

**Before the
I MINA'TRENTAI SINGKO NA LIHESLATURAN GUAHAN
THIRTY FIFTH GUAM LEGISLATURE**

In the Matter of:)	
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Bill No. 315-35 (LS))	SUPPLEMENTAL TESTIMONY OF
)	FREDERICK J. HORECKY, CHIEF
)	ADMINISTRATIVE LAW JUDGE,
)	ON BEHALF OF THE GUAM
)	PUBLIC UTILITIES COMMISSION
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PUC Administrative Law Judge Frederick J. Horecky submits this supplemental testimony, on behalf of the PUC, concerning an issue raised during the public hearing: does Bill No. 315 violate the Bond Covenants by attempting to set a penetration level for Net Metering Customers of the Guam Power Authority? Section 1 of Bill No. 315, which attempts to set a 20% penetration level for Net Metering Customers, does violate the Bond Covenants.

I. BACKGROUND

The Guam Legislature has never previously attempted to set the level of penetration for Net Metering Systems. Now, sixteen years after the establishment of the Net Metering Program, Bill No. 315 would mandate that GPA implement a 20% percent penetration level, without any review or approval by the PUC.

From the very commencement of the Net Metering Program in 2004, it was the Guam Legislature that granted the Public Utilities Commission full authority to implement the Net Metering Program, including establishment of penetration levels. The PUC has repeatedly exercised such authority over the past twelve years.

In Public Law 27-132 (2004), the Legislature placed full responsibility with the PUC for the implementation of the Net Metering Program, including promulgation of “necessary” rules and regulations. The term “necessary” grants discretion to PUC to determine which rules are “necessary.” In Public Law 29-62 (2008), the Legislature recognized that PUC and the Consolidated Commission on Utilities are the “governing bodies for electric utility rate and policy;” PUC was granted full responsibility to establish the “rate structure” for the PUC program.

In 2008, the PUC enacted rules for the Net Metering Program in the form of the Net Metering Rider (a Tariff), which included a penetration level for net metering customers at 1,000 customers. In 2015, the PUC declined to approve the request of GPA to alter the level of penetration. In 2019, in GPA Docket 19-04, the PUC established a new penetration level “to an aggregated cap set at 10% of GPA’s August 1, 2017 peak demand of 26MW.” PUC ORDER, May 30, 2019. The PUC amended the Net Metering Rider to include the new penetration level.

The penetration level established at 20% in Bill 315 is directly contrary to the 10% level mandated in the PUC Order of March 30, 2019. The intent of Bill 315 is to counter, overrule, void, and nullify the penetration level established by the PUC in GPA Docket 19-04. Adoption of the 20% penetration level would compromise and violate the independence of the PUC, and interfere with its power to set penetration levels for Net Metering Customers.

II. THE LEGISLATIVE ATTEMPT IN BILL 315 TO VOID THE PUC ORDER IN GPA DOCKET 19-04, AND REPLACE THE 10% PENETRATION LEVEL ESTABLISHED BY THE PUC WITH A 20% PENETRATION LEVEL, VIOLATES THE BOND COVENANTS.

During the public hearing on October 7, 2020, Senator Therese Terlaje asked GEDA representative Tina Garcia whether the Legal Opinion submitted by GPA Bond Counsel addressed whether the setting of a penetration level by the Legislature for the Net Metering Program violates the Bond Covenants. The opinion submitted by John Wang of the Orrick firm expressly states that the provision in Bill No. 315 setting a penetration level violates the Bond Covenants: **“The proposed legislation would, among other things, effectively amend the GPUC statute by increasing the aggregate capacity limit for net energy measurement calculations and to establish the rate at which customers are to be compensated. The GPUC would no longer be empowered to regulate such matters and certain other matters mandated by the legislation. As a result, the proposed bill, if enacted, would limit the power and independence of the GPUC as a rate-making authority and would be a breach of the Government’s covenant in GPA’s indenture.”** (emphasis added).

GPA Bond Counsel further stated: **“Any transaction that would involve net metering arrangements with GPA, the use of GPA’s transmission system, the use of GPA’s distribution system, ...must be subject to the approval of the GPUC after consideration of appropriate ratemaking policies, including the appropriate allocation**

of costs on various ratepayer classes.” An increase in the penetration level for Net Metering Customers would obviously increase the amount of net-metering energy using GPA’s transmission and distribution systems.

The Bond Covenants do not only prevent specific interference with the “rate-making” functions of the PUC; the GPA Bond Indenture, Section 6.20, establishes a pledge by the government of Guam, including the Guam Legislature, that it will not “substantially impair the **powers, duties or effectiveness** of the Public Utilities Commission thereunder in relation to the Authority or its rates.” Any impairment of the duties or powers of the PUC, regarding GPA, whether it involves rates or not, is a violation of the Bond Indenture.

An attempt by the Legislature to abolish the 10% level of penetration duly established by the PUC, in the lawful exercise of its jurisdiction, would constitute an impairment of the powers, duties and effectiveness of the PUC. The GWA Bond Indenture similarly includes a pledge that the Government of Guam/Legislature will “maintain the **rights, powers and duties of the ... Guam Public Utilities Commission...**”. As previously indicated, on at least three occasions the PUC has exercised its power concerning the setting of penetration levels for Net Metering Customers. The Legislature granted the power to PUC to establish any necessary rules for the implementation of the Net Metering Program, which included the setting of a penetration level. Nullification by the Legislature of the penetration level established

by the PUC would impair the powers, duties and effectiveness of the PUC. Bill 315 would destroy, rather than maintain, the power of the PUC to set the level of penetration.

III. THE SETTING OF A PENETRATION LEVEL FOR NET METERING CUSTOMERS IS A RATE ISSUE; BY SETTING A PENETRATION LEVEL, THE LEGISLATURE WOULD VIOLATE THE PROHIBITION ON INTERFERENCE WITH THE PUC RATE SETTING AUTHORITY.

The setting of the level of penetration for Net Metering Customers is a “rate” issue, directly related to the setting of rates. Bill 315 proposes the “doubling” of the penetration level set by the PUC, from 10% to 20%. If placed in effect, the new penetration level would allow an increase in megawatt production by Net Metering Customers from 26MW to 52MW, or from approximately 2,200 customers to 4,400 customers. Such an increase in the number of customers and the level of MW production could impact rates.

An increase in the number of net metering customers would result in a loss of revenues for GPA. An increase in the amount of compensation that GPA pays to Net Metering Customers as credits and excess compensation would result in a loss of revenues to GPA and a possible need to increase rates. GPA presently claims that the subsidization of Net Metering Customers through retail credits has resulted in a loss of \$3.8M. A doubling of the rate impact would be \$7.6M. If correct, such impact would result in a loss of rate revenue by GPA and would be borne by ratepayers through an increase in rates to all ratepayers.

GPA's calculation of loss of revenues is subject to the scrutiny and review of the PUC; the issue of rate impact is one that the PUC must consider before there is any increase in the penetration level for Net Metering Customers. That rate issue is not a matter for Legislative determination. Non-net metering customers could end up subsidizing net metering customers to an even greater extent, requiring rate adjustments.

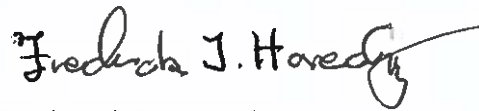
Furthermore, the only possible reason for even establishing "penetration levels" is for rate-setting purposes. Bill 315 does exactly that. It sets a "penetration level" only as a means of forever grandfathering existing Net Metering Customers at the "retail" rate. The Bill prohibits GPA from ever petitioning the PUC to change the rates of compensation for existing net metering systems that fall within the 20% aggregate capacity limit. The PUC would be stripped of its authority to set rates for Net Metering Customers that fall within the 20% penetration level. Penetration levels and establishment of Net Metering Rates go hand and hand together and are inexorably linked.

IV. CONCLUSION

The Chairman of the Committee on Power & Energy Utilities honestly explained the purpose of Bill 315 in his closing statement at the public hearing. The intent of the Bill is to remove the ability of the PUC to alter or change "retail" rates for existing NEM Customers. He stated that the "main intent" of the Bill was to "protect current NEM Customers" at the "retail" rate. His concern was that the PUC would "reduce the

compensation level from the current retail rate.” Whether the current rate for existing New Customers should be altered or changed is a matter for the PUC to decide, not the Guam Legislature. It is not a proper purpose of legislation to preempt the rate setting authority of the independent Public Utilities Commission, which was created by the Organic Act of Guam. All Senators should reject such an apparent attempt to interfere with the powers and duties of the PUC, in violation of the Bond Covenants.

Sincerely,

A handwritten signature in black ink that reads "Frederick J. Horecky". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Frederick J. Horecky
Chief Administrative Law Judge
Guam Public Utilities Commission