estimate of the area and population that will be served as a result of the improvements.¹³

In particular, the FCC March 5, 2013 Order specified that, for rate-of-return carriers [i.e. "GTA"], the five-year plans "should describe the carrier's network improvement plan, which should provide greater visibility into current plans to extend broadband service to unserved locations in rate-of-return service territories."¹⁴ The FCC has indicated that a key component of the certification issued by entities such as the Guam PUC under Section 254(e) is whether USF support is being used to maintain and extend modern networks capable of providing voice and broadband service.¹⁵

The FCC's five-year plan requirements require the ETC to describe with "specificity" the proposed improvements or upgrades to the ETC's network throughout its service area: (1) how signal quality, coverage, or capacity will improve due to the receipt of high-cost support throughout the area for which the ETC seeks designation; (2) the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; (3) the specific geographic areas where the improvements will be made; and (4) the estimated population that will be served as a result of the improvements.¹⁶

GTA has submitted, under seal, its Five-Year Service Quality Improvement Plan.¹⁷ Exhibit A, Five Year Build Out Plan sets forth GTA's major network improvement projects for the five calendar years 2019 through 2023, along with the start and completion dates, capital costs, and areas and populations associated with those projects.¹⁸

Fund et al., WC Docket 10-90 *et al.*, Order, DA 13-332 (rel. Mar. 5, 2013) ("*March 5, 2013 Order*") at Para's. 4, 6-9. Delaying Five Year Plan until July 1, 2014 see WC Docket No. 10-90, Order, DA 13-1115, Para 8 (released May 16, 2013).

¹³ 47 C.F.R. §54.202(a)(1)(ii).

¹⁴ March 5, 2013 Order at Par. 9 *citing* Section 54.202(a)(1)(ii).

¹⁵ USF/ICC Transformation Order at Par. 612.

¹⁶ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 05-46 (rel. Mar. 17, 2005) ("*2005 ETC Order*").

¹⁷ GTA Petition, *supra*, Exhibit A-Five Year Build Out Plan, GTA Docket 18-03, filed August 27, 2018.

¹⁸ *Id.*

GTA indicates that use of eligible funds for these projects will enhance its network and invest in new technology.¹⁹ Numerous projects are listed for 2019-2023, including: installation of VDSL and fiber expansion.²⁰ VDSL is “Very high data rate Digital Subscriber Line.” It is a “hybrid loop scenario”, with Fiber to the Neighborhood, providing distribution from the central office to the neighborhood, which carries the signal the last leg to the residential premises.²¹ GTA has also indicated a breakdown of the estimated capital expenditures associated with the projects and operating expenses.²²

Submitted as Attachments to its Petition are certifications by Teleguam Holdings LLC that it complies with applicable service quality standards and Consumer Protection Rules, and that it is able to function in emergency situations.²³

2. Detailed information on any outage lasting at least 30 minutes. GTA had three outages that affected the landline and wireless service.²⁴ On April 20, 2017, the 3G wireless network router processor malfunctioned at 1050 to 1205 and had to be rebooted. Wireless users on the 3G voice/data/SMS services had intermittent service. On September 4, 2017, WMS 3G sites were impacted by a malfunctioning router processor from 1955 to 2109 which had to be rebooted. Wireless users were impacted with all services in this period. On November 25, 2017, stacked switches temporarily malfunctioned at 1630 hours affecting landline voice services which impacted some routes. Switches were rebooted and at 1713 all voice services started to normalize. Full outage duration was for 30 minutes and full recovery took 90 minutes.
3. The number of requests for service from potential customers that were unfulfilled for the past year. There were no requests for service from potential customers that were unfulfilled for the past year, other than requests that GTA was unable to fulfill due to the subscriber’s inability to

¹⁹ GPA Petition, *supra*, at pg. 4.

²⁰ GPA Petition, *supra*, Exhibit A (Five Year Buildout Plan).

²¹ Newton’s Telecom Dictionary (25th Anniversary Edition 2009), definition of VDSL.

²² *Id.*, see also Exhibit B, GTA Audited Financial Plan.

²³ GPA Petition, *supra*, Attachments.

²⁴ GTA Petition, *supra*, at p. 3.

pay the required deposits for delivery of service or service drops for new subscribers.²⁵

4. The number of complaints per 1,000 handsets or lines. During calendar year 2017 and to date 2018, GTA was not aware of any end user complaints filed with the PUC or any other regulatory body.²⁶
5. Certification that the ETC is complying with applicable service quality standards. GTA certifies that it adheres to all applicable PUC service quality standards.²⁷
6. Certification that ETC is able to function in emergency situations. GTA certifies that it has the ability to remain functional in emergency situations. Through the use of its backup electricity generators, buried copper and fiber plant, and backup battery power at its Central Office and Remote Equipment Centers, GTA has the necessary infrastructure and equipment to remain functional in situations that include fires, earthquakes or typhoons.²⁸
7. Certification that the ETC is offering a local usage plan that is comparable to the incumbent LEC. GTA is the incumbent LEC and offers an unlimited local usage plan to its subscribers.²⁹
8. Certification that the carrier acknowledges that the Commission may require it to provide equal access. GTA currently offers equal access to all of its subscribers and therefore is in compliance with this requirement.³⁰

GTA has also provided the required certification that it has advertised the availability of the supported services and charges through general media distribution, including direct mailing, Internet, newspaper advertising, and radio.³¹

GTA indicates that, for calendar year 2017, it received \$5,398,302.00 in high cost loop support.³² For the 2018 calendar year to date, GTA received a total of \$2,201,667.00

²⁵ Id.

²⁶ Id.

²⁷ Id.

²⁸ Id. at p. 4.

²⁹ Id.

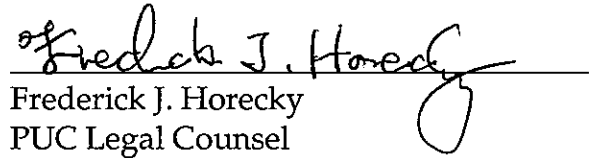
³⁰ Id.

³¹ Id.

³² Id.

in high cost universal service support.³³ GTA has also submitted audited financial data for 2017 as an attachment to its Petition to demonstrate that all funds are being used to support core services.³⁴ Based upon the Petition and supporting exhibits submitted by GTA, it appears that the USF received in calendar year 2017 has been used as intended. Counsel is not aware of any evidence which contradicts the above certifications by GTA and believes that such certifications should be accepted. It is Legal Counsel's recommendation that GTA's request for USAC Certification be granted. The Commission may reasonably certify that future USF received by GTA will be appropriately used. A draft letter to the FCC approving Teleguam Holdings LLC "Use" certification is submitted herewith.

Dated this 28th day of August, 2018.


Frederick J. Horecky
PUC Legal Counsel

³³ Id.

³⁴ Consolidated Financial Statements, attached as Exhibit B to GTA Petition (GTA Audited Financial Data).

Guam Public Utilities Commission

**To: Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554**

**Irene M. Flannery
Vice-President – High Cost & Low Income Division
Universal Service Administration Company
2000 L Street, N.W. Suite 200
Washington, DC 20036**

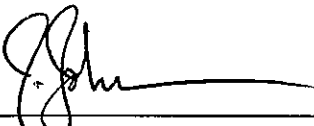
**RE: CC Docket 96-45/WC Docket No. 10-90 –Annual State-Certification of
Support for Eligible Telecommunications Carriers Pursuant to 47 C.F.R.
§54.314**

Pursuant to the requirements of 47 C.F.R §54.314, the Guam Public Utilities Commission hereby certifies to the Federal Communications Commission and the Universal Service Administrative Company that Teleguam Holdings, LLC, is eligible to receive federal high-cost support for the program years cited.

The Guam Public Utilities Commission certifies for Teleguam Holdings, LLC, that all federal high cost support provided to such carrier within Guam was used in the preceding calendar year (2017) and will be used in the coming calendar year (2019) only for the provisioning, maintenance and upgrading of facilities and services for which the support is intended, consistent with Section 254(e) of the Communications Act.

I am authorized to make this certification on behalf of the Guam Public Utilities Commission. This certification is for study area 663800 for the Territory of Guam.

Dated this 30th day of August, 2018.



Jeffrey C. Johnson
Chairman
Guam Public Utilities Commission

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



In the Matter of

TeleGuam Holdings, LLC (f/k/a Pulse
Mobile) USAC CERTIFICATION

) GTA Docket 18-04

) PUC COUNSEL REPORT
)
)
)
)

BACKGROUND

On August 27, 2018, TeleGuam Holdings LLC, f/k/a Pulse Mobile, filed its 2018 Annual USAC filing.¹ Although TeleGuam Holdings LLC is the technical holder of the ETC designation, it operates as a CMRS carrier under the name of Pulse Mobile. Thus, “Pulse Mobile”, as used herein, will interchangeably refer to TeleGuam Holdings.

Pulse Mobile has petitioned the PUC to issue a Certification that Pulse Mobile will use federal universal service support funds for purposes in compliance with Section 254(e) of the Communications Act.² It receives monies from interstate universal service funds [“USF”] that are designated to support local services, build needed infrastructure and improve service quality.

Each year the PUC is required to certify to the FCC and the Universal Service Administrative Company (USAC) that those universal service funds will be used only for the purposes designated in the Federal Act. Absent such a Certification by PUC, TeleGuam Holdings LLC would be denied funds for each quarter of the year that certification is delayed.³ Pulse receives monies from interstate universal service funds (USF) that are designated to accomplish the purposes set forth in Section 254(e) of the Communications Act.

On February 1, 2007, the PUC granted Pulse Mobile LLC’s Petition for designation as an ETC.⁴ By virtue of PUC Order in GTA Docket 11-14 issued on May 25, 2012, Pulse Mobile’s ETC Designation was transferred to TeleGuam Holdings LLC.⁵ ETCs are service providers eligible to receive federal support for local services from Universal Service Funds. In accordance with such Order, TeleGuam Holdings LLC annual designation as an ETC, d/b/a Pulse Mobile, is subject to its provision of annual certifications and data submissions to the PUC. The PUC requires such information so

¹ Pulse Mobile Petition for Annual USAC Certification, Docket No. 18-04, filed August 27, 2018. Id. at p. 1.

² Id.

³ Pulse Mobile Petition for Annual USAC Certification, Docket No. 12-08, filed September 12, 2012.

⁴ Application of Pulse Mobile, LLC for Designation as an Eligible Telecommunications Carrier (Order Approving Designation, Docket No. 06-8, issued February 1, 2007).

⁵ PUC Order, GTA Docket 11-14, dated May 25, 2012.

that it can ensure that funds received by Pulse will be expended in accord with the requirements of the Communications Act.

RECENT DEVELOPMENTS

Pulse has continued to make capital improvements to its wireless networks on Guam.⁶ Pulse has built out various aspects of its wireless network over the past year.⁷ During 2017-18, Pulse continued its LTE Site Coverage Expansion, 3G Site Coverage Expansion, and 3G Switch and Capacity Upgrades.⁸ With its Petition, GPA has submitted its planned expansion plan for 2019 through 2023. Exhibit A, Five Year Build Out Plan, sets forth GTA's major network improvement projects for the next five calendar years, along with the start and completion dates, capital costs, and areas and populations associated with those projects.⁹ Numerous projects are listed for 2019-2023, including: installation of VDSL and fiber expansion.¹⁰ GTA's Plan indicates capital expenditures in excess of \$6M.¹¹

REQUIREMENTS

The Pulse ETC Designation Order contains the following requirements:

- (a) Pulse Mobile must comply with any local usage requirements prescribed by the FCC;
- (b) Pulse Mobile must comply with any FCC requirements concerning E911 service when implemented in the Territory of Guam;
- (c) Pulse Mobile must certify to the Commission on or before August 31 of each year, that Pulse Mobile (i) offers all of the services designated by the FCC for support pursuant to Section 254(c) of the Federal Act either using its own facilities or a combination of its own facilities and resale and (ii) advertises the availability of supported services and the charges there for using media of

⁶ Pulse Mobile Petition for Annual USAC Certification, GTA Docket 17-06, Exhibit A to Pulse's Petition, Pulse Mobile's Five-Year Network Improvement Plan.

⁷ Id.

⁸ Id., Exhibit A to Pulse's Petition, Pulse Mobile's Five Year Network Improvement Plan, updated as of August, 2017.

⁹ Pulse Mobile Petition for Annual USAC Certification, Docket No. 18-04, filed August 27, 2018, Exhibit A, Five Year Buildout Plan, updated as of August 2018.

¹⁰ Id.

¹¹ Id.

general distribution as described in its petition;

- (d) Pulse Mobile must notify the Commission within thirty (30) days of any determination that it cannot provide service to a requesting customer in accordance with the FCC's requirements;
- (e) Pulse Mobile must file a detailed build-out plan satisfying the FCC's requirements;
- (f) Pulse Mobile will file with the Commission as part of its annual submission of certification and documentation by August 31 of each year, an annual certification in substantially the form required by Section 54.314(b) and 54.314(c) of the FCC's Rules to verify that Pulse will use federal high-cost support only for those facilities and services for which the support is intended;
- (g) Pulse Mobile must submit to the Commission on or before August 31 of each year the following documentation: (i) Pulse Mobile's progress towards meeting its build-out plans; (ii) information on any outage lasting at least 30 minutes and potentially affecting either at least 10 percent of the end users served or 911 facilities; (iii) the number of requests for service from potential customers within Pulse Mobile's service area that were unfulfilled for the past year; (iv) the number of complaints per 1,000 handsets; (v) Pulse Mobile's compliance with the CTIA Consumer Code; (vi) Pulse Mobile's certification that it is able to function in emergency situations; (vii) Pulse Mobile's certification that it is offering a local usage plan comparable to that offered by the incumbent local exchange carrier; and (viii) Pulse Mobile's certification that it acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other ETC is providing equal access in the service area;
- (h) Pulse Mobile must promptly submit to the Commission any additional information or reports that the Commission may reasonably request from time to time.

COMPLIANCE WITH REQUIREMENTS

- (a) *FCC Local usage requirements-*

The FCC has designated nine core services that are eligible for Universal Service Fund (USF) support: single party service; local usage; voice grade access to the public switched telephone network; dual tone multifrequency signaling; access to emergency services; access to operator services; access to interexchange services; access to directory assistance; and toll limitation service for qualifying low-income consumers.¹² In its Petition, Pulse states that, in accordance with 47 C.F.R. §54.101, it provides all of the core services that are designated for support for USF throughout its licensed service territory.¹³

(b) E911 Service-

Pulse indicates that it currently offers its customers access to operators throughout Guam to provide the requested services.¹⁴ Pulse certifies that it continues to support 911 services and supports E911 services including providing the automatic numbering information throughout the territory of Guam.¹⁵ In accordance with the ORDER APPROVING DESIGNATION, Pulse is required, to the extent that a governmental authority in Guam implements E911 systems, to provide E911 service. Pulse's designation as an ETC is also conditioned on its compliance with any FCC requirements concerning E911 service when implemented in Guam.¹⁶

(c) Certification of services -

In compliance with Pulse's ETC Designation Order, and FCC 05-46, it certifies to the PUC that it offers all of the services designated by the FCC for support pursuant to Section 254(c) of the Federal Act by using its own facilities and advertising the availability of supported services and charges using media distribution available on Guam.¹⁷ Pulse also advertises its services on its website and through direct mail. It provides advertising and education of lifeline services through its website to eligible low income subscribers and has advertised such services through flyers distributed through various government agencies, and publication in newspapers of general circulation.¹⁸

¹² 47 U.S.C. §214(e).

¹³ Pulse Petition for Annual USAC Certification, p. 2.

¹⁴ Id at p. 3.

¹⁵ Id.

¹⁶ ORDER APPROVING DESIGNATION, Docket No. 06-8, p. 3.

¹⁷ Pulse Petition for Annual USAC Certification, supra, at p. 3.

¹⁸ Id. at pgs. 3 and 9.

(d) Notification of inability to provide service -

Pulse Mobile certified that it “has been able to fulfill services to all requesting customers in accordance with FCC requirements.”¹⁹

(e) Filing of detailed build-out plan-

Pulse Mobile filed its detailed five-year build-out plan, under confidentiality, as an attachment to its Petition.²⁰ The projects described in the plan support the provision of the core services for which service was intended.

(f) Filing of annual certification under Section 54.314(b)-

Pulse, through its Chief Executive Officer, has certified that all Federal High-Cost support provided to it will be used only for the provision, maintenance and upgrading of facilities and services for which support is intended.²¹

(g) Filing Documentation-

(i) Pulse’s progress toward meeting its build-out plans – Pulse’s five year plan indicates that it has made substantial improvements to its wireless networks and plans to continue to make such improvements over the next few years.²²

(ii) Information on any outages – Pulse had two outages that affected wireless service.²³ On April 20, 2017, the 3G wireless network router processor malfunctioned at 1050 to 1205 and had to be rebooted. Wireless users on the 3G voice/data/SMS services had intermittent service. On September 4, 2017, WMS 3G sites were impacted by a malfunctioning router processor from 1955 to 2109 which had to be rebooted. Wireless users were impacted with all services in this period.

¹⁹ Id at p. 4.

²⁰ Id. at p. 3; Exhibit A to Pulse’s Petition, Pulse Mobile’s Five Year Build Out Plan, updated as of August 2018.

²¹ 2018 High Cost Support Use Certification of TeleGuam Holdings, LLC, “Pulse Mobile”, attached to Pulse Petition for Annual USAC Certification, dated August 24, 2018.

²² Exhibit A to Pulse Petition, Pulse Mobile Five Year Build Out Plan, updated as of August 2018.

²³ Pulse Petition for Annual USAC Certification, at p. 4.

(iii) Unfulfilled requests for service – Pulse indicates that, to date, it has been able to fulfill services to all requesting customers in accordance with FCC requirements.²⁴

(iv) Complaints per 1,000 handsets – During calendar year 2017, Pulse has not received any end user informal complaint from the FCC. To date in calendar year 2018, GTA has not received end user complaints from the FCC.²⁵

(v) Compliance with CTIA Consumer Code – Pulse certifies that it is in compliance with the CTIA Consumer Code and all applicable service quality standards within the reporting period.²⁶ These include: disclosure of rates and terms of service to consumers; making maps available showing where service is generally available; providing contract terms to customers and confirming changes in services; allowing a trial period for new service; providing specific disclosures in advertising; separately identifying carrier charges from taxes on billing statements; providing customers the right to terminate service for changes in contract terms; providing ready access to customer service, promptly responding to consumer inquiries and complaints received from government agencies; abiding by policies for protection of customer privacy; and providing consumers with free notifications for voice, data and message usage and international roaming.²⁷

(vi) Ability to function in emergency situations – Pulse has certified that it has the ability to remain functional in emergency situations without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations as required. It can change call routing translations as needed to reroute traffic around damaged facilities.²⁸

(vii) Certification of local usage plan – Pulse offers a comparable local usage plan that offers unlimited minutes for local calling.²⁹

²⁴ Id.

²⁵ Id.

²⁶ Pulse Petition for Annual USAC Certification, at pgs. 4-8.

²⁷ Id. at pgs. 4-8.

²⁸ Id. at pg. 8.

²⁹ Id. at pg. 9.

(viii) Equal access certification – Pulse acknowledges that it currently is not required to offer equal access to long distance carriers but acknowledges that it may be required to do so in the event that no other ETC is providing equal access in service area.³⁰

(h) *Prompt submission of information or reports-*

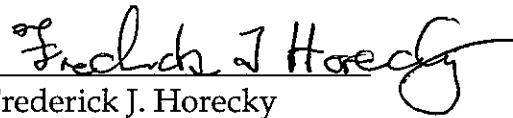
Pulse must promptly submit to the Commission any additional information or reports that the Commission may reasonably request from time to time. Pulse has been responsive in providing any additional information requested by Legal Counsel. Legal Counsel has not become aware of any contrary evidence which would contradict the above certifications by Pulse.

RECOMMENDATION

Pulse indicates that, for calendar year 2017, it received \$1,183,224.00 in USF.³¹ To date in 2018, it has received \$493,010.00.³² It is Legal Counsel's belief that Pulse has satisfied all of the criteria set forth in the Pulse ETC Designation Order and the FCC's requirements. Pulse Mobile's Five-Year Plan has demonstrated a commitment to further build-out and upgrade its wireless local networks.

Based upon the certifications and documentation provided by Pulse in its Petition for Annual USAC Certification, it is Counsel's opinion that there is a sufficient factual and evidentiary basis upon which the Commission can reasonably certify that the USF distributed to Pulse in calendar year 2019 will be used in accordance with the purposes and requirements designated in the Federal Act. Counsel recommends that Pulse's Petition for USAC certification be GRANTED. A draft Certification to the FCC is submitted herewith.

Dated this 28th day of August, 2018.


Frederick J. Horecky
PUC Legal Counsel

³⁰ Id. at pg. 9.

³¹ Id.

³² Id.

Guam Public Utilities Commission

**To: Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554**

**Irene M. Flannery
Vice-President – High Cost & Low Income Division
Universal Service Administration Company
2000 L Street, N.W. Suite 200
Washington, DC 20036**

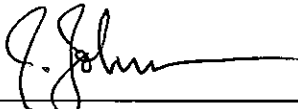
**RE: CC Docket 96-45/WC Docket No. 10-90 – Annual State-Certification of
Support for Eligible Telecommunications Carriers Pursuant to 47 C.F.R.
§54.314**

Pursuant to the requirements of 47 C.F.R §54.314, the Guam Public Utilities Commission hereby certifies to the Federal Communications Commission and the Universal Service Administrative Company that Teleguam Holdings, LLC, f/k/a Pulse Mobile, LLC, is eligible to receive federal high-cost support for the program years cited.

The Guam Public Utilities Commission certifies for Teleguam Holdings, LLC, f/k/a Pulse Mobile, LLC, that all federal high cost support provided to such carrier within Guam was used in the preceding calendar year (2017) and will be used in the coming calendar year (2019) only for the provisioning, maintenance and upgrading of facilities and services for which the support is intended, consistent with Section 254(e) of the Communications Act.

I am authorized to make this certification on behalf of the Guam Public Utilities Commission. This certification is for study area 669003 for the Territory of Guam.

Dated this 30th day of August, 2018.



Jeffrey C. Johnson
Chairman
Guam Public Utilities Commission



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE: REQUEST BY THE GUAM) GWA DOCKET 18-06
WATERWORKS AUTHORITY)
TO REALLOCATE FUNDS) ORDER
FROM THE 2010, 2013 & 2016)
BOND PROCEEDS)

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC”) at the request of Petitioner Guam Waterworks Authority (“GWA”) for approval of a consolidated bond reallocation funded by GWA’s 2010, 2013 and 2016 Bond proceeds to complete projects required by Order of the United States District Court, filed with the PUC on June 8, 2018.

On August 28, 2018, the Administrative Law Judge of the PUC (the “ALJ”) assigned to this matter filed an ALJ Report that included his findings and recommendations based on the administrative record before the PUC. The ALJ found the following.

DETERMINATIONS

A. Reallocation of 2010 Bond Proceeds

In its Petition, GWA submitted that it had completed a “reconciliation of all CIP accounts funded by 2010 Bonds and determined there were eighteen line items that

contained unobligated balances” totaling \$4,309,634.00.¹ GWA maintained that of these unobligated line items, thirteen CIP projects had unspent balances as a result of “negotiated cost savings” or unused contingencies, or are insufficient to complete those projects.²

However, GWA submitted that five (5) CIP line item projects require additional funding for completion.³ GWA requested the reallocation of \$886,431.00 from unspent funds from certain line items to five (5) critical projects.

In particular, GWA requested the following additional funding to these projects: \$150,000.00 to GWA’s Meter Replacement Program; \$200,000.00 to Brigade II (Ugum Lift) BPS Upgrade; \$200,000.00 to Rehabilitation of Asan Springs; \$150,000.00 to Water Reservoir Internal/External; and \$186,431.00 to Baza Gardens STP Replacement.⁴ GWA Resolution No. 18-FY2018 authorizes this particular reallocation of 2010 Bond funds.

B. Reallocation of 2013 and 2016 Bond Proceeds

With respect to 2013 bond proceeds, GWA submitted that through reconciliation it had determined that \$6,542,006.00 of project costs remain unobligated.⁵ GWA requested that \$6,541,991.00 be reallocated from the various CIP line items to the on-going Baza Gardens Wastewater Sewer Conveyance Project.⁶

¹ Petition, p. 1.

² Petition, p. 1.

³ Petition, pp. 1-2.

⁴ Petition, Exhibit B.

⁵ Petition, p. 2.

⁶ Petition, p. 2.

It appears that once this \$6,541,991.00 has been reallocated to the Baza Gardens Wastewater Sewer Conveyance Project, GWA further requested decertification of \$6,736,379.00 of 2016 Bond funding initially allocated to this project. After such decertification, GWA requested that this \$6,736,379.00 of 2016 bond funds be allocated to its Water System Reservoir Improvements Project.

With respect to 2016 bond proceeds, GWA submitted that through reconciliation it had determined that \$56,816,436.00 of project costs remain unobligated.⁷ GWA “seeks to deploy \$32,878,272.00” that “remain categorized as un-obligated project costs” to various CIP projects, such as new production wells, production well meter replacement Phase 1, fire hydrant replacement, Bayside Sewer Pump Station rehabilitation, among others.⁸

In addition, GWA further intends to use the remaining unobligated 2016 bond proceeds to specifically fund tank projects ordered by the District Court. Specifically, GWA submitted that directing these particular proceeds to the design and construction activities of these tank projects will add to GWA’s efforts to meet a 2020 deadline. In particular, GWA requested that \$30,480,170.00 of unobligated 2016 Bond funds be reallocated to its Water System Reservoir Improvements project.⁹

GWA Resolution No. 31-FY2018 authorizes the reallocation of \$6,541,991.00, specific to the use of 2013 Bond funds, and the reallocation of \$30,480,170.00, specific to the use of 2016 Bond funds.

⁷ Petition, p. 2.

⁸ Petition, p. 2.

⁹ Petition, p. 3.

GWA further submitted that it must sideline a group of projects obligated under 2016 Bond funds in order to prioritize projects that have court-ordered deadlines in 2020.¹⁰ GWA maintained that the allocations identified in the Petition are “clearly justified” given its need to presently prioritize the tank reservoir projects ordered by the District Court.¹¹

RECOMMENDATION

The PUC is tasked with reviewing and approving all uses of bond proceeds pursuant to 12 G.C.A. §12105. The ALJ appreciated that as projects are completed, or as projects require more work than originally budgeted, unobligated fund balances become generated, necessitating the need for particular reallocations. Based on the record, GWA is required to complete the court-ordered reservoir projects by the end of 2020. In particular, the Amended Stipulated Order requires that GWA “complete the assessment and necessary repair, rehabilitation, replacement, and relocation of all of its 29 storage tanks.”¹²

Accordingly, the ALJ found that the reallocation of funding detailed in GWA’s Petition was reasonable and necessary given GWA’s need to comply with its obligations under the federal Amended Stipulated Order. The ALJ, therefore, recommended the PUC’s approval of the Petition.

The Commission hereby adopts the findings made in the August 28, 2018 ALJ Report, and therefore, issues the following:

¹⁰ Petition, p. 3.

¹¹ Petition, p. 3.

¹² Amended Stipulated Order, USA v. Guam Waterworks Authority and GovGuam, pp. 24-25 (Nov. 10, 2011).

ORDERING PROVISIONS

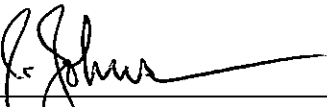
Upon careful consideration of the record herein, and for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby ORDERS the following:

1. That the instant Petition is hereby APPROVED and GWA is authorized to proceed with the reallocation of 2010, 2013 and 2016 bond proceeds as indicated in the Petition; in particular, GWA is authorized to reallocate \$886,431.00 of 2010 Bond proceeds; \$6,541,991.00 of 2013 Bond proceeds; and \$30,480,170.00 of 2016 Bond proceeds.

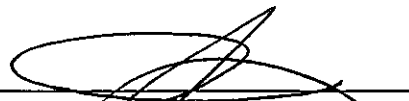
2. GWA is ordered to pay the PUC's regulatory fees and expenses, including and without limitation, consulting and counsel fees, and the fees and expenses associated with this matter. Assessment of the PUC's regulatory fees and expenses is authorized pursuant to 12 G.C.A. §§ 12103(b) and 12125(b), and Rule 40 of the Rules of Practice and Procedure before the PUC.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

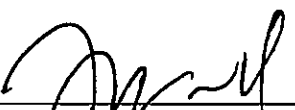
SO ORDERED this 30th day of August, 2018.



JEFFREY C. JOHNSON
Chairman



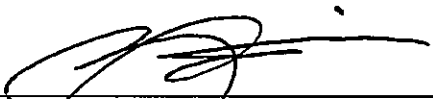
ROWENA E. PEREZ
Commissioner



JOSEPH M. MCDONALD
Commissioner



FILOMENA M. CANTORIA
Commissioner



MICHAEL A. PANGELINAN
Commissioner



PETER MONTINOLA
Commissioner

P183021.JRA



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

)	GWA DOCKET 18-07
IN RE: PETITION TO INCLUDE)	
UGUM TREATMENT PLANT)	ORDER
IN SCADA'S UPGRADE)	
_____)	

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the "PUC") pursuant to the July 3, 2018 Petition for Approval of the Change Order to Include Ugum Water Treatment Plan in the SCADA System Wide Upgrade, filed by the Guam Waterworks Authority ("GWA") (hereinafter referred to as the "Petition").

On August 27, 2018, the Administrative Law Judge of the PUC (the "ALJ") assigned to this matter filed an ALJ Report that included his findings and recommendations based on the administrative record before the PUC. The ALJ found the following.

DETERMINATIONS

On October 27, 2016, the PUC authorized GPA and GWA to enter into a contract with Benson for a Supervisory Control and Data Acquisition ("SCADA") system that would run power, water, and wastewater on a common platform. On December 6, 2016, GPA and GWA executed a contract with Benson Guam Enterprises, Inc. ("Benson") for the design and installation of the new SCADA system for GPA and GWA.¹ Thereafter, Benson subcontracted to Siemens the performance, development, testing and delivery of a SCADA system to GPA and GWA.²

¹ Petition, p. 2.

² Petition, p. 2.

A. Contract Review Protocol

Pursuant to 12 G.C.A. §12105, GWA may not enter into any contractual agreements or obligations which could increase rates and charges without the PUC's express approval. Additionally, pursuant to GWA's Contract Review Protocol issued in Administrative Docket 00-04, "[a]ll professional service procurements in excess of \$1,000,000" require "prior PUC approval under 12 G.C.A. § 12004, which shall be obtained before the procurement process is begun"³

B. GWA's Petition for PUC Approval

1. 2017 Power Glitch at the Ugum Surface Water Treatment Plant

According to GWA, an "electrical power surge in early 2017" resulted in the Ugum Surface Water Treatment Plant ("Ugum") going "off-line for several days."⁴ In January of this year, GWA dispatched the services of Benson to have Siemens perform an on-site assessment of Ugum's Siemens SCADA and main programmable logic controller ("PLC") system, as well as emergency recovery and other services.⁵

According to GWA, upon completion of the Ugum assessment, Siemens submitted a report to GWA that recommended an upgrade to GWA's main PLC system and SCADA system with a redundant system (the "Siemens Report").⁶ Such redundancy, or duplication of critical components of a system, was recommended to presumably increase reliability of the SCADA system. The Siemens Report also recommended an upgrade to the software, integration of raw

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

⁴ Petition, p. 2.

⁵ Petition, p. 2.

⁶ Petition, p. 2.

water intake pump station to the plant's SCADA system, and replace defective equipment and cabling.⁷

According to GWA, Ernst & Young also performed a vulnerability and cyber security assessment of GWA's facilities and recommended that GWA address certain vulnerabilities with respect to the Ugum SCADA system.⁸

2. Change Order No. 5

In its Petition, GWA requested PUC approval of Task Order No. 5, which will require an additional \$687,506.25 to the existing SCADA contract with Benson. Change Order No. 5 will allow Benson to perform the recommended upgrades to the Ugum SCADA and PLC system, which was described in the Siemens Report.

Specifically, Change Order No. 5 includes the following: Hardware, software, and engineering services, for a total amount of \$455,738.00; and \$119,100.00 for integration services. The costs also include a fifteen percent (15%) mark-up at \$86,225.70, and a four percent (4%) administrative fee at \$26,442.55, totaling \$687,506.25. GWA submitted that the change order will be funded as 2016 Capital Improvement Projects EE 09-08 and EE 09-09.⁹

C. GWA Resolution No. 34-FY2018 and GPA Resolution No. 2018-13

Based on Resolution No. 34-FY2018 and GPA Resolution No. 2018-13, the Consolidated Commission on Utilities (the "CCU") found that the terms of the change order proposal submitted by Benson were fair and reasonable. Accordingly, the CCU authorized

⁷ Petition, p. 2.

⁸ Petition, pp. 2-3.

⁹ Petition, p. 3.

GWA to accept the change order, and thereby authorized the expenditure of an additional \$687,506.25 to the existing contract.

CONCLUSION

This Commission, in prior dockets, has previously highlighted the significance of a SCADA system, and that such system would increase GWA's operational efficiency.¹⁰ The system is supposed to improve the ability of GWA to monitor and control the water and wastewater utility system.¹¹ In addition, the PUC has also been aware that GWA intended on integrating sixty (60) SCADA-ready water and wastewater facilities, with remaining facilities planned and added as funding became available.¹²

Based on the record before this Commission, the need for a properly functioning, and reliable, SCADA system in GWA's facilities is clear. GWA needs the upgrades identified Change Order No. 5 in order to better monitor and control its water and wastewater utility system, especially to keep Ugum safe and reliable. Based on the documents submitted, GWA has demonstrated that the subject Change Order No. 5, which is related to GWA's SCADA system, is reasonable, prudent, and necessary.

Accordingly, based on the record before the PUC, the ALJ recommended that the PUC approve GWA's petition and that GWA should be authorized to proceed with the Change Order No. 5 to the subject contract, at an additional cost of \$687,506.25.

The Commission hereby adopts the findings made in the August 27, 2018 ALJ Report, and therefore, issues the following:

¹⁰ PUC Order, GPA Docket 17-01, p. 4 (Oct. 27, 2016).

¹¹ PUC Order, GPA Docket 17-01, p. 4 (Oct. 27, 2016).

¹² PUC Order, GPA Docket 17-01, p. 2 (Oct. 27, 2016).

ORDERING PROVISIONS

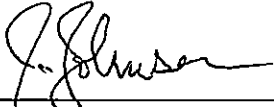
Upon careful consideration of the record herein, and for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby ORDERS the following:

1. That the instant Petition is hereby APPROVED and GWA is authorized to proceed with the Change Order No. 5 to the subject contract, at an additional cost of \$687,506.25.


2. GWA is ordered to pay the PUC's regulatory fees and expenses, including and without limitation, consulting and counsel fees, and the fees and expenses associated with this matter. Assessment of the PUC's regulatory fees and expenses is authorized pursuant to 12 G.C.A. §§ 12103(b) and 12125(b), and Rule 40 of the Rules of Practice and Procedure before the PUC.

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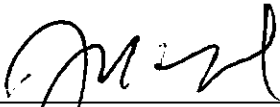
SO ORDERED this 30th day of August, 2018.



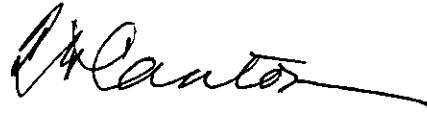
JEFFREY C. JOHNSON
Chairman



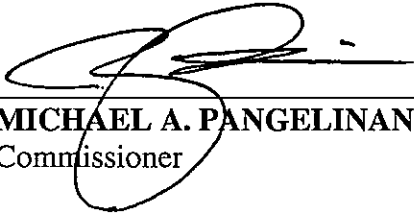
ROWENA E. PEREZ
Commissioner



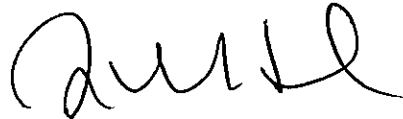
JOSEPH M. MCDONALD
Commissioner



FILOMENA M. CANTORIA
Commissioner



MICHAEL A. PANGELINAN
Commissioner



PETER MONTINOLA
Commissioner



BEFORE THE PUBLIC UTILITIES COMMISSION

IN RE:)	PAG DOCKET 18-06
PETITION FOR APPROVAL)	
OF ADDITIONAL FUNDING)	ORDER
FOR OWNERS/AGENT)	
ENGINEERING SERVICES)	
AGREEMENT WITH)	
WSP USA, INC.)	

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC”) pursuant to the Petition filed by the Jose D. Leon Guerrero Commercial Port, Port Authority of Guam (“PAG” or the “Port”) on August 15, 2018, whereby PAG requests review and approval of Task Orders No. 7 and 8 of its Owners/Agent Engineering Services contract with WSP USA, Inc. formerly known as Parsons Brinckerhoff (hereinafter referred to as either “Parsons,” “WSP” or the “Consultant”).

On August 27, 2018, the Administrative Law Judge of the PUC (the “ALJ”) assigned to this matter filed an ALJ Report that included his findings and recommendations based on the administrative record before the PUC. The ALJ found the following.

DETERMINATIONS

Back in 2015, PAG sought professional services and technical support in the areas of design and engineering services, program management, financial consulting and analysis, and other related services for PAG. Specifically, PAG sought services related to the following: assistance with PAG’s 5-Year Tariff Petition before the PUC; assistance with PAG’s Capital Program, to include assistance with the issuance of revenues bonds; implementation of a new

Terminal Operating System (“TOS”) by assistance with the TOS contract and task order negotiations; assistance with studies related to rate adjustments and PUC petitions; and technical services during the construction phase of the Marine Service Life Extension Project at the Port’s wharfs.¹

On August 27, 2015, the PUC approved the subject contract at a cost of \$1,380,000.00, which funded Task Orders No. 1 and 2. The Commission found that the terms of the agreement appeared commercially reasonable and not burdensome; and that since the contract was fully funded by the federal Office of Economic Adjustment, such funding relieved ratepayers of any negative impact.²

With respect to the term of the Contract, the initial term was for a period of one (1) year with four (4) year-long options to renew, not to exceed a total of five (5) years.³ Any renewal was conditioned on the availability of appropriated or budgeted funds; and should no funds be appropriated or budgeted, then the Contract could be terminated.⁴

Since that time, Parsons and the Port engaged in six (6) Task Orders, which resulted in a total contract cost of \$1,761,332.00. Also, in 2017, Parsons Brinckerhoff became WSP USA, Inc.

A. Regulatory Review

Under 12 G.C.A. §12105, the PUC must expressly approve any contractual agreements or obligations which could increase PAG’s rates and charges. In addition, under

¹ PUC Order, PAG Docket 15-05, pp. 1-2 (Aug. 27, 2015).

² See PUC Order, PAG Docket 15-05, pp. 7-8.

³ RFP No. PAG-015-003, Attachment 2 (“Contract”), PAG Docket 15-05, p. 2.

⁴ Contract, PAG Docket 15-05, p. 2.

PAG's Contract Review Protocol, "[a]ll professional service contracts in excess of \$1,000,000" "shall require prior PUC approval"⁵

B. Approval of Task Order Nos. 7 and 8

In this instance, the Port is requesting PUC approval of Task Orders No. 7 and No. 8 under the contract. According to documents submitted by the Port, Task Order No. 7 concerns work that includes the following: review of the Port's implementation of its TOS; program development for the dismantling and destruction of STS Cranes No. 2 and 3, and the procurement, transport, and installation of the replacement crane for STS Crane No. 3; review of the Port's progress on its facility and equipment maintenance; assistance with planning of construction projects under the Port's CIP; and general programming management, and financial analysis services.⁶ According to the Port, Task Order No. 7 will be fully funded by a grant issued by the federal Office of Economic Adjustment.

The Port submitted that Task Order No. 8 involves the development of an environmental health and safety program. According to the task order, this work will include: site tours and interviews; the development of a comprehensive environmental health and safety plan and manual; and project management and administration, at total cost of \$294,615.00. PAG submits that this amount will be funded by Port revenues.

The environmental health and safety manual will include policies regarding disciplinary action, accident investigations, safety inspections, new employee orientation, drug and alcohol abuse, hazardous waste, electrical safety, special pollutants, emergency action

⁵ Contract Review Protocol, PAG Docket 09-01, p. 1 (June 20, 2011).

⁶ Petition, p. 1.

planning, air quality, oil and petroleum, use of cranes, among a whole host of other Port-specific matters.

With regard to prior task orders, PAG further submitted with its Petition Task Orders Numbers 3, 4, 5, and 6. Task Order No. 3 concerned the redesign of PAG's Hotel Wharf; and Task Order No. 4 concerned engineering services to help determine site locations for the Port's new administrative buildings. Task Order Nos. 3 and 4 totaled \$128,332.00, an amount which was fully funded by Port revenue.

Task Order No. 5 primarily concerned assisting the Port with its CIP Bond program support and issuance of the Port's inaugural bond. Finally, Task Order No. 6 concerned facilitation of the Port's new TOS system "post-go-live activities." The activities included WiFi improvements, planning projects for the Port's IT team, and cyber security projects, among others. Task Order Nos. 5 and 6 totaled \$256,000.00, an amount which was also fully funded by Port revenue. This amount, however, brought the total cost of the subject contract beyond the ten percent (10%) contingency threshold provided under PAG's Contract Review Protocol.

CONCLUSION

Based on the documentation provided, the ALJ found that the Consultant is required to assist PAG with the following: assistance with PAG's 5-Year Tariff Petition before the PUC; assistance with PAG's Capital Program, to include tasks associated with the issuance of revenue bonds; implementation of a new TOS by assisting PAG with the TOS contract and task order negotiations; assistance with studies related to rate adjustments and PUC petitions;

and technical services during the construction phase of the Marine Service Life Extension Project at the Port's wharfs.⁷

The ALJ further found that the WSP's assistance to the Port has been instrumental in the development of the Port's CIP program, and in the issuance of the Port's inaugural bond. With the issuance of the Port's first revenue bond, and with the Port's modernization now underway, initiation and completion of Port projects are crucial. In addition, the ALJ found that federal grant money has been essential in providing the Port with these critical engineering services. And since a huge part of the cost of this contract has been funded by federal money, such funding has relieved ratepayers of a fairly sizeable impact.

Accordingly, based on the record before the Commission in the instant docket, and for the other reasons set forth herein, the ALJ found that the subject request for approval of Task Order Nos. 7 and 8, as well as prior Task Orders submitted to the PUC for its review, along with their costs, terms and conditions, are reasonable.

The ALJ further noted that the subject contract exceeded the ten percent (10%) contingency under the original contract. However, since Task Orders No. 5 and 6 involved substantial work related to the Port's Engineering Report required for the issuance of Port revenue bonds, as well as assistance related to such bond issuance, the Commission should ratify this expenditure as being reasonable and necessary to the Port's modernization efforts.

Accordingly, the ALJ recommended that the PUC approve Task Order Nos. 7 and 8 issued under the Professional Services Agreement between PAG and WSP, and therefore authorize the Port to expend the total amount of \$1,194,615.00. In addition, the ALJ further

⁷ Contract, PAG Docket 15-05, pp. 1-3.

recommended that the PUC ratify the amount of \$381,332.00 for Task Orders No. 5 and 6, which exceeded the initial ten percent (10%) contingency under the original contract. The Commission hereby adopts the findings made in the August 27, 2018 ALJ Report, and therefore, issues the following:

ORDERING PROVISIONS

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

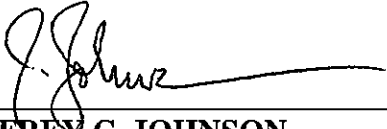
1. PAG's Petition for approval of Task Order Nos. 7 and 8 issued under the Professional Services Agreement between PAG and WSP are approved, and PAG is authorized to expend the total amount of \$1,194,615.00.

2. The amount of \$381,332.00 for Task Orders No. 5 and 6, which exceeded the initial ten percent (10%) contingency under the Contract is hereby RATIFIED.

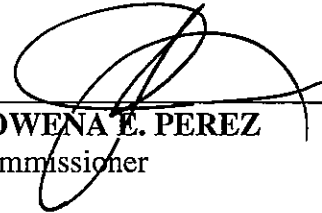
3. PAG is ordered to pay the PUC's regulatory fees and expenses, including and without limitation, consulting and counsel fees, and the fees and expenses associated with this matter. Assessment of the PUC's regulatory fees and expenses is authorized pursuant to 12 G.C.A. §§ 12103(b) and 12125(b), and Rule 40 of the Rules of Practice and Procedure before the PUC.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

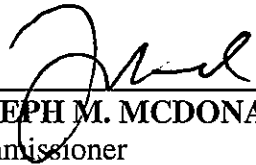
SO ORDERED this 30th day of August, 2018.



JEFFREY C. JOHNSON
Chairman



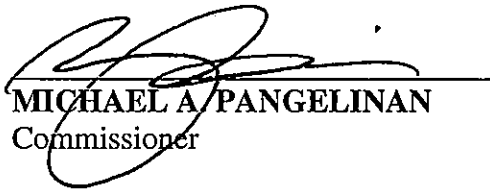
ROWENA E. PEREZ
Commissioner



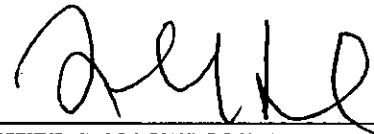
JOSEPH M. MCDONALD
Commissioner



FILOMENA M. CANTORIA
Commissioner



MICHAEL A. PANGELINAN
Commissioner



PETER MONTINOLA
Commissioner

P183029.JRA



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:) **GPA DOCKET 18-01**
)
THE APPLICATION OF THE GUAM) **ORDER**
POWER AUTHORITY TO APPROVE)
THE CONTRACT FOR RESIDUAL)
FUEL OIL NO. 6 FOR THE BASELOAD)
POWER GENERATING PLANTS.)

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Petition of the Guam Power Authority ["GPA"] for Review and Approval of the Contract for Supply of Residual Fuel Oil No. 6 with Mobil Oil Guam.¹

BACKGROUND

2. On October 12, 2017, GPA petitioned the PUC for authorization to procure Residual Fuel Oil No. 6 for the baseload power generating plants.²
3. GPA's current contract for Residual Fuel Oil with Hyundai Corporation was originally set to expire on August 31, 2018.³
4. On October 26, 2017, the PUC authorized GPA to proceed with the procurement of RFO No. 6, finding that "there is a clear need for RFO No. 6 for the Baseload Power Plants; such fuel is essential to the operation of the Baseload Power Plants."⁴
5. GPA issued a procurement for RFO through IFB No. GPA-009-18.
6. On June 12, 2018, GPA petitioned the PUC for approval of a three-month extension to the current Contract for Residual Fuel Oil No. 6 for the Baseload Power Generating Plants.⁵

¹ GPA Docket 18-01, filed August 10, 2018.

² GPA Petition for Contract Review, GPA Docket 18-01, filed October 12, 2017.

³ Id. at p.1.

⁴ PUC Order, GPA Docket 18-01, dated October 26, 2017, at p. 3.

⁵ GPA Petition to Approve a Three-Month Extension to the Contract for Residual Fuel Oil No. 6 for Baseload Power Generating Plants, GPA Docket 18-16, filed June 12, 2018.

7. While the current contract was to terminate on August 31, 2018, GPA determined that it needed to provide an adequate mobilization period for the new supplier, particularly if that supplier was one other than the existing supplier.⁶
8. On June 26, 2018, the PUC approved GPA's request to extend the current fuel supply contract with Hyundai Corporation for three months. Such extension was necessary "in order to ensure a smooth transition from the old supplier to a new supplier, and that there is sufficient time for mobilization by the new supplier."⁷
9. The three-month extension for the RFO Supply Contract with Hyundai Corporation will expire on November 30, 2018.
10. On August 28, 2018, the Guam Consolidated Commission on Utilities ["CCU"] determined that Mobil Oil Guam was the "lowest, most responsive bidder meeting the requirements of the bid solicitation..."⁸
11. Based upon the determination that Mobil Oil Guam was the low bidder, the CCU requested that the PUC authorize the GPA General Manager to enter into a contract with Mobil Oil Guam for the supply of Residual Fuel Oil No. 6.⁹
12. GPA now proposes to enter into an RFO No. 6 Supply Contract with Mobil Oil Guam for a period of two years, commencing December 1, 2018 and expiring on November 30, 2020. The Contract includes three one-year extension options renewable annually upon mutual agreement of both parties.¹⁰

⁶ Guam Consolidated Commission on Utilities Resolution No. 2018-12, Authorizing the Management of the Guam Power Authority (GPA) to Proceed with the Extension of the Contract for the Supply of Residual Fuel Oil No. 6 (GPA IFB-068-12) with Hyundai Corporation, issued June 12, 2018.

⁷ PUC Order, GPA Docket 18-16, dated June 26, 2018, at pgs. 3-4.

⁸ Guam Consolidated Commissions on Utilities Resolution No. 2018-16, Authorizing the Management of the Guam Power Authority to enter into a Two- Year Contract for the Supply of Residual Fuel Oil No. 6, issued August 28, 2018, at p. 1.

⁹ Id. at p. 2.

¹⁰ Id. at p. 2.

13. The cost of the Contract to ratepayers will be approximately \$113,345,841.00 for the first year and \$116,097,561.00 for the second year, for a total of \$229,433,402.00 for the two-year contract period.¹¹

DETERMINATIONS

14. GPA's Procurement Officer provided a public announcement for the need for such fuel supply services through Invitation for Re-bid No. GPA-009-18, describing the type of services required and specifying the type of information and data required of each offeror.¹²
15. Five companies submitted bids: Hyundai Corporation, Mobil Oil Guam, Hanwa Corporation, Freepoint Commodities (LLC), and Vitol Inc.¹³
16. Mobil Oil Guam submitted the lowest average Fixed Premium Fee of \$54.700/MT (\$8.614BBL). The Fixed Premium Fee proposed by Mobil is approximately 3% higher than the current contract average Fixed Premium Fee of Hyundai Corporation. The estimated cost increase in Fixed Premium for the two-year period is \$1,006,879.00.¹⁴
17. There was an open and transparent bidding process, and Mobil Oil Guam is clearly the lowest, most responsive bidder. The comparative bid results of the five bidders are set forth at Exhibit "A" to CCU Resolution No. 2018-16.¹⁵
18. A review of the proposed Contract between GPA and Mobil Oil Guam indicates that the contract includes the standard contract provisions which protect GPA and its ratepayers: general insurance requirements, environmental liability insurance and indemnification, and performance guaranties and protections, etc.¹⁶

¹¹ Id. also see Exhibit "C" to CCU Resolution No. 2018-16.

¹² Guam Consolidated Commission on Utilities Resolution No. 2018-16, Authorizing the Management of the Guam Power Authority to Enter into a Two-Year Contract for the Supply of Residual Fuel Oil No. 6, issued August 28, 2018, at p. 1.

¹³ Id.

¹⁴ Id.; and Exhibit "B".

¹⁵ Id. at Exhibit "A".

¹⁶ PUC Order, Approval of Procurement for Residual Fuel Oil No. 6, GPA Docket 18-01, dated October 26, 2017, at p. 3.

19. Under the contract, the contractor may be required to produce an estimated quantity of 1,400,000 bbls/yr. of High Sulfur Fuel Oil; the estimated quantity for production of Low Sulfur Fuel Oil (LSFO) is 600,000 bbls/yr.¹⁷
20. GPA has demonstrated that the new fuel supply contract is necessary to provide an uninterrupted supply of fuel for the Baseload Plants.¹⁸
21. The PUC previously determined that there is a need for the RFO No. 6 for the Baseload Power Plants; such fuel is essential to the operation of the Baseload Power Plants.¹⁹

ORDERING PROVISIONS

Upon consideration of the record herein, the Petition of GPA, the PUC Legal Counsel Report, and for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby **ORDERS** that:

1. GPA's Contract for Supply of Residual Fuel Oil No. 6 with Mobil Oil Guam is hereby approved.
2. GPA has demonstrated a clear need for Residual Fuel Oil No. 6 for the Baseload Power Plants, as such fuel is essential to the operation of the plants.
3. GPA is authorized to expend up to a total of \$229,433,402.00 in the two-year contract base period for the purchase of the fuel oil specified in the contract. The funding source shall be fuel revenue funds.
4. GPA is ordered to pay the Commission's regulatory fees and expenses, including, without limitation, consulting and counsel fees and the fees and expenses of conducting the hearing proceedings. Assessment of PUC's regulatory fees and expenses is authorized pursuant to 12 GCA §§12103(b) and

¹⁷ Volume II Contract IFB No. GPA-009-18 [Supply of Residual Fuel Oil No. 6], at p. 9.

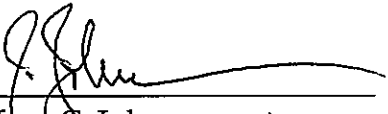
¹⁸ GPA Issues for Decision re: Resolution No. 2018-16 (submitted by GPA to CCU Commissioners Board Packet for CCU meeting of August 28, 2018).

¹⁹ PUC Order, GPA Docket 18-01, dated October 26, 2017, at p. 3.


Order
Contract for Residual Fuel Oil No. 6
GPA Docket 18-01
August 30, 2018

12125(b), and Rule 40 of the Rules of Practice and Procedure before the Public
Utilities Commission.

Dated this 30th day of August, 2018.



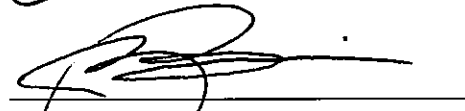
Jeffrey C. Johnson
Chairman




Rowena E. Perez
Commissioner



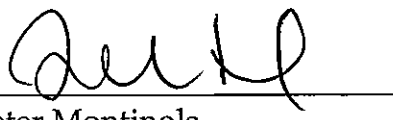
Joseph M. McDonald
Commissioner



Michael A. Pangelinan
Commissioner



Filomena M. Cantoria
Commissioner



Peter Montinola
Commissioner

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN THE MATTER OF:) GPA Docket 18-10
)
The Application of the Guam Power)
Authority to Approve the Contract)
Extension with Tristar Terminals Guam,)
Inc. for the Dock Facility User Agreement,)
Pipeline Agreement, and Fuel Storage)
Agreement for GPA.)

ORDER

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Supplemental Filing of the Guam Power Authority ["GPA"] for contract review and approval of the Contract Extension with Tristar Terminals Guam, Inc. for the Pipeline Agreement, and the Fuel Storage Agreement for GPA.¹

BACKGROUND

2. In its Order in this Docket dated March 29, 2018, the PUC granted GPA's request for approval of the Dock Facility User Agreement between GPA and Tristar.²
3. However, the Commission expressed concerns about the contract provisions in both the Pipeline and Storage Agreements for annual, automatic four (4) percent cost of living increases in the pricing.
4. The Commission determined that the "rapidly increasing contract costs, which are compounded annually as a result of the 4% automatic annual increases, impose burdens upon the ratepayers."³
5. The Commission further determined that these costs were included as "fuel handling charges" in the Levelized Energy Adjustment Clause, which increased the amounts that ratepayers pay for fuel.⁴
6. According to the Commission, said automatic charges were not "just and reasonable" rates, as there was no evidence demonstrating that the 4% automatic annual increase under the contracts were related to actual CPI increases, or to any

¹ GPA Supplemental Filing for Contract Extension with Tristar Terminals Guam, Inc. for Pipeline Agreement, and Fuel Storage Agreement, GPA Docket 18-10, filed August 10, 2018.

² PUC Order, GPA Docket 18-10, dated March 29, 2018, at p. 4.

³ Id. at p. 3.

⁴ Id.

demonstrable costs incurred by Tristar.”⁵

7. PUC ordered that GPA, with regard to the Pipeline and Storage Agreements, “renegotiate the automatic 4% annual CPI increases with Tristar.”⁶
8. Subsequent to the PUC Order, GPA did meet with Tristar on several occasions regarding the automatic CPI increases.⁷
9. On May 4, 2018, Tristar filed its response concerning the automatic 4% annual CPI escalation in a letter to GPA General Manager John Benavente.⁸
10. Tristar claims that its basis for the 4% annual escalation factor are the terms agreed to by GPA in the initial contract period (2013 to 2018). Tristar further claims that the increase is based upon “operational cost accorded by various regulating agencies” that GPA was aware of.⁹
11. Tristar states that the CPI did increase in one year, 2016, by 6%. It also refers to Government of Guam tax increases, such as the increase in GRT from 4% to 5%, and the new 2% general sales tax, as justifications for the automatic annual CPI increases.¹⁰
12. GPA indicates that the Pipeline Agreement and the Fuel Storage Agreement terminate on August 31, 2018. It claims that Tristar is unwilling to negotiate further on the 4% annual CPI increase, and requests that PUC approve the Pipeline Agreement and Fuel Storage Agreement with such 4% annual CPI Increases.¹¹

DETERMINATIONS

13. Tristar’s arguments supporting the annual 4% CPI increases are not convincing.

⁵ Id.

⁶ Id. at p. 5.

⁷ GPA Supplemental Filing for Contract Extension with Tristar Terminals Guam, Inc. for Pipeline Agreement, and Fuel Storage Agreement, GPA Docket 18-10, filed August 10, 2018, at p. 1.

⁸ Letter from Tristar General Manager Kazhakuttam K. Vikraman to GPA General Manager John Benavente, dated May 4, 2018 (a copy is attached to GPA’s Supplemental Filing).

⁹ Id. at p. 1.

¹⁰ Id. at pgs. 1-2.

¹¹ Telephone conversation between GPA Counsel Graham Botha and Frederick J. Horecky, PUC Counsel on August 13, 2018.

14. That the percent change in the annual CPI for FY2016 was 6% is correct, but that fact has no relevance. In examining calendar years 2013-2017, for the five-year period, there was an average 1.5% annual CPI increase, far less than the “automatic” 4% charged.
15. Tristar also indicates a number of other costs that it bears, such as GRT and sales tax. The sales tax has now been deleted by the Legislature. However, any costs such as GRT should be factored in as actual costs when GPA and Tristar negotiate the contract prices. These costs should stand on their own and may be included if negotiated by the parties. Other alleged costs are no justification for an automatic 4% annual CPI increase.
16. Tristar has not offered any convincing justification for an automatic annual 4% increase.
17. Since 2013, the PUC staff and consultants have questioned the assumptions of the annual automatic 4% annual contract price increases. Lummus Consultants found that there is no evidence that supports an assumption of the 4% annual inflation increase; such increase results in substantial costs to the ratepayers.¹²
18. Yet, unfortunately, there seems to be little that the PUC can do at the present time regarding these contract provisions. Tristar has steadfastly refused to negotiate the automatic annual CPI increases. As has repeatedly been pointed out, Tristar has a monopoly on these services and access to the Pipeline.
19. The 2013 conclusion of Lummus Consultants, that GPA has little choice but to contract with Tristar for the Pipeline and Fuel Storage Agreements, is still valid, as there is no other alternative.¹³
20. The termination dates for the Pipeline Agreements and Fuel Storage Agreement are rapidly approaching (August 31, 2018). There is little time to fashion other solutions.
21. From a regulatory view point, it is frustrating that GPA and Tristar have been unable or unwilling to address this issue and correct an automatic charge that has no rational basis and is completely unrelated to any actual CIP increase.

¹² Lummus Consultants Review of Fuel Storage Contract, GPA Docket 13-11, filed September 19, 2013, at p. 1.

¹³ Id.

22. It is true that this is a contract extension, and the parties initially agreed to and incorporated the automatic 4% annual CPI increases in the contracts.
23. The PUC should now indicate that it will not approve any future contract between GPA and Tristar with such provisions. GPA's Counsel has agreed that GPA will seek to ensure that any future contracts with Tristar will not include the automatic 4% increase.¹⁴
24. The parties should be free to include actual Tristar costs in the pricing, or to negotiate increases based upon actual CPI increases in the prior year.
25. At present, however, GPA does need the services provided by Tristar for "ensuring uninterrupted supply of fuel to GPA through the use of Tristar's fuel handling facilities..."¹⁵

ORDERING PROVISIONS

After careful review and consideration of the above determinations, the Petition of GPA, the Pipeline, and Storage Agreements between GPA and Tristar, the Report of PUC Counsel, 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** that:

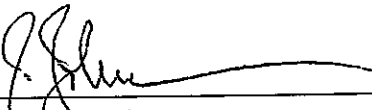
1. GPA's request to proceed with the Contract extension with Tristar Terminals Guam Inc. for the Pipeline Agreement and Fuel Storage Agreement for a four-year period, from September 1, 2018, to August 31, 2022, is approved.
2. PUC will not approve any future contract provisions between GPA and Tristar that include an automatic annual CPI increase.
3. The owner of the pipeline which GPA utilizes from Tristar is the Port Authority of Guam. Tristar leases the pipeline from PAG. GPA is ordered to meet and discuss with PAG any possible ways in which PAG can mitigate the increasing costs which Tristar charges GPA for use of the pipeline facilities.
4. GPA should continue to consider and evaluate alternative plans by which it can reduce its reliance upon Tristar's facilities.

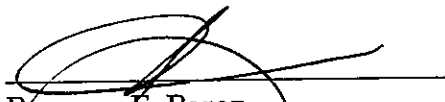
¹⁴ Telephone conversation between GPA Counsel Graham Botha and Frederick J. Horecky, PUC Counsel on August 13, 2018.

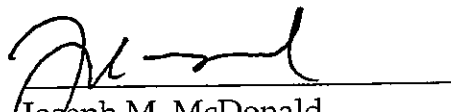
¹⁵ CCU Resolution No. 2017-43, adopted November 22, 2017, at p. 1.


5. GPA is ordered to pay the Commission's regulatory fees and expenses, including, without limitation, consulting and counsel fees and the fees and expenses of conducting the hearing proceedings. Assessment of PUC's regulatory fees and expenses are 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 30th day of August, 2018.

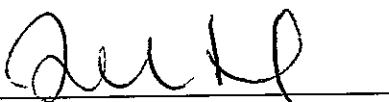

Jeffrey C. Johnson
Chairman


Rowena E. Perez
Commissioner


Joseph M. McDonald
Commissioner


Michael A. Pangelinan
Commissioner


Filomena M. Cantoria
Commissioner


Peter Montinola
Commissioner

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN THE MATTER OF:

)
) GPA Docket 18-02
)

The Application of the Guam Power
Authority to Approve the Technical
Specifications for the Procurement of the
180MW Power Plant.

)
) **ORDER**
)
)
)

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Petition of the Guam Power Authority ["GPA"] for Approval of the Technical Specifications for the Procurement of the 180MW Power Plant.¹

BACKGROUND

2. In this Docket, PUC previously authorized GPA to pursue a 3-step bid process for the procurement of a 180MW Power Plant.²
3. GPA was first authorized to issue a Request for Qualifications for qualified bidders for the power plant. Thereafter, upon selection of qualified bidders, GPA was required to submit its completed technical plan and specifications for the Power Plant to the PUC for approval.³
4. Subsequent to PUC authorization, GPA selected seven qualified bidders to proceed to the technical proposal step.⁴
5. In the present Petition, GPA requests that the PUC approve the technical bid documents for the procurement of the new power plant, and the technical specifications for such plant.⁵

¹ GPA Petition to Approve the Technical Specifications for the Procurement of the 180MW Power Plant, GPA Docket 18-02, filed August 10, 2018.

² PUC Order, GPA Docket 18-02, dated November 30, 2017.

³ Id. at p. 5.

⁴ GPA Petition to Approve the Technical Specifications for the Procurement of the 180MW Power Plant, GPA Docket 18-02, filed August 10, 2018, at p. 1.

⁵ Id.

6. Should the PUC approve the bid documents and the technical specifications, GPA will issue those to the seven prequalified bidders in Step 2 of the technical bid process.
7. The technical specifications address the requirement that the project be a Build, Own/Operate, and Transfer (BOT) contract using an Independent Power Producer (IPP) model.⁶
8. The power plant must be capable of dual firing for ultra-low sulfur diesel (USLD) or natural gas, and must meet GPA reliability criteria and minimum reliability requirements, as well as all federal and local environmental requirements.⁷
9. The award will be made to the bidder providing the lowest present value cost, after bidders have met the requirements in the technical specifications.⁸
10. In Resolution No. 2018-015, the Guam Consolidated Commission on Utilities approved the Bid Documents and Technical Specifications for Multi-Step Bid GPA-034-18 for the Build, Own/Operate & Transfer (BOT) Contract for 120-180MW New Generation Capacity.⁹
11. PUC Counsel has submitted his Report herein. The Commission adopts the recommendations set forth in the Report.¹⁰

DETERMINATIONS

12. GPA has submitted a copy of the Bid Documents and Technical Specifications for IFB GPA-034-18 along with its Petition.
13. The Bid Documents and Technical Specifications were prepared by GPA's Consultant Stanley Consultants Inc. and K&M Advisors, a Sub-Consultant.
14. The documents are broken down into four Sections, Sections A-D, and the Proposed Contract, as follows:

⁶ GPA Petition to Approve the Technical Specifications for the Procurement of the 180MW Power Plant, GPA Docket 18-02, filed August 10, 2018, at p. 2.

⁷ Id.

⁸ Id.

⁹ CCU Resolution No. 2018-015, Authorizing the Management of the Guam Power Authority (GPA) to Petition the Public Utilities Commission for the Approval of the Multi-Step Bid BOT Specification for New 120-180MW generation capacity, adopted July 24, 2018.

¹⁰ PUC Counsel Report, GPA Docket 18-02, dated August 25, 2018.

- A. Information for Bidders;
 - B. Instructions to Bidders;
 - C. Functional Technical Specifications;
 - D. Forms; and
- Energy Conversion Agreement between GPA and Project Company.
15. The Project Company selected will be responsible for developing, constructing, owning and operating a 180MW dispatchable power generating facility.¹¹ However, GPA may consider evaluating proposals that are within plus/minus 10% of the preferred capacity.¹²
16. The Project Company is required to give existing GPA employees a “first refusal for employment at the new power plant”, where such employees are “adversely affected or separated as a result of the commissioning of the new power plant...”.¹³
17. For fossil fuel generating facilities, the project company may be required to use ULSD and Natural Gas.¹⁴
18. The commercial operation date for Phase 2 of the plant is expected to be September 9, 2022.¹⁵
19. The Project Company will be required to build the Electrical Interconnection Facilities between the Facility and GPA’s 115kV Harmon Substation.¹⁶
20. Arrangements for financing the development and construction of the facility “shall be the *sole responsibility* of the Selected Bidder. GPA will not be a party to the signing of any document related to financing of the Project apart from the ECA, LLA, consent, conditional assignment, and/or multi-lateral lending documents.”¹⁷
21. Project Company will be responsible for building infrastructure and new pipelines for transport of ULSD and Natural Gas from the GPA Bulk Fuel Storage Facility to the plant site.¹⁸

¹¹ Section A, Information for Bidders at §1.1.3.

¹² Id. at §5.2(a).

¹³ Id. at §7.4.

¹⁴ Id. at §§9.1 and 9.2.

¹⁵ Id. at §12.

¹⁶ Section B, Instructions to Bidders, §3.2.3(b)(ii).

¹⁷ Section A, Information for Bidders, §5.1.

¹⁸ Section C, Functional Technical Specifications, §1.3.1.

22. The Project Company will also be responsible for designing and constructing the Interconnection Facilities between the existing GPA Harmon Substation and the facilities known as the “Point of Interconnection.”¹⁹
23. The project includes a 115kV substation and transmission lines to the GPA system.²⁰
24. The Functional Technical Specifications are extremely detailed and cover every aspect of the power generation facility, including engineering, design, mechanical plant and system requirements, plant piping systems, products, electrical plant, civil and structural requirements, structural loads, foundation and steel design, substation requirements, transmission requirements, and electrical requirements, etc.
25. With regard to each aspect of the plant, the Project Company is required to comply with all applicable local and federal codes, and the requirements of applicable professional organizations.
26. The specifications appear to be detailed and comprehensive, and seemingly address all relevant aspects of plant design, construction and operation.
27. The Guam Consolidated Commission on Utilities has represented that GPA completed the technical specifications documents for the 180MW New Generation Capacity bid, and that such specifications fully address the requirements for the following:
- Build, Own/Operate and Transfer (BOT) contract
 - Specifications for 120MW – 180MW flexible generation to meet renewable integration requirements
 - Specifications for dual firing units for ultra-low sulfur diesel and natural gas
 - Architectural requirements and GPA involvement during design process
 - Federal and Local Environmental and Safety requirements
 - GPA Employee Hiring Opportunity
 - Bond & Security Requirements during bid and construction periods
 - PUC approval 1 day in 4.5 years reliability criteria
 - GPA minimum reliability requirements
 - Lowest present value cost as basis for award

¹⁹ Id. at §1.3.2.

²⁰ Id. at §1.1.

- Draft contract²¹

28. On August 23, 2018, Counsel met with GPA Legal Counsel, Chief Financial Officer, and Engineer Representatives. GPA Officials have represented that the technical specifications should be adequate to protect the interest of GPA and its ratepayers.

29. In addition, the CCU, by recommending approval of the Technical Bid Documents and the Functional Technical Specifications, have impliedly represented that such technical specifications are adequate to protect the interests of GPA and its ratepayers.

30. In this Docket, a main concern of the Public Utilities Commission has been that "GPA shall consider technologies other than combined cycle units in the procurement for new generation which it subsequently intends to issue. In accordance with a market approach, bidders should be able to offer technology solutions other than combined cycle units, which may include LNG, LPG, or other possible solutions which meet the necessary criteria."²²

31. Counsel's review of the Bid Documents and Functional Technical Specifications indicates that they fully comply with the PUC requirement that GPA shall consider technologies other than combined cycle units in the procurement.

32. GPA's Consultants Stanley and K&M Advisors, properly opened up the procurement to all types of technology, including fossil fuel technologies, renewable technologies, and hybrid technologies. The bid documents, in numerous places, make it clear that no one technology is favored, but that bidders may submit proposals from any technology that can satisfy the generation and other requirements of bid.

33. §1.1.2, Section A, Information for Bidders, states as follows:

This IFB allows Bidders to offer different technologies such as fossil fuel fired technologies, renewable technologies with storage, or hybrid technologies provided that the Project can serve as a reliable base load fully dispatchable Facility capable of meeting the functional requirements specified in the IFB documents. Any sections of the IFB documents referencing Fuel or Fuel related concepts and defined terms such as Heat Rate, Guaranteed Heat Rate, Fuel Charge, etc... are only applicable to Proposals based on Facilities that operate on fossil fuel.²³

²¹ CCU Resolution No. 2018-015, at p. 1.

²² PUC Supplemental Order, GPA Docket 15-05, dated April 27, 2017, at p. 1.

²³ Section A, Information for Bidders, §1.1.2.

34. Overall, the consultant drafters have assured that GPA has satisfied the requirement of PUC that the procurement be open to all technologies.
35. Of course, there is no assurance that renewable technologies, technologies other than fuel oil-based generation (such as reciprocating engine or combustion turbine) will be bid. From his discussions with GPA officials, Counsel notes that none of the seven bidders qualified under the Request for Qualifications referenced projects involving renewables. Although a few of the bidders have renewable experience, for the most part the qualifications proposals referenced fuel oil-based generation such as combined cycle, reciprocating engine, and combustion turbine.
36. Nevertheless, GPA certainly cannot ensure that bidders submit proposals based upon renewable energy. All that can be required is that the procurement allow for renewable proposals if prospective bidders desire to make such proposals.
37. The proposed contract form for the Energy Conversion Agreement between GPA and the Project Company appears to be adequate to protect the interest of GPA and its ratepayers.
38. The format for the Contract follows in some respects that previously done with Enron for the Piti 8 & 9 plants.
39. The financing requirement is that bidders put up at least 20% of the total funding for the project in the form of contributed equity.
40. Each bidder initially submits, as part of its submission a Proposal Security in the amount of \$3,000,000.²⁴
41. At the "Financial Close", GPA will return the Proposal Security to the project company. The Project Company is then required to provide GPA with a security deposit (the "Construction Security") in an amount equal to US \$75,000,000 to ensure Project Company's obligations to pay liquidated damages in accordance with the Contract.²⁵ Liquidated damages are payable by the Project Company for failure to complete the Phase 1 and Phase 2 facilities by the "Commercial Operation Date." Any delay damages will be deducted from the Construction Security.²⁶

²⁴ Section B, Instructions to Bidders, §4.8.

²⁵ Proposed Energy Conversion Agreement, §9.6(d).

²⁶ Id. at Article 9 (Liquidated Damages Payable by Project Company).

42. The construction will be completed in two phases, "Phase 1" and "Phase 2." Phase I means all work as required to put the Simple Cycle Unit in case of a combined cycle Facility or the first 50-70 MW of firm base load capacity in case of other technologies into commercial operation; Phase 2 means all work as required to complete the rest of the Facility and put the entire Facility into commercial operation.²⁷
43. The Project Company will also pay liquidated damages for failure to meet contracted facility capacity in a dollar amount, to be determined per kilowatt.²⁸
44. Once the construction is completed, the balance of the Construction Security will be returned to the Project Company. However, thereafter, GPA can offset any liquidated damages incurred against amounts which it owes to the Project Company.
45. The contract contains considerable insurance requirements that must be purchased by the Project Company, including cargo transportation insurance, contractors all risks policy, professional indemnity policy, properties insurance, workmen's compensation, and public liability insurance, etc.²⁹
46. There are mutual indemnification clauses where both GPA and the Project Company will indemnify and hold each other harmless for losses resulting from either's negligent or willful acts.³⁰
47. In cases of default by the Project Company, GPA will have the option to purchase the generation plant. If GPA terminates the contract for its convenience, it is obligated to purchase the plant.
48. Therefore, the contract provisions appear to be adequate to protect GPA's and ratepayer interests.
49. GPA submits that its request to proceed with the technical specifications for the procurement of a 180MW power plant "will be essential to ensuring compliance

²⁷ Section A, Information for Bidders, §2.63 and 2.64.

²⁸ Proposed Energy Conversion Agreement, Article 9(Liquidated Damages Payable by Project Company).

²⁹ Id. at Article 15 (Insurance Requirement).

³⁰ Id. at Article 16 (Liability and Indemnification).

with USEPA environmental regulations, and is reasonable, prudent, and necessary.”³¹

50. For the foregoing reasons, PUC should approve GPA’s Bid Document for Multi-Step Bid GPA-034-18 and the Functional Technical Specifications.

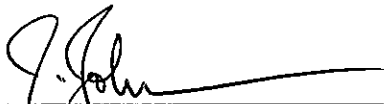
ORDERING PROVISIONS

Upon consideration of the record herein, the Petition of GPA, the PUC Legal Counsel Report, and for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby **ORDERS** that:

1. The Bid Documents for Multi-Step Bid GPA-034-18 and the Functional Bid Specifications, as submitted by GPA in its Petition, are approved.
2. GPA must obtain PUC approval of the final contract upon completion of the bid process.
3. GPA is ordered to pay the Commission’s regulatory fees and expenses, including, without limitation, consulting and counsel fees and the fees and expenses of conducting the hearing proceedings. Assessment of PUC’s regulatory fees and expenses is authorized pursuant to 12 GCA §§12103(b) and 12125(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

³¹ GPA Petition to Approve the Technical Specifications for the Procurement of the 180MW Power Plant, GPA Docket 18-02, filed August 10, 2018, at p. 2.


Dated this 30th day of August, 2018.



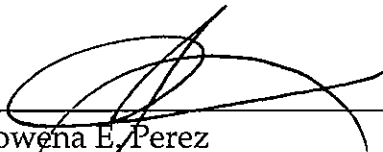
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