

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE:)
PDS' FORMAL COMPLAINT) PDS DOCKET 12-01
REGARDING GTA'S REJECTION OF)
DARK FIBER IOF ORDER) **ALJ REPORT**
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INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ("PUC") upon the STIPULATION TO DISMISS DOCKET filed herein on July 27, 2012 by Pacific Data Systems ("PDS") and TeleGuam Holdings LLC ("GTA").¹

BACKGROUND

2. In the STIPULATION, PDS and GTA agreed to dismiss the Complaint; however, the parties indicated therein that they had been unable to agree upon payment of the Commission's costs in this docket. GTA took the position that PDS should pay the costs in full; PDS' position was that the cost should be evenly split. The parties requested that this sole issue be considered by the Commission.²
3. The PUC, in its July 30, 2012 Order in this Docket, referred the issue of the proper allocation of Docket costs in this matter to the Administrative Law Judge.³
4. In this Report, the ALJ now addresses the issue of the manner in which PUC costs incurred in this Docket should be allocated between PDS and GTA.

DISCUSSION/ ANALYSIS

5. The total costs incurred by the PUC in this Docket are \$8,617.31.⁴
6. The above referenced costs of the PUC constitute those incurred for the services of ALJ Mair and ALJ Horecky.⁵

¹ STIPULATION TO DISMISS DOCKET, PDS Docket 12-01, filed July 27, 2012; PUC Order, PDS Docket 12-01, dated July 30, 2012.

² Id.

³ PUC Order, PDS Docket 12-01, dated July 30, 2012.

⁴ See Billing Statement of Mair, Mair, Spade & Thompson, LLC dated June 30, 2012 and Statement of the Law Offices of Horecky & Associates dated August 17, 2012, copies of which are attached hereto as Exhibits "A" and "B" respectively.

⁵ Id.

7. On May 24, 2012, PDS filed a Rule 26 Motion to Disqualify ALJ Horecky.⁶
8. ALJ Mair reviewed the Rule 26 Motion to Disqualify, as well as the Answer of ALJ Horecky. On June 11, 2012, ALJ Mair issued his "ALJ Report" which recommended that the PUC reject or deny PDS' Motion to Disqualify and permit ALJ Horecky to preside over the instant docket.⁷
9. After ALJ Mair had issued his Report, and ALJ Horecky had conducted further proceedings in this matter, GTA and PDS submitted their Stipulation dismissing the complaint and requesting that the PUC determine the issue of costs.
10. In his ALJ Report, ALJ Mair recommended that "the PUC order PDS to pay the PUC's regulatory fees and expenses, including and without limitation, consulting and counsel fees, and the fees and expenses associated with PUC's consideration of the Motion to Disqualify."⁸
11. ALJ Mair also recommended that PDS should bear responsibility for PUC's regulatory fees and expenses incurred with regard to its consideration of the Motion to Disqualify.
12. Since ALJ Mair has already determined the issue of which party should bear responsibility for the costs associated with the Motion to Disqualify, ALJ Horecky believes that such determination should stand. That issue was already appropriately determined by ALJ Mair.
13. The ALJ herein believes that ALJ Mair's determination was proper and correct. In this case, it was PDS who chose to bring a motion to disqualify. GTA in no manner initiated the motion or bore any responsibility for its filing. GTA only responded to the motion after ALJ Mair required PDS to serve GTA with the motion to disqualify. Since PDS' motion contained references to GTA, it is understandable that GTA desired to respond to the motion.
14. In PDS Docket 09-02, the PUC adopted an amendment to its Rules Governing Regulatory Fees for Telecommunications Companies, now referred to as Rule

⁶ PDS Rule 26 Motion to Disqualify Administrative Law Judge Frederick Horecky, PDS Docket 12-01, submitted to the PUC on May 24, 2012; attached was the "Declaration of John Day" and a number of invoices which had been submitted by the Law Offices of Horecky & Associates to the PUC.

⁷ ALJ Report, PDS Docket 12-01, filed June 11, 2012.

⁸ Id. at p. 12.

- 1.b.iii.Said rule provides that, in proceedings which involve one or more carriers as parties in disputes involving Interconnection Agreements, "PUC's regulatory expenses in such proceedings shall be allocated against such party or parties as the Commission deems appropriate."
15. In addition to the PUC costs related to PDS' Motion to Disqualify, PUC costs were incurred relative to ALJ Horecky's review of documents herein, conduct of a pre-hearing conference, and the preparation of Scheduling Orders etc. Such costs all relate to the substantive review of the issues in the proceeding, the processing of the complaint herein, and the conduct of proceedings (including the preparation of the Order issued by the PUC herein on July 30, 2012).
16. For the PUC costs related to ALJ Horecky's substantive work on the issues in this Docket, ALJ Horecky recommends that such costs be shared equally by the parties.
17. GTA disputes whether PDS should have filed the complaint herein, or should have pursued other dispute resolution remedies under the Interconnection Agreement.⁹ On the other hand, PDS felt that the issue of the rejection of its Dark Fiber IOF Order for GIAA was the proper subject of a Complaint in this Docket.¹⁰
18. The ALJ finds that PDS' complaint was a proper subject for resolution under the Commission's Interconnection Implementation Rules. The IIRs grant the PUC broad authority to resolve disputed issues arising under Interconnection Agreements of the parties.¹¹
19. The expenses incurred by the PUC relating to ALJ Horecky' substantive work in this Docket herein should be equally shared by both GTA and PDS.

RECOMMENDATION

20. Based upon the foregoing discussion and analysis, the ALJ recommends that PDS should be responsible for all costs incurred by the PUC with regard to the Motion to Disqualify.

⁹ GTA Response to PDS Formal Complaint, PDS Docket 12-01, filed June 25, 2012.

¹⁰ PDS Formal Complaint regarding Rejection by GTA Teleguam of PDS Dark Fiber IOF Order, PDS Docket 12-01, filed May 23, 2012.

¹¹ Interconnection Implementation Rules, Docket 05-01, adopted August 13, 2007, Rule 4.

21. The costs incurred by the PUC relative to ALJ Horecky's work in this proceeding should be equally shared by GTA and PDS.
22. PUC should issue an order requiring PDS to pay the amount of \$6,744.81 for costs incurred relative to ALJ Mair's services on the Motion to Disqualify.
23. With regard to costs relating to ALJ Horecky's services, PDS should pay the amount of \$936.25 and GTA should pay the amount of \$936.25.
24. The total costs which PDS should be required to pay in this proceeding are \$7,681.06.
25. The total costs which GTA should be required to pay are \$936.25.
26. A proposed order is submitted to the Commissioners herein.

Dated this 18th day of August, 2012.

Frederick J. Horecky
Administrative Law Judge