

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN THE MATTER OF: ) GPA Docket 21-06  
)  
The Application of the Guam Power )  
Authority to Approve the Piti 8 & 9 ) **ORDER**  
Contract for Conversion to ULSD with )  
Marianas Energy Company. )  
\_\_\_\_\_ )

**INTRODUCTION**

This matter comes before the Guam Public Utilities Commission [“PUC”] upon the Guam Power Authority [“GPA”] Petition to Approve the Piti 8&9 Contract for Conversion to Ultra Low Sulphur Diesel [“ULSD”] with Marianas Energy Company [“MEC”].<sup>1</sup> Ownership of the Piti 8&9 Units was transferred from MEC to GPA on January 29, 2019. MEC is currently the Performance Management Contractor for Piti 8&9 under the Energy Conversion Agreement until January 29, 2024.<sup>2</sup> GPA is required to convert the Piti 8&9 plant to ULSD by December 31, 2021, pursuant to the Consent Decree ordered by the District Court of Guam.<sup>3</sup>

**BACKGROUND**

A. Prior PUC Actions

On December 5, 2019, in GPA Docket 20-01, the PUC approved the Consent Decree between GPA and the United States Environmental Protection Agency [“USEPA”].<sup>4</sup> The Consent Decree between GPA and USEPA sought to resolve various alleged

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<sup>1</sup> GPA Petition to Approve the Piti 8&9 Contract for Conversion to ULSD with Marianas Energy Company, GPA Docket 21-06, filed February 4, 2021.

<sup>2</sup> Guam Consolidated Commission on Utilities, GPA Resolution No. 2021-01, Relative to Authorizing the Guam Power Authority to Convert the Piti 8&9 Slow-Speed Diesel Units to Burn Ultra-Low Sulfur Diesel Fuel, adopted and approved on January 26, 2021, at p. 1.

<sup>3</sup> GPA Petition to Approve the Piti 8&9 Contract for Conversion to ULSD with Marianas Energy Company, GPA Docket 21-06, filed February 4, 2021, at p. 1.

<sup>4</sup> PUC Order, GPA Docket 20-01, dated December 5, 2019, at p. 6.



environmental violations concerning air emissions of GPA's plants.<sup>5</sup> With regard to Piti Units 8&9, the Consent Decree ordered that GPA complete the installation of oxidation catalysts at Piti Units 8&9 and use only ULSD as a fuel to power said units. GPA was required to convert Piti 8&9 units to ULSD no later than December 31, 2021.<sup>6</sup>

On July 10, 2020, GPA filed a Petition with the PUC, in GPA Docket 20-16, to Retire the Piti 8&9 units.<sup>7</sup> GPA contended that it would be cost effective to retire the Piti 8&9 units upon the commissioning of the new Ukudu 198MW power plant. Other plants, such as the Aggreko Plant, and the new renewable plants which would come online were more efficient. GPA had requested that USEPA modify the consent decree to allow Piti 8&9 to be retired upon the commissioning of the new 198MW Ukudu plant.<sup>8</sup>

On April 20, 2020, the District Court of Guam issued the Consent Decree, which ordered GPA to convert the Piti 8&9 plants to ULSD.<sup>9</sup> In its Order in GPA Docket 20-16, the PUC declined to act on GPA's petition. Based upon principles of deference to the Federal Order, the PUC ordered that GPA should first seek modification of the Consent Decree to allow for the retirement of the Piti plants, including any necessary court approval of the proposed modification.<sup>10</sup>

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<sup>5</sup> Id., at p. 2.

<sup>6</sup> GPA Summary of Proposed Settlement Agreement between Guam Power Authority and the U.S. Environmental Protection Agency to Resolve Clean Air Act Violations alleged at the Cabras and Piti Units, prepared for the Consolidated Commission on Utilities, October 2019.

<sup>7</sup> GPA Petition Requesting to Retire Piti 8&9 Units, GPA Docket 20-16, dated July 10, 2020.

<sup>8</sup> GPA Petition to Approve the Piti 8&9 Contract for Conversion to ULSD with Marianas Energy Company, GPA Docket 21-06, filed February 4, 2021, at p. 1.

<sup>9</sup> United States of America, Plaintiff v. Guam Power Authority and Marianas Energy Corporation, LLC., Defendants, Consent Decree, Case No. 1:20-cv-0007.

<sup>10</sup> PUC Order, GPA Docket 20-16, dated September 24, 2020, at p. 10.

B. GPA's Current Position on Conversion of the Piti Plants

GPA has now determined that because of the USEPA's National Ambient Air Quality Standards ["NAAQS"], which are effective April 2023, conversion to ULSD is required. It now appears that the 198MW plant will not be commissioned until April 2024. GPA never sought to retire Piti 8&9 until the new power plant was commissioned: "It is very unlikely USEPA would agree to amend the consent decree to allow retirement of Piti when conversion allows it to meet April 2023 regulations. Furthermore, to meet April 2023 standards, GPA would have to burn a substantially costlier 0.2% S RFO which would have resulted in higher fuel costs for ratepayers. The conversion of Piti to ULSD and the utilization of 0.2% S at Cabras provided the cheaper alternative."<sup>11</sup> Burning ULSD at Piti and 0.2% s at Cabras would meet the USEPA standards and would cost about \$51M less.<sup>12</sup>

C. CCU Resolution No. 2021-01

The Guam Consolidated Commission on Utilities, in Resolution No. 2021-01, approved GPA's request to contract with Marianas Energy Company for the Conversion of the Piti 8&9 plants to ULSD.<sup>13</sup> The CCU determined that the 88MW capacity provided by the Piti Plants to the island-wide power system was "crucial in ensuring that GPA is able to provide the required energy for the island between now and the commissioning of the new 198-MW Ukudu Power Plant..."<sup>14</sup> The CCU resolution stated: "...as a result of the delay of the commissioning date of the new Ukudu power plant due to

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<sup>11</sup> GPA Responses to PUC Requests for Information, GPA Docket 21-06, dated February 15, 2021, Response No. 3.

<sup>12</sup> Id., Response No. 8, at p. 3.

<sup>13</sup> GPA Petition to Approve the Piti 8&9 Contract for Conversion to ULSD with Marianas Energy Company, GPA Docket 21-06, filed February 4, 2021.

<sup>14</sup> Guam Consolidated Commission on Utilities, GPA Resolution No. 2021-01, Relative to Authorizing the Guam Power Authority to Convert the Piti 8&9 Slow-Speed Diesel Units to Burn Ultra-Low Sulfur Diesel Fuel, adopted and approved on January 26, 2021.

COVID-19 and permitting issues, and USEPA's new National Ambient Air Quality Standards (NAAQS) effective April 2023, GPA determined that in order to comply with April 2023 NAAQS, the Piti 8&9 plant capacity burning low sulfur residual fuel oil would need to be limited by as much as 20% which would have a significant impact on system reliability..."<sup>15</sup>.

The CCU further indicated that such reduction in system capacity would negatively impact system reliability beginning in April 2023 and continuing until the Ukudu power plant was commissioned. To ensure system reliability, GPA was authorized to proceed with converting Piti 8&9 to ULSD, thereby achieving compliance with both the RICE NESHAP and April 2023 NAAQS without impacting system reliability.<sup>16</sup> GPA was authorized to contract with MEC for the conversion of the Piti 8&9 units to burn Ultra Low Sulfur Diesel fuel at a cost of \$14,141,045.28 with a project completion date of 15 months after contract signing. GPA was required to fund the conversion with Cabras 3&4 insurance proceeds.<sup>17</sup>

#### D. Contract Review Protocol

Pursuant to 12 G.C.A. § 12105, GPA may not enter into any contractual agreements or obligations which could increase rates and charges without the PUC's express approval. Furthermore, GPA's Contract Review Protocol requires that "[a]ll professional service procurements in excess of \$1,500,000" require "prior PUC approval. . . which shall be obtained before the procurement process is begun." The cost of conversion to ULSD, \$14,141,045.28, exceeds the contract review threshold, thus requiring PUC review.

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<sup>15</sup> Id., at p. 1.

<sup>16</sup> Id., at pgs. 1-2.

<sup>17</sup> Id., at p. 2.

A draft copy of the Contract for Services between GPA and MEC is attached to the ALJ Report as Exhibit "1". The Proposals of Marianas Energy Company and BWSC (Burmeister & Wain Scandinavian Contractor A/S), are attached collectively to the ALJ Report as Exhibit "2". BWSC was involved in the construction and operation of the Piti 8&9 plants since their inception.

The Administrative Law Judge filed his Report herein dated February 22, 2021. The PUC adopts the conclusions and recommendations in the Report.<sup>18</sup>

### **DETERMINATIONS**

- A. The Consent Decree requires that the PUC approve the conversion of the Piti 8&9 plants to ULSD.

One could theoretically examine issues concerning the conversion of the Piti plants to ULSD, such as cost, justification, and necessity. However, the overriding consideration is that, in the Consent Decree, the District Court of Guam has ordered GPA to convert the Piti plants to ULSD. Based upon the Decree, there is no issue but that GPA must convert the Piti plants to ULSD. The PUC approved the Consent Decree in GPA Docket 20-01. As was the case in GPA Docket 20-16, it would be beyond the powers of the PUC to order a result contrary to that contained in the Consent Decree.

In GPA Docket 20-16, the ALJ Report explored various reasons why the PUC is obligated to uphold the Consent Decree. Such a Decree of a court does bind non-

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<sup>18</sup> ALJ Report, GPA Docket 21-06, dated February 22, 2021.

parties to the action. In general, a Consent Decree of a Federal Court would “prevail” over the “order of any administrative body” of the state. “Federal Preemption” bars any state or local action which is contrary to a Federal Order.<sup>19</sup>

- B. GPA has provided a justification for the necessity of converting the Piti Plants to ULSD.

In this Docket, the ALJ issued various Requests for Information to GPA. A copy of GPA’s Responses to the RFIs are attached to the ALJ Report as Exhibit “3”.<sup>20</sup>

Conversion of the Piti 8&9 plants is the only means by which GPA can comply with applicable air emission standards. As indicated in the Consent Decree, conversion of such plants to ULSD was necessary to rectify violations by GPA of the National Emission Standards for Hazardous Air Pollutants (NESHAP). A particular concern with regard to GPA’s plants is sulfur and carbon emissions. Piti 8&9 must comply with the requirements of both NAAQS for SO<sub>2</sub> and NESHAP for Carbon Monoxide, CO. The conversion of Piti 8&9 to ULSD will attain both SO<sub>2</sub> and CO emission requirements.<sup>21</sup>

GPA initially believed that the new 198 MW plant would be in operation by October 2022. Had that date been met, GPA could have retired the Piti Plants before the deadline for compliance with the April 2023 NAAQS standards. However, with the delays to the construction of the new power plant, it is unlikely that USEPA will

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<sup>19</sup> See ALJ Report, GPA Docket 20-16, dated September 18, 2020, at p. 9.

<sup>20</sup> GPA’s Response to PUC Requests for Information, Piti 8&9 Contract for Conversion to ULSD with Marianas Energy Company, GPA Docket 21-06, filed February 15, 2021 (Exhibit “3” to the ALJ Report).

<sup>21</sup> Id., Response No. 5, at p. 2.

consent to the retirement of the Piti 8&9 plants. USEPA is unlikely to provide further consideration on delays to meet standards beyond April 2023, particularly when the conversion of Piti to ULSD will allow it to meet the 2023 NAAQS.<sup>22</sup> GPA further states that “USEPA is taking a firm stance on enforcing the April 2023 standards.”<sup>23</sup>

GPA was previously required to be in compliance with the 1-hour SO<sub>2</sub> NAAQS Standard by December 31, 2017. It is now required to show compliance through modeling emissions between January 1- December 31, 2022. By April 2023, GPA must submit a Final Report to USEPA to show that Guam is in full compliance.<sup>24</sup> TRC prepared a report for GPA in January of 2021 titled “SO<sub>2</sub> State Implementation Plan (SIP), Modeling Report for the Guam Power Authority.”<sup>25</sup> TRC reviewed GPA’s plan to convert Piti Units 7, 8, and 9 to Ultra-Low Sulfur Diesel. The study found that the conversion plan of GPA results in emissions within the SO<sub>2</sub> of the NAAQS requirements.<sup>26</sup>

The likely delay in the commissioning of the new power plant until 2024 has substantially affected GPA’s position on Piti plant retirement. Retirement is not possible at the present time. Now, the USEPA April 2023 deadline to meet the NAAQS 1-hour standards for sulfur required GPA to look at an alternative to retirement. GPA has determined that burning ULSD at Piti will meet USEPA standards. If for any

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<sup>22</sup> Id., Response No. 6, at p. 2.

<sup>23</sup> Id., Response No. 5, at p. 2.

<sup>24</sup> Id., Response No. 6, at p. 2.

<sup>25</sup> TRC, SO<sub>2</sub> State Implementation Plan (SIP), Modeling Report for the Guam Power Authority, January 2021.

<sup>26</sup> Id., at p. 14.

reason there are further delays of the operation of the Ukudu plant, Piti 8&9 would not be subject to potential penalties under the Consent Decree.<sup>27</sup>

As previously indicated, GPA had determined that, to comply with the April 2023 NAAQS, the Piti 8&9 plant capacity burning low sulfur residual fuel oil would need to be limited by as much as 20%.<sup>28</sup> The reduction of loss of capacity to the Piti plants would make it difficult, if not impossible, for GPA to meet its reserve requirements.<sup>29</sup>

- C. The Consent Decree requires GPA to incur the Cost of Converting Piti 8&9 to ULSD; GPA has undertaken reasonable efforts to minimize the cost of conversion.

Clearly, the cost of conversion – a \$14M price tag - is not inexpensive. However, pursuant to the Consent Decree, conversion must be accomplished. It does appear that GPA has been successful in reducing the conversion costs. When the possibility of conversion was first mentioned two or three years ago, GPA had placed a price tag of as high as \$30M upon conversion of Piti 8&9 to ULSD. More recently, in GPA Docket 20-16, GPA indicated that the total ULSD Conversion Contract Price was \$20,645,925. MEC took the position that the total ULSD Conversion Contract Price would be \$15.75M.<sup>30</sup>

Now, as a final figure, the agreed upon conversion price between GPA and MEC is \$14,141,045.28. GPA has been prudent in attempting to reduce the price of this project.

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<sup>27</sup> GPA's Response to PUC Requests for Information, Piti 8&9 Contract for Conversion to ULSD with Marianas Energy Company, GPA Docket 21-06, filed February 15, 2021 (Exhibit "3" hereto), Response No. 8, at p. 3.

<sup>28</sup> Guam Consolidated Commission on Utilities Resolution No. 2021-01, at p. 1.

<sup>29</sup> GPA Response to PUC RFIs, Response No. 12, at p. 4.

<sup>30</sup> Piti (MEC) 8&9 ULSD Conversion (Consent Decree Requirement), prepared by GPA for CCU Commissioners, June 18, 2020.



The conversion costs will be paid for from the Cabras 3&4 Insurance Funds. The initial funds resulting from the Cabras 3&4 explosions was over \$125M.<sup>31</sup> It now appears that the Balance of insurance funds, \$14.474M, would be barely sufficient to pay the costs of the conversion project. Attached to the ALJ Report as Exhibit “4” is a Summary of the Balance of the Cabras 3&4 Insurance Proceeds.<sup>32</sup>

- D. GPA shall continue to work with USEPA for the expeditious resolution of issues concerning the Timelines for Conversion.

GPA has been unable to meet deadlines stated in the Consent Decree for conversion of the Piti 8&9 plants. The consent decree indicates that, by March 1, 2020, GPA was required to submit applications for all permits and approvals necessary to accomplish the ULSD conversion and to install oxidation catalysts. It was also required by July 1, 2020 to enter a binding contract for performance of all work necessary to accomplish the conversion and the installation of oxidation catalysts. It was unable to meet those deadlines due to reasons beyond its control. Finally, the Consent Decree still currently indicates that the installation of the oxidation catalysts at Piti 8&9, as well as the conversion to ULSD, was required to be completed by December 31, 2021.<sup>33</sup>

GPA indicates that there have been “amicable discussions” with USEPA for a change in the timelines to reflect a March 31, 2021 deadline for the completion of the contract for conversion, and for conversion to be completed by August 31, 2022. To date there has

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<sup>31</sup> Guam Consolidated Commission on Utilities Resolution No. 2021-01, at p. 2.

<sup>32</sup> GPA’s Response to PUC Requests for Information, Response No. 15 (RFI.15. Insurance fund balance-summary 2-11-21) at p. 5.

<sup>33</sup> Piti (MEC) 8&9 ULSD Conversion (Consent Decree Requirement) prepared by GPA for CCU Commissioners, June 18, 2020, at p. 9.

been no written approval from USEPA. Negotiations will continue on these matters. There have been delays in the fuel tank rehabilitation (for the storage of ULSD) due to COVID-19 issues. GPA will continue negotiations which may not be resolved for several more months.<sup>34</sup>

### **ORDERING PROVISIONS**

After review of the record herein, including GPA's Petition to Approve the Piti 8&9 Contract for Conversion to ULSD with Marianas Energy Company, GPA's Responses to PUC's Requests for Information, and the ALJ Report, 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 Petition to Approve the Piti 8&9 Contract for Conversion to ULSD with Marianas Energy Company is granted.
2. GPA is authorized to enter into the proposed Contract, Exhibit "1" to the ALJ Report, with Marianas Energy Company for Conversion of Piti 8&9 to ULSD.
3. GPA is authorized to expend the amount of \$14,141,045.28 for such Contract.
4. GPA shall continue to work with USEPA for the expeditious resolution of issues concerning the Timelines for Conversion. GPA shall provide quarterly reports to the PUC concerning the status of its negotiations with USEPA.

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<sup>34</sup> GPA Responses to PUC RFIs, Response No. 10, at p. 3.

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 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.

[SIGNATURES TO FOLLOW ON NEXT PAGE]



Order  
Approval of the Contract  
between GPA and MEC  
to Convert Piti 8&9 to ULSD  
GPA Docket 21-06  
February 25, 2021

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Dated this 25th day of February 2021.

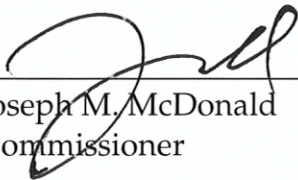


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Jeffrey C. Johnson  
Chairman


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Rowena E. Perez-Camacho  
Commissioner



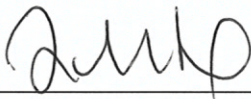
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Joseph M. McDonald  
Commissioner



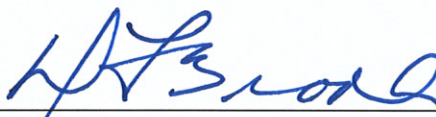
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Michael A. Pangelinan  
Commissioner



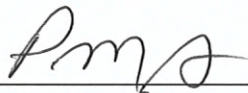
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Peter Montinola  
Commissioner



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Doris Flores Brooks  
Commissioner



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Pedro S.N. Guerrero  
Commissioner