

Guam Power Authority

Presentation to the Guam Public Utility Commission

*Resolution of Clean Air Act Violations
At Cabras and Piti Power Plants*

FRE 408 Settlement Confidential
October 2019



Exhibit "2"

Agenda

- Background
- Summary of Clean Air Act Violations
- Key Settlement Terms
- Current Status
- Recommendation

Background

- National Emission Standards for Hazardous Air Pollutants (NESHAP)
 - EPA sets emissions limitations for air pollutants that may reasonably be expected to cause serious health effects or adverse environmental effects
- These standards are industry-specific
 - E.g., coal- and oil-fired electric steam generating units (Mercury and Air Toxics Standard or MATS)
 - E.g., reciprocating internal combustion engines (RICE NESHAP)

MATS NESHAP

- The MATS are a set of air pollution limits for toxic air pollutants emitted from coal and oil-fired power plants, such as mercury, arsenic, and metals.
- Power plants must ensure that their emissions do not exceed the federal limits for the specified toxic air pollutants.



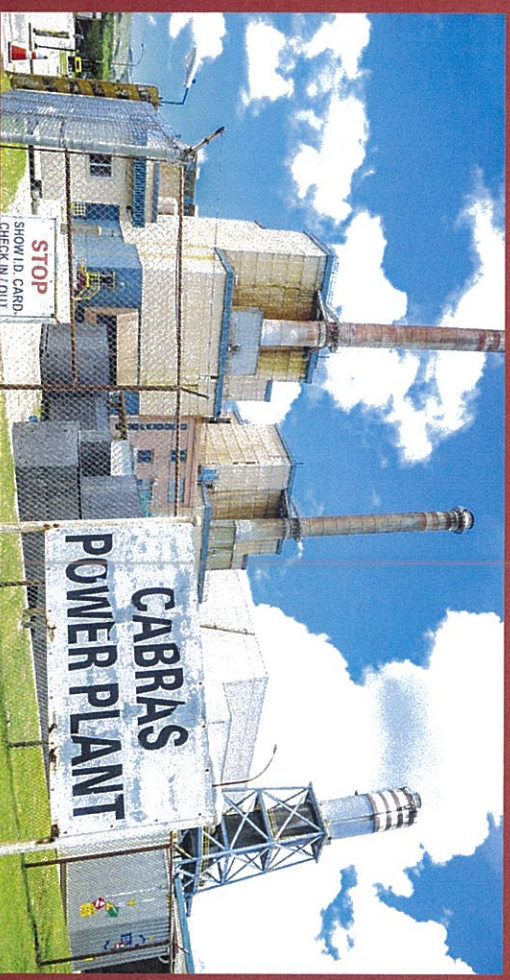
RICE NESHAP

- The RICE NESHAP requires operators of reciprocating internal combustion engines, which are commonly used to generate electricity, to limit the emissions of toxic air pollutants from that equipment.



Alleged Violations – Cabras

- Cabras units 1 and 2 have operated in violation of the MATS NESHAP since April of 2015.
- Cabras units 3 and 4 operated in violation of the RICE NESHAP from May of 2013 until they were damaged by an explosion in 2015.



Alleged Violations – Piti



- Piti units 8 and 9 have operated in violation of the RICE NESHAP since May of 2013.

Key Settlement Terms

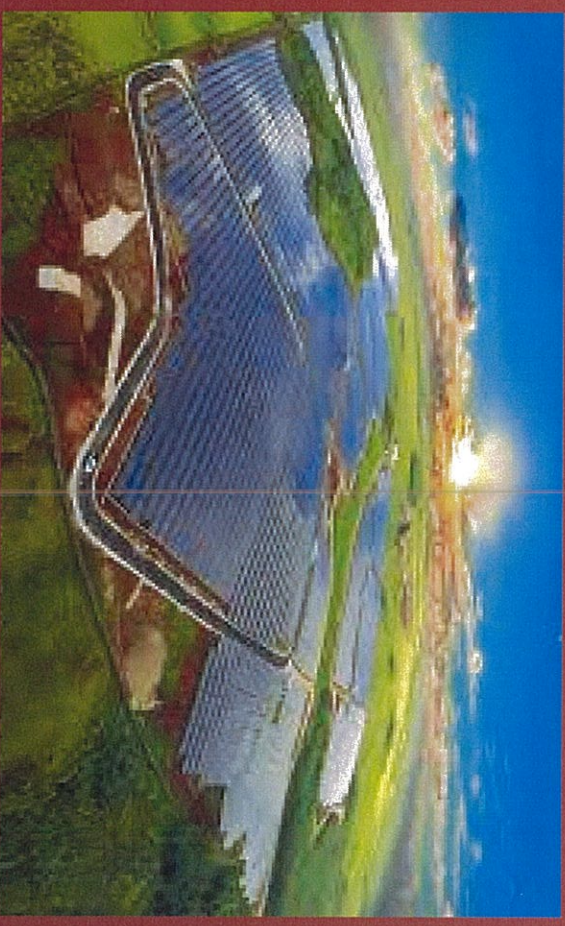
- GPA's will pay a civil penalty of \$400,000.
- GPA will build and operate a new 198 MW power plant burning ultra-low sulfur diesel (ULSD), and also capable of burning liquified natural gas (LNG).
- GPA's fuel delivery system will be converted from residual fuel oil to ULSD.
 - This will include refurbishment of the main fuel storage tanks and construction of a new ULSD pipeline.

Key Settlement Terms (cont'd)

- Piti units 8 and 9 will be repowered with ULSD by December 2021.
- Cabras units 1 and 2 will be repowered with Low Sulfur Residual Fuel Oil after the fuel delivery system is modified.
 - The units will later be shut down by October 31, 2022.
- Cabras units 3 and 4 and Tanguisson units 1 and 2 will be permanently shut down within 30 days of the settlement.

Key Settlement Terms (cont'd)

- GPA will build 100 MW of solar power (in addition to the 25 MW of solar already installed).
- GPA will install and operate a new energy storage system totaling 40 MW.



Effects of Settlement

- The Consent Decree will resolve the RICE NESHAP and MATS NESHAP claims made by EPA against the GPA and the Marianas Energy Company.
- GPA will not be admitting liability in the Consent Decree, but rather is making a strategic settlement to avoid the cost and uncertainty of litigating the United States' claims.
- When the Consent Decree is approved by the District Court of Guam, it will become an enforceable order of the Court.

Termination

- The Consent Decree can be terminated once all of the obligations have been fulfilled.
- DOJ and EPA will likely file a motion to terminate this Consent Decree in 2023.



Approvals in Place to Proceed with Settlement

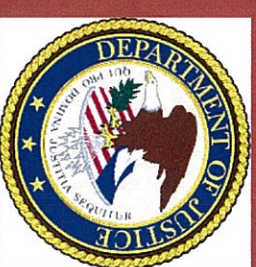
- On July 25, 2019, the PUC approved a contract between GPA and AYM International, Inc. for construction of a ULSD pipeline.
- On August 29, 2019:
 - The PUC approved a contract between GPA and Tristar Agility for bulk storage fuel tanks inspection and refurbishment.
 - The PUC also approved contracts between GPA and Mobil Oil Guam and Isla Petroleum and Energy Holdings LLC for the supply of ULSD to GPA.

Approval of the New Power Plant

- On September 3, 2019, the CCU approved the Energy Conversion Agreement (ECA) between GPA and Korea Electric Power Company (KEPCO) for the 198 MW power plant.
- Two days later, GPA filed the ECA with the PUC, which is expected to vote on the ECA on Wed., Oct. 31, 2019.
- GPA and KEPCO plan to sign the agreement after PUC review.



DOJ and Judicial Approval Process



- After GPA and MEC sign, the settlement must be authorized by the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice.
- Once the Department of Justice files the Consent Decree with the United States District Court for Guam, a public notice will be published in the Federal Register, after which the public will have 30 days in which to submit comments.
- After the close of the public comment period, the Department, in coordination with EPA, will respond to any comments submitted and request that the Court approve the settlement as an order of the court.

The settlement terms are favorable for Guam

- EPA has viable claims against GPA since the regulatory requirements are clear and data shows that GPA exceeded the allowable emissions limits.
- EPA has allowed GPA to pay a reduced penalty because of a determination that GPA has a limited ability to pay a civil penalty given its financial status.
- GPA was also allowed to negotiate a favorable timeline for the work to come into compliance, especially considering that GPA has allegedly been in violation of federal law for approximately six years.
- The cost of litigating the claims in court would be high and it very well could result in a much higher penalty and a more onerous compliance schedule.

The penalty is reasonable for these types of violations

- The Clean Air Act authorizes EPA to seek civil penalties up to a maximum amount established by statute and regulation.
 - Here the maximum is more than \$600 million, far beyond GPA's means
- EPA's Clean Air Act settlement policy could require a penalty of millions of dollars. A best case scenario would still be in excess of \$750,000
 - GPA was able to demonstrate that it has a limited ability to pay even the standard settlement amount, and that funds were better spent on new equipment and fuels to lower emissions
- The \$400,000 GPA penalty for violations at six units is significantly lower than that recovered by the United States in similar cases with fewer violations
 - Questar (2012) - \$3.66 million (RICE NESHAP and New Source Review – 4-5 units)
 - Virgin Islands Water & Power (2018) - \$1.3 million (RICE NESHAP - 2 units)
 - Neither of these two settlements included claims for the MATS rule, which would have increased the penalty even further

GPA can meet the schedule laid out in the Consent Decree

- The compliance schedule in the Consent Decree was negotiated with EPA is better than EPA could have demanded or would require if the Agency was forced to litigate the its claims.
- GPA will need to provide EPA with an update report every six months, which must include the status of construction and compliance with Consent Decree.
- If GPA may miss a deadline it has three options:
 - Request a delay from EPA based on circumstances that were unforeseeable, sudden, and outside of GPA's control
 - Request that the Court modify a deadline in the Consent Decree
 - Pay the stipulated penalties in the consent decree for missing the deadline.

The settlement will help Guam's power grid

- The Consent Decree allows GPA to modernize its power plants, which is needed regardless of whether this settlement is concluded.
- GPA's plans for an additional 100 MW of rooftop solar, combined with its existing solar energy portfolio, would also mean that a substantial portion of GPA's projected daytime production after 2021 will come from renewable energy.

Recommendation

We recommend that the CCU approve the settlement.

- The violations and potential penalties are substantial.
- The settlement conditions will improve Guam's air quality by requiring that GPA retire some of its older units and switch to cleaner fuels, primarily through building a new ULSD power plant.
- The settlement provides Guam with cost-efficient and reliable power
- The settlement conditions will also increase Guam's energy security by dramatically expanding GPA's renewable energy portfolio.

Discussion and Questions



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