

**GUAM PUBLIC UTILITIES COMMISSION
REGULAR MEETING
January 28, 2021
GCIC CONFERENCE ROOM, GCIC BUILDING, HAGATNA**



MINUTES

The Guam Public Utilities Commission [PUC] conducted a regular meeting commencing at 6:40 p.m. on January 28, 2021, pursuant to due and lawful notice. Commissioners Johnson, Perez-Camacho, 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 4, 2021. Upon motion duly made, seconded, and unanimously carried, the Commission approved the minutes subject to correction.

2. Port Authority of Guam

The Chairperson announced that the next item of business on the agenda was Port Authority of Guam [PAG] Docket 21-01, Petition for Approval of Contract Award for Management and Operations of the F1 Fuel Pier and Facility, ALJ Report, and Proposed Order. ALJ Alcantara stated that PAG is asking the PUC to approve its contract with Tristar Terminals Guam, Inc. [Tristar], for the management and operation of PAG's F1 Fuel Pier Facility [Pier], which is located at Cabras Island Industrial Park, and that this pier is where petroleum and non-petroleum products are uploaded, discharged, and distributed. ALJ Alcantara stated that PAG issued an RFP in April, 2018 and received three proposals, that IP&E was the ranked as the highest qualified offeror but PAG was unable to negotiate a contract with IP&E and PAG terminated negotiations with them and began negotiations with Tristar, which was the second highest ranked offeror, and was successful in negotiating the contract which PAG is requesting the PUC approve. ALJ Alcantara stated that the contract requires Tristar to operate and manage the Pier, receive the imports of fuel, oil, diesel, gas, liquid petroleum products, deliver fuel for export, bunkering fuel oil and gas, coordinate dockage with ships, perform preventive maintenance and repairs on the Pier, schedule operations, and collect port user fees for use of the Pier. ALJ Alcantara stated that PAG estimates that the annual cost for the management of this particular pier will be roughly \$650,000.00 per year for an estimated total of about \$3.25 million for the full five-year term, and he recommended that the PUC approve it. Commissioner Montinola inquired why PAG could not negotiate a

contract with IP&E and PAG General Manager [GM] Respicio stated that they could not agree on a fuel price. Commissioner Perez-Camacho moved to approve the proposed order approving the contract, which motion was seconded by Commissioners Guerrero and Flores-Brooks, and said motion carried unanimously.

The Chairperson announced that the next item of business was PAG Docket 21-02, Petition for Approval of Award for the Construction Management Services for the Rehabilitation of H-Wharf and Highway 11 Roadway Reconstruction, ALJ Report, and Proposed Order. ALJ Alcantara stated that this PAG contract is with GHD and involves the construction management of the demolition of the wharf's existing facilities and the construction of a new H-Wharf on 2.5 acres of land, and the paving, striping, signage, utilities, and drainage for about 4,200 feet of roadway. ALJ Alcantara stated that under the contract GHD will provide the general administration of the construction contract for those projects including preconstruction conferences, status reports, reviewing payment estimates and change orders, and project closeout services, and during the construction of the projects GHD will hold project meetings, weekly project progress meetings, review the construction contractor's project submission, surveys, and drawings, engage in audit control, testing, and inspections, and towards the end of the construction, GHD will develop a punch list and perform closeout inspections. ALJ Alcantara stated that the contract will cost \$2,249,945.54, and that PAG was able to save the amount of \$301,000.00, and that this contract will be funded by PAG's bond revenue funds, and he recommended that the PUC approve the contract. PAG GM Respicio thanked the PUC for considering this matter on short notice and he stated that this contract and the H-Wharf projects were critical in PAG's revenue bond modernization program. Commissioner Flores-Brooks inquired as to whether the contract is fixed-fee or a percentage of the overall contract cost and whether the fee can be amended and PAG GM Respicio confirmed that it was a fixed-fee contract and that the fee could not be amended. Commissioner McDonald inquired as to whether PAG intended to exercise the three options to renew for one-year periods and PAG GM Respicio stated that those provisions were in the contract in case PAG had to extend it and that the \$2 million contract cost is the most GHD could make from the contract. A discussion ensued between the Commissioners and PAG representatives concerning the expected duration of the construction projects, possible extensions of the construction management contract, and the contract's fixed fee. Commissioner Montinola moved to approve the proposed order approving the contract, which motion was seconded by Commissioner Pangelinan, and the motion carried unanimously.

3. Guam Power Authority

The Chairperson announced that the next item of business was Guam Power Authority [GPA] Docket 21-04, Levelized Energy Adjustment Clause [LEAC] Filing for Period February – July 2021, ALJ Report, and Proposed Order. ALJ Horecky stated that from

February to June of 2020, the LEAC factor was reduced from about 15 cents per kilowatt-hour down to 8.6 cents because there was nearly a 50% drop in the fuel oil prices, and from August, 2020 to February, 2021, the PUC decided to maintain the LEAC factor at 8.6 cents per kilowatt-hour resulting in an under-recovery of \$14.7 million at the end of January, 2021. The next LEAC period is from February 1, 2021 to July 31, 2021 and the CCU authorized GPA to continue the existing LEAC factor of 8.6 cents for this period and estimated an under-recovery of \$35 million at the end of the period. ALJ Horecky stated that to mitigate this under-recovery, the CCU authorized GPA to withdraw \$10 million from the self-insurance fund and to reduce the internally-funded CIP budget by \$5 million in FY 2021 and GPA has proposed these offsets in its current filing. ALJ Horecky stated that under schedule Tariff Z, the LEAC Factor is a fuel recovery charge that is calculated semi-annually for a six-month period subject to the approval of the PUC, and the ratepayers pay for GPA's fuel costs, and that the PUC's role is to determine the LEAC Factor. ALJ Horecky stated that GPA intends to pay the fuel cost itself from its self-insurance and CIP funds and that this violates Tariff Z because that tariff requires that the fuel costs be billed to GPA's customers. ALJ Horecky stated that purpose of GPA's self-insurance fund is to ensure that GPA quickly and efficiently repair damage to its systems caused by storms or typhoons, and that paying fuel costs is not this fund's purpose, and he described the history of the fund what GPA has paid for typhoon damage in the past, and the risks GPA would be taking by using these funds as a ratepayer subsidy for their fuel costs. ALJ Horecky then described the issues that would arise if the PUC allowed GPA to use its internally-funded CIP to subsidize ratepayers. ALJ Horecky stated that maintaining the LEAC rate at 8.6 cents during this period of rapidly rising fuel prices would be catastrophic and that ratepayers would have a substantially larger LEAC increase in the future if the LEAC rate is not raised now and he recommended that the PUC raise the LEAC factor for the next six months should be increased to 12.2016 cents per kilowatt-hour which will result in a lower under-recovery of \$21 million. ALJ Horecky stated that to fully pay for fuel, it's over 15 cents per kilowatt-hour and that the PUC does not usually award a full-recovery and that awarding a 50% recovery instead of a full 100% recovery is consistent with this practice. GPA GM Benavente stated that he hopes that Guam will economically recover from the Pandemic quickly and that GPA was trying to find an alternative solution to help the ratepayers by using its self-insurance fund and delaying some of its CIP projects for a short period of time and that the decision is really up to the PUC. CCU Chairperson Duenas stated that the CCU is trying to maintain the current LEAC rate for the next six months to give stability to the ratepayers.

A discussion ensued between the Commissioners, ALJ Horecky, GPA GM Benavente, GPA CFO KIM, and CCU Chairperson Duenas concerning the part of Tariff Z that requires GPA to come in and request a LEAC adjustment if the under-recovery approaches \$2 million, the CIP projects that GPA would delay if it used its internally funded CIP budget to subsidize the ratepayer's fuel costs in the next LEAC period, the

current state of Guam's economy, the number of ratepayers who are unemployed as a result of the pandemic emergency, the risks associated with using GPA's self-insurance fund to subsidize the ratepayer's fuel costs for the next LEAC period, the status of GPA's Demand Side Management program, the state of fuel prices, the rate of growth of GPA's under-recovery, whether the pandemic emergency constitutes a catastrophe that justifies the use of GPA's self-insurance fund to subsidize the ratepayer's fuel costs for the next LEAC period, the consequences of leaving the LEAC at its current rate and recouping the under-recovery later, the effect of raising the LEAC for the next LEAC period on the ratepayers, the period of time it would likely take to recoup the under-recovery if they did not raise the LEAC rate for the next LEAC period, the date when GPA expects to bring more solar power online, the effect of raising the LEAC rate to less than 12 cents as recommended by ALJ Horecky, whether raising the LEAC would result in the profit to GPA or a pass-through expense, the effect of raising the LEAC on the average ratepayer per month, and whether the PUC should amend the LEAC protocols. The Commissioner's requested that GPA CFO Kim calculate the LEAC at various recovery rates and he provided the results of those calculations to them. Commissioner Pangelinan moved to authorize GPA to use \$10 million from its self-insurance fund and \$5 million from its self-funded CIP funds to pay for the costs of fuel and raise the LEAC rate to 11 cents for the next LEAC period, which motion was seconded by Commissioner Perez-Camacho, and the motion passed with only Commissioners Flores-Brooks and Guerrero voting against it. ALJ Horecky stated that he would revise the proposed order to reflect the PUC's authorizations.

The Chairperson announced that the next item of business was GPA Docket 20-10, Petition for Creation of a Condominium Rate Schedule, ALJ Report, and Proposed Order. ALJ Horecky stated that GPA CFO Kim would give a presentation to the PUC. GPA CFO Kim began his presentation and stated that GPA performed a cost of service analysis to develop a condominium residential rate and determined that it needed \$5.79 million in revenue to cover its cost of service and the rates they are asking for are very close to their cost of service. GPA CFO Kim stated that GPA is requesting individual metering for new construction to be more efficient in getting a residential rate. GPA CFO Kim covered the described the existing rates, explained what the demand charge was and he described how GPA developed the demand charge for the condominium residential rate, and he also described how GPA developed the water well charges. GPA CFO Kim described the cost savings for the different classes of condominium residential rate payers. GPA CFO Kim explained that the new rates create a parity for the condominium residential ratepayers with the residential ratepayers and concluded his presentation. A discussion ensued between the Commissioners and GPA CFO Kim concerning the charges to different classes of condominium residential ratepayers, the demand charges, how the ratepayers could lower their electrical bills, and the lifeline rates for the different classes. ALJ Horecky stated that he submitted a very comprehensive report and that he recommends that the PUC approve the

condominium rate schedule service fee because it will result in a substantial rate reduction to the vast majority of condominium residents. ALJ Horecky described the various arguments submitted by the opponents of the new rate schedule, and stated that only the residents of one condominium, Villa Kanton Tasi, raised issues about Schedule D, and he described how the majority of condominium residential ratepayers will benefit from the new rates, and that the new rates will result in a big rate reduction. ALJ Horecky described the work that GPA's rate specialist, Mark Bouchamp, put into this project, and he described the demand charges for the rate schedules, and the ordering provisions that he placed in the order. Commissioner Flores-Brooks inquired as to what three-phase metering was and GPA GM Benavente stated that some condominiums are not able to run on single-phase power and require three-phase power to operate their equipment or infrastructure. A discussion ensued between the Commissioners, ALJ Horecky, and GPA GM Benavente concerning the various charges in the rate schedule, how condominiums opt for single-phase or three-phase power, the potential savings of the new rate schedule, whether there was parity between the condominium residential ratepayers and the residential ratepayers, the effects the new rates would have on residential ratepayers, and whether the condominiums could apply for different rate schedule classes.

The Chairperson invited members of the public present to ask questions or make statements. Mr. Duenas inquired what the demand charge was and GPA GM Benavente states that it was \$5.8 and that under the new rate schedule it would be \$12. A discussion ensued between the Commissioners, ALJ Horecky, and GPA GM Benavente and Mr. Duenas concerning whether the new rate schedule actually resulted in a cost reduction to the condominium residential ratepayers, why the demand charge was increased to \$12, the effect of the new rates on the Villa Kanton Tasi condominiums, and possible solutions to reduce the power bills at the Villa Kanton Tasi condominiums. A discussion ensued between the Commissioners, ALJ Horecky, and GPA GM Benavente about why GPA could not simply charge residential rates to the condominium residential ratepayers. Commissioner Montinola moved to approved the proposed order approving the new rate schedule, which motion was seconded by Commissioner Perez-Camacho, and the motion carried unanimously.

4. Administrative Matters

The Chairperson announced that the next item of business was GPA Docket 21-05, Filing of FY20 Contracts & Obligations (for Informational Purposes only). ALJ Horecky stated that this concerns what contracts were approved and what the costs were and that it is a good overview for the Commissioner's information.

The Chairperson announced that the next item of business was the Fiscal Year 2020 Annual Report and he stated that the PUC sent the report to the executive and legislative branches. ALJ Horecky stated that the report was made and sent to those branches of government annually. A discussion ensued between the Commissioners and ALJ Horecky regarding possible modifications to the report's format.

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 they show the PUC spent more than was budgeted for publication expenses and professional fees and that she would like the PUC to implement a protocol wherein if the PUC was going to exceed a budgeted expense by 10%, the PUC's Administrator would have to get permission from the Chairperson and the vice Chairperson to allow the expenditure and then the administrator would report such authorizations back to the board.

Commissioner Flores-Brooks also stated that the PUC was behind on collecting approximately \$36,000 from various agencies. A discussion ensued between the Commissioners concerning what actions should be taken against the agencies who were behind on paying their costs to the PUC.

PUC Administrator requested that her assistant Cynthia Brown, receive a gas pension of \$50 per month for the use of her personal vehicle for PUC errands. ALJ Horecky stated that was in a previous resolution that was approved by the PUC, but was for only one of them. A discussion ensued between the Commissioners as to whether there should be separate gas pension for the PUC's new assistant and the PUC Administrator was instructed to provide the pension for whichever person does the PUC's errands.

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 January 28, 2021, on the third floor, GCIC Building, 414 W. Soledad Ave., Hagatna.

The following business will be transacted:

Agenda

- 1. Approval of Minutes of January 4, 2021**
- 2. Port Authority of Guam**
 - **PAG Docket 21-01, Petition for Approval of Contract Award for Management and Operations of the F1 Fuel Pier and Facility, ALJ Report, and Proposed Order**
 - **PAG Docket 21-02, Petition for Approval of Award for the Construction Management Services for the Rehabilitation of H-Wharf and Highway 11 Roadway Reconstruction, ALJ Report, and Proposed Order**
- 3. Guam Power Authority**
 - **GPA Docket 21-04, Levelized Energy Adjustment Clause [LEAC] Filing for Period February – July 2021, ALJ Report, and Proposed Order**
 - **GPA Docket 20-10, Petition for Creation of a Condominium Rate Schedule, ALJ Report, and Proposed Order**
- 4. Administrative Matters**
 - **GPA Docket 21-05, Filing of FY20 Contracts & Obligations (for Informational Purposes only)**
 - **FY2020 Annual Report**

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 PUBLIC UTILITIES COMMISSION

**IN RE: PETITION FOR APPROVAL)
OF CONTRACT AWARD)
FOR MANAGEMENT AND)
OPERATIONS OF THE F1)
FUEL PIER AND FACILITY)
WITH TRISTAR TERMINALS)
GUAM, INC. BY PORT)
AUTHORITY OF GUAM)**

PAG DOCKET 21-01

ORDER

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC”) pursuant to the January 8, 2021 Petition (hereinafter referred to as the “Petition”) for review and approval of the Tristar Terminals Guam Inc. (“Tristar”) contract related to the management and operation of the F-1 Fuel Pier Facility, filed by the Jose D. Leon Guerrero Commercial Port, Port Authority of Guam (“PAG” or the “Port”). PAG seeks PUC review and approval of this professional services contract with Tristar.¹

On January 26, 2021, the Administrative Law Judge of the PUC (the “ALJ”) assigned to this matter filed an ALJ Report that included his findings and recommendations based on the administrative record before the PUC. The ALJ found the following.

DETERMINATIONS

The F-1 Fuel Pier Facility is a dock constructed on submerged land that is located adjacent to the “fingertip portion of the Cabras Island Industrial Park” and owned by PAG.²

¹ The 2014 F-1 Fuel Pier Facility Management and Operations Agreement is attached hereto as “Exhibit A.”

² PAG Request for Proposal No. RFP-PAG-019-004 (the “RFP”), p. 4 (Apr. 4, 2019).

Based on the RFP documents, the facility includes pilings, a deck, dolphins, walkways, a dock shed, pipelines, valves and manifolds. A generator, mooring hooks, storage tanks, and an office building also sit on the facility. This fuel pier is where petroleum products, like gasoline and oil, and non-petroleum products are offloaded, discharged, and distributed.³ There, 7,000,000 to 10,000,000 barrels of petroleum products are imported and exported through the facility each year.⁴ In addition, based on the RFP documents, there are presently three (3) users of the fuel pier.

On April 5, 2019, PAG issued RFP-PAG-019-004 (the “RFP”), which sought services related to the management and operations of the F-1 Fuel Pier Facility.⁵ Three firms submitted proposals, which were evaluated and ranked by a PAG Evaluation Committee.⁶ Thereafter, the Evaluation Committee reviewed the submissions and identified IP&E Holdings, LLC dba IP&E Guam (“IP&E”) as the highest ranked proposal and, therefore, recommended that IP&E be given an opportunity to negotiate a contract with PAG.⁷ The Evaluation Committee identified Tristar as the second ranked proposal.⁸

³ Petition, p. 1 (Jan. 8, 2021).

⁴ RFP, p. 4.

⁵ Petition, p. 1.

⁶ Petition, p. 1.

⁷ Memorandum from the Contract Management Administrator to the General Manager, “Evaluation Analysis and Recommendation—RFP No. PAG-019-004 M&O of F1 Fuel Pier and Facility” (“Evaluation Analysis”), p. 2 (Sept. 13, 2019).

⁸ Evaluation Analysis, p. 2.

According to PAG, after several sessions of cost negotiations with IP&E, PAG terminated negotiations with IP&E on the basis that such negotiations were unsuccessful.⁹ As a result, PAG began negotiations with Tristar, the next ranked offeror, on March 19, 2020.¹⁰

On November 9, 2020, PAG and Tristar arrived at mutually agreeable terms and costs. On December 22, 2020, through Resolution No. 2020-18, PAG's Board of Directors approved the contract award to Tristar and authorized PAG to seek PUC approval of the contract.¹¹

1. PAG's Contract Review Protocol

Pursuant to 12 G.C.A. §12105, PAG may not enter into any contractual agreements or obligations which could increase rates and charges without the PUC's express approval. Additionally, pursuant to PAG's current Contract Review Protocol, "[a]ll professional services contracts in excess of \$1,000,000" and "[a]ll internally financed contracts utilizing O&M funds in excess of \$1,000,000, whether or not the contract extends over a period of one year or several years" "shall require prior PUC approval" Contract Review Protocol, PAG Docket 09-01, p. 1 (June 20, 2011). Further, with respect to multi-year contracts, PAG's Contract Review Protocol provides that "PAG must obtain PUC approval if the total costs over the entire procurement term exceed the review threshold." *Id.*, p. 3.

⁹ See Petition, p. 1. (According to PAG, "after our initial cost negotiations meeting and two (2) counter-offers by the Port, IP&E failed to respond to our 2nd counter-offer.").

¹⁰ Petition, p. 1.

¹¹ PAG Board of Directors Resolution No. 2020-18, p. 1 (Dec. 22, 2020).

2. Scope of Services

The RFP provides that the contractor must operate and manage the F-1 Fuel Pier, maintain and secure the pier, respond to emergencies, as well as perform related bunkering pier duties.¹² In particular, the contractor is required to receive imports of fuel oil, jet fuel, diesel, motor gasoline and liquid petroleum products; deliver fuel for export; bunker fuel oil and marine gas oil; and coordinate with ship masters and harbor pilots to ensure safe dockage.¹³

In addition, the contractor is tasked with providing preventive maintenance to the jetty, breasting dolphins, dredging and other safety equipment needed to operate the F-1 Dock; and conducting maintenance repairs required for operations.¹⁴ Further, the contractor is tasked with providing operational access by scheduling operations of the facility by uses; and collecting the Port's user fees.¹⁵

As part of its responsibilities, the contractor is also tasked with responding to emergencies, such as fuel spills; and preparing and securing the facility in the event of an anticipated storm or weather disturbance and storm recovery.¹⁶ The contractor is further required to perform any duties related to bunkering as may be required from time to time.¹⁷

¹² See RFP, Attachment No. 1.

¹³ RFP, Attachment 1.

¹⁴ RFP, Attachment 1.

¹⁵ RFP, Attachment 1.

¹⁶ RFP, Attachment 1.

¹⁷ RFP, Attachment 1.

3. Contract Terms

According to PAG, the 2014 F-1 Fuel Pier Facility Management and Operations Agreement shall generally serve as the proposed contract, with most terms remaining in place.¹⁸ For instance, the default termination provisions that are contained in the 2014 contract shall remain the same. In addition, the scope of the agreement will still include managing vessels that are not petroleum related; the contractor securing liability insurance for \$100 million coverage; and a thirty percent (30%) fee will still be assessed on the assigned value of the contract where the contractor assigns it to a third party.¹⁹

With regard to compensation, for the first two years of the contract, the contractor will be paid a throughput rate of \$0.162 per barrel on the first four million barrels of imported petroleum products.²⁰ This amount reflects a \$0.04 (or 29.6%) increase in the throughput rate, which is currently \$0.125 per barrel for the first three million barrels, and \$0.10 per barrel thereafter.²¹ With respect to years three, four, and five, this fee will increase another three percent (3%) each year, compensating the contractor at a rate of \$0.167, \$0.172 and \$0.177, for the third, fourth and fifth years, respectively.²² All products in excess of four million barrels shall be subject to the rate of ten cents per barrel, which is the same rate provided under the current agreement.

¹⁸ Petition, p. 3.

¹⁹ Petition, p. 3.

²⁰ Petition, p. 2.

²¹ Petition, p. 2.

²² Petition, p. 2.

In addition, there are a few other changes, such as a reduction in the fee for bunkering petroleum products, which will be \$0.33 per barrel, as opposed to the current fee of \$0.66. There is also a new crane rental fee, which is fixed at \$140,000.00 per year.²³

With regard to routine maintenance, PAG will reimburse the contractor up to \$70,000.00 per year for labor and materials for such work, as opposed to the \$60,000.00 cap contained in the current agreement. Lastly, the proposed contract provides for a five-year term.

4. Cost

PAG estimates annual cost for the management fee is \$650,000.00,²⁴ for an estimated total of \$3,250,000.00 for the full five-year term. The annual estimate is based on Tristar handling four million barrels of imported petroleum products per year. PAG submits that the contract will be funded internally through its O&M budget.

5. Tristar

According to its Proposal, Tristar was specifically formed to manage fuel operations in Guam.²⁵ Tristar presently owns and operates the Agat Bulk Fuel Terminal and petroleum cargo lines, which extends from the Agat terminal to the F-1 dock.²⁶ In addition, Tristar's workload includes the storage, transfer, and management of jet fuel for the U.S. Department of Defense.²⁷ Further, Tristar is the current manager and operator of the F-1

²³ Petition, p. 2.

²⁴ Petition, p. 3.

²⁵ Technical Proposal in Response to RFP-PAG-019-004 ("Tristar Proposal"), p. 3 (Aug. 8, 2019).

²⁶ Tristar Proposal, p. 13.

²⁷ Tristar Proposal, p. 13.

facility.²⁸ It has been PAG's contractor for this facility for almost ten (10) years.²⁹ Accordingly, Tristar submits that it has the technical experience and capabilities to manage, operate, and maintain the F-1 Pier and service the operations there.³⁰

6. Board Approval

At the December 22, 2020 meeting, PAG's Board of Directors approved the contract award to Tristar. In the Resolution, the Board indicated that after a series of cost negotiations, discussions, and counteroffers, PAG and Tristar reached an agreement that seemed "fair and reasonable" to PAG.³¹ Accordingly, the Board authorized PAG management to petition the PUC for approval of the award to Tristar.³²

CONCLUSION

Based on the documentation provided, the ALJ found that the subject contract is reasonable and necessary. The operation and management of PAG's F-1 Fuel Pier Facility is indeed crucial to PAG's operations. As indicated by PAG, the contract is vital since "Guam imports all its fuel resources."³³ As a result, "[a]ny disruption to the safe distribution of our fuel resource could be a potential threat to the Public Health, Welfare and Safety of our island."³⁴ Further, this contract is "revenue generating" for PAG and, as PAG stated, this contract ensures

²⁸ Tristar Proposal, p. 14.

²⁹ Tristar Proposal, p. 14.

³⁰ Tristar Proposal, p. 6.

³¹ Resolution, p. 1.

³² Resolution, p. 1.

³³ Petition, p. 1.

³⁴ Petition, p. 1.

that “Guam’s fuel resources are distributed throughout our island efficiently and uninterrupted.”³⁵

The ALJ further found that, based on its experience, expertise, work history, and network, as well as the fact that Tristar currently manages and operates the F-1 facility, it is clear that Tristar is qualified to provide the services set forth in the RFP.

In addition, PAG has demonstrated due diligence in negotiating initially with IP&E for eleven months, and then subsequently with Tristar. In fact, the record reflects that PAG has been engaged in cost negotiations with Tristar since March of last year. The procurement record reflects an initial proposal of \$0.297 per barrel. PAG was, therefore, able to lower the fee to the rate structure discussed in Part 3 above.

Accordingly, based on the documentation provided by PAG in this docket, and for the other reasons set forth therein, the ALJ thereby recommended that the PUC approve the award to Tristar, along with the proposed F-1 Fuel Pier Facility Management and Operations Agreement, at an annual cost of \$650,000.00.

The Commission hereby adopts the findings made in the January 26, 2021 ALJ Report, and therefore, issues the following.

ORDERING PROVISIONS

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

1. That the instant Petition is hereby APPROVED.

³⁵ Petition, p. 3.

2. PAG is authorized to enter into the proposed contract with Tristar Terminals Guam, Inc. related to the management and operation of the F-1 Fuel Pier Facility, at an annual cost of \$650,000.00.

3. That where PAG anticipates that it may exceed this annual amount by 10%, PAG shall seek prior PUC approval pursuant to Section 10 of the Contract Review Protocol.

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

[SIGNATURES TO FOLLOW ON NEXT PAGE]

SO ORDERED this 28th day of January, 2021.



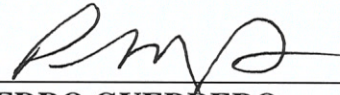
JEFFREY C. JOHNSON
Chairman



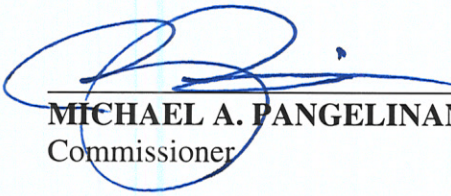
ROWENA E. PEREZ-CAMACHO
Commissioner



JOSEPH M. MCDONALD
Commissioner



PEDRO GUERRERO
Commissioner



MICHAEL A. PANGELINAN
Commissioner



PETER MONTINOLA
Commissioner



DORIS FLORES BROOKS
Commissioner

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BEFORE THE PUBLIC UTILITIES COMMISSION



IN RE: PETITION FOR APPROVAL) PAG DOCKET 21-02
OF AWARD TO GHD INC.)
FOR THE CONSTRUCTION)
MANAGEMENT SERVICES)
FOR THE REHABILITATION) ORDER
OF H-WHARF AND HIGHWAY)
11 ROADWAY)
RECONSTRUCTION BY)
PORT AUTHORITY OF GUAM)

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC”) pursuant to the January 26, 2021 Petition for review and approval of the contract related to the Construction Management Services for the Rehabilitation of H-Wharf and Highway 11 Roadway Reconstruction (the “Petition”), filed by the Jose D. Leon Guerrero Commercial Port, Port Authority of Guam (“PAG” or the “Port”).

On January 27, 2021, the Administrative Law Judge of the PUC (the “ALJ”) assigned to this matter filed an ALJ Report that included his findings and recommendations based on the administrative record before the PUC. The ALJ found the following.

DETERMINATIONS

Back in 2018, PAG issued revenue bonds in order to secure funding for its modernization projects, which include the restoration of its H-Wharf. On March 6, 2020, PAG issued Request For Proposals No. PAG-020-002 to solicit construction management

services (“Construction Manager”) for the Rehabilitation of H-Wharf and Highway 11 Roadway Reconstruction (“RFP”) projects.¹

Based on the RFP, the construction project for the H-Wharf will involve the demolition of the facilities currently sitting on the wharf and the removal of concrete foundations and pavement.² The project will further include the construction of a new wharf, consisting of a new sheet pile bulkhead retaining wall, sheet pile cap with supporting structures, and a new concrete surface.³ The H-Wharf construction will also include the installation of utilities, as well as the paving of about 2.5 acres of upland to serve as an unloading zone.⁴

The Highway 11 roadway reconstruction project will involve the repaving of approximately 4,200 feet, comprised of two 11-foot lanes and a two-foot unpaved shoulder.⁵ The work will include new pavement striping and signage, utilities under the pavement, and storm water piping, just to name a few.⁶

Seven (7) offerors submitted proposals in response to the RFP, which were evaluated by a PAG Evaluation Committee.⁷ The Evaluation Committee thereafter determined GHD to be the best qualified offeror.⁸

¹ Petition, p. 1 (Jan. 26, 2021).

² RFP, p. 19 (Mar. 6, 2020).

³ RFP, p. 19.

⁴ RFP, p. 19.

⁵ RFP, pp. 19-20.

⁶ RFP, pp. 19-20.

⁷ Petition, p. 1.

⁸ Petition, p. 1.

1. PAG's Contract Review Protocol

Pursuant to 12 G.C.A. §12105, PAG may not enter into any contractual agreements or obligations which could increase rates and charges without the PUC's express approval. Accordingly, pursuant to PAG's current Contract Review Protocol, "[a]ll professional services contracts in excess of \$1,000,000" and "[a]ll externally funded loan obligations and other financial obligations, such as lines of credit, bonds, etc., in excess of \$1,000,000," "shall require prior PUC approval" Contract Review Protocol, PAG Docket 09-01, p. 1 (June 20, 2011).

2. Scope of Work and Proposed Contract

a. Scope of Work

Based on the RFP and negotiations between GHD and PAG, the scope of work for the Construction Manager involves the general administration of the construction contract related to the projects, which includes preconstruction conferences, status reports, reviewing payment estimates and change orders, and project close-out services.⁹ Owing to cost negotiations, services related to procurement of the contractor were eventually eliminated from the scope of work.

The Construction Manager will be involved in the preconstruction meetings between PAG, stakeholders, and the contractor.¹⁰ During the construction of the projects, the Construction Manager will hold project meetings and weekly progress meetings, and will prepare reports as required by PAG.¹¹ The Construction Manager will also process

⁹ RFP, pp. 21-22.

¹⁰ RFP, pp. 20-21.

¹¹ RFP, pp. 20-21.

payment requests and review change orders, claims, and disputes.¹² It will also review the contractor's project submissions, surveys, and drawings.¹³ The Construction Manager will further engage in quality control, testing, and inspections.¹⁴ Towards the end of the construction, it will develop a punch list and will perform close-out inspections.¹⁵

In addition, the Construction Manager is required to provide staffing for eighteen (18) months during the construction of the project.¹⁶ During this time, the Construction Manager will provide inspection and engineering support for any civil, structural, electrical, mechanical, pile driving inspection and monitoring, soil engineering, and diving inspections.¹⁷

b. Contract Term

Based on the summary of cost negotiations with GHD contained in PAG's procurement records, the term of the contract shall be for an initial term of two (2) years, with three (3) additional options to renew, but not to exceed five (5) years.¹⁸ This contract will run concurrent with the construction contract.¹⁹ Substantial completion of the construction project itself is scheduled at eighteen (18) months.

¹² RFP, p. 22.

¹³ RFP, pp. 22-24.

¹⁴ RFP, p. 24.

¹⁵ RFP, pp. 22-24.

¹⁶ RFP, p. 25.

¹⁷ RFP, p. 25.

¹⁸ Memorandum from Contract Management Administrator to General Manager, "Cost Negotiations for the Construction Management Services of the Rehabilitation of H-Wharf and Highway 11 Roadway and Reconstruction ("Cost Negotiations Memo."), p. 1 (Dec. 15, 2020).

¹⁹ Cost Negotiations Memo., p. 2.

c. Cost and Funding

According to the Petition, PAG seeks PUC approval of its construction management contract with GHD at a cost of \$2,249,945.54.²⁰ PAG submitted that this contract is necessary in order to ensure “quality control measures are in place in order to meet construction deadlines and to stay within the budgeted amount.”²¹

Based on PAG’s procurement record, PAG and GHD have been engaged in cost negotiations since July 17, 2020.²² PAG and GHD arrived at the final figure above after several meetings and revisions to the proposal and scope of work.²³ According to PAG, this figure saves the Port about \$301,863.65 since the initial offer was for \$2,551,809.19.²⁴

In conversations with PAG, it submitted that this contract will be funded by Port Revenue Bond funds. According to PAG, the cost of the contract will be issued in a lump sum, and will be drawn down on a monthly basis for the term of the contract or upon completion of the project, whichever comes first.²⁵

3. GHD

According to its proposal, GHD has a local staff of over twenty employees, which includes eleven engineers with expertise in the fields of civil, marine structural, electrical, mechanical, pile driving, and geotechnical engineering, as well as construction

²⁰ Petition, p. 2.

²¹ Petition, p. 2.

²² “Letter of Acceptance” from PAG to GHD, p. 1 (Dec. 15, 2020).

²³ “Letter of Acceptance” from PAG to GHD, p. 1.

²⁴ “Letter of Acceptance” from PAG to GHD, p. 1.

²⁵ “Letter of Acceptance” from PAG to GHD, p. 1.

management.²⁶ Part of its representative work includes the PAG's Port Facility Expansion Project; the P-204 Wharf Improvements NAVFAC Uniform & Tango Wharf Replacement; and projects at Naval Base Guam, including the Repair of Glass Breakwater North Shore, and the Sumay Cove Bulkhead Replacement.²⁷

Further, based on its proposal, GHD's "Maritime and Coastal Group" has experts in its team "providing coastal planning, modeling, engineering design, and constructability reviews for coastal defense systems, seawalls, port facilities, harbors, floating and fixed docks, coastal and marine piles, boat ramps, wharves, fendering systems, dolphin structures, mooring systems, piers, coastal promenades, causeways, [and] ferry terminals," to name a few.²⁸

RECOMMENDATION AND CONCLUSION

Based on the record before the Commission, the ALJ found that the subject contract properly underwent Guam's competitive bidding process. The ALJ further found that the procurement record reflected that PAG and GHD had been engaged in cost negotiations since July 17, 2020; and that PAG and GHD arrived at the final figure after several meetings and revisions to the proposal and scope of work.²⁹ Accordingly, based on these negotiations, PAG was able to secure \$301,863.65 in savings.³⁰

Moreover, the ALJ found that, the record also indicates that GHD is linked to experts who have extensive experience in "providing coastal planning, modeling,

²⁶ GHD Proposal, p. 44 (May 7, 2020).

²⁷ GHD Proposal, p. 44.

²⁸ GHD Proposal, p. 46.

²⁹ "Letter of Acceptance" from PAG to GHD, p. 1.

³⁰ "Letter of Acceptance" from PAG to GHD, p. 1.

engineering design, and constructability reviews for coastal defense systems, seawalls, port facilities, harbors, floating and fixed docks, coastal and marine piles, boat ramps, wharves, fendering systems, dolphin structures, mooring systems, piers, coastal promenades, causeways, [and] ferry terminals,” as a few examples.³¹

GHD has eleven engineers on staff locally with expertise in the fields of civil, marine structural, electrical, mechanical, pile driving, and geotechnical engineering, as well as construction management.³² Its representative work includes the Port Facility Expansion Project; the P-204 Wharf Improvements NAVFAC Uniform & Tango Wharf Replacement; and projects at Naval Base Guam, including the Repair of Glass Breakwater North Shore and Sumay Cove Bulkhead Replacement.³³

Accordingly, based on this record, the ALJ recommended that the PUC approve the proposed contract with GHD, at a cost of \$2,249,945.54.

The Commission hereby adopts the findings made in the January 26, 2021 ALJ Report, and therefore, issues the following.

ORDERING PROVISIONS

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

1. That the instant Petition is hereby APPROVED.

³¹ GHD Proposal, p. 46.

³² GHD Proposal, p. 44.

³³ GHD Proposal, p. 44.

2. PAG is authorized to enter into the proposed contract with GHD, Inc. for construction management services related to the Rehabilitation of H-Wharf and Highway 11 Roadway Reconstruction projects, at a total cost of \$2,249,945.54.

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

[SIGNATURES TO FOLLOW ON NEXT PAGE]

SO ORDERED this 28th day of January, 2021.



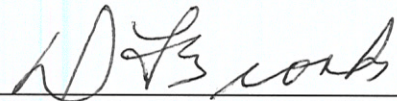
JEFFREY C. JOHNSON
Chairman

ROWENA E. PEREZ-CAMACHO
Commissioner

JOSEPH M. McDONALD
Commissioner

PEDRO GUERRERO
Commissioner

MICHAEL A. PANGELINAN
Commissioner

PETER MONTINOLA
Commissioner

DORIS FLORES BROOKS
Commissioner

P213009.JRA

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN THE MATTER OF:) GPA Docket 21-04
)
Guam Power Authority Levelized Energy)
Adjustment Clause (LEAC)) **ORDER**
)
)
)
_____)

INTRODUCTION

This matter comes before the Guam Public Utilities Commission [“PUC”] upon the Petition of the Guam Power Authority [“GPA”] to set the LEAC Factor effective February 1, 2021, for the next six-month period.¹ In its Petition, GPA seeks to maintain the Fuel Recovery Factor at \$.086800/kWh effective for meters read on or after February 1, 2021. The change would reflect “no increase” in the LEAC factor and no increase for a residential customer utilizing an average of 1,000 kilowatt hours per month.²

If the current LEAC Factor is maintained at \$.086800/kWh for the next six-months, GPA initially projected that there would be an under-recovery of \$30.5M by July 31, 2021.³ To offset 50% of the projected under-recovery (i.e. \$15M), “GPA has identified \$5M internally funded CIP to be delayed in FY2021, and GPA proposes a \$10M withdrawal from the self-insurance fund that could be refunded by activating the self-insurance surcharge beginning August 1, 2021, to fully restore the fund back to \$20M over a five year period.”⁴ GPA’s withdrawal of \$10M from the self-insurance fund would be refunded by activating the self-insurance surcharge beginning August 1, 2021, to restore

¹ GPA LEAC Filing, GPA Docket 21-04, dated December 4, 2020.

² Id., at p. 1.

³ Id.

⁴ Id.

the self-insurance fund to its current \$20M balance, over a five year period.⁵ GPA's updated fuel price figures in January 2021 indicates that the under-recovery will actually be \$42.9M due to a 50% increase in fuel prices.⁶

BACKGROUND

During the last LEAC period from February 1, 2020, through July 31, 2020, the PUC reduced the LEAC factor on three occasions because of steep declines in fuel prices. During such period, the PUC reduced the LEAC Factor by nearly 50%, from \$0.154242/kWh to \$0.086800 /kWh.⁷ At its meeting on July 30, 2020, the PUC maintained the same LEAC Factor of \$0.086800 for meters read on or after August 1, 2020, through January 31, 2021.⁸ The Commissioners determined that, because of the impact of the corona virus pandemic upon Guam and its ratepayers, that it was not appropriate to increase power bills at that time. The LEAC Factor of \$0.086800 was allowed to remain in effect in order "to smooth rates and lessen the impact of such rates upon the ratepayers."⁹

Regarding setting the new LEAC Factor for the upcoming six-month period, GPA initially proposed that, for the LEAC period of February 1, 2021 through July 31, 2021, the Factor be increased from \$0.086800/kWh to \$0.111653/kWh.¹⁰ Such was GPA's initial proposal to the Consolidated Commission on Utilities at its Regular Meeting on

⁵ Id., at p. 2.

⁶ Email from GPA CFO John Kim to PUC ALJ Fred Horecky re: Proposed LEAC, dated January 19, 2021.

⁷ See PUC Order, GPA Docket 20-03, dated January 30, 2020, at p. 5 (reduction of LEAC Factor from \$0.154242/kWh to \$0.131145/kWh); PUC Order, GPA Docket 20-12, dated March 26, 2020, at p. 3 (reduction of LEAC Factor from \$0.134474/kWh to \$0.110039/kWh); and PUC Order, GPA Docket 20-12, dated May 28, 2020, at p.4 (reduction of LEAC Factor from \$0.110039/kWh to \$0.08680/kWh).

⁸ PUC Order, GPA Docket 20-13, dated July 30, 2020, at p. 4.

⁹ Id., at p. 3.

¹⁰ GPA Issues for Decision Relative to LEAC, included in the CCU Regular Meeting Packet for November 24, 2020.

November 24, 2020. That increase would constitute a 28.63% increase from the current LEAC rate. However, the Consolidated Commission on Utilities “ordered” GPA “to seek ways to mitigate LEAC increase in order to further assist ratepayers during this pandemic period...”¹¹ The CCU determined that it would leave the LEAC Factor at \$0.086800kWh for the six-month period commencing February 1, 2021; to “offset” 50% of the total projected under-recovery of \$30M, the CCU authorized GPA to use \$10M of the Self-insurance fund to off-set the projected LEAC under-recovery and to reduce the internally funded CIP budget by \$5M in FY’2021 to be used to off-set the projected LEAC under-recovery.¹²

The ALJ filed his Report dated January 25, 2020.¹³

DETERMINATIONS

1. The GPA/CCU Offer to withdraw \$10M from the Self Insurance Fund and offset that Amount against the LEAC Under-Recovery should be accepted and ordered.

The GPA Petition stated that \$10M from the Self Insurance Fund should be offset against the LEAC Under-Recovery. The purposes of the Self Insurance Program are stated in the Protocols [“SIPP”]. Protocol 1 indicates that the SIP was established principally to reimburse GPA for “losses resulting from hazards such as accidents, explosions, fires, floods, storms, wind events, cyclones, typhoons, earthquakes, tsunami’s, natural disaster, equipment failures, **and similar events...**”.

¹¹ CCU Resolution No. 2020-24, authorizing the Management of the Guam Power Authority to Petition the Guam Public Utilities Commission for No Change in the Levelized Energy Adjustment Clause, approved December 24, 2020, at p. 2.

¹² Id., at pgs. 2-3.

¹³ ALJ Report, GPA Docket 21-04, dated January 25, 2020.

The language "similar events" is broad and could be extended to the present corona virus pandemic prevalent in Guam. Application of Self Insurance funds to the Under-Recovery will benefit ratepayers. When the Self-Insurance funds are withdrawn, and the total withdrawal brings the fund below \$18M, GPA shall be authorized to immediately reinstitute the Self Insurance surcharge to ratepayers in accordance with the SIPP (Protocols).

At the PUC Meeting, GPA General Manager John Benavente stated that the GPA system had been strengthened and hardened since the typhoons in the early 2000s. Now it would not likely be as difficult to repair the system after a typhoon, and it would not be necessary to use the same level of funds from the Self Insurance Fund.

2. The GPA/CCU Offer to withdraw \$5M from the internally funded Capital Improvement Project Funds and offset that Amount against the LEAC Under-Recovery should be accepted and ordered.

The offsetting of CIP funds against the LEAC Under-recovery will benefit ratepayers and lessen the need to raise the LEAC to a higher level.

3. Establishing A Fuel Recovery Factor of \$0.086800/kWh would provide insufficient customer rates to pay for GPA's actual fuel costs in the upcoming LEAC period.

GPA's own Petition demonstrates that maintaining the LEAC Factor at \$.086800/kWh for the next six-months would result in an under-recovery on July 31, 2021 of \$30.3M.¹⁴ The highest previous under-recovery level was \$16.775M in August 2017. It took

¹⁴ GPA LEAC Filing, GPA Docket 21-04, dated December 4, 2020.

approximately two and one-half years of increases in the LEAC Factors to recover such amount.¹⁵

Fuel oil price figures cited in CCU Resolution No. 2020-24 prove that maintaining the LEAC factor of \$.086800/kWh is entirely inadequate to recover the actual cost of GPA's fuel oil, or even to recover any of the present under-recovery of over \$15M. In fact, maintaining the LEAC Factor at \$.086800kWh for the next six months will essentially double the present under-recovery of GPA to the level of \$30.3M.¹⁶

The average market price of residual fuel oil and diesel used in the initial GPA filing for the current LEAC period was \$39.30/bbl. for the six-month period ending January 31, 2021. However, the current projection for the same period now is \$48.50/bbl. This means that fuel price used to calculate the LEAC Factor in the last six months was far too low. Ratepayers were not charged adequate amounts through LEAC to recover fuel prices. The projected average price of residual fuel oil and diesel for the period ending July 31, 2021 is expected to reach \$53.82/bbl. It makes no sense to maintain the current low LEAC factor in a period where fuel oil and diesel prices have been rising rapidly.

Since the LEAC Factor of \$.086800kWh was approved for meters read on and after June 1, 2020, there has been a substantial increase in the prices of residual fuel oil and diesel fuel. Morgan Stanley fuel oil pricing figures indicate the following:

¹⁵ Historical LEAC Over (Under) Recovery, CCU Regular Meeting Packet, November 24, 2020.

¹⁶ CCU Resolution No. 2020-24 Authorizing the Management of the Guam Power Authority to Petition the Guam Public Utilities Commission for no Change in the Levelized Energy Adjustment Clause, adopted on November 24, 2020, at p. 2.

	June 1, 2020	August 4, 2020	November 4, 2020	January 13, 2021
SING HSFO 180 CST (per metric ton)	\$212.85	\$258.12	\$266.48	\$342.82
SING Gasoil 10 PPM (per barrel)	\$41.54	\$49.13	\$43.91	\$61.91 ¹⁷

Thus, since June 1, 2020, the price of SING HSFO 180 CST has increased by over 61%. The Gasoil 10 PPM price has increased by over 49%. Yet, GPA now proposes to maintain the LEAC Factor at the same level which it was on June 1, 2020. The PUC should not maintain a LEAC Factor that is inadequate to pay the rising costs of fuel.

During the PUC Meeting on January 28, 2021, both GPA GM John Benavente and CCU Chairman Joey Duenas voiced their concerns about the dramatic increases in fuel prices and GPA's ability to continue to pay for fuel. They did not object to an increase in the LEAC Factor.

4. If the LEAC Factor is not increased now, Ratepayers will face even more substantial LEAC Increases in the Future.

"Kicking the can down the road" is not in the interest of ratepayers. Future increases will only be more severe and prolonged. The "under-recovery" hole will only get

¹⁷ These prices are compiled from the Morgan Stanley Asia Morning Call Price Indications dated June 1, 2020, August 14, 2020, November 4, 2020, and January 6, 2021.

deeper and deeper. It can already be contemplated that increases will be required over the next few LEAC periods unless fuel prices unexpectedly decline.

The appropriate process is for the PUC to charge ratepayers for the costs of fuel that GPA purchases, using the most current fuel price estimates. Under Tariff Z, ratepayers are required to be billed for the costs of fuel, and to reimburse GPA for such fuel costs as a pass through. The PUC must remain true to the guiding principles of LEAC and the determination of such Factor in accordance with Rate Schedule "Z".

Since at least August 2020, ratepayers have been billed at a LEAC Factor rate that does not cover GPA' fuel costs. It should be remembered that, as recently as January 30, 2020, the LEAC Factor was \$0.154242/kWh. For the months of February and March 2020, the LEAC Factor was \$0.131145/kWh. For April and May 2020, the LEAC Factor was \$0.110039/kWh. For June and July 2020, and continuing up to the present time, the LEAC Factor was reduced to 0.086800/kWh. Ratepayers should expect that, during times of rapidly increasing fuel prices, the LEAC Factor must again be increased.

5. The LEAC Factor for the next six months should be increased to \$0.110000 per kWh.

GPA had initially proposed raising the LEAC Factor for the next six-month period to \$0.111653/kWh. In accordance with established LEAC procedure, GPA always updates the residual fuel oil and diesel prices for the five-day period ten days before the PUC meeting. On December 18, 2020, the ALJ requested that GPA CFO John Kim provide an updated average of the Morgan Stanley Fuel Forecast prices for the five-day

period occurring ten days before the PUC January 28, 2021, meeting date.¹⁸ On January 19, 2021, CFO Kim provided the updated fuel prices.¹⁹

In accordance with the Morgan Stanley fuel pricing from January 11, 2021, to January 15, 2021, the average price per bbl. RFO was \$60.61; the average price for bbl. Diesel was \$71.13. The average market price of residual fuel oil and diesel used in the GPA filing for the current LEAC (August 1, 2020-January 31, 2021) was roughly \$40 per bbl. There has been a 50% increase in fuel oil prices since the beginning of the last LEAC period. As previously indicated in this Report, similar increases in fuel prices of 50% and greater were reflected in the SING HSFO 180 CFD and SING Gasoil 10 PPM prices.

To fully recover fuel costs for this upcoming LEAC period, without any offsets, the LEAC factor would have to be set at \$0.157233. If the PUC adopts a 50% recovery factor of \$0.122016, without any offsets, the total under-recovery as of July 31, 2021 would be \$21,451,000. See Proposed LEAC Rate, Feb. 21-Jul. 21, attached to the ALJ Report as Exhibit "1". If the PUC decided to maintain a LEAC Factor of \$0.086800 for the upcoming LEAC period, without any offsets, the Commission would have to raise the LEAC factor to \$0.210740 for the next LEAC period from August 21-Jan. 22 to fully recover the under-recovery. See Proposed LEAC Rate for August 2021 – January 2022, attached to the ALJ Report as Exhibit "2".

However, with the \$15M offsets against the LEAC under-recovery that GPA has proposed, and the increase in the LEAC Factor to \$.110000, the under-recovery as of July 31, 2021, is projected to be in the range of \$13-15M. An increase in the LEAC Factor to \$.110000 will result in an approximate 30% recovery of the under-recovery amount.

¹⁸ Email from ALJ Horecky to GPA CFO Kim, dated December 18, 2020.

¹⁹ Email from GPA CFO John Kim dated January 19, 2021.

Attached hereto as Exhibit "A" are the approved LEAC Factors that will be in effect for meters read on and after February 1, 2021.

ORDERING PROVISIONS

After carefully reviewing the record in this proceeding, having considered the LEAC Filing of GPA, and the Administrative Law Judge Report, and after discussion at a duly noticed regular meeting held on January 28, 2021, for good cause shown and on motion duly made, seconded and carried by affirmative vote of the undersigned Commissioners, the Guam Public Utilities Commission hereby **ORDERS** that:

1. The secondary Fuel Recovery Factor of \$0.110000/kWh shall be effective for meters read on or after February 1, 2021.
2. The current singular LEAC factors are hereby adjusted, effective February 1, 2021, as shown in the following table:

LEAC

Delivery Classification	\$ per kWh
Secondary -	\$0.110000
Primary – 13.8 KV	\$0.106891
Primary – 34.5 KV	\$0.106854
Transmission – 115 KV	\$0.105271

For the entire LEAC period, these changes represent an increase in the total bill of the average residential customer of 12.79%.

3. As requested by GPA, the forecast of the Working Capital Fund Requirement will remain the same, so there will not be a change in the Working Capital Surcharge for the period of February 1, 2021, through July 31, 2021.
4. GPA should file for a change in the LEAC factors to be effective August 1, 2021, on or before June 15, 2021.
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]

Dated this 28th day of January 2021.



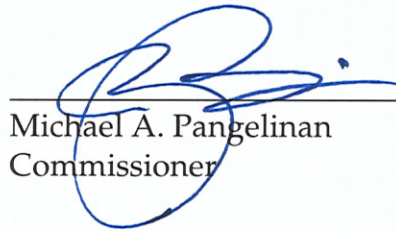
Jeffrey C. Johnson
Chairman



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

GPA

Proposed LEAC Rate (\$000)

As PUC Approved	
MS Pricing 10.29.20 to 11.04.20	
Feb 21- Jul 21	
Average Price per Bbl-RFO	\$ 60.61
Average Price per Bbl-Diesel	\$ 71.13
Number 6 (HSFO/LSFO)	\$ 49,796
Number 2 (Diesel)	37,869
Renewable (Solar)	4,690
TOTAL COST	\$ 92,355
Handling Costs	6,443
Total Current Fuel Expense	\$ 98,799
Civilian Allocation	80.530%
LEAC Current Fuel Expense	\$ 79,563
Estimated DSM for this period	\$ 1,500
Deferred Fuel Expense at the beginning of the period	14,709
Total LEAC Expense	\$ 95,772
Less: Trans. Level Costs	(3,377)
Distribution Level Costs	\$ 92,395
Over recovery at the end of the period	\$ (28,764)
Adjusted Distribution Level Costs	\$ 63,631
Distribution Level Sales (mWh)	578,459
LEAC Factor Distribution	0.110000
Current LEAC Factor Distribution	0.086800
Increase/(Decrease)	0.02320
Monthly Increase/(Decrease) - 1000 kWh	\$ 23.20
% Increase/(Decrease) in LEAC	26.73%
% Increase/(Decrease) in Total Bill	12.79%
Discount (3%) - Primary 13.8 KV	\$ 0.106891
Discount (4%) - 34.5 KV	\$ 0.106583
Discount (5%) - 115 KV	\$ 0.105271

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN THE MATTER OF:

) GPA DOCKET 19-09

)
)
) PETITION OF THE GUAM ASSOCIATION
) OF REALTORS AND CERTAIN GUAM
) SENATORS TO ESTABLISH A
) RESIDENTIAL RATE FOR MULTI-
) FAMILY ACCOMODATIONS
)

IN THE MATTER OF:

) GPA DOCKET 20-10

)
)
) THE PETITION OF THE GUAM POWER
) AUTHORITY FOR CREATION OF
) CONDOMINIUM RATE SCHEDULE.
)

ORDER

INTRODUCTION

This matter comes before the Guam Public Utilities Commission [“PUC”] upon the Petition of the Guam Association of Realtors and certain Senators of the Guam Legislature for Allocation of Residential Rate Schedule for Residential Multi-Family Accommodations.¹ The Petition sought the establishment of a residential power rate for residents living in apartment buildings, condos, and other multi-family residential buildings. According to the Petition, such residents are presently charged at a commercial power rate. Based upon principles of fairness and equity, the Petition sought the creation of a new power rate schedule for residential multi-family

¹ Petition of the Guam Association of Realtors and Certain Senators of the 35th Guam Legislature, GPA Docket 19-09, Allocation of Residential Rate Schedule for Residential Multi-Family Accommodations, filed March 20, 2019.

accommodations so that residents in such accommodations are not charged higher rates than those that reside in single family residences.²

The Administrative Law Judge [“ALJ”] conducted proceedings in GPA Docket 19-09. He requested that GPA indicate its position on whether equivalent residential rates should be extended to condominiums and apartment residents. Subsequently, after GPA’s Consultant had conducted a Cost of Service Study, and a review of Condominium and Apartment power rates, the Guam Consolidated Commission on Utilities [“CCU”] determined that it would authorize GPA to file a Petition for the Creation of a Condominium Rate.³ On March 10, 2020, GPA filed its Petition with the PUC for Creation of Condominium Rate, GPA Docket 20-10.⁴ The issues now before the PUC are whether it should approve the new Rate Schedule “D”, Condominium Service, and authorize the inclusion of “three phase” service in the current Schedule “R” for Residential Service.

BACKGROUND

1. The Legislative History

The concept that residents of condominiums, apartments, and multi-family accommodations should be accorded residential power rates initially seems to have been developed in a series of Bills introduced in the Guam Legislature. Over the past five years, Senators of the Guam legislature have introduced three separate bills that would have mandated the Guam Power Authority to implement “comparable Rate

² Id.

³ Guam Consolidated Commission on Utilities Resolution No. 2020-05, Authorizing the Management of the Guam Power Authority to Petition the Guam Public Utilities Commission to create a Condominium Rate Schedule, adopted and approved on February 21, 2020.

⁴ GPA Petition for Creation of Condominium Rate, GPA Docket 20-10, filed March 10, 2020.

Schedule Charges for Residential Multi-Family Accommodations.”⁵ Each bill would require GPA to develop and establish a residential rate schedule for residential multi-family accommodations (condominiums and apartments) providing equitable, comparable residential rates notwithstanding if the building complex was on a master meter or meters, “on par with the Rate Schedule R, as is accorded residential dwellings with individual metering.” Each of the three bills included similar provisions; none of the bills has been enacted into law.

The bills were each premised upon a finding that residents of condominiums, apartments, and multi-family accommodations were charged excessive commercial rates even though they were not businesses, but residences. Christopher Felix, a past President of the Guam Association of Realtors, testified in favor of Bill 8-33 by stating that multi-family complexes had to be wired for generators and large meters. Since large meters were utilized for multi-family accommodations, GPA billed such residences by meter size, not consumption. He believed that system created an inequity of “15-35%, such that people who lived in condo’s paid higher power rates.”⁶

In 2019, a public hearing was held on Bill 37-35, the most recent Bill which sought to require residential rates for multi-family accommodations. The Guam Public Utilities Commission submitted testimony in opposition the Bill 37-35. The testimony of Chairman Jeff Johnson stated that Bill would “undermine the independent rate-making authority of the PUC”, and would interfere with the powers of the PUC in violation of GPA rate covenants. The testimony advised that if ratepayers or interested parties sought the creation of a new residential rate schedule for residential multi-

⁵ These Bills include: Bill 408-32 (Introduced October 9, 2014, by Senators D. Rodriguez & T. Ada); Bill 8-33 (Introduced January 5, 2015 by Senator D. Rodriguez); and Bill 37-35 (Introduced on February 6, 2019, by Senators T. Taitague, C. Ridgell, and Speaker T. R. Muna Barnes).

⁶ Notes of Beatrice P. Limtiaco, GPA Assistant GM, Administration, of Public Hearing on Bill 8-33, January 29, 2015, transmitted to ALJ Fred Horecky on March 11, 2019.

family accommodations, they should file a request with the Guam Public Utilities Commission.⁷

2. GPA Docket 19-09

Approximately nine days after the Legislative public hearing on Bill No. 37-35, the Guam Association of Realtors and certain Senators of the 35th Guam Legislature filed their Petition for Allocation of Residential Rate Schedule for Residential Multi-Family Accommodations, dated March 20, 2019, with the PUC. The ALJ first scheduled a Preliminary Scheduling Conference in the matter.⁸ GPA was ordered to report to the parties and the ALJ concerning its efforts to obtain a cost of service study regarding rates currently charged to residents of multi-family accommodations, and the process by which it would determine the financial impact upon GPA and ratepayers of changing such rates from commercial to residential.⁹ GPA was also asked to determine when it would be able to make a final recommendation in this matter and to submit any request for action to the PUC.¹⁰

At the Conference, GPA indicated that it had engaged a consultant to conduct a cost-of-service study which would determine the financial impact upon GPA and its ratepayers of changing the power rates for residents of multi-family accommodations from commercial to residential.¹¹ GPA also agreed to have its consultant develop a cost-based ideal rate structure. Subsequent actions would include presentation of the studies to the Consolidated Commission on Utilities and recommendations/proposed

⁷ Testimony of the Guam Public Utilities Commission on Bill No. 37-35 (COR), Chairman Jeffrey C. Johnson, dated March 11, 2019.

⁸ ALJ Order for a Preliminary Scheduling Conference, GPA Docket 19-09, dated May 1, 2019.

⁹ Id., at par. 1.

¹⁰ Id., at par. 3.

¹¹ Letter from GPA Consultant UFS, GPA Docket 19-09, addressed to John Kim, Chief Financial Officer, GPA, dated April 29, 2020.

rate modifications to be submitted to the Public Utilities Commission.¹² After GPA's Consultant had completed much of the work on a Cost-of-Service Study, a subsequent hearing was held on November 19, 2019. Various parties appeared, including condominium residents. At that time GPA had not yet determined its position on implementing a new condominium rate schedule but hoped to present its position to the Consolidated Commission on Utilities at its January 2020 meeting. The ALJ continued his efforts in following up with GPA concerning its position on implementing a condominium rate schedule.¹³

In GPA Docket 19-09, GPA's consultant Utility Financial Solutions LLC completed a substantial amount of work, including: Electric Cost of Service Study and Financial Projection, dated October 24, 2019; Electric Department Cost of Service Overview; and Guam Power Authority Electric Rate Preliminary Study Results by Mark Beauchamp, President, Utility Financial Solutions. These reports are part of the record in this Docket, and copies have been provided to the Commissioners.

3. GPA Docket 20-10

In Consolidated Commission on Utilities Resolution No. 2020-05, enacted on February 21, 2020, the Guam Consolidated Commission on Utilities authorized the management of GPA to petition the Guam PUC to create a condominium rate schedule.¹⁴ In response to the PUC request for a recommendation from GPA and CCU on the Realtors/Senators petition to provide residential rates for condominium homes, the CCU indicated that "GPA seeks an **equitable rate plan** which reflects actual cost of

¹² Id.

¹³ Email from PUC ALJ Fred Horecky to GPA Assistant General Manager Beatrice Limtiaco dated December 10, 2019.

¹⁴ Guam Consolidated Commission on Utilities Resolution No. 2020-05, Authorizing the Management of the Guam Power Authority to Petition the Guam Public Utilities Commission to create a Condominium Rate Schedule, adopted and approved on February 21, 2020.

service...” (emphasis added).¹⁵ The CCU authorized GPA file a petition which would “... create a rate for condominiums with master meter servicing multiple dwelling units not individually metered, and amend Rate Schedule R to include 3-phase service metered single family dwellings...”.¹⁶ The proposed new tariff, Schedule “D”, Condominium Service, was attached to the CCU Resolution as Exhibit “A”. Schedule “D” is attached to the ALJ Report as Exhibit “1”. The tariff is available to condominium buildings in service or within the active building permit process as of the approved date by the tariff by the Public Utilities Commission. The CCU indicated that some condominium customers might now wish to change their Rate Schedule (G, J, or P) and afforded customers a “one-time option to elect to transfer to Rate Schedule D.”¹⁷

In its Petition filed on March 10, 2020, GPA petitioned PUC to create a Condominium Rate Schedule, and to amend Rate Schedule R to include three phase service metered single family dwellings.¹⁸ On March 11, 2020, the ALJ advised the Senator and Realtor parties that GPA had filed its petition to create a Condominium Rate Schedule.¹⁹

The ALJ filed his Report in this docket dated January 25, 2021. The PUC adopts the conclusions and recommendations in the ALJ Report.

PUBLIC HEARINGS

The ALJ further advised the parties that the PUC would need to conduct three public hearings before the new rate, if approved, could be effective.²⁰ On May 7, 2020,

¹⁵ Id., at p. 1.

¹⁶ Id.

¹⁷ Id., at p. 2.

¹⁸ GPA Petition for Creation of Condominium Rate, GPA Docket 20-10, filed March 10, 2020.

¹⁹ Email from PUC ALJ Fred Horecky to Senator/Realtor/GPA parties, GPA Docket 19-09, dated March 11, 2020.

²⁰ Id.

the ALJ indicated to the parties that the PUC was unable to schedule public hearings in the villages due to the corona virus situation.²¹ Subsequently, in early August 2020, PUC Administrator Palomo was able to secure permission from the Mayors of the Villages of Dededo and Asan to schedule public hearings on this matter at village facilities. Three Notices of Public Hearings were published in the Pacific Daily News, indicating that a public hearing would be held in Hagatna on August 20 and public hearings in Dededo and Asan would be held on August 25.²² However, on August 14, the Governor declared that Guam was back in PCOR1 due to the coronavirus pandemic. The Mayors Offices in Dededo and Asan no longer wanted the public hearings to be held in the villages. The PUC had to cancel the public hearings.²³

In December 2020, the PUC Administrator was able to arrange for the holding of public hearings. The PUC caused Public Notices for Public Hearings on GPA's Petition to create a Condominium Rate Schedule to be issued. The Notice of Public Hearings were published in the Pacific Daily News on December 29, 2020, January 5, 2021, and January 11, 2021.²⁴ The PUC conducted three public hearings on the proposed Condominium Service Rate Schedule D: on January 13, 2021, at 6:30 pm on the Third Floor, GCIC Building, Hagatna; on January 14, 2021, at 5:30p.m. at the Asan Community Center; and on January 14, 2021, at 7:00p.m. at the Dededo Senior Citizens Center.

John Kim, the Chief Financial Officer of the Guam Power Authority, gave a summary presentation on the proposed condominium Service Schedule "D" at each of the three public hearings. His presentation is attached to the ALJ Report as Exhibit "2".

²¹ Email from ALJ Fred Horecky to Senator/Relator/GPA parties advising that public hearings could not yet be scheduled, GPA Docket 19-09, dated May 7, 2020.

²² Notice of Public Hearing was published in the Pacific Daily News on August 6, August 13, and August 18.

²³ Notice of Cancellation of Public Hearings was published in the Pacific Daily News and the Guam Post on August 19, 2020.

²⁴ Notice of Public Hearing was published in the Pacific Daily News on December 29, 2020, January 5, 2021, and January 11, 2021.

His presentation demonstrated that 22 out of 25 condos/multi-family units will have rate reductions if Schedule "D" is adopted. The proposed rates are **less expensive** for the condo/apartment customers than residential rates.

At the Hagatna hearing, Shawn Blas, the President of the Guam Association of Realtors, voiced his support for the decrease in rates for condo residents. He noted that at least two former presidents of the Guam Association of Realtors had supported providing residential rates to condominium residents.

Senator Telo Taitague, one of the petitioners in GPA Docket 19-09, did not feel that GPA's proposal accomplished the intent of Bill 37-35, which was the establishment of comparable residential rates for customers residing in multi-family buildings. Some condominium residents would not benefit from the proposed condo rate. A copy of Senator Taitague's Testimony is attached to the ALJ Report as Exhibit "3". Senator Taitague testified at all three public hearings.

At the Asan Public Hearing, Senator Taitague stated that the proposed condo rate schedule did not accomplish the intent of Bill No. 37-35, which was "parity" and "equality." Residential rates should be charged to those living in condos as to those in residences. The PUC should assess if GPA has met the intent of Bill 37-35 which is rate parity. If not, the proposal should be rejected. John Duenas, a resident of Villa Kanton Tasi ["VKT"], believed that power consumption of condo residents' units should be the same as residential rates. In his view, GPA at all but admitted that charging a commercial rate for condo dwellers was a mistake. Mr. Duenas argued that under Schedule "D", VKT would pay higher rates. The demand charge has increased. A true and correct copy of Mr. Duenas's testimony is attached to the ALJ Report as Exhibit "4".

Richard Long testified and questioned why there was a demand charge for condominium units. He did not understand why there was a condo rate, but that

condos should all be charged at the residential rate. A true and correct copy of Mr. Long's Testimony is attached to the ALJ Report as Exhibit "5".

At the Dededo Public Hearing, another resident of Villa Kanton Tasi, Jere Johnson, testified that the intent of the proposed changes by GPA was good. However, it may not accomplish its purpose. Demand charges would be increased from \$5.80 to \$12.00. There could be an increase in monthly charges. He felt that with the proposed condo rate, VKT would pay more in December 2020.

After the hearings, President Shawn Blas of the Guam Association of Realtors submitted written testimony, which stated in part as follows: "GARs stance on the petition is that we would like to see equal or close to equal residential power rates for all individually owned residences on Guam, to include condominiums and other multi-family dwellings. We believe that this is fair and what is good for the homeowners of such residences regardless of the classification their power meter has."²⁵ His testimony is attached to the ALJ Report as Exhibit "6".

DETERMINATIONS

1. New Rate Schedule D, Condominium Service

This new Schedule would be applicable to condominiums with master meters servicing multiple dwelling units but would not include units individually metered. The new schedule would be available for condominiums in service or applied for before the effective date of this Schedule. The ratepayers, which in this case are the condominiums and apartments, would have the right to make a one-time election to move to rate schedule D from rate schedule G, J, or P. Once the customer is transferred

²⁵ GAR President Shawn Blas' Testimony is attached hereto as Exhibit "6".

to rate schedule D, the customer cannot move to another rate schedule. The Condominium Rate Schedule D would not be available to new condominiums or multi-family construction. New construction would need to consider metering and energy efficiency to obtain residential rates.²⁶

The following charges are applicable under Schedule “D”:

Monthly Rate:

Energy Charge:	-per kWh	\$0.06060
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Demand Charge:

Per kW of billing demand per month	-per kW	12.00
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Customer Charge:	-per month	\$59.25
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Determination of Demand:

The maximum demand for each month shall be the maximum average load in kW during any fifteen-minute period as indicated by a demand meter. The billing demand for each month shall be the maximum demand for such month or, 85% of the customer’s highest metered maximum demand for the preceding (11) eleven months. The Fuel Recovery, Insurance, Emergency Water Well Wastewater, and Working Capital Fund charges would be applicable to ratepayers under Schedule “D”, similar to residential ratepayers.²⁷

²⁶ Summary Presentation by John Kim, GPA CFO, Exhibit “2”

²⁷ GPA Petition, Exhibit “A”, Guam Power Authority Schedule “D”, Condominium Service.

The Energy Charge for Schedule D is less than the per kWh charge for the first 500kWh per month for Residential Service under Schedule R. The Energy Charge is designed to recover the power supply and capacity costs for the Schedule D service.²⁸ The Demand Charge, based upon peak demand, recovers distribution costs.²⁹

At present, GPA has determined that there are 26 condominium and apartment customers that are presently served under Rate Classes G, J, and P:

Rate Class	Number of Customers	kWh	Demand
G	1	1,244,529	3,186
J	15	5,725,954	13,343
P	10	16,642,461	33,661
Total	26	23,612,943	50,189³⁰

These customers would all be eligible to transfer to Schedule “D” Condominium Service.

The most recent listing of condominium and apartments that would be affected through classification under Schedule “D” is attached to the ALJ Report as Exhibit “7”.³¹ The list was provided as the “most updated listing.” Attached to the ALJ Report as Exhibit “8” is a listing of Customers and the projected annual rate change for each under Schedule “D”.³² The vast majority of customers would experience a rate

²⁸ Zoom conference between PUC ALJ Fred Horecky, GPA Legal Counsel Graham Botha, GPA CFO John Kim, and GPA Rate Consultant Mark Beauchamp on August 14, 2020.

²⁹ Id.

³⁰ Draft Report, Guam Power Authority Cost of Service & Condominium and Apartment Rate Development, dated October 24, 2019 (prepared by Utility Financial Solutions, LLC) at p. 29.

³¹ Exhibit “7” was provided to ALJ Horecky by GPA Legal Counsel Graham Botha through email dated August 11, 2020, in Response to Discovery Questions.

³² Id., at p. 30.

reduction, but the amount of such reduction ranges from 1% to 27%.³³ Because of the variance in Rate impacts upon customers who elect to be covered by Schedule “D”, each customer will need to confer with GPA to determine how it will be affected by such Schedule.

GPA estimates that implementation of the Schedule “D” rates to Condominium and Apartment customers would reduce overall revenues to GPA by \$533,000, and that the average condominium and apartment rates reduction is 8.4%. Such reduction is indicated in the graph below:

Rate Class	Current Revenues	Proposed Revenues	Percent Change
G	326,337	311,591	-4.5%
J	1,472,643	1,422,813	-3.4%
P	4,525,948	4,057,080	-10.4%
Total	6,324,928	5,791,484	-8.4%³⁴

GPA has also proposed a change to Schedule “R”, Residential Service. This change would extend Schedule “R” to “three-phase” service.³⁵ The purpose of this proposed change is to allow certain large single-family residences to be classified as “residential”; those residences previously could not be classified as residential because Schedule “R” only allowed “single phase” residences to be classified as residential.³⁶

³³ Id.

³⁴ Draft Report, Guam Power Authority Cost of Service & Condominium and Apartment Rate Development, dated October 24, 2019 (prepared by Utility Financial Solutions, LLC) at p. 29.

³⁵ GPA Petition, Exhibit “A”, Guam Power Authority Schedule “D”, Condominium Service, Schedule “R”, Residential Service.

³⁶ Zoom conference between PUC ALJ Fred Horecky, GPA Legal Counsel Graham Botha, GPA CFO John Kim, and GPA Rate Consultant Mark Beauchamp on August 14, 2020, explanation of GPA CFO John Kim.

The ALJ concurs with this recommendation. It is fair and equitable to allow single family residences to be under Schedule “R” regardless of whether they are “single-phase” or “three-phase.”

Attached to the ALJ Report as Exhibit “9” is a comparison of a proposed Condominium Rate to Residential Rates, Cost of Service Rate.³⁷ With regard to current condominium/apartment Schedule P customers, placing such customers under Schedule “D” will result in substantial rate reductions. The reductions are not as great for condominium/apartment customers presently in Rate Schedules J and G.³⁸

2. The Fairness/Equity Justification for Schedule “D”

The Guam Association of Realtors and the Senators of the Guam Legislature based their petition in GPA Docket 19-09 upon principles of fairness and equity. Their position was that homeowners that reside in multi-family residences, such as condominiums and apartments, should not be charged with higher rates than those that reside in single family residences. As a matter of fairness and equity, all residents of single family and multi-family accommodations should be billed at the same residential rate.

GPA, in proposing a Schedule for “Condominium Service”, agreed that residents of condominiums and apartments would be billed at similar rates to residential customers under Schedule “R”. In approving the Condominium Rate Schedule, the Guam Consolidated Commission on Utilities stated that it sought “an **equitable rate plan** which reflects actual cost of service...”.³⁹ In addition, the various Bills of the

³⁷ GPA Condo Rate Proposal (Summary Power Point), February 17, 2020, submitted by GPA Counsel Graham Botha to PUC ALJ Fred Horecky on August 11, 2020 in response to Discovery Questions dated August 10, 2020.

³⁸ Id.

³⁹ Guam Consolidated Commission on Utilities, Resolution No. 2020-05, adopted and approved on February 21, 2020, at p. 1.

Guam legislature requiring “Comparable Rate Schedule R Charges for Residential Multi-Family Accommodations” have likewise been based upon the assumption that rates for residents of condominiums and apartments should be “equitable”, and comparable to Schedule R for residential dwellings with individual metering.⁴⁰

Although the proceeding commenced as a “contested” proceeding, GPA ultimately decided, by filing the new Schedule D for Condominium Service in this Docket, that the power charges for residents of multi-family accommodations should be comparable to, and equitable with, those accorded to residential dwellings with individual metering. GPA undertook its best efforts to come up with a rate schedule for condominiums that would be fair and equitable. It was not under PUC compulsion or order to do so.

There is much discussion in rate making literature that supports consideration of principles of fairness and equity in allocating rates. After a cost-of service study is performed, rates are designed to collect the utility’s allowed revenues. The factor of “equity” is one of the considerations in rate setting. One of the Rate Design Fundamentals is that “rates should be designed so that costs are fairly apportioned among different customers, and “undue discrimination” in rate relationships is avoided.⁴¹ Rates should be allocated such that condominium and apartment residents do not pay a disproportionate share of the revenue requirement of GPA.

One of the leading scholars of ratemaking policy, James C. Bonbright, has indicated that considerations of “fairness” and “equity” – including “fairness among the different classes of consumers when the rate *relationships* are under inquiry” can be

⁴⁰ See Bill No. 37-35 (COR) Section 1, dated February 6, 2019.

⁴¹ Synapse Energy Economics, Inc., The Ratemaking Process, July 2017;
<https://www.synapse-energy.com/sites/default/files/Ratemaking-Fundamentals-FactSheet.pdf>

taken into account.⁴² Professor Bonbright stated: “At the risk of being subject to the prejudices of my profession, I am convinced that the modern tendency to view fairness criteria of reasonable rates as secondary criteria, to be accepted primarily as constraints on the application of the so-called economic criteria, is a mark of progress in the development of rate-making policies designed to serve the public interest. But this means merely that fairness issues should be kept in their place. It does not mean that they should be cavalierly dismissed or even belittled.”⁴³

To the extent that there is unfairness or inequity resulting from the power rates charged to residents of single-family dwellings and residents of multi-family accommodations, the Guam Power Authority did not cause such “unfairness” or “inequity.” Under the Guam Power Authority Rules for Rates and Services (28 GAR Chapter 3), it is clearly the customer who determines what class of service is being applied for. All of the apartment and condominium owners who are presently in rate classes P, G, and J, are charged in such rate classes because that is the class of service that they applied for in their original application to GPA.

A “Customer” is a person “who has made application for service.”⁴⁴ When an applicant for an electric service submits the application, it furnishes information to GPA including the “Rate schedule desired if an optional rate is available.”⁴⁵ Some condominiums and apartments have master meters, and the owners thereof did not provide individual meters to each residential unit. It was the choice of such owners to determine whether they would place master meters in condominiums and apartments, or individual meters for each unit. It was the choice of such owners to apply for commercial, or residential service. During proceedings in GPA Docket 19-09, it was

⁴² James C. Bonbright, *Principles of Public Utility Rates* (first published by the Columbia University Press in 1961 reprinted by permission © 2005 Powell Goldstein LLP), at p. 121; www.powellgoldstein-bonbright-principlesofpublicutilityrates-1960-10-10.

⁴³ Id.

⁴⁴ 28 GAR § 3102(e).

⁴⁵ 28 GAR § 3110(i).

suggested that the cost to now provide such individual meters to condominiums or apartments which do not have individual unit meters could be prohibitive.

GPA has presented a Condo Service Schedule that will reduce rates for most eligible ratepayers. During the docket proceedings, there were no objections raised to the Condo Service Schedule proposed by GPA. Guam Power Authority states that a Condominium Rate Schedule will provide a more fair and equitable service by reducing the rates that are presently paid by residents of multi-family accommodations. It will benefit most of the eligible ratepayers and provide rates that are less than those of residential customers.

GPA has accomplished goals of fairness and equity in proposed Schedule D. As will be demonstrated, under that Schedule, nearly all of condominium customers are in fact provided **rates that are less expensive than residential rates**.

3. Condominium Service Schedule D is a fairer and more equitable Tariff for Condominium and other Multi-Family Accommodations than the present commercial rate schedules; the vast majority of Condominium Customers will experience substantial rate reductions by implementation of Schedule D

If Schedule D is not approved by the PUC, residents of condominiums will continue to be billed at existing commercial rates. The substantial progress in rate reduction for nearly all condominium customers would be thwarted. All the work of GPA in honestly seeking an improved billing for condominium customers would be for naught. Approval of the Schedule D by the PUC will mean a substantial reduction in rates for most condominium residents. A stark choice faces the PUC: either approve a Schedule D which positively reduces the rates of the vast majority of condominium ratepayers or condemn such ratepayers to the same existing commercial rates that they have complained about.

Here the PUC should consider the “greatest good for the greatest number.” This principle was developed by British Philosopher Jeremy Bentham. The meaning of ‘the greatest good for the greatest number of people’ is that any decision made which produces the greatest good for the greatest number of people is good and ethical under western philosophical theory. All ratepayers have different power use characteristics, and it is impossible to expect that any rate schedule will affect all ratepayers in the same manner. Here Schedule D will work to the benefit of the vast majority of condominium ratepayers.

The ALJ notes that, at the public hearings, the only complaints from condominium residents came from the residents of Villa Kanton Tasi. No residents of any other condominium or apartment building testified against the approval of Condominium Service Rate Schedule D. The “Customer Impacts” section of CFO Kim’s Presentation demonstrates that 22 out of 25 condominium customers will pay reduced power rates because of the implementation of Schedule D. Schedule D rates are less than residential rates.

There will be no improvement reducing the inequity of condominium rates unless the PUC approves Schedule D. For the Rate P class condominium customers, all 10 of them will experience positive rate reductions from 21.3% down to 5.7% under Schedule D. 8 of such customers experience reductions of over 8%. For Rate J customers, 12 out of 15 customers experience rate reductions by virtue of Schedule D. 7 of those customers experience reductions of over 11%. There are a few Rate J Customers that do not experience rate decreases. However, no two customers are the same. The reason that some customers do not experience decreases is based upon their individual power consumption characteristics and amount of energy utilized. There can never be any rate tariff that will exactly affect all ratepayers in the same fashion.

Both Senator Taitague and VKT residents argue that Condominium Service Schedule D has not established “comparable residential rates for customers residing in multifamily buildings.” That contention is untrue. In fact, the proposed rates under Condominium Service D establish rates that are **lower than residential rates**. To begin with, if one reviews the comparison of proposed condominium rates to residential rate in Mr. Kim’s presentation, the overall rate revenue collected by GPA under Schedule D from all customers is less than the revenue which would be collected under residential rates.

The “Sample Customer Bill Matrix” for existing Rate J condominium residents shows that the rates charged to 10 customers under Proposed Rate D is less than the rate which would be charged to such customers under residential rates. The same result is evident for Condominium residents under Rate P class. All such customers experience lower rates under Proposed Rate D than under the residential rate.

Contrary to the assertion of the opponents to Schedule D, Schedule D provides lower rates to condominiums than residential rates. Why is this the case? Under Schedule D, all condominium ratepayers would be charged a flat charge of \$0.06060 for all energy consumed. This rate is far lower than residential rates. Under Schedule R, a ratepayer is charged more for the first 500kWh at \$0.06955 per/kWh. For over 500kWh, ratepayers are charged \$0.08687 per kWh. Residential ratepayers pay \$0.08687 for all kWh over 500, whereas condominium ratepayers will pay \$0.06060 for all kWh consumed.

In Schedule D, GPA has substantially reduced the per kWh charges for condominium owners under commercial Schedule J and Schedule P. These charges are indicated on the Sample Customer Bill Matrix of the CFO Kim presentation. Schedule J customers pay \$0.19437 for the first 500kWh, and \$0.06484 for kWh over 500. The Schedule P rates are \$0.14170 for the first 55,000kWh, and \$0.06444 for over 55,000kWh.

Under Schedule D, condominium ratepayers will pay a flat kWh charge of \$0.06060, which is lower than both Class J and Class P rates.

Also, under residential rates, each resident of a condominium would be charged a monthly customer charge of \$15.00. However, under proposed Schedule D, the condominium would only be charged one monthly charge of \$59.25. There is no additional charge to the residents of the condominiums.

There is a "Sample bill for Rate Schedule J Customer" included in CFO Kim's presentation. Customer B, upon information and belief, is VKT. That sample bill, based upon December 2019 figures, shows that VKT will pay less in power rates under the proposed Schedule D than under Rate Schedule J. In his testimony, Mr. Duenas indicated that VKT would experience an increased rate under Schedule D for December 2020. No documentation was submitted to establish such contention.

CFO Kim has demonstrated that Mr. Duenas' allegation that VKT would experience an increased rate and power bill under Schedule D is erroneous. Mr. Kim has prepared what is, upon information and belief, a excel spreadsheet of VKT power bills from October 2019 through December 2020. The spreadsheet demonstrates that for every month, VKT's power bill under Schedule D would have been less than the actual bill under Schedule J, and less than the bill would have been under Schedule R (Residential). VKT pays less for power under Schedule D than under the Residential Rate.

For the period of October 2019 through December 2020, VKT would save \$4,915.63 under Schedule D as opposed to its actual bill under Schedule J. For the same period, VKT would save \$1,537 under Schedule D than under Schedule R. VKT's saving under Schedule D are not as high as some Schedule J customers. The reason appears to be VKT's status as a high-power consumer. There are only 22 units in VKT,

and they are each over 2,000 sq. ft. The monthly power consumption for the VKT residents of the 22 units utilized averages more than 2,500kWh per month, which is significantly higher than the average residential use of 1,000 kWh per month. In addition, the building has an elevator, swimming pool, and lighted garage. VKT has the option to elect not to be under Schedule D if it so chooses. However, the benefits to most condominium ratepayers from Schedule D should not be denied to them because of objections from one condominium ratepayer.

The opponents of Schedule D have stated that “if GPA’s rate schedule for condos shows the same charge for single family residences”, they would support the rate schedule. An application of the Residential Schedule R to condominiums would, in fact, result in higher rates to condominium residents than under the proposed Schedule D. Demand charges for condominium customers under Schedule D are increased. They increase from \$5.80 to \$12.00. The reason for the increase in demand charges is the drastic reduction of per kWh charges. Under proposed Schedule D, condominium residents will be paying lower kWh charges than any other rate classes, including a substantially reduced rate charge to that paid by the residential class.

The increased demand charge merely offsets, to a lesser degree, the substantial decrease in per kilowatt charges. The Demand charge does not constitute a major cost in the bill. Even with the increased demand charge, VKT will still pay less under Schedule D than under Schedule R. The demand charge is to offset the loss of revenue through the reduction in kilowatt charges. GPA is voluntarily accepting a loss of \$533,390 by virtue of adopting Schedule D. Schedule D does accomplish “parity” and “equity” with residential rates. It exceeds “parity” and “equity” by establishing a less expensive rate under Schedule D than under Schedule R, residential rates.

Condominium Service Schedule D satisfies all tests for approval of a rate tariff. President Shawn Blas of the Guam Association of Realtors argued for a standard that there should be equal or close to equal residential power rates for all individually

owned residences in Guam, to include condominiums and other multi-family dwellings.” That goal is accomplished by Schedule D. In truth, condominium units and single-family residences are not the same in terms of the load and other requirements they impose upon the power system. As large units, condominiums impose higher load requirements on the transmission system than do individual single-family residences.

The proposed rate under Schedule D is a substantial improvement for most condominium residents. It would be unfortunate to disregard the vast improvement that Schedule D provides to be overwhelming majority of condominium residents owners because of the interests of one condo. The condominium Service Schedule D meets the requirement of 12 GCA § 12116(a) that all rates charged by a public utility be **just and reasonable**.

4. Revenue Recovery Options

A significant issue faced by GPA’s loss of \$533,000 in revenues from the adoption of the new Condominium Rate is what option should be pursued to recover such lost revenue. Of course, reduction of revenues paid by condominium and apartment owners reduces the overall revenue recovery that GPA has presently been provided in rates. Ordinarily, when there is a rate reduction for one class, that loss of revenue must be recovered from another class or classes of ratepayers. Rates are a “zero sum” game. When rates are reduced for one class of ratepayers, ordinarily such rates must be paid for by another class or classes of ratepayers. This presumes that the original rate structure is “reasonable.”

The Guam Power Authority has set forth various “Revenue Recovery Options”:

- Increase all rate classes (Except Navy) by 0.4%

- Residential Impact \$0.35/Month
- Apply increase only to residential class:
 - Residential Impact \$1.05/Month
- Postpone adjustment until 2023:
 - Base rate adjustment of 8.4% is anticipated
 - Fuel costs are projected to decline 13.1%
 - Anticipated overall residential rate reduction of 8.1%⁴⁶

In the Discovery Questions posed to GPA on August 10, 2020, the following question was presented: “GPA has outlined different “Revenue Recovery Options” by which GPA could recover the over \$550,000 [now reduced to \$533,000] that it will lose by creating the new condominium rate. These include spreading the loss over all rate classes, recovering the loss only from the Residential class, and “Postpone adjustment until 2023.” The ALJ needs to address how the PUC should respond to this issue. Which option does GPA suggest?”⁴⁷ GPA responded to this question as follows: “**GPA plans to absorb the cost.**”⁴⁸

GPA’s response apparently means that, for the present time, GPA is not requesting that the PUC take any formal action to recover the loss of revenue that will result from implementation of the Condominium Rate Schedule. At the Public Hearings, GPA CFO John Kim indicated that GPA had no present plans to recover the revenue loss. However, GPA has indicated its possible intent to file for a base rate adjustment of 8.4% in 2023. It is also unclear at present whether such base rate adjustment that actually result in an increase for ratepayers, as GPA also estimates a fuel cost decline (i.e. in the LEAC Factor) of 13.1%. The fact remains that such loss of

⁴⁶ Guam Power Authority Electric Rate Preliminary Study Results, Mark Beauchamp, President, Utility Financial Solutions, at p. 26.

⁴⁷ Email from PUC ALJ Fred Horecky to GPA Legal Counsel Graham Botha, Discovery Questions regarding GPA Docket 19-09 and 20-10, dated August 10, 2020 at no. 4.

⁴⁸ Id.

revenue will need to be addressed by the PUC in the future. Since GPA is not presently making any request for increase in base rates, the ALJ concludes that GPA should be allowed to implement Schedule "D", the Condominium Rate.

5. One Time Election and Prohibition of Subsequent Transfer to Another Rate Class

A few remaining issues arise concerning the procedure for implementing Schedule "D". Under the procedure, the ratepayers under Schedule "D" will be able to make "a one-time election to move to rate schedule D from rate schedule G, J, or P. Once the customer is transferred to rate schedule D, the customer cannot move to another rate schedule."⁴⁹ It is the condominium or apartment owner that will have the right to make the election, not individual unit owners. This is appropriate, as it is the condominium or apartment that is the "customer."

The "one-time election" makes sense, as it applies to condominiums and apartments that are presently in operation, as well as those that have been approved prior to the date of implementation of Schedule "D". For purposes of rate stability, it is not desirable to have a system which encourages constant changes from one rate class to another. Constant changes back and forth between different rate schedules would lead to a lack of continuity in rate administration and create administrative cost and burden. However, the ALJ has recommended that condominium ratepayers should have an opportunity to switch back from Schedule D to the applicable commercial rate class after three (3) years. Ratepayers should have the opportunity to switch classes if they find Schedule D to be unsuitable.

Furthermore, service under Condominium Rate Schedule "D" will not be available to future condominiums or apartments that are built. GPA takes the position

⁴⁹ GPA Petition, Exhibit "A", Guam Power Authority Schedule "D", Condominium Service, Schedule "R", Residential Service.

that “[T]he condo rate was designed for condominiums that were built before the modern appliances and equipment. Technology has changed and architects can design more efficient condominiums for future builds.”⁵⁰ This restriction as to future condominiums or apartments is also appropriate. If the developers or owners of such buildings desire to have units that are built for power service at residential rates, such sub-metering can be built into the plans for condos and apartments.

ORDERING PROVISIONS

After carefully reviewing the record in this proceeding, having considered the GPA Petition for Creation of Condominium Rate, the Summary Report of the GPA Chief Financial Officer, and the Administrative Law Judge Report, and after discussion at a duly noticed regular meeting held on January 28, 2021, for good cause shown and on motion duly made, seconded and carried by affirmative vote of the undersigned Commissioners, the Guam Public Utilities Commission hereby **ORDERS** that:

1. Schedule D shall be amended to provide that ratepayers under Schedule D shall have the opportunity to switch back from Schedule D to the applicable commercial class of service after three years from the date of election for such service.
2. With the amendment, Condominium Service Schedule D is approved.
3. GPA is authorized to implement Condominium Service Schedule D as amended.

⁵⁰ GPA Condo Rate Proposal, February 17, 2020 (Power Point), submitted by GPA Counsel Graham Botha to PUC ALJ Fred Horecky on August 11, 2020 in response to Requests for Information updated August 10, 2020, at Request No. 5.

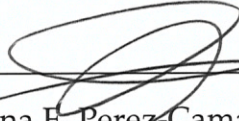
4. The amendment of Rate Schedule R, Residential Service, to include three phase service metered single-family dwellings, is also approved.
5. GPA shall file a final Amended Condominium Service Schedule D, and a Revised Schedule R, with the PUC.
6. GPA is ordered to pay the Commission's regulatory fees 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]


Dated this 28th day of January 2021.



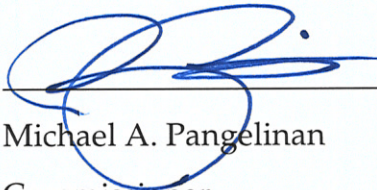
Jeffrey C. Johnson
Chairman



Rowena E. Perez-Camacho
Commissioner



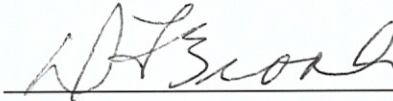
Joseph M. McDonald
Commissioner



Michael A. Pangelinan
Commissioner



Peter Montinola
Commissioner



Doris Flores Brooks
Commissioner



Pedro S.N. Guerrero
Commissioner