

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:) GPA Docket 21-17
)
The Application of the Guam Power)
Authority to Approve the Amendment to) **ORDER**
the Contract for Residual Fuel Oil No. 6)
for the Baseload Power Generating Plants.)
_____)



INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission [“PUC”] upon the Petition of Guam Power Authority [“GPA”] for approval of the Amendment to the Contract for Residual Fuel Oil No. 6 for the Baseload Power Generating Plants.¹
2. GPA seeks PUC approval of an amendment to the GPA-Hyundai Corporation Contract which would require Hyundai Corporation to provide GPA with 0.2% sulfur Residual Fuel Oil No. 6 for the Baseload Power Generating Plants.²
3. In accordance with proposed amendments to the Consent Decree between GPA and the United States Environmental Protection Agency [“USEPA”] (which have already been agreed to by USEPA), GPA will likely soon be required to use 0.2% Ultra Low Sulfur Fuel Oil [“ULSFO”] in the Cabras 1 & 2 plants, no later than December 31, 2022.³
4. The “State Implementation Plan” (“SIP”), when finally approved, will require GPA to switch to a lower sulfur fuel to comply with certain new federal fuel standards by April 2023.⁴

¹ GPA Petition to Approve the Amendment to the Contract for Residual Fuel Oil No. 6 for the Baseload Power Generating Plants, GPA Docket 21-17, filed August 9, 2021.

² Id., at p. 1.

³ Guam Consolidated Commission on Utilities Resolution No. 2021-20, Relative to Approving the Proposed Amendment to the Consent Decree with the United States Environmental Protection Agency (USEPA), adopted and approved on July 27, 2021, at p. 3.

⁴ Issues for Decision, Resolution No. 2021-20, Proposed Amendment of Consent Decree between GPA and USEPA, CCU Commissioners’ Board Packet for the CCU Meeting on July 27, 2021; in a conversation between GPA Counsel and ALJ Horecky on

BACKGROUND

5. On July 30, 2020, the PUC approved the GPA-Hyundai Contract for the supply of Residual Fuel Oil No. 6 to the Baseload Power Generating Plants.⁵ The Contract has a 3-year initial term, commencing September 1, 2020, and ending on August 31, 2023, with two additional 1-year extension options, upon the mutual agreement of the parties.⁶
6. In accordance with the Contract, Hyundai supplies a minimum annual supply to GPA of between one million and two million barrels of residual fuel oil per year.⁷
7. The Contract only provides for the delivery of two types of Fuel Grade: Low Sulfur Fuel Oil (LSFO), 1.19% w Sulfur (Maximum), and High Sulfur Fuel Oil (HSFO), 2.00% w Sulfur (Maximum).⁸
8. On April 20, 2020, the District Court of Guam approved a negotiated Consent Decree between the U.S. Environmental Protection Agency [“USEPA”] regarding alleged violations of the Clean Air Act. On December 5, 2019, the PUC approved the Consent Decree and authorized GPA to enter such Decree.⁹

August 17, 2021, Mr. Botha indicated that the draft State Implementation Plan for Guam includes the requirement that GPA switch to ULSFO by April 2023. The SIP is pending final administrative approval.

⁵ PUC Order, GPA Docket 20-17, dated July 30, 2020, at p. 4.

⁶ Id., at pgs. 2-3.

⁷ Contract for Supply of Residual Fuel Oil No. 6 between GPA and Hyundai Corporation, approved by the PUC on July 30, 2020, at Section 2, Fuel Oil to be Supplied.

⁸ Id., at Section 2.

⁹ PUC Order, GPA Docket 20-01, dated December 5, 2019, at p. 6.

9. The original Consent Decree required GPA to use only Low Sulfur Residual Fuel Oil (1.19% w Sulfur (Maximum)) as a fuel to power Cabras Units 1 & 2 upon the date that its existing fuel tanks were refurbished.¹⁰
10. The draft State Implementation Plan (“SIP”), when adopted, will require GPA to comply by April 2023 by switching to a lower sulfur fuel, to reach attainment with federal standards for sulfur dioxide emissions. GPA has agreed to transition to a fuel that is “cleaner” than the fuel required under the existing Consent Decree: “Specifically, GPA has agreed to transition to a fuel with sulfur content of no greater than 0.2% to power Cabras Units 1 & 2 until their retirement. This will substantially reduce emissions as compared to the low sulfur residual fuel oil (“RFO”) allowed by the Consent Decree.”¹¹
11. GPA indicates that it and the USEPA have agreed to the Modification of the Consent Decree which would allow GPA to transition to the Ultra-Low Sulfur Fuel Oil (“ULSFO”) with a sulfur limit of 0.2% by weight, no later than December 31, 2022. To allow for provision by Hyundai Corporation of 0.2% sulfur ULSFO, an amendment of Contract between GPA and Hyundai is necessary. At present Hyundai Corporation can only provide to GPA LSFO with 1.19% sulfur or 2.00% HSFO.
12. In Resolution No. 2021-19, the Guam Consolidated Commission on Utilities has approved an Amendment to the Hyundai Corporation Contract which would authorize the provision of ULSFO with a sulfur limit of 0.2%, effective January 1,

¹⁰ Guam Consolidated Commission on Utilities Resolution No. 2021-20, Relative to Approving the Proposed Amendment to the Consent Decree with the United States Environmental Protection Agency (USEPA), approved and adopted on July 27, 2021, at p. 3.

¹¹ Issues for Decision, Resolution No. 2021-20, Proposed Amendment of Consent Decree between GPA and USEPA, CCU Commissioners’ Board Packet for the CCU Meeting on July 27, 2021.

2022. GPA also determined that the Fixed Premium Fee proposal of Hyundai was “reasonable and provides the lowest cost for the Authority...”.¹²

13. In addition, the Guam Consolidated Commission on Utilities also approved the Amendment of the Consent Decree that would require GPA to provide fuel with sulfur content of no greater than 0.2% to power Cabras Units 1 & 2 until their retirement, and no later than December 31, 2022.¹³ The amendment provides as follows: “Once the other, second tank has been emptied of high sulfur RFO, including all sludge from the high sulfur RFO, but in no event later than December 31, 2022, then continuing thereafter, GPA shall use a blended fuel with no greater than 0.2% sulfur by weight to power Cabras Units 1 & 2.”¹⁴

14. The Amendment to the Consent Decree will still need to be approved by the Department of Justice and the District Court of Guam.¹⁵

15. The Administrative Law Judge filed his Report herein dated August 23, 2021.¹⁶

DETERMINATIONS

16. The Guam Consolidated Commission on Utilities contends that the Consent Decree between GPA and USEPA requires GPA to substitute the LSFO and HSFO and transition to Ultra Low Sulfur Fuel Oil (“ULSFO”) with a sulfur limit of 0.2% by

¹² CCU Resolution No. 2021-19, Authorizing Management of the Guam Power Authority to Amend the Contract for the Supply of Residual Fuel Oil No. 6, approved and adopted on July 27, 2021.

¹³ CCU Resolution No. 2021-20, Relative to Approving the Proposed Amendment to the Consent Decree with the United States Environmental Protection Agency (USEPA), adopted and approved on July 27, 2021.

¹⁴ Id., at p. 3.

¹⁵ Issues for Decision, Resolution No. 2021-20, Proposed Amendment of Consent Decree between GPA and USEPA, CCU Commissioners’ Board Packet for the CCU Meeting on July 27, 2021.

¹⁶ ALJ Report, GPA Docket 21-17, dated August 23, 2021.

weight, no later than December 31, 2022.¹⁷ Technically, however, the Consent Decree has not yet been modified to require that the 0.2% ULSFO be used for the Cabras 1 & 2 plants.

17. GPA has represented that the USEPA has already agreed to various changes to the Consent Decree, subject to the required approvals. One such change is as follows: “In no event later than December 31, 2022, and continuing thereafter, GPA shall use a blended fuel with no grader than 0.2% sulfur by weight to power Cabras Units 1 & 2.”¹⁸ The CCU also approved such change in Resolution No. 2021-20.

18. In addition, GPA represents that the State Implementation Plan (“SIP”) will require GPA to switch to a lower sulfur fuel by April 2023 to reach attainment with federal standards for sulfur dioxide emissions. Based upon the inclusion of such requirement in the State Implementation Plan, and the agreement of GPA and USEPA to require the transition to a fuel with sulfur content of no greater than 0.2% to power Cabras Units 1 & 2, it is prudent for the PUC to approve the proposed amendment in the Hyundai Contract.

19. Since GPA is agreeing to use 0.2% ULSFO, which has a lower sulfur content than presently required in the Consent Decree, the Consent Decree would not appear to prevent GPA from using such ULSFO. However, GPA should continue to diligently pursue the securing of all necessary approvals for the Consent Decree amendments, including approval by the Department of Justice and the District Court of Guam.

¹⁷ CCU Resolution No. 2021-19, Authorizing Management of the Guam Power Authority to Amend the Contract for the Supply of Residual Fuel Oil No. 6, approved and adopted on July 27, 2021.

¹⁸ Negotiated Consent Decree Changes, July 2021 (included in CCU Commissioners’ Board Packet for the CCU Meeting on July 27, 2021, at p. 2.).

20. The amendment includes the provision by Hyundai Corporation of a new type of fuel that was not provided for in the original contract. An issue could arise concerning the propriety of including a new type of fuel in the contract without issuing a separate bid for such fuel supply.

21. To begin with, the type of fuel which could be delivered under the contract refers to “RESIDUAL FUEL OIL NO. 6” in Schedule A of the Contract. The new fuel oil (ULSFO) which Hyundai Corporation would supply to GPA is still Residual Fuel Oil, which arguably falls within the Contract specifications. In addition, Hyundai also already supplies LSFRO to GPA under the Contract, albeit with higher sulfur content (1.19%). The 0.2% fuel will be produced as a “blended fuel.” The type of fuel provided would not appear to be so different as to require a new procurement.

22. Section 14, Government Laws and Regulations, of the Hyundai Corporation Contract expressly contemplates that Hyundai will use its best efforts to furnish GPA’s substitute fuel oil which complies with government laws and regulations:

“If any time during the term of the Contract the Government of the United States or the Territory of Guam enacts laws or issues regulations which would prevent **GPA** from burning the type of fuel oil to be supplied hereunder, **GPA** shall use its best efforts to obtain an exemption. In the event **GPA** cannot obtain an exemption from such laws and regulations, **CONTRACTOR** shall use his best efforts to furnish **GPA** substitute fuel oil which complies with such governmental laws and regulations at the same price set out herein, or if unreasonable, at a price to be renegotiated by the parties....”.¹⁹

23. The requirement that Hyundai Corporation supply 0.2% LSRFO is fully appropriate pursuant to Section 14.

¹⁹ Contract for Supply of Residual Fuel Oil No. 6 between GPA and Hyundai Corporation, approved by the PUC on July 30, 2020, at Section 14, Government Laws and Regulations.

24. The 0.2% ULSFO that GPA will utilize after December 31, 2022, is more expensive than the HSRFO and LSRFO presently utilized. For the year commencing on January 1, 2023, it is estimated that the annual value of the contract amendment with Hyundai will be \$160,445,436 per year.²⁰ The present estimated cost under the Hyundai Corporation Contract for fuel from September 1, 2021, to August 31, 2022, is \$143,915,313.77.²¹

25. The estimated price of the 0.20% sulfur ULSFO is \$601.290/MT (Metric Ton), whereas the July 2021 prices for 1.19% LSFO and HSFO were respectively \$428.81/MT (Metric Ton). The differential cost per metric ton was estimated to be 23% greater for 0.2%ULSFO than 1.19% LSRFO.²²

26. Recognizing the higher cost of 0.2% ULSFO, the CCU confirmed GPA's determination that the Fixed Premium Fee for the 0.2% ULSFO (\$79.00/MT and \$18,632,075.47/yr.) were reasonable.

27. A copy of the proposed Amendment No. 1 to the Hyundai Contract is attached to the ALJ Report as Exhibit "1". The Consent Decree and the State Implementation Plan will not require GPA to use 0.2% ULSFO until December 31, 2022; however, pursuant to Amendment No. 1, GPA seeks to receive 0.2% ULSFO beginning in the February/March 2022 time frame.

²⁰ CCU Resolution No. 2021-19, Authorizing Management of the Guam Power Authority to Amend the Contract for the Supply of Residual Fuel Oil No. 6, approved and adopted on July 27, 2021, at p. 2; and see also Exhibit A to CCU Resolution No. 2021-19.

²¹Email from GPA Legal Counsel Graham Botha to PUC Administrative Law Judge Fred Horecky, with attached RFO Expenses Sept 2020 to Aug 2021 (by Albert Florencio, GPA Fuel Manager) dated August 16, 2021.

²² CCU Resolution No. 2021-19, Authorizing Management of the Guam Power Authority to Amend the Contract for the Supply of Residual Fuel Oil No. 6, approved and adopted on July 27, 2021, Exhibit A (HYUNDAI PROPOSAL FOR ULSFO (0.20% sulfur)) and HYUNDAI CONTRACT FIXED PREMIUM FEE & ESTIMATED UNIT COST COMPARISON.

28. The justification for use of such fuel oil by GPA before the Consent Decree requires it is as follows: "...GPA will be ordering .2% for Tank 1935 when it is finished in Feb/Mar 2022 time frame and phasing out the 1.19% LSRFO. Tank 1934 will be emptied out and when finished (1 year) will be filled with ULSD. We do not want to temporarily put 1.19% in Tank 1935 and then have to pay \$1M+ to clean out sludge before Dec 2022, so we will go directly to .2% RFO."²³ GPA's justifications for the earlier usage of ULSFO are avoidance of costs to again clean out Tank 1935 if a higher sulfur fuel were stored in such tank even temporarily, and to avoid loss of use of Tank 1935 during the period when it would need to be cleaned for a second time.

29. Since GPA will be required to convert its fuel source for the baseload plants to 0.2% ULSFO, the cost of such fuel is likely an unavoidable expense for GPA. Such ULSFO is essential to the operation of the Cabras power plants, and a contract amendment is reasonable, prudent, and necessary.²⁴

ORDERING PROVISIONS

Upon consideration of the record herein, the Petition of GPA for Approval of the Amendment to the Contract for Residual Fuel Oil No. 6 for the Baseload Power Generating Plants, the ALJ Report, and for good cause shown, on motion duly made, seconded, and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby **ORDERS** that:

²³ Email from GPA Counsel Graham Botha to PUC ALJ Fred Horecky dated August 17, 2021, with explanation of discussion between Mr. Botha and Albert N. Florencio, Fuel Manager.

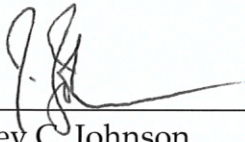
²⁴ GPA Petition to Approve the Amendment to the Contract for Residual Fuel Oil No. 6 for the Baseload Power Generating Plants, GPA Docket 21-17, filed August 9, 2021, at p. 2.

1. Amendment No. 1 of the Contract between GPA and Hyundai Corporation for supply of 0.2% sulfur Residual Fuel Oil No. 6 to the Baseload Power Plants is hereby approved. GPA is authorized to execute the Amendment.
 2. GPA is authorized to expend such amounts for fuel under Amendment No. 1 in accordance with the Bid Reference and Fixed Fee Premium prices set forth therein.
 3. GPA is ordered to pay the Commission's regulatory fees and expenses, including, without limitation, consulting and counsel fees and the fees and expenses of conducting the hearing proceedings. Assessment of PUC's regulatory fees and expenses is authorized pursuant to 12 GCA §§12103(b) and 12125(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.
-

[SIGNATURES TO FOLLOW ON NEXT PAGE]


Order
Approval of Amendment to Contract
for Residual Fuel Oil No. 6
GPA Docket 21-17
August 26, 2021

Dated this 26th day of August 2021.



Jeffrey C. Johnson
Chairman

Rowena E. Perez-Camacho
Commissioner



Joseph M. McDonald
Commissioner

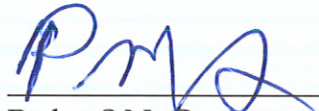
Michael A. Pangelinan
Commissioner



Peter Montinola
Commissioner



Doris Flores Brooks
Commissioner



Pedro S.N. Guerrero
Commissioner