

**GUAM PUBLIC UTILITIES COMMISSION
REGULAR MEETING
February 25, 2021
GCIC CONFERENCE ROOM, GCIC BUILDING, HAGATNA**



MINUTES

The Guam Public Utilities Commission [PUC] conducted a regular meeting commencing at 6:39 p.m. on February 25, 2021, pursuant to due and lawful notice. Commissioners Johnson, Montinola, Pangelinan, McDonald, Flores-Brooks, and Guerrero were in attendance. The following matters were considered at the meeting under the agenda included as *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 January 28, 2021. Upon motion duly made, seconded, and unanimously carried, the Commission approved the minutes subject to corrections.

2. Guam Waterworks Authority

The Chairperson announced that the next item of business on the agenda was Guam Waterworks Authority [GWA] Docket 21-02, Petition for Approval of GWA's Indefinite Quantity Contract with JMI Edison [JMI] for Submersible Pumps and Motors for GWA's Deep Wells, PUC Counsel Report, and Proposed Order. Legal Counsel Camacho stated that GWA requests the PUC approve its second indefinite quantity contract for submersible pumps and motors, that JMI was the vendor on GWA's prior contract for this equipment, that the contract has a three-year initial term which will cost approximately \$1.4 million dollars, and two additional 1-year renewal option periods with an estimated cost of \$997,870 for both options combined, that the contract has a 10% contingency in the amount of \$249,467.53, and that the total estimated cost of the contract is \$2.7 million dollars which is prudent and reasonable. Legal Counsel Camacho stated that GWA's purchase of this equipment is necessary to maintain its inventory for submersible motors and pumps that GWA relies on to ensure the reliability of its operating its water wells, that the source of funding for the contract is GWA's internal CIP funds, and he recommended that the PUC approve the contract. GWA GM Bordallo stated that the contract is essential to keep its 120 wells operational because GWA needs a critical inventory in place so that if any well goes down, GWA will have the necessary stock of pumps and motors to get it back up and running to keep the water system operable. A discussion ensued between Commissioners Flores-Brooks and Montinola and GWA GM Bordallo concerning whether the pumps were of

a uniform type, how many different types of pumps GWA requires to operate the water wells, and the lifespan of the pumps. Commissioner Guerrero moved to approve the proposed order granting the petition, which motion was seconded by Commissioner Montinola, and the motion passed unanimously.

3. Guam Power Authority

The Chairperson announced that the next item of business was Guam Power Authority [GPA] Docket 21-06, Petition to Approve the Piti 8& 9 Contract for Conversion to Ultra-Low Sulphur Diesel [ULSD] with Marianas Energy Company [MEC], ALJ Report, and Proposed Order. ALJ Horecky stated that GPA is requesting that the PUC approve the conversion of Piti 8 and 9 plants to ULSD, that the PUC has previously approved the consent decree between GPA and U.S. Environmental Protection Agency [USEPA] which requires the ULSD conversion, that the PUC had previously denied GPA's request to retire the Piti 8 and 9 plants, and that the ULSD conversion is necessary for GPA to comply with the 2023 National Ambient Air Quality Standards called the NAAQS. ALJ Horecky stated that MEC is the PMC for Piti 8 and 9, that MEC was responsible for procuring a contractor or subcontractor for the conversion work, that MEC has retained Bermeister & Wain, Scandinavian Corporation [BWSC] to do most of the work, and that the work is estimated to cost about \$15.7 million, that \$14 million of this amount will be paid from GPA's self-insurance fund, and that GPA expects the project to take 15 months and believes that it will be completed in August, 2022. ALJ Horecky went over the various terms of the proposed order and recommended that the PUC approve GPA's petition. GPA GM Benavente stated that the cheapest way to comply with the consent decree is to convert Piti 8 and 9 to ULSD. A discussion ensued between Commissioners Montinola, Pangelinan, Flores-Brooks, ALJ Horecky and GPA GM Benavente regarding when Piti 8 and 9 would be retired, the amount of time the units would be off-line during the conversion, the terms of the consent decree, the availability of ULSD storage tanks, the number of other prospective contractors that MEC sought proposals from, GPA's self-insurance fund, and whether just the fuel would be converted or the entire plant would be refurbished, who owns MEC. Commissioner Guerrero moved to approve the petition, which motion was seconded by Commissioner Montinola, and the motion was approved unanimously.

The Chairperson announced that the next item of business was GPA Docket 21-07, Petition to Approve Amendment to the Energy Conversion Agreement [ECA] with KEPCO for the 198MW Power Plant, ALJ Report, and Proposed Order. Commissioner Pangelinan recused himself from this matter because his law firm represents KEPCO and he stated that he did no work on this matter for his law firm and he left the meeting. ALJ Horecky stated that the GPA is requesting the PUC to approve three amendments to its ECA with KEPCO, which was previously approved by the PUC.

ALJ Horecky stated that the first amendment was replacing the Ukudu 65-megawatt standby generator reserve facility with 41MW diesel engines that will be installed near the GPA Cabras Fuel Oil Storage Facility. ALJ Horecky stated that the second amendment was that the permitting for the new powerplant will be "minor source" rather than "major source," which means that when a plant burns in excess of 100 tons of pollutants or emissions per year that are prohibited, it will fall under the plant's major source permit, but when it's below that level, it can be minor source and this should reduce the time it takes to have the plant's permitting approved. ALJ Horecky stated that the change to the 41MW diesel engines was necessary because GPA could not operate the plant under either the major source or minor source, that it would cost an additional \$4 million, and that the cost should be offset because GPA would be able to retire some of its older plants that are expensive to operate. ALJ Horecky stated that the third amendment will change the commercial operation date of the new plant from October 2022 to April 2024, and that GPA has shown sufficient reasons justifying the delay. ALJ Horecky stated that the PUC's approval was also conditional on GPA obtaining USEPA approval and the district court approving a modified consent decree incorporating these amendments, and that GPA would be required to provide quarterly reports to the PUC concerning the status of the negotiations with U.S. EPA. GPA GM Benavente stated that the new plant would be completed no later than April 2024 with best efforts to complete the plant by November 2023, and that the tricky part will be getting all the permits due to the Guam State Historic Preservation Office [SHPO] only having one archaeologist, that the 41MW plant will increase GPA's efficiency, that the new schedule will allow KEPCO to begin ordering the steam and combustion turbines for the new plant, and that GPA will make regular reports to the PUC to show the new schedules. A discussion ensued between the Chairperson, Commissioners Montinola, McDonald, Flores-Brooks, Guerrero, ALJ Horecky and GPA GM Benavente regarding the KEPCO's contractor for the turbines, GPA's use of 115 Kv Lines, GPA's status on putting renewable energy online, whether KEPCO will be using its own employees for the plant, the justification for the 41 MW Diesel units, whether the 41MW Diesel units would be a baseload plant or a reserve plant, whether GPA's plan would result in Guam having 50% renewable energy online by 2030, whether the 41MW Diesel units will be online by April 2024, GPA's plans for retiring MEC 8 and 9, and whether GPA would spend \$14 million converting Piti 8 and 9 and then retire them shortly thereafter. Commissioner Guerrero moved to approve the proposed order granting the petition, which motion was seconded by Commissioner McDonald, and the motion passed unanimously. A discussion ensued between the Commissioners and GPA GM Benavente concerning GPA's battery storage facilities coming online and their performance.

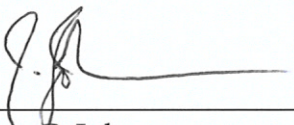
4. Administrative Matters

The Chairperson announced that there were no administrative matters.

5. Other Business.

The Chairperson inquired as to whether the Commissioners had any other business. Commissioner Flores-Brooks stated that she had reviewed the financials and that the PUC's administrative costs are slightly over the quarterly budget for publication and recording services. ALJ Horecky stated that the costs for publication and recording services had increased during the last quarter due to the three public hearings for the Condo rates.

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



Jeffrey C. Johnson
Chairperson

ATTACHMENT A
THE GUAM PUBLIC UTILITIES COMMISSION
NOTICE OF PUBLIC MEETING

NOTICE IS HEREBY GIVEN that the Guam Public Utilities Commission [PUC] will conduct a regular business meeting, commencing at 6:30 p.m. on February 25, 2021, Suite 202, GCIC Building, 414 W. Soledad Ave., Hagatna.

The following business will be transacted:

Agenda

1. **Approval of Minutes of January 28, 2021**
2. **Guam Waterworks Authority**
 - **GWA Docket 21-02, Petition for Approval of GWA's Indefinite Quantity Contract with JMI Edison for Submersible Pumps and Motors for GWA's Deep Wells, PUC Counsel Report, and Proposed Order**
3. **Guam Power Authority**
 - **GPA Docket 21-06, Petition to Approve the Piti 8& 9 Contract for Conversion to ULSD with Marianas Energy Company, ALJ Report, and Proposed Order**
 - **GPA Docket 21-07, Petition to Approve Amendment to the Energy Conversion Agreement (ECA) with KEPCO for the 198MW Power Plant, ALJ Report, and Proposed Order**
4. **Administrative Matters**
5. **Other Business**

Due to the current public health emergency, all persons attending the meeting will be required to wear masks. Social distancing protocols will be observed. Further information about the meeting may be obtained from the PUC's Administrator Lou Palomo at 472-1907. Those persons who require special accommodations, auxiliary aids, or services to attend the meeting should also contact Ms. Palomo.

This Notice is paid for by the Guam Public Utilities Commission

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN THE MATTER OF:

)
) GWA DOCKET 21-02
)

THE PETITION OF THE GUAM
WATERWORKS AUTHORITY TO
AWARD AN INDEFINITE CONTRACT)
FOR SUBMERSIBLE PUMPS AND)
MOTORS TO JMI-EDISON)
_____)

) ORDER

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] pursuant to the Guam Waterworks Authority's ["GWA"] Petition for Approval to Award and Indefinite Quantity Contract for Submersible Pumps and Motors to JMI-Edison [JMI].¹
2. GWA requests that the PUC approve GWA's award of an Indefinite Quantity Contract for Submersible pumps and motors for the amount of \$2,744,142.83.

BACKGROUND

3. GWA's prior indefinite quantity contract for the purchase of submersible pumps and motors for GWA's drinking water wells was with JMI and it expired on or about September 30, 2020. GWA was previously ordered to obtain the PUC's approval if it decided to solicit for another indefinite quantity contract for the purchase of submersible motors and pumps due to that prior contract's cost exceeding the PUC's contract review threshold.²
4. On October 28, 2020, GWA issued GWA-IFB-2021-01 (Submersible Pumps and Motors) [IFB]. GWA received two bids in response to the IFB from Frontier Supply Company and JMI. GWA opened the bids on December 16, 2020 and subsequently determined that JMI had submitted the lowest bid³

¹ GWA Petition to Award an Indefinite Quantity Contract for Submersible Pumps and Motors to JMI, GWA Docket 21-02, filed on February 8, 2021 [GWA Petition] at 1.

² PUC Order for GWA Docket No. 20-01 dated January 30, 2020 at 4.

³ GWA Petition at 89. NOTE: Page numbers listed herein as the PDF page numbers of the Petition and its exhibits due to the internal page numbers of the petition not being continuous.

5. On January 5, 2021, GWA issued a Notice of Conditional Award to JMI which stated that the award was conditioned on GWA obtaining the approval of the Consolidated Commission on Utilities [CCU] and the PUC.⁴
6. On January 26, 2021, the CCU issued CCU Resolution No. 07-FY2021 which approved GWA's award of the contract for the IFB to JMI subject to the PUC's approval of said contract.⁵
7. PUC Legal Counsel issued his report for GWA Docket No. 21-02 on February 19, 2021.

ANALYSIS

8. The PUC's Contract Review Protocol for GWA mandates that GWA obtain prior PUC approval for multi-year contracts that exceed the amount of one-million-dollar (\$1,000,000), including the cost incurred in any renewal option.⁶ Here, the total estimated contract price is \$2,744,142.83, which requires PUC approval because the total cost of the contract exceeds the \$1,000,000 contract review amount.
9. The contract has an initial three-year contract term with an estimated cost of \$1,496,805.18, and two additional one-year renewal options with an estimated cost of \$997,870.12 for both renewal options, and a ten-percent contingency in the amount of \$249,467.53. The total estimated cost of the contract with its initial term, renewal options, and the ten-percent contingency is \$2,744,142.83.⁷ In GWA's prior contract for submersible motors and pumps with JMI, GWA paid the total amount of \$3,364,029.71 for the contract's three-year initial term, and its two renewal options.⁸ This indicates that the contract at issue here is \$619,886.88 lower than its prior contract for submersible motors and pumps. Hence, the contract's \$2,744,142.83 cost is reasonable and prudent.

⁴ Id., at 96.

⁵ Id., at 87.

⁶ PUC Order re Contract Review Protocol for GWA, PUC Administrative Docket 00-004, filed on October 27, 2005 at paragraph 4(b) at 2.

⁷ GWA Petition at 86.

⁸ PUC Order for GWA Docket No. 20-01 dated January 30, 2020 at 3.

10. Further, the PUC has previously found that GWA's purchase of this equipment is necessary to maintain its inventory of submersible motors and pumps and that GWA relies on this equipment to ensure the reliability of operating its ninety-five drinking water wells.⁹ Hence, the GWA's exercise of the second and final one-year renewal period contract is necessary because GWA relies on its inventory of submersible motors and pumps to provide drinking water to the people of Guam.
11. The source of funding for this contract is GWA's internally funded Capital Improvement Funds.¹⁰
12. Based on the foregoing, the PUC finds that GWA's request to approve its indefinite quantity contract for submersible pumps and motors with JMI for the amount of \$2,744,142.83 is reasonable, prudent, and necessary.

ORDERING PROVISIONS

After review of the record herein, GWA's Petition to approve its indefinite quantity contract for submersible pumps and motors with JMI for the amount of \$2,744,142.83, and the PUC Counsel Report, and for good cause shown, on motion duly made, seconded and carried by the undersigned Commissioners, the Guam Public Utilities Commission **HEREBY ORDERS** that:

1. GWA's Petition to approve its indefinite quantity contract for submersible pumps and motors with JMI for the amount of \$2,744,142.83 is hereby approved.
2. GWA 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 the PUC's regulatory fees and expenses is authorized pursuant to 12 GCA §12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

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⁹ Id.

¹⁰ GWA Petition at 86.

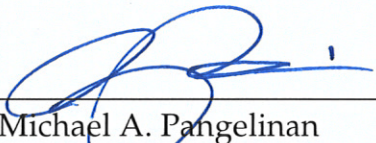
PUC Order
Petition of GWA to Award an
Indefinite Quantity Contract for
Submersible Pumps and Motors
to JMI-Edison
GWA Docket 21-01
February 25, 2021

Dated this 25th day of February, 2021.




Jeffrey C. Johnson
Chairman


Rowena E. Perez-Camacho
Commissioner



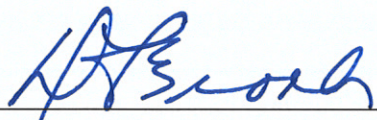
Michael A. Pangelinan
Commissioner



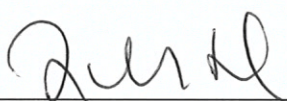
Pedro S.N. Guerrero
Commissioner



Joseph M. McDonald
Commissioner



Doris Flores Brooks
Commissioner



Peter Montinola
Commissioner

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"].¹ 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, 2024.² 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.³

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"].⁴

The Consent Decree between GPA and USEPA sought to resolve various alleged

¹ 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.

² 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.

³ 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.

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

environmental violations concerning air emissions of GPA's plants.⁵ 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, 2021.⁶

On July 10, 2020, GPA filed a Petition with the PUC, in GPA Docket 20-16, to Retire the Piti 8&9 units.⁷ 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.⁸

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.⁹ 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.¹⁰

⁵ Id., at p. 2.

⁶ 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.

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

⁸ 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.

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

¹⁰ 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."¹¹ Burning ULSD at Piti and 0.2% s at Cabras would meet the USEPA standards and would cost about \$51M less.¹²

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.¹³ 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..."¹⁴ The CCU resolution stated: "...as a result of the delay of the commissioning date of the new Ukudu power plant due to

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

¹² Id., Response No. 8, at p. 3.

¹³ 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.

¹⁴ 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..."¹⁵.

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.¹⁶

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.¹⁷

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.

¹⁵ Id., at p. 1.

¹⁶ Id., at pgs. 1-2.

¹⁷ 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.¹⁸

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-

¹⁸ 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.¹⁹

- 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”.²⁰

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 SO₂ and NESHAP for Carbon Monoxide, CO. The conversion of Piti 8&9 to ULSD will attain both SO₂ and CO emission requirements.²¹

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

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

²⁰ 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).

²¹ 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.²² GPA further states that “USEPA is taking a firm stance on enforcing the April 2023 standards.”²³

GPA was previously required to be in compliance with the 1-hour SO₂ 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.²⁴ TRC prepared a report for GPA in January of 2021 titled “SO₂ State Implementation Plan (SIP), Modeling Report for the Guam Power Authority.”²⁵ 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 SO₂ of the NAAQS requirements.²⁶

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

²² Id., Response No. 6, at p. 2.

²³ Id., Response No. 5, at p. 2.

²⁴ Id., Response No. 6, at p. 2.

²⁵ TRC, SO₂ State Implementation Plan (SIP), Modeling Report for the Guam Power Authority, January 2021.

²⁶ 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.²⁷

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%.²⁸ The reduction of loss of capacity to the Piti plants would make it difficult, if not impossible, for GPA to meet its reserve requirements.²⁹

- 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.³⁰

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.

²⁷ 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.

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

²⁹ GPA Response to PUC RFIs, Response No. 12, at p. 4.

³⁰ 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.³¹ 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.³²

- 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, 2021.³³

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

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

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

³³ 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.³⁴

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.

³⁴ 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]

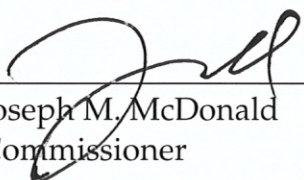
Order
Approval of the Contract
between GPA and MEC
to Convert Piti 8&9 to ULSD
GPA Docket 21-06
February 25, 2021

Dated this 25th day of February 2021.




Jeffrey C. Johnson
Chairman

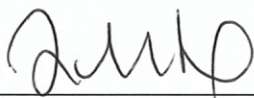
Rowena E. Perez-Camacho
Commissioner



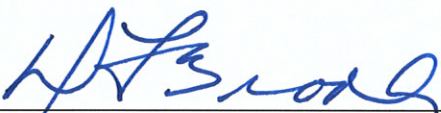
Joseph M. McDonald
Commissioner



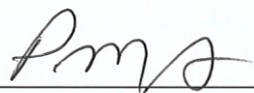
Michael A. Pangelinan
Commissioner



Peter Montinola
Commissioner



Doris Flores Brooks
Commissioner



Pedro S.N. Guerrero
Commissioner

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN THE MATTER OF:) GPA Docket 21-07
)
The Application of the Guam Power)
Authority to Approve the Amendment to) **ORDER**
the Energy Conversion Agreement (ECA))
with KEPCO for the 198MW Power Plant.)
_____)

INTRODUCTION

This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Guam Power Authority ["GPA"] Petition to Approve the Amendment to the Energy Conversion Agreement (ECA) with Korean Electric Power Company ["KEPCO"] for the 198MW Power Plant.¹

The essentials of the Proposed Amendment are set forth in Exhibit "1" to the ALJ Report. Exhibit "1" is Attachment A to Guam Consolidated Commission on Utilities Resolution No. 2021-02.² GPA has also provided to the PUC five proposed Schedule Attachments to the Energy Conversion Agreement which specify the requirements for the proposed operation of a 41MW diesel facility at Cabras: Schedule 1, Functional Specifications for Reserve Facility; Schedule 2, Technical Limit and Contracted Characteristics; Schedule 3, Commissioning and Testing; Schedule 4, Determination of Tariff; and Schedule 10, ULSD and Natural Gas Metering System and Settlement.³

¹ GPA Petition to Approve the Amendment to the Energy Conversion Agreement (ECA) with KEPCO for the 198MW Power Plant, GPA Docket 21-07, filed February 5, 2021.

² Guam Consolidated Commission on Utilities Resolution No. 2021-02, Relative to Authorization of Ukudu Power Plant Energy Conversion Agreement (ECA) Amendment for Relocation of Emergency Diesel Units and Pursuit of Minor Source Air Permit, Attachment 1, adopted and approved on January 26, 2021; see Exhibit "1" attached hereto.

³ Copies of these Schedules were provided in an email from GPA Legal Counsel Graham Botha to PUC ALJ Fred Horecky dated February 5, 2021.

The Amendment negotiated by GPA and KEPCO contains three basic aspects: (1) in the original KEPCO Proposal, KEPCO was to build a diesel facility of 65MW of standby generation capacity at the Ukudu new plant site. The parties have now agreed that, instead of the construction of a 65MW standby generator facility at the Ukudu site, 41MW of diesel engines will be installed near the GPA Cabras Fuel Oil Storage Facility⁴; (2) The Commercial Operation Date (COD) for the 198MW Power Plant will be changed from October 31, 2022, to April 2024⁵; and (3) the air permitting for the new power plant will be “minor source” rather than “major source.”

BACKGROUND

A. Prior PUC Actions

On October 31, 2019, in GPA Docket 19-13, the PUC approved the Energy Conversion Agreement between GPA and KEPCO for the construction and operation of the 198MW Power Plant in Ukudu.⁶ On December 5, 2019, the PUC approved the Consent Decree between GPA and USEPA, which constituted a final resolution of environmental violations alleged by EPA.⁷ Both the Consent Decree and the ECA presently require the construction and operation of the new power plant burning ultra-low sulfur diesel (ULSD) by October 31, 2022.⁸ Based upon KEPCO’s bid proposal, the parties agreed that KEPCO would construct a 65MW reserve facility that would serve as a backup in the event that the new power plant could not operate. The site of the reserve facility was at Ukudu.

⁴ GPA Petition to Approve the Amendment to the Energy Conversion Agreement (ECA) with KEPCO for the 198MW Power Plant, GPA Docket 21-07, filed February 5, 2021, at p. 1.

⁵ Id., at p. 2.

⁶ PUC Order, GPA Docket 19-13, dated October 31, 2019, at p. 19.

⁷ PUC Order, GPA Docket 20-01, dated December 5, 2019, at p. 6.

⁸ GPA Petition to Approve the Consent Decree with the United States Environmental Protection Agency (EPA), GPA Docket 20-01, filed November 12, 2019, at p. 1.

B. GPA's Stated Justification for the Relocation of the Reserve Facility

GPA's justification for the relocation of the Reserve Facility is set forth in a Letter from GPA General Manager John Benavente to CCU Commissioners, dated December 14, 2020, which is attached to the ALJ Report as Exhibit "2".⁹ The reason for relocation of the diesel standby generator facility from Ukudu to Cabras relates in part to the permitting process for the new power plant. KEPCO originally pursued "Major Source Permitting" to meet its performance obligations for the new power plant. USEPA expressed concerns that major source permitting would result in substantial delays in the construction of the new power plant. Subsequently, KEPCO and GPA agreed on a minor source permit process and the relocation of the diesel standby engine plant to a Cabras site directly adjacent to the GPA Bulk Fuel Oil Storage Tank Facility.¹⁰

A "minor source" permitting was not feasible if the 65MW facility continued to be located at the Ukudu site. With minor source, there is a 100 ton per year limitation on emissions. With the combination of both the 198MW combined cycle and the 65 MW diesels at Ukudu, the production capability of the Ukudu plant would have been significantly limited when the steam turbine is overhauled every four years.¹¹ The 65MW reserve facility was only intended to be used for short duration outages and was only capable of operating for 300 hours continuously.¹² The 65MW reserve facility could only operate at a maximum of 500 hours per year.¹³

⁹ Letter from General Manager John Benavente to CCU Commissioners, Subject: Update on New Power Plant and USEPA Negotiations, dated December 14, 2020, attached hereto as Exhibit "2".

¹⁰ Id. at p. 2.

¹¹ GPA Responses to PUC Requests for Information, GPA Docket 21-07, dated February 16, 2021, Response No. 5.

¹² Id., at Response No. 3.

¹³ Letter from General Manager John Benavente to CCU Commissioners, Subject: Update on New Power Plant and USEPA Negotiations, dated December 14, 2020, at p. 2.

C. CCU Resolution No. 2021-02

On January 26, 2021, the Guam Consolidated Commission on Utilities, in Resolution No. 2021-02, authorized the Amendment of the Ukudu Power Plant Energy Conversion Agreement for relocation of the emergency diesel units and pursuit of minor source air permit.¹⁴ The CCU recognized that the USEPA had expressed concerns that the local company constructing the plant, Guam Ukudu Power ["GUP"] LLC, intended to pursue a major source air permit path, which would result in significant delays because of the lengthy air monitoring requirements before a major source permit could be issued. This delay could extend the Commercial Operation Date past 2025.

The USEPA encouraged GPA to work out an alternative which would permit the plant under minor source permitting.¹⁵ The CCU recognized that GPA and GUP LLC had reached an agreement to permit the Ukudu Combined Cycle Plant as a minor source air permit, to install a 41MW plant of diesel engines in Cabras, and to agree to fixed and variable O&M rates to compensate for the operation and maintenance of the new diesel plant.

The CCU also authorized GPA to amend the Ukudu Power Plant Energy Conversion Agreement for the relocation and operation of a 41MW diesel unit facility at Cabras, and to require GUP LLC to pursue a minor source air permit, with the new Commercial Operation Date of the Ukudu plant to be no later than April 2024. The parties also agreed to "best efforts" to achieve a target COD of November

¹⁴ Guam Consolidated Commission on Utilities Resolution No. 2021-02, Relative to Authorization of Ukudu Power Plant Energy Conversion Agreement (ECA) Amendment for Relocation of Emergency Diesel Units and Pursuit of Minor Source Air Permit, adopted and approved on January 26, 2021.

¹⁵ Id., at p. 1.

2023.¹⁶ The proposed diesel plant at Cabras would consist of 15 units of 2.75MW capacity each available for continuous operations.¹⁷ In accordance with the agreement between GPA and GUP LLC, GPA would pay a fixed O&M of \$2M annually, and a variable O&M of \$0.025/kWh. GPA would provide the ULSD for the diesel units.¹⁸

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 annual fixed management fees of \$2M for the 41MW plant alone will exceed the contract review threshold, thus requiring PUC review.

The Administrative Law Judge filed his Report herein dated February 22, 2021. The PUC adopts the conclusions and recommendations in the Report.¹⁹

DETERMINATIONS

A. The 41MW Diesel Plant at Cabras provides significant advantages to GPA over the previously proposed 65MW facility at Ukudu.

¹⁶ Id., at pgs. 2-3.

¹⁷ Proposed Amendment of the Ukudu Power Plant Energy Conversion Agreement, January 21, 2021, at p. 6.

¹⁸ Id.

¹⁹ ALJ Report, GPA Docket 21-06, dated February 22, 2021.

41MW of continuous operating diesel units would be installed on GPA property next to the GPA Bulk Fuel Oil Storage Facility. The original KEPCO proposal was for 65MW of standby generators at the Ukudu site.²⁰ The Reserve Facility at Ukudu was a 65MW power generation plant consisting of twenty-six (26) high speed reciprocating engines operating on ULSD. However, the diesel units at Ukudu were “designed for operation of no more than 500 hours per year and of no more than 300 hours of continuous operation.”²¹

The 65MW reserve facility had an extremely limited operating capacity of 500 hours annually. Only KEPCO, and not GPA, could dispatch the unit. The only purpose of the 65MW reserve facility was to provide backup to KEPCO when it was not meeting availability guarantees with the new power plant. GPA had absolutely no say as to when the facility would be run, and GPA could not use the 65MW facility for grid support.²²

With the change to minor source permitting, the 41MW facility at Cabras would be permitted to run for a minimum of 2,600 hours and likely as much 5,000 hours.²³ With the 41MW facility, GPA is in complete control as to when the facility is dispatched. The facility is continuously dispatchable throughout the year. It will provide generation capacity and grid support to the island-wide power system. The change in the proposed site of the diesel units to Cabras is clearly advantageous to

²⁰ Letter from General Manager John Benavente to CCU Commissioners, Subject: Update on New Power Plant and USEPA Negotiations, dated December 14, 2020, at pgs. 1-2.

²¹ GPA Workpaper on Proposed Amendment of the Ukudu Power Plant Energy Conversion Agreement, January 21, 2021, at p. 4.

²² Phone Conference between ALJ Horecky, Graham Botha, and Jennifer Sablan on February 17, 2021.

²³ Letter from General Manager John Benavente to CCU Commissioners, Subject: Update on New Power Plant and USEPA Negotiations, dated December 14, 2020, at p.2.

GPA. Such change would allow the 41MW to be run continuously, as opposed to the limitation on the Ukudu site to 500 hours.²⁴

This advantageous change is premised upon KEPCO's agreement to proceed with a minor source air permit application process rather than the major source permitting. GPA provided KEPCO the alternative of relocating the diesel generator facility to Cabras and making "adjustments to the capacity factor of the combined cycle during the steam turbine overhaul years."²⁵ GPA agreed to adjust the new plant availability from 85% to 66% during steam turbine overhaul once every 4 years.²⁶ The PUC should approve the change in location of the diesel units, the minor source permitting process, and the adjustments to the capacity factor of the combined cycle during the steam turbine overhaul years. USEPA has indicated that it is not opposed to change the diesel location, and the permitting process to minor source. It believes that the amendment would address the avoiding of delays in the permitting process.²⁷

- B. Although there are additional Costs resulting from placing the 41MW plant at Cabras, there does not appear to be any viable alternative; the relocation of the 41 MW facility to Cabras also will result in savings that will offset the costs.

According to GPA, there was simply no way that the proposal for the 65MW reserve facility could be worked out. It was not cost effective for KEPCO to proceed with it

²⁴ Phone Conference between ALJ Horecky, Graham Botha, and Jennifer Sablan on February 17, 2021.

²⁵ Letter from General Manager John Benavente to CCU Commissioners, Subject: Update on New Power Plant and USEPA Negotiations, dated December 14, 2020, at p.2.

²⁶ GPA Workpaper on Proposed Amendment of the Ukudu Power Plant Energy Conversion Agreement, January 21, 2021, at p. 6.

²⁷ Letter from General Manager John Benavente to CCU Commissioners, Subject: Update on New Power Plant and USEPA Negotiations, dated December 14, 2020, at p.2.

under minor source permitting. GPA was concerned that, without a resolution to these issues, KEPCO may well have declined to proceed with the ECA.²⁸ Placing the 65MW facility at Ukudu is no longer realistic. Therefore, there is no alternative to location of the 41MW facility at Cabras.

As with the prior proposal for a 65MW facility, the 41MW facility will be constructed by KEPCO. GPA does not pay any additional amount for the construction of the plant.²⁹ GPA will pay a fixed annual fee to KEPCO of \$2M to operate and maintain the plant. KEPCO will need about 35 personnel to operate and maintain the plant including overhauls throughout the plant life, which are funded from fixed cost.³⁰ Fixed O&M covers personnel costs for manning the plant, and other costs such as administration, permitting, licensing, etc. Variable O&M include such consumable items as oil, filters, equipment replacements, and other operation items.³¹ GPA estimates that variable costs will be \$2.425M annually.³² The variable O&M will be \$0.025/kWh.³³ There will likely be additional costs of \$4.425M annually for the operation of the 41 MW plant.³⁴ The annual cost for the 41MW facility is over \$400,000 less than that for the Aggreko plant.³⁵

The 41MW plant would result in cost savings, although it is difficult to quantify those at the present time. The 41MW plant would allow GPA to retire units which

²⁸ Id. at p. 1.

²⁹ Phone Conference between ALJ Horecky, Graham Botha, and Jennifer Sablan on February 17, 2021.

³⁰ GPA Responses to PUC Requests for Information, GPA Docket 21-07, dated February 16, 2021, Response No. 9.

³¹ Phone Conference between ALJ Horecky, Graham Botha, and Jennifer Sablan on February 17, 2021.

³² GPA Responses to PUC Requests for Information, GPA Docket 21-07, dated February 16, 2021, Response No.11.

³³ GPA Workpaper on Proposed Amendment of the Ukudu Power Plant Energy Conversion Agreement, January 21, 2021, at p. 6.

³⁴ Id.

³⁵ Id.

are already 30 years old.³⁶ Possible candidates include the Tenjo diesels, the Talofoto diesels, the Yigo CT, and Piti 8 & 9.³⁷ Savings would include the operation costs of such older plants. The 41MW plant would provide fuel saving and would be more efficient than the older plants. GPA has provided calculations showing that the 41MW plant is less expensive to run than the Aggreko plant, which both have similar energy production. Since the 41MW plant is close to the ULSD storage facility at Cabras, tanker transportation required to other plants (\$9.24/Bbl. Delivery costs) will be avoided.³⁸

C. The Amendment to Change Commercial Operation Date to April 2024 is justified by several Factors.

The parties have targeted a COD date as April 2024, although they have also agreed to “make all best efforts to reduce the COD to November 30, 2023.”³⁹

There are many factors that justify the amendment of the ECA to change the Commercial Operation Date. There had been several delays caused by the negotiations on major source/minor source permitting. Minor source permitting does result in a shorter commissioning period but is potentially not economically feasible to KEPCO due to higher capital investment requirements to meet contract performance.⁴⁰

³⁶ GPA Responses to PUC Requests for Information, GPA Docket 21-07, dated February 16, 2021, Response No. 5.

³⁷ Phone Conference between ALJ Horecky, Graham Botha, and Jennifer Sablan on February 17, 2021.

³⁸ GPA Responses to PUC Requests for Information, GPA Docket 21-07, dated February 16, 2021, Response No. 5.

³⁹ Conditions for DG Plant relocation and Minor Air Permit Acquisition for Ukudu Project, dated December 11, 2020 and signed by GPA/Guam Ukudu Power, LLC, at p. 3 (Exhibit “1” hereto).

⁴⁰ Proposed Amendment of the Ukudu Power Plant Energy Conversion Agreement, January 21, 2021, at p. 5.

According to GM Benavente, these economic feasibility issues had even led to a possibility of contract termination. However, the parties were able to work out an appropriate compromise. The environmental and construction permitting has presented challenges. This is the first new power plant construction in 23 years. The resources of applicable local permitting agencies have been taxed. There has been substantially increased scrutiny on historical preservation and environmental permitting due to the military build-up and other community concerns.⁴¹

On top of the foregoing challenges, there have been delays related to the COVID-19 pandemic. The relevant local government permitting agencies have had reduced availability during the pandemic due to closures. Quarantine requirements and other travel restrictions made it difficult for KEPCO personnel to travel to Guam. There have been work inefficiencies resulting from the changes in the operating mode.⁴² KEPCO was unable to contract with its originally selected Engineering, Procurement, and Construction Contractor, Hyundai, because of the delays and uncertain schedules for the plant causing the contract cost to increase. KEPCO issued a new tender for its EPC, and is engaging a new EPC, Doosan Industries.⁴³

Therefore, the proposed change in the Commercial Operation Date is justified due to the legitimate delays that have occurred, which delays were beyond the ability of the parties to avoid.

⁴¹ Id.

⁴² Id.

⁴³ Letter from General Manager John Benavente to CCU Commissioners, Subject: Update on New Power Plant and USEPA Negotiations, dated December 14, 2020, at p.2.

ORDERING PROVISIONS

After review of the record herein, including GPA's Petition and the Proposed Amendments to the Energy Conversion Agreement between GPA and KEPCO, 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:

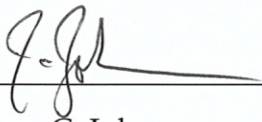
1. GPA' proposed Amendments to the Energy Conversion Agreement between GPA and KEPCO are approved. The changes which PUC approves include:
 - (a) Removal from KEPCO's proposal of the construction of a 65MW diesel reserve facility at Ukudu, and location of a 41MW diesel engine reserve facility at the Cabras site, and the agreement by the parties for Minor Source permitting for such facility and the new power plant; and
 - (2) a change in the Commercial Operation Date from October 31, 2022, to April 2024, with the agreement by the parties to use best efforts to meet a November 30, 2023 target.
2. GPA is authorized to pay to KEPCO a fixed annual fee of \$2M and a variable O&M fee of \$0.025/kWh to operate and maintain the 41MW diesel plant.
3. GPA shall continue to work with USEPA to expeditiously approve the changes to the ECA reflected in paragraph 1 above. GPA shall provide quarterly reports to the PUC concerning the status of its negotiations with USEPA.
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 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 for Amendment
to the ECA with KEPCO for 198MW Power Plant
GPA Docket 21-07
February 25, 2021

Dated this 25th day of February 2021.



Jeffrey C. Johnson
Chairman

Rowena E. Perez-Camacho
Commissioner

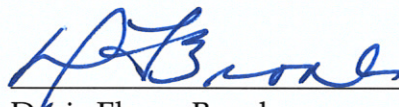


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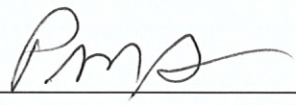
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