

**GUAM PUBLIC UTILITIES COMMISSION  
REGULAR MEETING  
March 31, 2022  
GCIC CONFERENCE ROOM, GCIC BUILDING, HAGATNA**



**MINUTES**

The Guam Public Utilities Commission [PUC] conducted a regular meeting commencing at 6:45 p.m. on March 31, 2022, pursuant to due and lawful notice. Commissioners Johnson, Montinola, Perez-Camacho, McDonald, Pangelinan, 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 February 24, 2022. Upon motion duly made, seconded, and unanimously carried, the Commission approved the minutes subject to corrections.

**2. Public Comment**

The Chairperson announced that the next item of business on the agenda was Public Comment. Dr. William Weare stated that he agrees that GPA's current proposals for new power generation plants are necessary and that he believes that the PUC should oppose placing one of these plants at the Cabras facility unless the elevation of the proposed plant site is above 30 feet of sea level to avoid building the new plant on a saltwater plane that could be flooded in a typhoon, that GPA has several alternative sites which would be suitable. Weare also stated that GPA has improperly toward private rooftop solar by taking the position that the private rooftop solar program takes advantage of GPA and impacts those customers who do not private rooftop solar unfairly. Weare stated that the relationship between private rooftop solar producers and GPA is a barter system where the private producers give their power to GPA in exchange for getting it back at times when rooftop production does not meet their energy needs such as night time, that private rooftop solar is the cheapest form of acquiring energy that GPA has, and because GPA takes private rooftop solar power and sells it to customers at full retail value GPA's allegations that the program is costing them money cannot be substantiated, that his proposal ensure that GPA would make a 5% profit on any excess power they reimburse private rooftop solar customers for, and that he recommends that GPA and the PUC must build better storage instead of new powerplants due to rising fuel costs and the Chairperson thanked Weare for his time.



### **3. Port Authority of Guam**

The Chairperson announced that the next item of business on the agenda was Port Authority of Guam [PAG] Docket 22-03, Petition of the Port Authority for PUC Review and Approval of the Procurement Contract Award to JJ Global Services for the Construction to Repair and Upgrade the EQMR Building, IFB-PAG-CIP-021-010, ALJ Report, and Proposed Order. ALJ Alcantara stated that PAG's petition is for the approval of its contract to repair and upgrade its Equipment Maintenance & Repair Building which is also known as the EQMR Building, that the \$3.98 million cost for the contract would be paid by bond funds, that the EQMR Building was built in 1968, it has 24,000 square feet of space and houses PAG's maintenance and repair and supply management staff, that the contract's scope of work involves structural repairs, building new office spaces, upgrading the building's fire protection, electrical and IT systems, the application elastomeric silicone coating on the roof, removing and replacing roof drains, repairing vents and skylights, removing and repairing doors, removing and installing a new chain link fencing gate, removing and replacing existing stair access to the Engineering office, renovating the existing Facility Maintenance offices which includes the supply office and storage area as well as Mechanical Supervisor office and Pool Room, building new lounge rooms, as well as metal stair access to what's going to be a new mezzanine space, plumbing repair and upgrades. ALJ Alcantara stated that the contract has the standard terms which includes a liquidated damages clause, a clause that allows PAG to terminate or modify the contract due to a lack of funding, and he recommended that the PUC approve the contract. PAG's Deputy GM of Operations Dominic Muna stated that approving the contract would help PAG continue its modernization plan and continue to grow for the years to come. The Chairperson inquired as to whether PAG should resolicit the contract as requested in a letter submitted by Felixberto Alfred Duenas to the PUC and Muna stated that he was not aware of that letter and that the contract firmly conforms the local law and we followed all the procurement activities from beginning to end. Commissioner Flores-Brooks stated that she has to abstain because her binder did not contain the ALJ Report and she did not want to vote prior to reading it. Commissioner Perez-Camacho inquired as to where PAG was housing its maintenance team and Muna stated that they are permanently housed in the EQMR Building. Commissioner Montinola inquired as to the condition of the building's foundation and Muna stated that the foundation is solid because it was built by the U.S. military and that the employees would have to move out of the building during its renovation. Commissioner Guerrero moved to approve the proposed order approving the petition which motion was seconded by Commissioner Montinola and the motion passed with six affirmative votes and one abstention from Commissioner Flores-Brooks.



#### 4. Guam Power Authority

The Chairperson announced that the next item of business on the agenda was Guam Power Authority [GPA] GPA Docket 22-07, Petition to Approve Cabras Unit #2 Major Overhaul, PUC Counsel Report, and Proposed Order. Legal Counsel Camacho stated that TEMES is the PMC for Cabras 1 and 2 and that GPA is petitioning for the PUC to approve TEMES performing a \$4.9 million overhaul of the Cabras 2 unit, that TEMES is supposed to decommission Cabras 1 and 2 by October, 2024 after the new 198-megawatt plant is completed, that Cabras 2 last overhaul occurred in 2016 and that the Cabras units are supposed to receive an overhaul once every five years, that the need for an overhaul of Cabras 2 is experiencing more unit outages, mostly formed by the Boiler 2 failures and fan safety belt failures and insufficient airflow caused by gas and an airduct leakage, that GPA has scheduled the overhaul for September of 2022, that the overhaul is expected to take approximately 50 days to complete, and that the overhaul was reasonable, prudent, and necessary and he recommended that the PUC approve the petition. A discussion ensued between the Chairperson, Commissioners Montinola, McDonald, Flores-Brooks, and Guerrero, Legal Counsel Camacho, GPA Legal Counsel Botha, and CCU Commissioner Joey Duenas regarding the status of the Aggreko Units, the status of Cabras 1 and the last time it was overhauled, the Cabras units' end of life cycle, whether the overhaul will prevent future outages from occurring, the generating capacity of GPA's existing baseload and peaking units, the timing of the overhaul, what services will be included in the overhaul, the cause of the Cabras 1 explosion, when Cabras 1 will be operational again, GPA's power reserve capacity, the status of the 198 megawatt power plant project, the status of the 17 mile pipeline project, whether GPA is complying with the USEPA Consent Decree, the number of GPA's baseload generators that are currently operational, how much power the solar farms are actually providing to the island wide power system, the challenges that the CCU is currently facing to fund various GPA and GWA projects, the dates the new solar farm will be operational, the status of the KEPCO solar farm and whether it becoming operational will avoid the need for the overhaul, whether using other generators on island would avoid need to overhaul Cabras 2, whether GPA can move up the date to start the overhaul on Cabras 2, and whether the U.S. Navy's assistance could prevent avoid the Cabras 2 overhaul. Commissioner Pangelinan recused himself from further action on this matter due to the lengthy discussion of KEPCO which is a client of his law firm. Commissioner Montinola moved to approve the proposed order granting the petition, which motion was seconded by Commissioner McDonald and the motion passed with five affirmative votes, one vote in opposition by Commissioner Guerrero, and one abstention by Commissioner Pangelinan.



The Chairperson announced that the next item of business on the agenda was GPA Docket 22-09, Petition to Approve the Contract Award for Merchant Services for GPA and GWA, ALJ Report, and Proposed Order. ALJ Horecky stated that GPA requests that the PUC approve the award of a contract for merchant services with First Hawaiian Bank for both GPA and GWA, that merchant services would enable GPA and GWA to accept and process credit and debit card customer billing payments at their payment facilities and online, that the PUC has previously authorized GPA to solicit for the merchant services, that the cost of the merchant services will be approximately for GPA \$600,000 per year and \$3 million for five years, and for GWA, \$350,000 per year and \$1.75 million for five years, that the contract is reasonable, prudent, and necessary, and he recommend that the PUC approved the petition. GPA Legal Counsel Botha stated that the new contract will allow GPA and GWA to accept MasterCard and Visa and the prior contract only accepted MasterCard, and that the new contract has a phenomenal, 0.2 percent fee for credit cards instead of the average 2.0 percent fee. A discussion ensued between Commissioners Montinola, Pangelinan, and Flores-Brooks, and GPA Legal Counsel Botha and GPA's Mafnas regarding the credit card usage of GPA and GWA's customers, the current average GPA customer power usage, why the current contract for merchant services did not accept Visa, whether it is lawful to pass the credit card fees to GPA and GWA's customers, and the amount GPA and GWA will be paying for the merchant services. Commissioner Perez-Camacho moved to approved the proposed order granting the petition which motion was seconded by Commissioner Montinola, and the motion carried unanimously.

The Chairperson announced that the next item of business on the agenda was GPA Docket 22-10, Petition of the Guam Power Authority to Approve a Bond Issuance to Refinance a Portion of the Outstanding 2012 Revenue Bonds, ALJ Report, and Proposed Order. ALJ Horecky stated that GPA's petition is to refund the 2012 Series A bonds with a new issuance of 2022 Series A revenue refunding bonds forward delivery, that the PUC has jurisdiction because all debt obligations as well as bond uses or issuances are reviewed by the PUC under the contract review protocol, GPA submits that the bond refinancing will lower debt service costs and provide a net present value savings to ratepayers, that the bond refinancing is reasonable, prudent, and necessary, that the bond refinance has been authorized by Public Law 36-80, that the bond refinancing will extend the maturity date from 2022 to 2044, that after the bond refinancing is done GPA must come back to the PUC and get approval for the uses of the savings from the bond refinancing, that the first part of the refunding will be about \$12.4 million dollars in savings for those six years and thereafter the savings will be closer to \$6.5 million, that these savings assist ratepayers by not having to increase rates to pay the \$600 million cost of the new 198 megawatt power plant, that there are two proposed orders, the order approving the long-term debt order which is attached and an order approving the long-term debt. A discussion ensued between the Chairperson, Commissioners Montinola and Flores-Brooks, ALJ Horecky, and GPA Legal Counsel Botha regarding

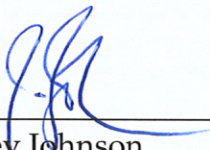


whether the bond refinance was 4.5% or 4.22% of the true interest, the various restrictions and covenants in the bond refinancing, the percent of savings the bond refinancing will achieve, the net present value of the bond refinancing savings, GPA's current debt and its net equity position, and the method used to determine the bond refinancing savings. Commissioner Montinola moved to approve the proposed orders granting the petition which motion was seconded by Commissioner Guerrero, and the motion passed with six affirmative votes to one vote in opposition by Commissioner Flores-Brooks.

The Chairperson announced that the next item of business on the agenda was GPA Docket 22- 05, PUC Review of the Levelized Energy Adjustment Clause (LEAC) Factor pursuant to Tariff Z, ALJ Report, and Proposed Order. ALJ Horecky stated that this matter comes before the PUC pursuant to Tariff Z which governs the determination of the levelized standard energy adjustment clause [LEAC] that provides a formula for each customer bill to recover GPA's fuel costs, that GPA's current under-recovery is about \$22 million if the PUC did nothing tonight and continue the existing 18-cent LEAC factor to remain in effect for the rest of the LEAC period, the under-recovery at the end of the period would be \$32 which is more than the \$17.5 million under-recovery currently authorized by the PUC, that GPA's plan to delay the LEAC increase until May 1, 2022 would result in a higher LEAC increase that would not benefit the ratepayers, that the PUC has an obligation under Tariff Z to determine whether the current LEAC factor is adequate to recover GPA's actual fuel expenses during this LEAC period, that letting the under-recovery grow to \$32 million would be unprecedented, he recommended that the PUC increase the LEAC factor to 20.9552 cents per kilowatt-hour on meters effective after April 1, 2022 and he stated that he provided a proposed order that would do this if approved. A discussion ensued between the Chairperson and the Commissioners, ALJ Horecky, CCU Commissioner Duenas, and GPA Legal Counsel Botha regarding GPA's ability to pay for its fuel without increasing the LEAC factor, whether the current LEAC could be used to the end of the current LEAC period, whether the six month LEAC period should be shortened to three months, the current volatility of fuel prices, whether the activation of the KEPCO Solar Farm would result in a lower LEAC rate because of less need for fuel, the current status of the KEPC Solar Farm project, whether running the power plants more efficiently would result in a lower LEAC rate, and whether the bond refinancing could be used to reduce the LEAC rate. Commissioner Perez-Camacho moved to approve proposed order increasing the LEAC rate to 20.9552 cents per kilowatt-hour on meters effective after April 1, 2022 which motion was seconded by Commissioner Montinola, and the motion carried with six affirmative votes to one vote in opposition made by Commissioner Guerrero.



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



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Jeffrey 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 March 31, 2022, Suite 202, GCIC Building, 414 W. Soledad Ave., Hagatna.

The following business will be transacted:

**Agenda**

- 1. Call to Order**
- 2. Approval of Minutes of February 24, 2022**
- 3. Public Comment**  
  
**Dr. William Weare, MD ("PUC Proposals (Four)")**
- 4. Port Authority of Guam**
  - **PAG Docket 22-03, Petition of the Port Authority for PUC Review and Approval of the Procurement Contract Award to JJ Global Services for the Construction to Repair and Upgrade the EQMR Building, IFB-PAG-CIP-021-010, ALJ Report, and Proposed Order**
- 5. Guam Power Authority**
  - **GPA Docket 22-07, Petition to Approve Cabras Unit #2 Major Overhaul, PUC Counsel Report, and Proposed Order**
  - **GPA Docket 22-09, Petition to Approve the Contract Award for Merchant Services for GPA and GWA, ALJ Report, and Proposed Order**
  - **GPA Docket 22-10, Petition of the Guam Power Authority to Approve a Bond Issuance to Refinance a Portion of the Outstanding 2012 Revenue Bonds, ALJ Report, and Proposed Order**
  - **GPA Docket 22- 05, PUC Review of the Levelized Energy Adjustment Clause (LEAC) Factor pursuant to Tariff Z, ALJ Report, and Proposed Order**
- 6. Adjournment**



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. The meeting will be broadcast live on the PUC website at [guampuc.com](http://guampuc.com). 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**

**PETITION FOR APPROVAL OF )  
AWARD TO JJ GLOBAL SERVICES )  
FOR THE CONSTRUCTION )  
AND REPAIR AND UPGRADE OF )  
THE EQMR BUILDING BY PORT )  
AUTHORITY OF GUAM )  
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**PAG DOCKET 22-03**

**ORDER**



**INTRODUCTION**

This matter comes before the Guam Public Utilities Commission (the “PUC”) pursuant to the March 2, 2022 Petition for review and approval of the contract related to repairing and upgrading the EQMR Building with JJ Global Services (the “Petition”), filed by the Jose D. Leon Guerrero Commercial Port, Port Authority of Guam (hereinafter referred to either “PAG” or the “Port”).

On March 28, 2022, 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 renovation of its Equipment, Maintenance and Repair Building (“EQMR Building”). On November 3, 2021, PAG issued and published Invitation for Bid No. IFB-PAG-CIP021-010 (hereinafter referred to as the “IFB”), which sought the services of a contractor to complete repairs and upgrades to the EQMR



Building.<sup>1</sup> In response to the IFB, two contractors submitted bids.<sup>2</sup> According to PAG, JJ Global Services (“JJ Global”) was the lowest responsible and responsive bidder with a bid of Three Million Nine Hundred Eighty Thousand Dollars (\$3,980,000.00).<sup>3</sup> On February 10, 2022, PAG issued a Notice of Intent to Award the contract to JJ Global.<sup>4</sup> On February 24, 2022, PAG’s Board of Directors issued Resolution No. 2022-05, which approved PAG’s contract award to JJ Global and authorized PAG to petition the PUC for review and approval of the subject contract.<sup>5</sup>

**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, and any use of such funds” “shall require prior PUC approval . . . .” Contract Review Protocol, PAG Docket 09-01, p. 1 (June 20, 2011). The subject contract is rightfully before the Commission since the contract both exceeds \$1,000,000.00 and will be funded by bond revenues.

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<sup>1</sup> Petition, p. 1 (Mar. 2, 2022).

<sup>2</sup> PAG Board Resolution No. 2022-05, p. 1 (Feb. 24, 2022).

<sup>3</sup> Petition, p. 1 (Mar. 2, 2022).

<sup>4</sup> Petition, p. 1 (Mar. 2, 2022).

<sup>5</sup> PAG Board Resolution No. 2022-05, p. 1 (Feb. 24, 2022).



## **2. Scope of Work and Proposed Contract**

### **a. Scope of Work**

The project is focused on repairing and upgrading the EQMR Building, which is 24,000 square feet and was constructed back in 1968.<sup>6</sup> This building houses PAG's Maintenance & Repair and Supply Management staff.<sup>7</sup> Generally, the scope of work involves structural repairs to existing cracks and spalls that affect the overall structural integrity of the building.<sup>8</sup> The project also involves renovations that will provide new office spaces, as well as upgrades to the building, which include fire protection, electrical and IT systems that will meet code requirements.<sup>9</sup>

Specifically, the scope of work is comprised of nine areas: (1) administrative; (2) structural; (3) architectural; (4) mechanical; (5) plumbing; (6) fire protection; (7) communication; (8) electrical; and (9) commissioning and testing (close-out).<sup>10</sup> For instance, the contractor is tasked with painting the exterior and interior walls of the building, including beams and columns; and applying Elastomeric silicone coating on the roof.<sup>11</sup>

Other tasks include removing and replacing metal downspouts and roof drains; repairing vents and skylights; removing and repairing doors; removing and installing a new

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<sup>6</sup> IFB, p. 4.

<sup>7</sup> IFB, p. 4.

<sup>8</sup> IFB, p. 4.

<sup>9</sup> *See*, IFB, p. 4.

<sup>10</sup> IFB, p. 40.

<sup>11</sup> IFB, p. 80.



chain-link fence and gate; and removing and replacing existing stair access to the Engineering Office.<sup>12</sup> The contractor is also tasked with renovating the existing Facility Maintenance offices, supply office, and storage area, as well as the Mechanical Supervisor office and tool room; building new lounge rooms and metal stair access to the mezzanine offices; building new office spaces, data room, and restroom, just to name a few.<sup>13</sup>

The contractor is responsible for all structural repairs as well, which include: repairing cracks and spalls along walls, roof slabs, beams, columns, and other reinforced concrete.<sup>14</sup> It must also build a new mezzanine floor for the office spaces with steel beams support, wood floor joists, and fire rated flooring system, and building stair access to the mezzanine area; install a chain link fence and gate for the new electrical rooms, among others.<sup>15</sup>

Some mechanical work includes the removal and disposal of existing HVAC systems in the supply and other offices, and the supply storage room; the installation of a new range hood in the kitchen, and the installation of a new high efficiency HVLS fan in woodwork and mechanic shop; and the installation of a dust collection system for the woodwork shop, oil management system for handling oil or lubricant at the mechanic shop; and the installation of new Energy Star-rated exhaust fans for the new mezzanine restrooms.<sup>16</sup>

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<sup>12</sup> IFB, p. 80.

<sup>13</sup> IFB, p. 80.

<sup>14</sup> IFB, p. 80.

<sup>15</sup> IFB, p. 81.

<sup>16</sup> IFB, p. 81.



Plumbing for the EQMR Building will include the removal and disposal of the utility sinks and plumbing fixtures; the removal and disposal of existing showers; and the installation of new utility sinks, plumbing fixtures, water heaters, and emergency eye wash and showers, just to name a few.<sup>17</sup>

Regarding fire protection, the contractor is tasked with removing and replacing the existing fire sprinkler system; and the installation of a new fire alarm system.<sup>18</sup> Regarding telecommunications, the contractor is tasked with the removal of telephone system conduits; the installation of a new data cabinet; and the provisioning of a security system (to include CCTV, access control, and a panic alarm).<sup>19</sup>

The electrical work will include the removal and replacement of underground feeder cables to the EQMR building; the removal and replacement of electrical panels, transformers, switches, conduits, feeders, power supply, lighting and appurtenances; and to provide backup power to minimize downtime during the construction.<sup>20</sup> Work for closing-out the project will include the disposal of all debris and trash to appropriate disposal sites.<sup>21</sup>

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<sup>17</sup> IFB, pp. 81-82.

<sup>18</sup> IFB, p. 82.

<sup>19</sup> IFB, p. 82.

<sup>20</sup> IFB, p. 82.

<sup>21</sup> IFB, pp. 82-83.



As is regularly the case, the contractor will be subject to liquidated damages (of \$1,000.00) for each calendar day the work remains incomplete after five hundred and forty (540) days from the date of the Notice to Proceed.<sup>22</sup>

Other provisions of the IFB include the following: “[a]ll material and equipment must conform to applicable standards of organizations such as the American National Standard Institute (ANSI), the American Society for Testing and Materials (ASTM), the National Manufacturers Association (NEMA), and the Underwriters Laboratories (UL).”<sup>23</sup> Further, “[a]ll materials and equipment required to complete the project shall be furnished by the Contractor.”<sup>24</sup> In addition, the Port may terminate or modify the contract based simply on the lack of funding.<sup>25</sup>

**b. Contract Term, Cost and Funding**

Pursuant to the terms of the agreement, the contractor is required to complete its services within Five Hundred and Forty (540) Calendar Days from the issuance of a Notice to Proceed by the Port.

According to PAG, the total cost of the repairs and upgrades under the contract is \$3,980,000.00.<sup>26</sup> This particular project was expressly identified as a bond-funded project, which was approved by the PUC and the Guam Legislature.

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<sup>22</sup> IFB, pp. 33, 60.

<sup>23</sup> IFB, p. 34.

<sup>24</sup> IFB, p. 34.

<sup>25</sup> IFB, p. 62.

<sup>26</sup> Petition, p. 1 (Mar. 2, 2022).



PAG submitted that this contract is necessary in order to prevent further deterioration of the building and to eradicate the risk of concrete shedding and falling from its structures; and, therefore, to ensure a safe working environment for the port's maintenance and operations personnel, as well as for its tenants and users; and will bring the building structures in compliance with the Uniform Building Code.<sup>27</sup>

### **RECOMMENDATION AND CONCLUSION**

Based on the documentation provided, the ALJ found that this contract is indeed necessary to prevent further deterioration of the building and eradicate the risk of concrete shedding and falling from its structures. It will also ensure a safe working environment for the Port's maintenance and operations personnel, as well as for its tenants and users; and will bring the building structures in compliance with the Uniform Building Code.

The use of bond revenue is appropriate since this particular project was expressly identified as a bond-funded project, which was approved by the PUC and the Guam Legislature. Indeed, the Guam Legislature expressly found that in order for the Port to "increase capacity, execute infrastructure development, and undertake Port expansion to meet the community's needs," it needs to repair its EQMR Building. Accordingly, the Guam Legislature approved PAG's issuance of system revenue bonds for the purpose of funding such a project, among others. *See* P.L. 34-70, p. 2 (Dec. 5, 2017).

Based on the record before the Commission, the ALJ found that the subject contract appears to have undergone Guam's competitive bidding process; and that the contract is necessary to the Port's expansion and modernization. Accordingly, the ALJ

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<sup>27</sup> PAG Legal Review, p. 1.



recommended that the PUC approve the proposed contract with JJ Global Services, at a cost of \$3,980,000.00.

The Commission hereby adopts the findings in the February 21, 2022 ALJ Report and therefore issues the following.

### **ORDERING PROVISIONS**



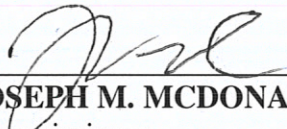
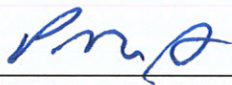
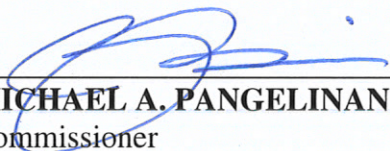
Upon careful consideration of the record herein, and for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby ORDERS the following:

1. That the instant Petition is hereby APPROVED.
2. PAG is authorized to enter into the proposed contract with JJ Global Services for construction services to repair and upgrade the EQMR Building; and at a cost of \$3,980,000.00.
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 31<sup>st</sup> day of March, 2022.

  
**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 GUAM PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF:**

**THE PETITION OF THE GUAM  
POWER AUTHORITY FOR APPROVAL  
OF CONTRACT WITH TEMES, INC.,  
FOR THE CABRAS 2 OVERHAUL**

**GPA DOCKET 22-07**

**ORDER**



**INTRODUCTION**

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Guam Power Authority ["GPA"] Petition for Approval of the GPA-Temes, Inc., contract for the overhaul of Cabras 2 ["contract"].<sup>1</sup>
2. The Cabras 2 Overhaul is scheduled to begin in September, 2022 and is expected to take fifty (50) days to complete and the contract will cost \$4,960,602.<sup>2</sup>

**BACKGROUND**

3. Temes, Inc. ["Temes"], is GPA Performance Management Contractor ["PMC"] for its Cabras 1 and 2 power plants and Temes' PMC contract does not expire until September, 2023.<sup>3</sup>
4. GPA's prior Consent Decree with the U.S. Environmental Protection Agency [USEPA], which the PUC approved in GPA Docket No. 20-01, required GPA to permanently de-activate and de-commission Cabras 1&2 by October 22, 2022 after its generating capacity is replaced by GPA's new 198MW power plant project which was previously scheduled to be completed in the 4<sup>th</sup> quarter of 2022.<sup>4</sup>
5. Under GPA's revised consent decree with the USEPA, GPA is authorized to continue to use Cabras 1 & 2 for up to six months after the completion of the new 198MW power plant, and it is currently estimated that GPA will be operating Cabras 1 & 2 under this extension until October, 2024.

<sup>1</sup> GPA Petition for Approval of Contract with Temes, Inc., for the Cabras 2 Overhaul, GPA Docket 22-07, filed January 27, 2022 (Petition).

<sup>2</sup> Id., at 1. [NOTE: This report cites the PDF numbers because the numbers used in the Petition and its exhibits are not continuous]

<sup>3</sup> Id., at 3.

<sup>4</sup> Order dated January 30, 2020, GPA Docket No. 20-04 at 2.



6. An overhaul of the Cabras 1 & 2 units is recommended every five (5) years, and the last overhaul Cabras 2 received was in 2016. GPA scheduled an overhaul for Cabras 2 in March, 2020 but this overhaul could not be conducted due to the COVID-19 Pandemic Emergency.<sup>5</sup>
7. Currently, Cabras 2 is in need of an overhaul because it is experiencing significant unit outages and down time caused by boiler tube failures, plant safety valve failures, and insufficient air flow caused by gas and air duct leakage that restrict unit output.<sup>6</sup>
8. GPA has scheduled an overhaul of Cabras 2 for September, 2022 and the overhaul is expected to take approximately fifty (50) days to complete and it is estimated to cost \$4,960,602.<sup>7</sup>
9. On January 25, 2022, the Consolidated Commission on Utilities [“CCU”] adopted Resolution No. FY2022-07, which authorized GPA’s management petition to PUC to use \$4,960,602 in revenue funds to pay for the Cabras 2 Overhaul scheduled for September, 2022.<sup>8</sup>
10. On March 28, 2022, the PUC Legal Counsel issued his report.

### **DETERMINATIONS**

11. The PUC’s Contract Review Protocol mandates that any contract or obligation which exceeds the \$1,500,000 must receive prior PUC approval.<sup>9</sup> Here, the contract for the Cabras 2 Overhaul exceeds the \$1,500,000 threshold amount because it is estimated to cost \$4,960,602 and GPA must obtain the PUC’s prior approval before entering into the contract.
12. The \$4,960,602 cost of the Cabras 2 overhaul is reasonable. In October, 2016, the PUC approved the \$5,190,000 cost of overhauling Cabras 1 (Cabras 2’s sister unit).<sup>10</sup> Here, despite the current cost increases, the proposed Cabras 2 overhaul is \$229,398 lower than the \$5,190,000 cost of overhauling Cabras 1 approximately six years ago.

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<sup>5</sup> Petition at 1 and 3.

<sup>6</sup> Id., at 3.

<sup>7</sup> Id.

<sup>8</sup> Id., at 4.

<sup>9</sup> PUC Order, Administrative Docket, filed on February 15, 2008 at 4.

<sup>10</sup> PUC Order, GPA Docket 17-02, filed on October 27, 2016 at 3.



13. The Cabras 2 overhaul is prudent. Until the new 198MW power plant is commissioned, GPA must rely on 132MW produced by Cabras 1 & 2 to provide reliable energy to operate the island wide power system. The former Aggreko units, now known as the Yigo diesels are not valid alternatives to shut down Cabras 2 to avoid the \$4,960,602 overhaul cost. The Yigo diesels only provide only 40MW of diesel peaking units, they are not run as baseload units, and their output is 26MW less than the 66MW produced by Cabras 2 which is a baseload unit. The 60MW KEPCO solar facility is not a valid alternative to shutting down Cabras 2 to avoid the overhaul costs. The KEPCO solar facility, which is currently scheduled to be online in May 2022, has no battery storage, it only operates from 6:00 a.m., to 6:00 p.m. with full load, not accounting for rain or cloud cover. The average output of 60MW solar farm is between 12-15MW, which is far less than the reliable 66MW provided by Cabras 2, and the solar farm is not available during the peak usage hours for Guam which occurs after 7:00 p.m. and does not contribute to providing energy to fulfill Guam's average 254MW peak load demand. GPA's only other baseload power units are Piti 8 & 9 which produce 88MW, and, until the new 198MW power plant is completed, GPA needs both Piti 8&9 and Cabras 1 & 2 to meet this peak demand. Finally, there is the 60MW Hanwha solar farm, but this is not a viable alternative to shutting down Cabras 2 to avoid the overhaul costs because the Hanwha solar farm is not expected to be completed until December 2023, and would be subject to the same limitations as the KEPCO Solar facility. Hence, the Cabras 2 overhaul is prudent.
14. The Cabras 2 Overhaul is necessary. As stated above, GPA relies on both Piti 8 & 9 and Cabras 1 and 2 to meet Guam's peak load needs until the new 198MW power plant is commissioned. According to GPA, turbine overhauls for the Cabras 1 & 2 units should be done every two years, and the turbine overhaul for Cabras 2 is overdue at this time. Further, the turbine inspection for the Cabras 2 unit which is part of the Cabras 2 overhaul is also overdue at this time. Finally, GPA is under increased pressure to complete the Cabras 2 overhaul as scheduled in September 2022 because, at this time, Cabras 1 is offline awaiting repairs as a result of a boiler explosion on February 4, 2022, which results in GPA having a limited reserve capacity.
15. Based on the foregoing, the Cabras 2 Overhaul and its one \$4,960,602 cost are reasonable, prudent, and necessary.



PUC Order  
Petition for Approval of  
Contract with Temes, Inc., for the  
Cabras 2 Overhaul  
March 31, 2022

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### **ORDERING PROVISIONS**

After careful review and consideration of the above determinations, GPA's Petition to approve the Contract with Temes, Inc., for the Cabras 2 Overhaul, the Report of PUC Legal Counsel, and the record herein, for good cause shown, and on motion duly made, seconded, and carried by the undersigned Commissioners, the Guam Public Utilities Commission **HEREBY ORDERS** that:

1. The GPA-Temes, Inc. Contract for the Cabras 2 Overhaul and its \$4,960,602 cost are approved.
2. 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 §§12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

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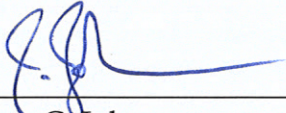
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PUC Order  
Petition for Approval of  
Contract with Temes, Inc., for the  
Cabras 2 Overhaul  
March 31, 2022

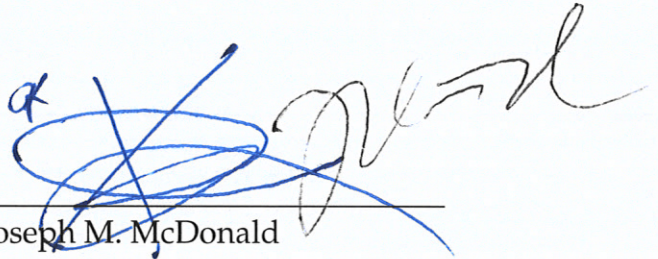
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Dated this 31st day of March, 2022.



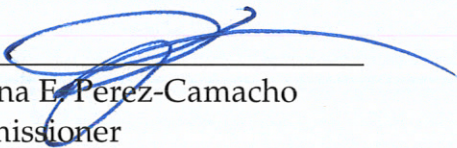
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Jeffrey C. Johnson  
Chairman



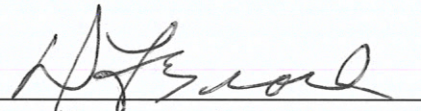
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Joseph M. McDonald  
Commissioner



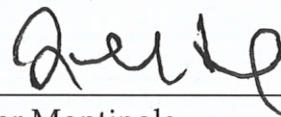
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Rowena E. Perez-Camacho  
Commissioner



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Doris Flores Brooks  
Commissioner



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Peter Montinola  
Commissioner

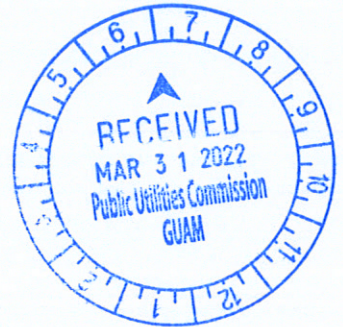
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Pete Guerrero  
Commissioner



## BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF: ) GPA Docket 22-09  
)  
The Application of the Guam Power )  
Authority to Approve the Contract for ) **ORDER**  
Merchant Services for GPA and GWA. )  
\_\_\_\_\_ )



### INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Petition of the Guam Power Authority ["GPA"] to Approve the Contract for Merchant Services for GPA and GWA.<sup>1</sup>
2. GPA requests that PUC approve the Award of a Contract for Merchant Services with First Hawaiian Bank for both GPA and GWA. The Merchant Services provided by First Hawaiian Bank would enable the acceptance and processing of credit and debit card customer billing payments for GPA and GWA at their payment facilities and online.
3. Guam Solid Waste Authority (GSWA) will also receive merchant services from First Hawaiian Bank. Although GSWA was included in the procurement for Merchant Services, GPA has not included GSWA in its present request because the cost of the contract to GSWA does not meet GSWA's contract review threshold of \$750,000.00 per annum or over the possible 5-year period of the Contract.<sup>2</sup>

<sup>1</sup> GPA Petition to Approve the Contract for Merchant Services, GPA Docket 22-09, filed March 9, 2022.

<sup>2</sup> Phone conversation between GPA Legal Counsel Graham Botha and PUC Administrative Law Judge Fred Horecky on March 10, 2022.



### **BACKGROUND**

4. In GPA Docket 21-08, the PUC authorized GPA to issue a Procurement for Merchant Services as set forth in its Petition and Request for Proposal No. GPA-RFP-21-\_\_\_\_, for GPA, GWA, and GSWA.<sup>3</sup>
5. Pursuant to the PUC Order, GPA issued a Request for Proposal for a 1-year contract for Merchant Banking Services, with the option to extend for four 1-year periods.<sup>4</sup>
6. GPA received three proposals in response to the RFP. An Evaluation Committee comprised of GPA and GWA personnel determined that the proposal from First Hawaiian Bank was the most comprehensive and acceptable.<sup>5</sup>
7. The Consolidated Commission on Utilities, subject to PUC approval, authorized the General Managers of the Guam Power Authority and Guam Waterworks Authority to award the Merchant Banking Services Contract to the First Hawaiian Bank at a cost of approximately \$600,000 per year and \$3 million for five years, and \$350,000 per year, and \$1,750,000 for five years, for GPA and GWA respectively.<sup>6</sup>
8. The Merchant Services Contracts would be for a 5-year contract period consisting of a base year and four additional 1-year options.

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<sup>3</sup> PUC Order, GPA Docket 21-08, dated April 29, 2021, at p. 5.

<sup>4</sup> Guam Consolidated Commission on Utilities, GPA Resolution No. FY2022-09/GWA Resolution No. 08-FY2022, Relative to the Authorization for the Guam Power Authority and the Guam Waterworks Authority to Award a Contract for Merchant Banking Services and to Petition the Guam Public Utilities Commission for Approval, approved and adopted on February 22, 2022.

<sup>5</sup> Id., at p. 1.

<sup>6</sup> Id., at p. 2.



9. The Administrative Law Judge ["ALJ"] submitted his Report in this Docket dated March 15, 2022. The PUC adopts the conclusions and recommendations stated therein.

### **DETERMINATIONS**

10. GPA indicates that the First Hawaiian Bank price proposal offered certain advantageous rates, including Visa Utility Program and Mastercard Utility Industry Program rates which offer low interchange rates for utilities.<sup>7</sup>
11. First Hawaiian Bank can offer credit card payments with Visa cards, whereas Bank of Hawaii was unable to do so under the prior Merchant Services Contract.<sup>8</sup>
12. The proposal of First Hawaiian Bank offered "a very favorable interchange rate introduced specifically for the utility industry" under which GPA and GWA expect to save \$1,000,000 and \$220,000 respectively, per year in merchant fees under this new contract.<sup>9</sup>
13. The First Hawaiian Bank proposal also provides all implementation support at no extra cost to the utilities in addition to maintaining consistent pricing throughout the duration of the contract.<sup>10</sup>

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<sup>7</sup> Id., at p. 1.

<sup>8</sup> Phone conversation between GPA CFO John Kim and PUC Administrative Law Judge Fred Horecky on March 14, 2022.

<sup>9</sup> Guam Consolidated Commission on Utilities, GPA Resolution No. FY2022-09/GWA Resolution No. 08-FY2022, Relative to the Authorization for the Guam Power Authority and the Guam Waterworks Authority to Award a Contract for Merchant Banking Services and to Petition the Guam Public Utilities Commission for Approval, approved and adopted on February 22, 2022, at p. 1.

<sup>10</sup> Id., at p. 2.



14. The fees which First Hawaiian Bank will charge for Merchant Services are set forth in the Bid Worksheet attached to the ALJ Report as Exhibit "1".

15. Under the Contact Award, GPA indicates that the following prices will be charged to GPA/GWA for the Merchant Services:

1. Visa & Mastercard - \$0.75 consumer, \$1.5 commercial + transaction fee 0.2%
2. Debit card - \$0.17 per transaction
3. Gateway fee - \$0.09 per transaction<sup>11</sup>

16. GPA and GWA will enter into Form Merchant Agreements with First Hawaiian Bank to establish such services. A true and correct copy of said Agreement is attached to the ALJ Report as Exhibit "2".<sup>12</sup>

17. The PUC previously determined in GPA Docket 21-08 that the provision of merchant services are beneficial to both the utilities and their customers: (1) Credit card payments of utility bills has increased substantially in the last few years; (2) The wide availability of merchant services to customers helps to ensure that the utilities are promptly paid for the services which they provide; (3) The reduced costs of such merchant services have increased customer usage of credit card and online payments of utility bills.<sup>13</sup>

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<sup>11</sup> Email from Graham Botha, GPA Legal Counsel, to PUC ALJ Fred Horecky, dated March 11, 2022.

<sup>12</sup> The FHB Merchant Processing Agreement was provided by Graham Botha, GPA Legal Counsel, to PUC ALJ Fred Horecky in an email dated March 12, 2022.

<sup>13</sup> PUC Order, GPA Docket 21-08, dated April 29, 2021, at pgs. 3-4.



18. There are no charges to the GPA and GWA customers who utilize the merchant services.<sup>14</sup>

19. The award of the Merchant Services Contract to First Hawaiian Bank is reasonable, prudent, and necessary. The cost of services under the proposed contract is less than that under the prior contract. The cost for such services is also reasonable.

### **ORDERING PROVISIONS**

Upon consideration of the record herein, the Petition of GPA, 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:

1. The Merchant Banking Services contract awards by GPA and GWA to the First Hawaiian Bank are approved.
2. GPA has demonstrated a clear need to provide a broad range of merchant services for the customers of the utilities. It is reasonable, prudent, and necessary for GPA to proceed with the Procurement for Merchant Services.
3. Expenditures in the approximate amount of \$600,000 per year and \$3 million for five years, and \$350,000 per year and \$1,750,000 for five years, for GPA and GWA respectively, are authorized for the 5-year contract period consisting of a base year and four additional 1-year options.

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<sup>14</sup> Phone conversation between GPA CFO John Kim and PUC Administrative Law Judge Fred Horecky on March 14, 2022.



4. GPA is ordered to pay the Commission's regulatory fees and expenses, including, without limitation, consulting and counsel fees and the fees and expenses of conducting the hearing proceedings. Assessment of PUC's regulatory fees and expenses is authorized pursuant to 12 GCA §§12103(b) and 12125(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

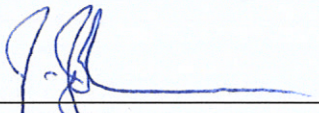
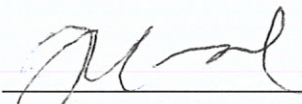
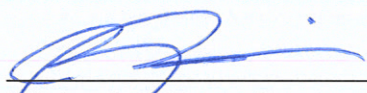
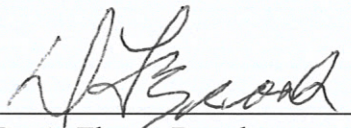
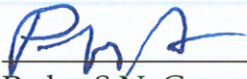
**[SIGNATURES TO FOLLOW ON NEXT PAGE]**



Order  
Approval of the Contracts for Merchant Services  
GPA Docket 22-09  
March 31, 2022

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Dated this 31st day of March 2022.

  
\_\_\_\_\_  
Jeffrey C. Johnson  
Chairman  
\_\_\_\_\_  
Rowena E. Perez-Camacho  
Commissioner  
\_\_\_\_\_  
Joseph M. McDonald  
Commissioner  
\_\_\_\_\_  
Michael A. Pangelinan  
Commissioner  
\_\_\_\_\_  
Peter Montinola  
Commissioner  
\_\_\_\_\_  
Doris Flores Brooks  
Commissioner  
\_\_\_\_\_  
Pedro S.N. Guerrero  
Commissioner



**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF: ) GPA Docket 22-10  
)  
The Application of the Guam Power Authority )  
to Approve a Bond Issuance to Refinance a )  
Portion of the Outstanding Revenue Bonds. )  
)

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**ORDER APPROVING LONG-TERM DEBT**

On September 28, 1992, this Commission adopted an Order approving certain aspects of the proposal of the Guam Power Authority ("GPA") to issue and sell long-term debt in the form of revenue bonds (the "Senior Bonds") pursuant to Chapter 8 of Title 12 of the Guam Code Annotated (Sections 8101 et seq.) (the "Act") for the purposes of financing certain additions and improvements to the electric power system of GPA and, as part of such financing program, refunding certain of GPA's then outstanding bonds and other indebtedness.

The proposed form of an indenture pursuant to which the Senior Bonds in one or more series were proposed to be issued (the "Senior Indenture") was presented to the Commission at that time. In accordance with the Act, the covenants and agreements authorized by the Act and included in the Senior Indenture were approved by said Order for inclusion in substantially such form in the Senior Indenture executed by GPA, and certain modifications of such form were approved by Order of the Commission adopted on December 3, 1992.

GPA executed and delivered the Senior Indenture on January 5, 1993, and has previously issued eight series of Senior Bonds, having the terms and issued for the purposes authorized and approved by Orders of the Commission heretofore adopted.

GPA has now applied to the Commission for approval of one or more additional series of revenue bonds for the purpose of refunding and retiring all or a portion of the remaining outstanding Guam Power Authority Revenue Bonds, 2012 Series A, for debt service savings, in accordance with the Act. Such additional series of Senior Bonds (the "Refunding Bonds") shall be in an aggregate principal amount sufficient to provide funds for the payment of the Prior Bonds and for the payment of all expenses incident to such issuance and refunding, as set forth in §8229 of the Act, to pay for credit enhancement, if any, and to fund a deposit to the debt service reserve fund if necessary in respect of such Senior Bonds.

The proposed form of the Eighth Supplemental Indenture (the "Eighth Supplemental Indenture") pursuant to which the Refunding Bonds are proposed to be issued are attached hereto, together with the Senior Indenture, as Exhibit A.



The Commission, having duly considered the application of GPA and the information presented on GPA's behalf, and having determined that the issuance of the Refunding Bonds for such purposes is just and reasonable, orders as follows:

1. The covenants and agreements authorized by Section 8210 of the Act and included in Exhibit A are hereby approved for inclusion in substantially such form in the Senior Indenture as supplemented by the Eighth Supplemental Indenture executed by GPA; provided, however, that any material modification or amendment of the Eighth Supplemental Indenture shall be subject to the Commission's prior review and approval. GPA shall have the responsibility of bringing any such material modification or amendment to the Commission's attention. The Commission's Chief Administrative Law Judge is hereby authorized to determine and confirm, by closing certificate or otherwise, that the form of the Eighth Supplemental Indenture executed and delivered by GPA does not contain any material modification or amendment from the proposed form of the Eighth Supplemental Indenture included in Exhibit A and hereby approved by the Commission.
2. The Refunding Bonds shall be issued in an aggregate principal amount determined to be sufficient in accordance with Section 8229 of Title 12 of the Guam Code Annotated, including all costs of issuance and of such refunding, plus any amount needed to provide for any reason a deposit to the debt service reserve in connection with the issuance of the Refunding Bonds, to provide for original issue discount (if any), a credit enhancement fee (if applicable), and underwriters' discount. Original issue discount and credit enhancement each shall not be used unless it results in a lower yield on such Refunding Bonds, as evidenced by a certificate of GPA. Underwriters' discount (not including original issue discount) shall not exceed one percent (1.0%) of the original principal amount of such Refunding Bonds. Costs of issuance (including, but not limited to, fees and disbursements of bond counsel, printing fees, rating agency fees, initial trustee's fees, escrow agent fees, verification agent fees, and the fee of the Guam Economic Development Authority, but not including the cost of credit enhancement, if any) shall not exceed two percent (2.0%) of the original principal amount of such Refunding Bonds. The final maturity of the Refunding Bonds shall not be later than the final maturity of the latest maturing then outstanding Senior Bonds.
3. The principal amount of Refunding Bonds that may be issued may not exceed an aggregate principal amount sufficient to provide funds for the refunding or retirement of all or a portion of the Prior Bonds, plus costs of issuance and of retirement or refunding, and of a debt service reserve fund deposit. The present value of debt service on the Refunding Bonds shall be at least two percent (2%) less than the present value of debt service on the Prior Bonds being refinanced, using the yield on the Refunding Bonds as the discount rate. All obligations of GPA to pay debt service on, and the redemption price of,



the Prior Bonds shall be discharged concurrently with the issuance of the Refunding Bonds; and thereafter, the Prior Bonds shall be payable solely from, and secured solely by, an escrow established for such purpose in accordance with the Indenture.

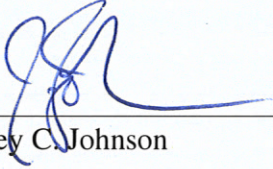
4. The All-in True Interest Cost (TIC) of the Refunding Bonds hereunder, whether to refund all or a portion of the outstanding 2012 Series A Revenue Bonds, shall in no event exceed 4.50%.

**[SIGNATURES TO FOLLOW ON NEXT PAGE]**

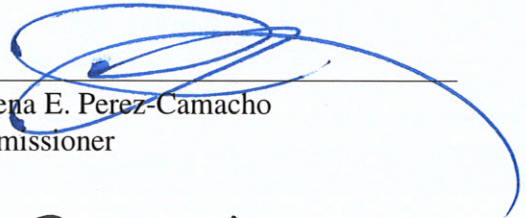


PUC Order Approving Long Term Debt  
GPA Docket 22-10  
March 31, 2022

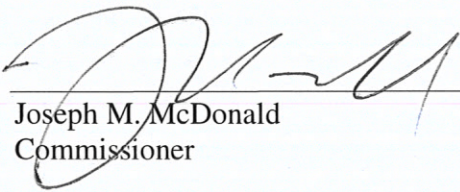
Dated this 31<sup>st</sup> day of March 2022.



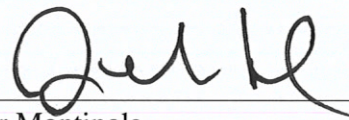
Jeffrey C. Johnson  
Chairman



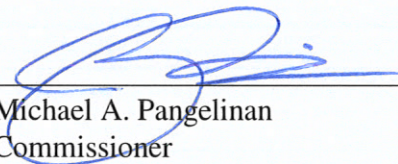
Rowena E. Perez-Camacho  
Commissioner



Joseph M. McDonald  
Commissioner

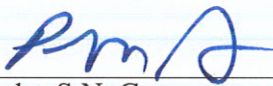


Peter Montinola  
Commissioner



Michael A. Pangelinan  
Commissioner

Doris Flores Brooks  
Commissioner



Pedro S.N. Guerrero  
Commissioner



## **EXHIBIT A**

**[Attach form of Eighth Supplemental Indenture]**



**GUAM POWER AUTHORITY**

and

**BANK OF GUAM,**  
as Trustee and Depositary

and

**U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,**  
as Co-Trustee

**EIGHTH SUPPLEMENTAL INDENTURE**

**Dated as of April 1, 2022**

**Relating to \$[2022A PAR] Principal Amount**  
**of Guam Power Authority**

**Revenue Refunding Bonds, 2022 Series A (Forward Delivery)**

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## TABLE OF CONTENTS

	Page
ARTICLE XLI DEFINITIONS .....	3
Section 41.01.    Definitions .....	3
ARTICLE XLII AUTHORIZATION AND TERMS OF THE 2022 SERIES A BONDS .....	4
Section 42.01.    Authorization of 2022 Series A Bonds .....	4
Section 42.02.    Terms of 2022 Series A Bonds; Appointments .....	5
Section 42.03.    Redemption of the 2022 Series A Bonds.....	6
Section 42.04.    Special Provisions as to Book-Entry Only System for 2022 Series A Bonds .....	9
ARTICLE XLIII ISSUANCE OF 2022 SERIES A BONDS; APPLICATION OF PROCEEDS .....	11
Section 43.01.    Issuance of 2022 Series A Bonds .....	11
Section 43.02.    Application of Proceeds of 2022 Series A Bonds .....	11
Section 43.03.    Creation of 2022 Series A Proceeds Account; Application.....	11
ARTICLE XLIV TAX COVENANTS .....	11
Section 44.01.    2022 Series A Rebate Account .....	11
Section 44.02.    Tax Covenants for 2022 Series A Bonds.....	12
Section 44.03.    Continuing Disclosure .....	13
Section 44.04.    Waiver of Brokerage Confirmations .....	13
EXHIBIT A [FORM OF 2022 SERIES A BOND] A-1	



**THIS EIGHTH SUPPLEMENTAL INDENTURE**, made and entered into and dated as of the first day of [April 2022], by and among **GUAM POWER AUTHORITY**, a public corporation of the Government of Guam duly organized and existing under and by virtue of the laws of Guam (the "Authority"), **BANK OF GUAM**, a banking corporation organized under the laws of Guam, authorized to do business within Guam, and being qualified to accept and administer the trusts hereby created, as trustee (the "Trustee" or the "Depository"), and **U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION** (successor-in-interest to U.S. Bank National Association), a national banking association organized under the laws of the United States of America, and being qualified to accept and administer the trusts hereby created, as successor co-trustee (the "Co-Trustee"),

**WITNESSETH**

**WHEREAS**, pursuant to the Guam Power Authority Act of 1968, being Chapter 8, Title 12, Guam Code Annotated, as amended (the "Act"), the Board of Directors of the Authority (the "Board") is authorized to incur indebtedness by the issuance of revenue bonds, with the approval of the Governor, to raise funds for the purpose of establishing the electric power system of the Authority (the "System"), or of acquiring lands for the system, or of acquiring, constructing, improving, equipping, maintaining, repairing, renewing, replacing, reconstructing or insuring the system, or any part thereof, or for the purpose of refunding any such bonds, or for any combination of such purposes;

**WHEREAS**, the Authority has determined to issue revenue bonds for such purposes and to that end has duly authorized the execution and delivery of that certain Indenture, dated as of December 1, 1992, as previously supplemented and amended, among the Authority, the Trustee and the Co-Trustee (the "Indenture"), to secure the payment of the principal thereof and the interest and premium, if any, thereon, and the observance of the covenants and conditions therein contained;

**WHEREAS**, no Event of Default has occurred and is now occurring;

**WHEREAS**, revenue bonds may be issued pursuant to the Indenture and one or more indentures supplemental thereto, from time to time, in an aggregate principal amount not limited except as therein provided, and said revenue bonds are to be designated as the "Guam Power Authority Revenue Bonds" (the "Bonds");

**WHEREAS**, pursuant to the Indenture, the Authority heretofore issued its Revenue Bonds, 1992 Series A (the "1992 Bonds") in the original aggregate principal amount of \$158,000,000 to refund certain indebtedness of the Authority and to pay for costs of improvements to the System;

**WHEREAS**, pursuant to the Indenture, the Authority heretofore issued its Revenue Bonds, 1993 Series A (the "1993 Bonds") in the original aggregate principal amount of \$100,000,000 to pay for costs of improvements to the System;

**WHEREAS**, pursuant to the Indenture, the Authority heretofore issued its Revenue Bonds, 1994 Series A (the "1994 Bonds") pursuant to the Indenture in the original aggregate principal amount of \$102,900,000 to pay for costs of certain improvements to the System;



WHEREAS, pursuant to the Indenture, the Authority heretofore issued its Revenue Bonds, 1999 Series A (the "1999 Bonds") in the original aggregate principal amount of \$349,178,601 to finance and refinance certain costs of the acquisition, construction, improvement, equipment, maintenance, repair, renewal, replacement, reconstruction and insurance of the System;

WHEREAS, pursuant to the Indenture, the Authority heretofore issued its Revenue Bonds, 2010 Series A (the "2010 Bonds") in the original aggregate principal amount of \$150,440,000 to finance certain costs of the acquisition, construction, improvement, equipment, maintenance, repair, renewal, replacement, reconstruction and insurance of the System;

WHEREAS, pursuant to the Indenture, the Authority heretofore issued its Revenue Bonds, 2012 Series A (the "2012 Bonds") in the original aggregate principal amount of \$340,620,000 to refinance certain costs of the acquisition, construction, improvement, equipment, maintenance, repair, renewal, replacement, reconstruction and insurance of the System through the redemption in full of the remaining outstanding aggregate principal amount of the Authority's 1993 Bonds and 1999 Bonds;

WHEREAS, pursuant to the Indenture, the Authority heretofore issued its Revenue Bonds, 2014 Series A (the "2014 Bonds") in the original aggregate principal amount of \$76,470,000 to finance certain costs of the acquisition, construction, improvement, equipment, maintenance, repair, renewal, replacement, reconstruction and insurance of the System;

WHEREAS, pursuant to the Indenture, the Authority heretofore issued its Revenue Refunding Bonds, 2017 Series A (the "2017 Bonds") in the original aggregate principal amount of \$148,670,000 to refinance certain costs of the acquisition, construction, improvement, equipment, maintenance, repair, renewal, replacement, reconstruction and insurance of the System through the defeasance and redemption of the Authority's 2010 Bonds;

WHEREAS, the Authority has determined that it is necessary to refund certain outstanding Bonds of the Authority originally issued to undertake certain capital improvements to the System, and Section 8203(d) and Section 8228, Title 12, Guam Code Annotated, authorizes the issuance of revenue bonds of the Authority to refinance the costs of such capital improvements;

WHEREAS, it is now desirable and necessary and in the best interests of the Authority to authorize the issuance of \$[2022A PAR] aggregate principal amount of Bonds further designated as "2022 Series A (Forward Delivery)" (the "2022 Series A Bonds") in order to provide money to be used to refinance certain costs of the acquisition, construction, improvement, equipment, maintenance, repair, renewal, replacement, reconstruction and insurance of the System through the defeasance and redemption of [all/a portion of] of the remaining outstanding aggregate principal amount of the Authority's 2012 Bonds;

WHEREAS, as required by Section 50103(k), Title 12, Guam Code Annotated, the Legislature of Guam has, by P.L. No. 36-[\_\_\_], approved the terms and conditions of the issuance of revenue bonds to be issued by the Authority for the purposes described therein;



WHEREAS, as provided by Section 50103(k), Title 12, Guam Code Annotated, the Guam Economic Development Authority has approved the issuance and sale of the 2022 Series A Bonds;

WHEREAS, all acts, conditions and things required by the laws of the United States of America and the Government of Guam to exist, to have happened and to have been performed precedent to and in connection with the issuance of the 2022 Series A Bonds exist, have happened, and have been performed in regular and due time, form and manner as required by law, and the Authority is now duly authorized and empowered, pursuant to each and every requirement of law, to issue said Bonds for the purpose, in the manner and upon the terms herein provided;

NOW, THEREFORE, THIS SUPPLEMENTAL INDENTURE WITNESSETH, in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the 2022 Series A Bonds by the owners thereof, and for other valuable consideration, the receipt whereof is hereby acknowledged, the Authority does hereby covenant and agree with the Trustee, the Depositary and the Co-Trustee as follows:

## ARTICLE XLI

### DEFINITIONS

Section 41.01. Definitions. Unless the context otherwise requires, the terms defined in the Indenture shall, for all purposes of this Supplemental Indenture and of any certificate, opinion or other document herein mentioned, have the meanings specified in the Indenture.

In addition, unless the context otherwise requires, the terms defined in this Section shall for all purposes of this Supplemental Indenture and of any certificate, opinion or other document herein mentioned, have the meanings herein specified.

“Bond Year” means, with respect to the 2022 Series A Bonds, the period of twelve consecutive months ending on September 30 of each year if 2022 Series A Bonds are or will be Outstanding in such twelve-month period, provided the first Bond Year shall commence on the Settlement Date of the 2022 Series A Bonds and end on September 30, 2023.

“Continuing Disclosure Agreement” means the Master Continuing Disclosure Agreement, dated as of May 1, 1999, among the Authority, the Trustee and the Co-Trustee, and all agreements supplemental thereto, including the Supplemental Continuing Disclosure Agreement, dated as of April 1, 2022, relating to the 2022 Series A Bonds.

“Current Interest Bonds” means the 2022 Series A Bonds the interest on which is payable on each interest payment date to the maturity or redemption date thereof as set forth in Section 42.02(A).

“DTC” means The Depository Trust Company, New York, New York, or any successor thereto.



“Escrow Agent” means, with respect to the 2022 Series A Bonds, the Co-Trustee in its capacity as Escrow Agent under the Escrow Agreement.

“Escrow Agreement” means, with respect to the 2022 Series A Bonds, that certain Escrow Agreement, dated as of April 1, 2022, by and between the Authority and the Co-Trustee, as escrow agent thereunder, relating to the refunding of the Prior Bonds.

“Forward Delivery Bond Purchase Agreement” means, in respect of the 2022 Series A Bonds and for purposes of this Eighth Supplemental Indenture, that certain [Forward Delivery Bond Purchase Agreement], dated [\_\_\_\_\_, 2022], between the Authority, Guam Economic Development Authority and the underwriters named therein, relating to the purchase and sale of the 2022 Series A Bonds.

“Principal Payment Period” means, with respect to the 2022 Series A Bonds, the period beginning on the Settlement Date in respect of such Bonds and ending October 1, 2023, and thereafter each period of twelve months ending on October 1.

“Prior Bonds” for purposes of this Eighth Supplemental Indenture, means the \$[\_\_\_\_\_] outstanding principal amount of the 2012 Bonds maturing on October 1 in the years [\_\_\_\_\_] to be refunded by the 2022 Series A Bonds.

“Settlement Date” means, with respect to the 2022 Series A Bonds, the date of original execution and delivery of such Bonds, expected to be on or about [Settlement Date], in accordance with the Forward Delivery Bond Purchase Agreement.

“Term Bonds” means, with respect to the 2022 Series A Bonds, the 2022 Series A Bonds designated as such by Section 42.02, and which are payable at or before their specified maturity date or dates from Mandatory Sinking Account Payments established for that purpose and calculated to retire such Bonds on or before their specified maturity date or dates.

“2022 Series A Bonds” means the Guam Power Authority Revenue Refunding Bonds, 2022 Series A (Forward Delivery), authorized to be issued and Outstanding hereunder.

## ARTICLE XLII

### AUTHORIZATION AND TERMS OF THE 2022 SERIES A BONDS

Section 42.01. Authorization of 2022 Series A Bonds. A Series of Bonds to be issued under the Indenture is hereby created for the purpose of providing moneys for deposit into the 2022 Series A Proceeds Account and withdrawal therefrom in accordance with law. The Bonds of such Series are designated as the “Guam Power Authority Revenue Refunding Bonds, 2022 Series A (Forward Delivery).” The Authority intends that interest on the 2022 Series A Bonds be excluded from gross income for federal income tax purposes and that the 2022 Series A Bonds and the interest thereon be exempt from taxation by any state or political subdivision or the District of Columbia. The aggregate principal amount of 2022 Series A Bonds which may be issued and Outstanding under this Supplemental Indenture shall not exceed [PAR WRITTEN OUT] Dollars (\$[2022A PAR]).



**Section 42.02. Terms of 2022 Series A Bonds; Appointments.**

The 2022 Series A Bonds shall be issued as fully registered Bonds without coupons in the denominations of \$5,000 or any integral multiple thereof. The 2022 Series A Bonds shall be dated as of their date of issuance, and interest thereon shall be calculated on the basis of a 360-day year of twelve 30-day months and shall be payable on April 1 and October 1 of each year, commencing [October 1, 2022] (each, an "Interest Payment Date" for the 2022 Series A Bonds). Each Current Interest Bond shall bear interest from the Interest Payment Date next preceding the date of authentication thereof unless it is authenticated as of a day after a Record Date and on or before the related Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or unless it is authenticated on or before the Record Date for the first Interest Payment Date, in which event it shall bear interest from its date; provided, however, that if, at the time of authentication of any 2022 Series A Bond, interest is in default on Outstanding Bonds, such Bond shall bear interest from the date to which interest has previously been paid or made available for payment on the Outstanding 2022 Series A Bonds.

The Principal Payment Period for the 2022 Series A Bonds shall be the twelve calendar months next preceding each maturity date or Mandatory Sinking Account Payment date for such Bonds.

The Record Date for all scheduled payments of principal of and interest on the 2022 Series A Bonds shall be the 15th day of the calendar month next preceding the date each such payment is due, whether or not such 15th day is a Business Day.

The Co-Trustee is hereby appointed Paying Agent for the 2022 Series A Bonds. The Principal Office of the Paying Agent shall be in Los Angeles, California, except that for surrender and payment of 2022 Series A Bonds, the Principal Office of the Paying Agent shall be in St. Paul, Minnesota.

Payment of the interest on any 2022 Series A Bond shall be made to the person whose name appears on the bond registration books of the Co-Trustee as the registered owner thereof as of the close of business on the Record Date immediately preceding an Interest Payment Date, such interest to be paid by check mailed by first class mail to such registered owner at such registered owner's address as it appears on such registration books. The principal, Accreted Value or Redemption Price of the 2022 Series A Bonds shall be payable in lawful money of the United States of America upon surrender thereof at the Principal Office of the Paying Agent. Upon the written request of a registered owner of one million dollars (\$1,000,000) or more in aggregate principal amount of 2022 Series A Bonds received prior to the applicable Record Date, payment of interest on and principal (including Redemption Price) of such Bonds shall be made by wire transfer from the Paying Agent to the registered owner of such Bonds to an account within the United States. Any such principal payment by wire transfer shall nevertheless be subject to prior surrender of the 2022 Series A Bonds with respect to which such payment is made. Each payment of interest or principal on 2022 Series A Bonds, whether by check or wire transfer, shall be accompanied by information specifying, for each maturity of such Bonds with respect to which such payment is being made, the amount and the CUSIP number (if available).



The following 2022 Series A Bonds are Current Interest Bonds and shall mature on the dates and in the amounts and shall bear interest at the rates per annum as set forth below:

<u>Maturity Date</u> <u>(October 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>
	\$[_____]	[____]%

The 2022 Series A Bonds maturing on October 1, 20[\_\_\_\_] are Term Bonds.

The 2022 Series A Bonds shall be subject to redemption as provided in Section 42.03.

The 2022 Series A Bonds, the Co-Trustee's certificate of authentication and registration and the form of assignment to appear thereon shall be in substantially the form set forth in Exhibit A hereto, with necessary or appropriate variations, omissions and insertions as permitted or required by this Indenture. The 2022 Series A Bonds of each maturity shall be assigned the letters "RA" and shall be numbered in consecutive numerical order from 1 upwards.

Section 42.03. Redemption of the 2022 Series A Bonds.

(a) Optional Redemption. The 2022 Series A Bonds maturing on or before October 1, 20[\_\_\_\_] are not subject to optional redemption prior to their respective stated maturities. The 2022 Series A Bonds maturing on or after October 1, 20[\_\_\_\_] are subject to redemption prior to their respective stated maturities, at the option of the Authority, from any source of available funds, on any date on or after October 1, 20[\_\_\_\_], as a whole, or in part by such maturity or maturities as may be specified by Request of the Authority (and by lot within a maturity), at a Redemption Price equal to 100% of the aggregate principal amount thereof, plus interest accrued thereon to the date fixed for redemption.

The Authority shall notify the Trustee and the Co-Trustee in writing at least 60 days (or such lesser number of days acceptable to the Trustee and the Co-Trustee in the sole discretion of the Trustee and the Co-Trustee) prior to the date to be fixed for redemption of its intention to exercise its redemption option.



(b) Mandatory Sinking Account Redemption.

(i) The 2022 Series A Bonds maturing on October 1, 20[ ] are also subject to redemption prior to their stated maturity in part, by lot, from Mandatory Sinking Account Payments established for such maturity in this subsection (b)(i), upon payment of the principal amount thereof and accrued interest thereon to the date fixed for redemption, without premium. Subject to the terms and conditions set forth in this Section and in the Indenture, such Bonds shall be redeemed (or paid at maturity, as the case may be) by application of Mandatory Sinking Account Payments for such Bonds, in the amounts (after giving effect to the credits provided for in Section 5.03 of the Indenture) and on October 1 in the years hereinafter set forth:

Mandatory Sinking Account Payments  
for Bonds Due October 1, 20[ ]

<u>Year</u>	<u>Amount</u>
20[ ]	\$( )
20[ ]*	( )

\* Maturity

(ii) Upon the redemption of 2022 Series A Bonds pursuant to subsection (a) or other retirement of 2022 Series A Term Bonds in excess of any Mandatory Sinking Account Payments in any year, the principal amount of such Bonds shall be credited against such remaining Mandatory Sinking Account Payments as are designated by the Authority, in such manner as if such Mandatory Sinking Account Payments were maturities (i.e., to produce as nearly proportional reductions as practicable, provided that Mandatory Sinking Account Payments shall remain as integral multiples of the applicable minimum authorized Bond denomination).

(c) Extraordinary Optional Redemption. The 2022 Series A Bonds are subject to redemption at the option of the Authority on any date prior to their respective stated maturities, as a whole, or in part by lot within each maturity so that the reduction in Annual Debt Service for the 2022 Series A Bonds for each Bond Year after such redemption date shall be as nearly proportional as practicable, from and to the extent of proceeds received by the Authority due to a governmental taking of the System or portions thereof by eminent domain proceedings, if such amounts are not used for additions, improvements or extensions to the System, under the circumstances and upon the conditions and terms set forth in Section 6.14, at the principal amount thereof plus interest accrued thereon, without premium.

(d) Notice of Redemption; Conditional Notice of Redemption; Rescission. In accordance with Section 4.03, notice of the redemption of the 2022 Series A Bonds shall be given at the times and in the manner set forth in this Section 4.03(d) in lieu of said Section 4.03. Notice of redemption shall be given (except as provided below) by the Co-Trustee, not less than twenty (20) nor more than sixty (60) days prior to the date fixed for redemption, by first class mail to each of the registered owners of the 2022 Series A Bonds designated for redemption at their addresses appearing on the bond registration books of the Co-Trustee on the date the 2022 Series A Bonds to be redeemed are selected. Each notice of redemption shall state the redemption date, the place



or places of redemption, the maturities to be redeemed, and, if less than all of any such maturity, the numbers of the 2022 Series A Bonds of such maturity to be redeemed and, in the case of 2022 Series A Bonds to be redeemed in part only, the respective portions of the principal amount thereof to be redeemed, and shall also state that on said date there will become due and payable on each of said 2022 Series A Bonds the Redemption Price thereof or of said specified portion of the principal thereof in the case of a Bond to be redeemed in part only, together with interest accrued thereon to the redemption date, and that from and after such redemption date interest thereon shall cease to accrue, and shall require that such 2022 Series A Bonds then be surrendered, with a written instrument of transfer duly executed by the registered owner thereof or by such registered owner's attorney duly authorized in writing. No defect in or failure to give such mailed notice of redemption shall affect the validity of proceedings for the redemption of such 2022 Series A Bonds. Each notice of redemption shall also state the CUSIP number, date of issue and interest rate on each 2022 Series A Bond, or portion thereof, to be redeemed, and shall include the redemption agent name and address; provided, however, that failure to include any of such information in any redemption notice, or any inaccuracy in any such information, shall not affect the sufficiency of the proceedings for redemption of any 2022 Series A Bonds.

A copy of any notice of redemption given pursuant to the foregoing paragraph shall also be sent by first class mail to each Owner of \$1,000,000 or more in aggregate principal amount of 2022 Series A Bonds to be redeemed and to each of the Fiduciaries in respect of the 2022 Series A Bonds, each of the Credit Providers in respect of the 2022 Series A Bonds, the Securities Depositories (as defined below) and at least one of the Information Services (as defined below); provided, however, that failure to give notice pursuant to this sentence by certified mail to any 2022 Series A Bondowners, to any Fiduciaries in respect of the 2022 Series A Bonds, to any Credit Providers in respect of the 2022 Series A Bonds or to any Securities Depositories or Information Services, or the insufficiency of any such notices, shall not affect the sufficiency of the proceedings for redemption of any 2022 Series A Bonds. A second notice shall be sent by first class mail to the registered owner of any 2022 Series A Bond which has been called for redemption in whole or in part, and is not surrendered for payment within sixty (60) days after the date fixed for redemption; provided, however, that failure to send any such second notice, or any deficiency of any such notice, shall not affect the sufficiency of the proceedings for redemption of any Bonds.

As used in this Section 42.03(d), the term "Information Services" means the Municipal Securities Rulemaking Board, through its Electronic Municipal Market Access ("EMMA") website at [www.emma.msrb.org](http://www.emma.msrb.org), or its successor, or any other recognized repository in accordance with then-current guidelines of the Securities and Exchange Commission, and/or such other services providing information with respect to called bonds, or no such services, as the Authority may designate in a Certificate delivered to the Co-Trustee; and the term "Securities Depositories" means The Depository Trust Company, 18301 Bermuda Green Drive, Tampa, Florida, 33647, and/or, in accordance with then-current guidelines of the Securities and Exchange Commission, such other nationally recognized securities depositories, or no such depositories, as the Authority may designate in a Certificate delivered to the Co-Trustee.

Notice of redemption of Bonds shall be given by the Co-Trustee for and on behalf of the Authority.



Any notice of optional redemption of the 2022 Series A Bonds delivered in accordance with this Section 42.03(d) may be conditional and if any condition stated in the notice of redemption shall not have been satisfied on or prior to the redemption date, said notice shall be of no force and effect and the Authority shall not be required to redeem the 2022 Series A Bonds thereby called for redemption, and the redemption shall be cancelled and the Co-Trustee shall within a reasonable time thereafter give notice, to the persons and in the manner in which the notice of redemption was given, that such condition or conditions were not met and that the redemption was cancelled. In addition, the Authority may, at its option, on or prior to the date fixed for optional redemption in any notice of redemption of the 2022 Series A Bonds, rescind and cancel such notice of redemption, and any optional redemption of 2022 Series A Bonds and notice thereof shall be rescinded and cancelled and the Co-Trustee shall give (in the same manner as notice of redemption was given) notice of such cancellation to the recipients of the notice of redemption being cancelled.

Section 42.04. Special Provisions as to Book-Entry Only System for 2022 Series A Bonds. (A) Notwithstanding any of the provisions of Sections 2.03 through 2.09 to the contrary, the 2022 Series A Bonds initially shall be issued in the form of a single, authenticated, fully registered bond for each stated maturity of such 2022 Series A Bonds, representing the aggregate principal amount of such maturity; and the 2022 Series A Bonds shall be governed by the provisions of this Section 42.04.

(B) All of the Outstanding 2022 Series A Bonds shall, except as provided in this paragraph (B) and in paragraph (D) of this Section 42.04, be registered in the registration books kept by the Co-Trustee in the name of Cede & Co., as nominee of DTC, and the Authority, the Trustee, the Co-Trustee, the Paying Agent and the Depository shall have no responsibility or obligation to any Participant or to any person on behalf of which a Participant holds an interest in the 2022 Series A Bonds. Without limiting the immediately preceding sentence, the Authority, the Trustee, the Co-Trustee, the Paying Agent and the Depository shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any Participant with respect to any ownership interest in the 2022 Series A Bonds, (ii) the delivery to any Participant or any other person, other than a Holder, as shown in the registration books kept by the Co-Trustee, of any notice with respect to the 2022 Series A Bonds, including any notice of redemption, or (iii) the payment to any Participant or any other person, other than a Holder, as shown in the registration books kept by the Co-Trustee, of any amount with respect to principal of or premium if any, or interest on the 2022 Series A Bonds or any consent given or action taken by DTC as registered owner of the 2022 Series A Bonds. The Authority, the Trustee, the Co-Trustee, the Paying Agent and the Depository may treat and consider the person in whose name each 2022 Series A Bond is registered in the registration books kept by the Co-Trustee as the holder and absolute owner of such 2022 Series A Bond for the purpose of payment of principal, premium and interest with respect to such 2022 Series A Bond, for the purpose of giving notices of redemption and other matters with respect to such 2022 Series A Bond, for the purpose of registering transfers with respect to such 2022 Series A Bond, and for all other purposes whatsoever. The Paying Agent shall pay all principal of and premium, if any, and interest on the 2022 Series A Bonds only to or upon the order of the respective Holders, as shown in the registration books kept by the Co-Trustee as provided in Section 2.06, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the Authority's obligations with respect to payment of principal of and premium, if any, and interest on the 2022 Series A Bonds to the extent of the sum or sums so paid. No person other



than a Holder, as shown in the registration books kept by the Co-Trustee, shall receive a definitive Series 2022 A Bond pursuant to the Indenture. Upon delivery by DTC to the Authority or the Co-Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions herein with respect to Record Dates, the words "Cede & Co." in the Indenture shall refer to such new nominee of DTC.

(C) The delivery by the Authority of the Representation Letter relating to the 2022 Series A Bonds shall not in any way limit the provisions of paragraph (B) of this Section or in any other way impose upon the Authority any obligation whatsoever with respect to persons having interests in the 2022 Series A Bonds other than the Holders, as shown on the registration books kept by the Co-Trustee. The Co-Trustee shall take all action necessary for all representations of the Co-Trustee in the Representation Letter with respect to the Co-Trustee to be complied with at all times.

(D) DTC may determine to discontinue providing its services with respect to the 2022 Series A Bonds at any time by giving reasonable written notice to the Authority and the Co-Trustee and discharging its responsibilities with respect thereto under applicable law. The Authority, in its sole discretion and without the consent of any other person, may terminate the services of DTC with respect to the 2022 Series A Bonds. Upon the discontinuance or termination of the services of DTC with respect to the 2022 Series A Bonds, unless a substitute securities Depositary is appointed to undertake the functions of DTC hereunder, the Authority is obligated to deliver 2022 Series A Bonds at the expense of the beneficial owners of the 2022 Series A Bonds, as described in the Indenture, and the 2022 Series A Bonds shall no longer be restricted to being registered in the registration books kept by the Co-Trustee in the name of Cede & Co., as nominee of DTC, but may be registered in whatever name or names the Holders shall designate, in accordance with the provisions of the Indenture.

(E) Notwithstanding any other provision of the Indenture to the contrary, so long as any 2022 Series A Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal or, premium, if any, and interest on such 2022 Series A Bond and all notices with respect thereto shall be made and given, respectively, in the manner provided in the Representation Letter. Holders shall have no lien or security interest in any rebate or refund paid by DTC to the Paying Agent which arises from the payment by the Paying Agent of principal or interest on the 2022 Series A Bonds in immediately available funds to DTC.

(F) The Co-Trustee is hereby authorized and requested to execute and deliver the Representation Letter relating to the 2022 Series A Bonds and, in connection with any successor nominee for DTC or any successor Depositary, enter into comparable arrangements, and shall have the same rights with respect to its actions thereunder as it has with respect to its actions under this Supplemental Indenture.



## ARTICLE XLIII

### ISSUANCE OF 2022 SERIES A BONDS; APPLICATION OF PROCEEDS

Section 43.01. Issuance of 2022 Series A Bonds. At any time after the execution and delivery of this Supplemental Indenture, the Authority may sell and execute and the Co-Trustee shall authenticate and, upon the Order of the Authority, deliver the 2022 Series A Bonds in an aggregate principal amount not to exceed [PAR WRITTEN OUT] Dollars (\$[2022A PAR]).

Section 43.02. Application of Proceeds of 2022 Series A Bonds. The proceeds in the amount of \$[ ] received by the Authority from the sale of the 2022 Series A Bonds shall be deposited with the Co-Trustee, who shall forthwith apply such proceeds in the following manner, as directed by a Request of the Authority:

(A) The Co-Trustee shall transfer to the Trustee, as Depositary for the 2022 Series A Proceeds Account, the amount of \$[ ] for deposit in the 2022 Series A Proceeds Account for payment of Costs of Issuance relating to the 2022 Series A Bonds.

(B) The Co-Trustee, as Escrow Agent, shall deposit \$[ ] of such proceeds in the Escrow Fund established pursuant to the Escrow Agreement for purposes of refunding and redeeming the Prior Bonds as described in the Escrow Agreement.

To the extent required, the foregoing deposits shall be deemed to have been made to the Construction Fund for purposes of compliance with Section 8236 of the Act.

On the Settlement Date, the amount on deposit in the Bond Reserve Fund is at least \$[ ], which exceeds the Bond Reserve Fund Requirement determined as of such date, taking into account the issuance of the 2022 Series A Bonds and the refunding of the Prior Bonds. Therefore, no deposit shall be made to the Bond Reserve Fund on the Settlement Date.

### Section 43.03. Creation of 2022 Series A Proceeds Account; Application.

(a) The Trustee, as Depositary, shall create within the Construction Fund a separate account called the "2022 Series A Proceeds Account" (the "2022 Series A Proceeds Account"). Moneys in the 2022 Series A Proceeds Account shall be applied in accordance with Section 3.03 for the purpose of paying, or reimbursing the Authority for the payment of, Costs of Issuance with respect to the 2022 Series A Bonds. Any amounts remaining on deposit in the 2022 Series A Proceeds Account shall be transferred to the Revenue Fund no later than [180<sup>TH</sup> DAY AFTER SETTLEMENT], and thereafter the 2022 Series A Proceeds Account shall be closed.

## ARTICLE XLIV

### TAX COVENANTS

### Section 44.01. 2022 Series A Rebate Account.

(A) The Trustee shall establish and maintain within the Rebate Fund a separate subaccount designated as the "2022 Series A Rebate Account." There shall be deposited



in the 2022 Series A Rebate Account from amounts in the Revenue Fund or other lawfully available moneys such amounts as are required to be deposited therein pursuant to the Tax Certificate with respect to the 2022 Series A Bonds. All money at any time deposited in the 2022 Series A Rebate Account shall be held by the Trustee in trust, to the extent required to satisfy the Rebate Requirement for the 2022 Series A Bonds (as defined in the Tax Certificate with respect to the 2022 Series A Bonds), for payment to the United States of America, and the United States of America is hereby granted a first lien on such money until such payment. All amounts required to be deposited into or on deposit in the 2022 Series A Rebate Account shall be governed exclusively by this Section and by the Tax Certificate with respect to the 2022 Series A Bonds (which is incorporated herein by reference).

In the event that the amount in the 2022 Series A Rebate Account exceeds the Rebate Requirement for the 2022 Series A Bonds, upon the Request of the Authority, the Trustee shall transfer the excess from the 2022 Series A Rebate Account to the Revenue Fund.

(B) Notwithstanding any provisions of this Section, if the Authority shall provide to the Trustee an opinion of Bond Counsel that any specified action required under this Section is no longer required or that some further or different action is required to maintain the exclusion from federal income tax of interest on any Series of Bonds, the Trustee and the Authority may conclusively rely on such opinion in complying with the requirements of this Section, and, notwithstanding Article IX of the Indenture, the covenants hereunder shall be deemed to be modified to that extent.

Section 44.02. Tax Covenants for 2022 Series A Bonds. (A) The Authority intends that interest on the 2022 Series A Bonds be excluded from gross income for federal income tax purposes and that the 2022 Series A Bonds and the interest thereon be exempt from taxation by any state or political subdivision or the District of Columbia.

(A) The Authority shall not use or permit the use of any proceeds of the 2022 Series A Bonds or any other funds of the Authority, directly or indirectly, to acquire any securities or obligations, and shall not use or permit the use of any amounts received by the Authority in any manner, and shall not take or permit to be taken any other action or actions, which would cause any such Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code or to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

(B) The Authority shall at all times do and perform all acts and things permitted by law and the Indenture which are necessary or desirable in order to assure that interest paid on the 2022 Series A Bonds (or on any of them) shall be excluded from gross income for federal income tax purposes.



Section 44.03. Continuing Disclosure. The Authority hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement. Notwithstanding any other provision of this Supplemental Indenture, failure of the Authority to comply with the Continuing Disclosure Agreement shall not be considered an Event of Default; however, the Trustee shall, at the written request of any Participating Underwriter (as defined in the Continuing Disclosure Agreement) or of the Owners of at least 25% in aggregate principal amount of Outstanding 2022 Series A Bonds (but only to the extent funds in an amount satisfactory to the Trustee have been provided to it or it has been otherwise indemnified to its satisfaction for its payment or incurrence of any cost, liability, expense or additional charges and fees of the Trustee whatsoever, including, without limitation, reasonable fees and expenses of its attorneys), or any Owner or Beneficial Owner of any 2022 Series A Bond may, take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Authority, the Trustee or the Co-Trustee, as the case may be, to comply with their respective obligations under this Section. For purposes of this Section, "Beneficial Owner" means any person which has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any 2022 Series A Bonds (including persons holding 2022 Series A Bonds through nominees, depositories or other intermediaries).

Section 44.04. Waiver of Brokerage Confirmations. The Authority acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Authority the right to receive brokerage confirmations of security transactions as they occur, the Authority specifically waives receipt of such confirmations to the extent permitted by law. The Co-Trustee will furnish the Authority and the Trustee periodic cash transaction statements which shall include detail for all investment transactions made by the Co-Trustee.



IN WITNESS WHEREOF and in acceptance of the duties herein, the GUAM POWER AUTHORITY has caused this Supplemental Indenture to be signed in its name by its duly authorized officers, under its seal; BANK OF GUAM, as Trustee and as a Depositary, has caused this Supplemental Indenture to be signed in its corporate name by one of its authorized officers and its corporate seal to be hereunto affixed; and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Co-Trustee and as Paying Agent, has caused this Supplemental Indenture to be signed in its corporate name by one of its authorized officers, all as of the day and year first above written.

**GUAM POWER AUTHORITY**

By \_\_\_\_\_  
Chairperson

[SEAL]

By \_\_\_\_\_  
Secretary

[Signature page – Eighth Supplemental Indenture – GPA 2022]



**BANK OF GUAM, as Trustee and  
Depository**

By \_\_\_\_\_  
Authorized Officer

**[Signature page – Eighth Supplemental Indenture – GPA 2022]**



**U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION, as Co-Trustee and Paying Agent**

By \_\_\_\_\_  
Authorized Officer

**[Signature page – GPA - Eighth Supplemental Indenture]**



The foregoing Supplemental Indenture of Guam Power Authority providing for the issuance of revenue bonds for the purposes authorized by Sections 8203(d), Title 12, Guam Code Annotated, is hereby approved this first day of [April 2022].

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Governor of Guam

Approved as to form:

By \_\_\_\_\_  
Attorney General

The foregoing Supplemental Indenture of Guam Power Authority, and the appointment of the Trustee, the Co-Trustee, the Paying Agent and the Depositary and the exercise of their respective powers and functions as set forth in such Supplemental Indenture, is hereby approved this first day of [April 2022].

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Director of Administration  
Department of Administration  
Government of Guam

[Signature page – Eighth Supplemental Indenture – GPA 2022]



EXHIBIT A

[FORM OF 2022 SERIES A BOND

No. RA - \_\_\_\_\_

\$ \_\_\_\_\_

GUAM POWER AUTHORITY  
REVENUE REFUNDING BOND,  
2022 SERIES A (FORWARD DELIVERY)  
(Current Interest Bond)

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>DATED</u>	<u>CUSIP</u>
[    %]	October 1, _____	[Settlement Date]	400653 _____

Registered Holder:

Principal Sum:

Dollars

GUAM POWER AUTHORITY, a public corporation of the Government of Guam duly organized and existing under and by virtue of the laws of Guam (herein called the "Authority"), for value received, hereby promises to pay (but only out of the Revenues and other assets pledged therefor as hereinafter mentioned) to the registered holder identified above or its registered assigns, on the maturity date specified above (subject to any right of prior redemption hereinafter mentioned), the principal sum specified above in lawful money of the United States of America; and to pay interest thereon, in like lawful money and solely from said Revenues and assets, from the interest payment date next preceding the date of authentication of this Bond (unless this Bond is authenticated as of a day during the period from the sixteenth day of the month next preceding any interest payment date to such interest payment date, inclusive, in which event it shall bear interest from such interest payment date, or unless this Bond is authenticated on or before September 15, 2022, in which event it shall bear interest from its date) until payment of such principal sum shall be discharged as provided in the Indenture hereinafter mentioned, at the interest rate specified above per annum, payable on April 1 and October 1 in each year, commencing [October 1, 2022]. The principal (or redemption price) hereof is payable upon surrender hereof at the corporate trust office of U.S. Bank Trust Company, National Association (herein called the "Co-Trustee" or the "Paying Agent"), in St. Paul, Minnesota, or other office specified by the Paying Agent, and the interest hereon is payable by check mailed by first class mail to the person in whose name this Bond is registered at the close of business on the fifteenth day of the month immediately preceding an interest payment date, at such person's address as it appears on the Bond registration books of the Co-Trustee. Upon the written request of any registered owner of \$1,000,000 or more in aggregate principal amount of 2022 Series A Bonds (hereinafter mentioned), payment of the principal or redemption price of and interest on such Bonds will be made by wire transfer as provided in the Indenture; provided that any such



principal or redemption payment shall nevertheless be subject to the prior surrender of the 2022 Series A Bonds with respect to which such payment is made.

This Bond is one of a duly authorized issue of bonds of the Authority designated as the "Guam Power Authority Revenue Bonds" (herein called the "Bonds"), unlimited in aggregate principal amount, except as otherwise provided in the laws of the United States of America and the Government of Guam and in the Indenture, which issue of Bonds consists or may consist of one or more series of varying dates, maturities, interest rates and redemption and other provisions, all issued or to be issued pursuant to Chapter 8, Title 12, Guam Code Annotated, as amended, and pursuant to that certain Indenture, dated as of December 1, 1992, as previously supplemented and as supplemented by an Eighth Supplemental Indenture, dated as of April 1, 2022 (herein collectively called the "Indenture"), each by and among the Authority, the Co-Trustee and Bank of Guam, as Trustee and Depositary (herein called the "Trustee" or the "Depositary"). This Bond is also one of a duly authorized series of Bonds additionally designated "Revenue Refunding Bonds, 2022 Series A (Forward Delivery)" (herein called the "2022 Series A Bonds"), in the aggregate principal amount of [PAR WRITTEN OUT] Dollars (\$[2022A PAR]) all issued under the provisions of the Indenture. The Bonds are issued for the purpose of providing moneys to raise funds for the purpose of establishing the electric power system of the Authority, or of acquiring lands for the system, or of acquiring, constructing, improving, equipping, maintaining, repairing, renewing, replacing, reconstructing or insuring the system, or any part thereof, or for the purpose of refunding any such Bonds, or for any combination of such purposes. Reference is hereby made to the Indenture (a copy of which is on file at said office of the Co-Trustee in Los Angeles, California and at the office of the Trustee in Guam) and all indentures supplemental thereto for a description of the rights thereunder of the registered owners of the Bonds, of the nature and extent of the security and provisions for payment of the Bonds, of the rights, duties and immunities of the Trustee, the Co-Trustee and the Depositary and of the rights and obligations of the Authority thereunder, to all the provisions of which Indenture the registered owner of this Bond, by acceptance hereof, assents and agrees.

The Bonds and the interest thereon (to the extent set forth in the Indenture) are payable from Revenues (as that term is defined in the Indenture) and other assets pledged as provided in the Indenture, and are secured by a pledge of said Revenues and assets (except to the extent of the Rebate Requirement referred to in the Indenture), subject only to provisions of the Indenture permitting the application thereof for or to the purposes and on the terms and conditions set forth in the Indenture.

The Bonds are limited obligations of the Authority and are not a lien or charge upon the funds or property of the Authority, except to the extent of the pledge and assignment hereinafter described. Neither the payment of the principal of this Bond nor any part thereof, nor of any interest thereon, is a debt, liability or obligation of the Government of Guam.

[The 2022 Series A Bonds maturing on or before October 1, 20[ ] are not subject to optional redemption prior to their respective stated maturities. The 2022 Series A Bonds maturing on or after October 1, 20[ ] are subject to redemption prior to their respective stated maturities, at the option of the Authority, from any source of available funds, on any date on or after October 1, 20[ ], as a whole, or in part by such maturity or maturities as may be specified



by the Authority (and by lot within a maturity), at a Redemption Price equal to 100% of the aggregate principal amount thereof, plus interest accrued thereon to the date fixed for redemption.]

[The 2022 Series A Bonds maturing on October 1, 20[ ] are also subject to redemption prior to their respective stated maturities, in part in lots of \$5,000 principal, from Mandatory Sinking Account Payments established for such maturity as provided in the Indenture, on October 1, 20[ ] and on October 1, 2040 at the principal amount thereof and interest accrued thereon to the date fixed for redemption, without premium.]

The 2022 Series A Bonds are subject to redemption at the option of the Authority on any date prior to their respective state maturities, as a whole, or in part by lot within each maturity so that the reduction in Annual Debt Service (as that term is defined in the Indenture) for the 2022 Series A Bonds for each Bond Year (as that term is defined in the Indenture) after such redemption date shall be as nearly proportional as practicable, from and to the extent of proceeds received by the Authority due to a governmental taking of the System or portions thereof by eminent domain proceedings, if such amounts are not used for additions, improvements or extensions to the System, under the circumstances and upon the conditions and terms set forth in the Indenture, at the principal amount thereof plus interest accrued thereon, without premium.

Notice of any redemption, identifying the 2022 Series A Bonds or portions thereof to be redeemed, shall be given by the Co-Trustee in the manner set forth in the Indenture. Receipt of such notice by the registered owners shall not be a condition precedent to such redemption.

Any notice of optional redemption of the 2022 Series A Bonds may be conditional, and if any condition stated in the notice of redemption shall not have been satisfied on or prior to the redemption date, said notice shall be of no force and effect and the Authority shall not be required to redeem the 2022 Series A Bonds thereby called for redemption, and the redemption shall be cancelled, and the Co-Trustee shall within a reasonable time thereafter give notice, to the persons and in the manner in which the notice of redemption was given, that such condition or conditions were not met and that the redemption was cancelled. In addition, the Authority may, at its option, on or prior to the date fixed for optional redemption in any notice of redemption of the 2022 Series A Bonds, rescind and cancel such notice of redemption, and any optional redemption of 2022 Series A Bonds and notice thereof shall be rescinded and cancelled, and the Trustee shall give (in the manner in which notice of redemption was given) notice of such cancellation to the recipients of the notice of redemption being cancelled.

If this Bond is called for redemption and payment is duly provided therefor as specified in the Indenture, interest shall cease to accrue hereon from and after the date fixed for redemption.

If an Event of Default (as that term is defined in the Indenture) shall occur, the principal of all Bonds (and the interest accrued thereon) may be declared due and payable upon the conditions, in the manner and with the effect provided in the Indenture. The Indenture provides that in certain events such a declaration and its consequences may be rescinded by the registered owners of not less than a majority in Accreted Value of the Bonds then outstanding.



The 2022 Series A Bonds are issuable only in fully registered form in denominations of \$5,000 or any integral multiple thereof. Subject to the limitations and upon payment of the charges, if any, provided in the Indenture, this Bond may be exchanged, at said office of the Co-Trustee, for a new fully registered Bond or Bonds, of the same series, maturity and tenor and of any authorized denomination or denominations and for the aggregate principal amount of this Bond then remaining outstanding.

This Bond is transferable by the registered owner hereof, in person or by its attorney duly authorized in writing, at said office of the Co-Trustee, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer a new registered Bond or Bonds, of the same series, maturity and tenor and of any authorized denomination or denominations and for the same aggregate principal amount of this Bond then remaining outstanding will be issued to the transferee in exchange therefor. The Co-Trustee shall not be required to register the transfer of this Bond during the five days next preceding any date established by the Co-Trustee for the selection of Bonds for redemption or at any time after selection of this Bond for redemption.

The Authority, the Trustee, the Co-Trustee, the Paying Agent and the Depositary may treat the registered owner hereof as the absolute owner hereof for all purposes, and none of the Authority, the Trustee, the Co-Trustee and the Depositary shall be affected by any notice to the contrary.

The Indenture and the rights and obligations of the Authority, the registered owners of the Bonds, the Trustee, the Co-Trustee and the Depositary may be modified or amended at any time in the manner, to the extent, and upon the terms provided in the Indenture, provided that no such modification or amendment shall (i) extend the fixed maturity of this Bond, or reduce the amount of principal hereof, or extend the time of payment or reduce the amount of any Mandatory Sinking Account Payment provided in the Indenture for the payment of this Bond, or extend the time of payment of any interest on this Bond or reduce the rate of interest hereon, without the consent of the registered owner hereof, or (ii) reduce the percentage of the principal amount of Bonds the consent of the registered owners of which is required to effect any such modification or amendment, permit the creation of any lien on the Revenues and other assets pledged as security for the Bonds (including additional Bonds hereafter issued) prior to or on a parity with the lien created by the Indenture or deprive the registered owners of the Bonds of the lien of the Indenture (except as expressly provided in the Indenture), without the consent of the registered owners of all Bonds then outstanding, all as more fully set forth in the Indenture.

This Bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon endorsed shall have been dated and manually signed by the Co-Trustee.

Unless this Bond is presented by an authorized representative of The Depository Trust Company to the Co-Trustee for registration of transfer, exchange or payment, and any Bond issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO



**ANY PERSON IS WRONGFUL** since the registered owner hereof, Cede & Co., has an interest herein.

It is hereby certified and recited that any and all conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by the laws of the United States of America and the Government of Guam, and that the amount of this Bond, together with all other indebtedness of the Authority, does not exceed any limit prescribed by such laws, and is not in excess of the amount of Bonds permitted to be issued under the Indenture.



IN WITNESS WHEREOF, GUAM POWER AUTHORITY has caused this Bond to be executed in its name and on its behalf by the facsimile signatures of its Chairman of the Board of Directors and the Secretary of the Board of Directors of the Authority and its seal to be reproduced hereon by facsimile, all as of the \_\_\_\_\_ day of \_\_\_\_\_ 2022.

**GUAM POWER AUTHORITY**

By \_\_\_\_\_  
Chairman of the Board of  
Directors of the Guam Power  
Authority

(SEAL)

Countersigned:

By \_\_\_\_\_  
Secretary of the Board of  
Directors of the Guam Power  
Authority



## CERTIFICATE OF AUTHENTICATION

This is one the Bonds described in the within-mentioned Indenture which has been authenticated  
on \_\_\_\_\_.

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION, as Co-Trustee

By \_\_\_\_\_  
Authorized Officer



**[FORM OF]  
ASSIGNMENT**

The following abbreviations, when used in the inscription on the face of the within Bond and in the assignment below, shall be construed as though they were set out in full according to applicable laws or regulations.

TEN COM - as tenants in common  
TEN ENT - as tenants by the entireties  
JT TEN - as joint tenants with  
right of survivorship and  
not as tenants in common

UNIF GIFT MIN ACT - \_\_ Custodian \_\_  
(Cust) (Minor)  
under Uniform Gifts to Minors Act  
\_\_\_\_\_  
(State)

Additional abbreviations may also be used though not in the above list.

For value received the undersigned do(es) hereby sell, assign and transfer unto \_\_\_\_\_ the within-mentioned registered Bond and hereby irrevocably constitute(s) and appoint(s) \_\_\_\_\_ attorney, to register the transfer the same on the books of the Co-Trustee with full power of substitution in the premises.

Dated: \_\_\_\_\_

**NOTICE:**

The signature on this Assignment must correspond with the name as it appears on the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

**Signature Guaranteed:**

Social Security Number, Taxpayer Identification Number or other Identifying Number of Assignee:

\_\_\_\_\_  
Notice: Signature must be guaranteed by an eligible guarantor institution.



## BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF: ) GPA Docket 22-10  
)  
)  
The Application of the Guam Power Authority )  
to Approve a Bond Issuance to Refinance a )  
Portion of the Outstanding Revenue Bonds. )  
)

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### ORDER

On March 12, 2022, the Guam Power Authority ("GPA") petitioned the Guam Public Utilities Commission (the "Commission") for authority to issue additional senior revenue bonds ("Revenue Bonds") for the purpose of refunding and retiring all or a portion of the Guam Power Authority Revenue Bonds, 2012 Series A (the "Prior Bonds"), in accordance with Chapter 8, Title 12, Guam Code Annotated (§8101 et seq.), as amended from time to time (the "Act").

The Commission has examined the petition and the findings and recommendations of its Administrative Law Judge. After discussion at a duly convened meeting of the Commission on March 31, 2022, and upon the specific finding that the GPA petition is in the best interests of GPA's ratepayers, on motion duly seconded and carried by the undersigned Commissioners, the Guam Public Utilities Commission hereby **ORDERS** that:

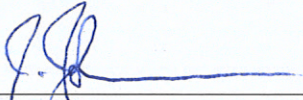
1. The Order Approving Long-Term Debt, in form attached ("Debt Order"), shall be and is hereby adopted by the Commission.
2. A portion of the long-term debt authorized by the Debt Order is authorized to be used to refinance the Prior Bonds; provided that the refinancing results in a net present value savings to GPA and its ratepayers of at least two percent (2%). Any issuance of Revenue Bonds hereunder shall comply with all requirements of the Debt Order.
3. Within forty-five (45) days after completion of the refinancing of the Prior Bonds, GPA shall submit a petition to the Commission indicating the manner in which actual savings shall be allocated, and the purposes for which GPA intends to expend the savings from this bond issuance. PUC shall conduct a review of such petition and issue an Order concerning the approved uses for such savings.
4. The Commission authorizes its Chairman to approve changes with respect to the maximum principal amount of the refunding bonds, or other matters not inconsistent with the terms of this Order.



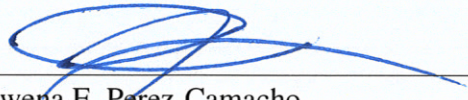
PUC Order  
GPA Request to Issue Revenue Bonds  
GPA Docket 22-10  
March 31, 2022

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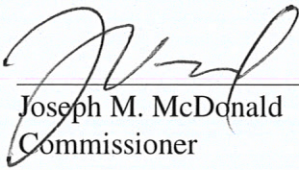
Dated this 31st day of March, 2022.



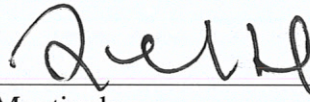
Jeffrey C. Johnson  
Chairman



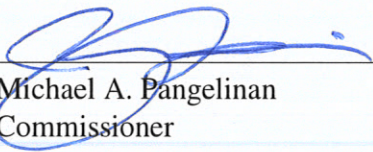
Rowena E. Perez-Camacho  
Commissioner



Joseph M. McDonald  
Commissioner

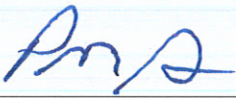


Peter Montinola  
Commissioner



Michael A. Pangelinan  
Commissioner

Doris Flores Brooks  
Commissioner



Pedro S.N. Guerrero  
Commissioner



**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF: ) GPA Docket 22-05  
)  
PUC Review of the Levelized Energy )  
Adjustment Clause (LEAC) Factor ) **ORDER**  
Pursuant to Tariff Z )  
\_\_\_\_\_ )



**INTRODUCTION**

GPA Rate Schedule “Z” is the “Levelized Energy Adjustment Clause” (LEAC). A true and correct copy of Schedule “Z” is attached to the ALJ Report as Exhibit “1”. Pursuant thereto, the power to establish fuel recovery charges for GPA customer bills is solely vested with the Guam Public Utilities Commission [“PUC”] (“fuel recovery charge” and “LEAC Factor” will be used interchangeably herein). The PUC has the duty to determine fuel expense to GPA, and, using a specific formula, to set the Fuel Recovery Charge to GPA customers that will be sufficient to recover all fuel costs. The PUC is required to recalculate the Fuel Recovery Charge semi-annually for a (6) six-month period.<sup>1</sup>

If GPA has a cumulative under-recovery balance of more than \$2 million, or if the under-recovery balance on fuel cost is projected to exceed \$2 million, during a 6-month levelized period, the PUC may adjust the Fuel Recovery Charge to recover such deficit.<sup>2</sup> At present, the current LEAC Factor for residential customers is \$0.180837. If that Factor is maintained for the remaining four months of this LEAC period, GPA’s under-recovery of fuel costs at the end of this LEAC period will increase from \$17.5M to

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<sup>1</sup> Guam Power Authority Schedule “Z, Levelized Energy Adjustment Clause (LEAC), Issued March 21, 1994, Revised March 31, 2012, Effective with meters read on and after April 1, 2012.

<sup>2</sup> Id.



\$32M, an increase of over \$14.5M. See GPA Proposed LEAC Rate (prepared 3/18/2022), attached to the ALJ Report as Exhibit "2".<sup>3</sup>

The project increase in the GPA under-recovery during this LEAC period exceeds the \$2M threshold for LEAC adjustments over seven-fold.

### **BACKGROUND**

In this Docket, on January 27, 2022, the PUC increased the Fuel Recovery Factor from \$0.171458/kWh to \$0.180837 for meters read on or after February 1, 2022. The rationale for the nearly one-cent increase in the LEAC Factor per kWh was a substantial increase in fuel oil prices. From August 1, 2021 through February 1, 2022, high sulfur fuel oil prices (HSFO) increased by 16.8%. Diesel fuel prices increased by 26%. Without an increase in the LEAC Factor, the projected fuel cost under-recovery during the last LEAC period was expected to grow from \$17.6M to \$23,210,000 as of July 31, 2022.<sup>4</sup>

At its meeting on March 22, 2022, the Guam Consolidated Commission on Utilities had before it the GPA Proposed LEAC Rate attached hereto as Exhibit "2", which established that GPA's under-recovery would increase by over \$14.5M if GPA took no action during this LEAC period to increase the LEAC Factor. Its own figures showed sharp increases in the estimated cost per barrel of RFO from \$84.40 to \$93.69, and from \$101.79 to \$120.74 per barrel of diesel.

During the CCU meeting, Chairman Joey Duenas stated that the CCU provides the PUC with "recommendations" for the regular six-month adjustments to the fuel surcharge, but that "the adjustments come from the PUC if it sees an "aberration...Midterm corrections are not really something we initiate, but we provide

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<sup>3</sup> GPA Proposed LEAC Rate (prepared 3/18/22), submitted by GPA CFO John Kim in an email to PUC Administrative Law Judge dated March 18, 2022.

<sup>4</sup> PUC Order, GPA Docket 22-05, dated January 27, 2022, at p. 5.



information to the PUC, and then it's up to them.”<sup>5</sup> The CCU determined that it would make no recommendation to the PUC as to whether the LEAC Factor should be increased. The alleged “reasons” given for failing to make a recommendation were that GPA could “tolerate” the under-recovery without an increase, that it would “get by” and could still “afford its fuel”. It could “wait” to determine whether an increase was needed in May (although a steeper increase will be needed at that time), and that “uncertainty” in current fuel prices justified doing nothing at the present time.<sup>6</sup> Finally, delay of action until May 1 would provide some “leeway” to ratepayers.<sup>7</sup>

The Administrative Law Judge (“ALJ”) filed his Report herein on March 28, 2022. The PUC adopts the recommendations and conclusions set forth therein.<sup>8</sup>

## **DETERMINATIONS**

### **I. THE PUC HAS THE DUTY AND OBLIGATION UNDER TARRIF Z TO DETERMINE WHETHER THE CURRENT LEAC FACTOR IS ADEQUATE TO RECOVER GPA'S ACTUAL FUEL EXPENSES DURING THIS LEAC PERIOD.**

There is no dispute that the \$2M under-recovery increase threshold for review by PUC within the LEAC period has been met in this case. In fact, because of drastic increases in fuel prices caused by the Russian War against Ukraine and other factors, the “projection” is that the under-recovery will be \$14.5M greater than originally anticipated in the PUC Order dated January 27, 2022. GPA's own “GPA Proposed LEAC Rate (Exhibit “2” to the ALJ Report) demonstrates that the current LEAC Factor must be substantially increased to prevent a \$32M under-recovery. This would

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<sup>5</sup> The Pacific Daily News, March 24, 2022, at p. 5; see also [https://www.youtube.com/channel/UC8vmfIBiNtxeeRy1zuG4sFQ\(CCUCU](https://www.youtube.com/channel/UC8vmfIBiNtxeeRy1zuG4sFQ(CCUCU) Meeting of March 22, 2022).

<sup>6</sup> Id.

<sup>7</sup> Guam Daily Post, March 22, 2022, at p. 4.

<sup>8</sup> ALJ Report, GPA Docket 22-05, dated March 28, 2022.



represent an eighty-two percent (82%) increase in the GPA under-recovery in this LEAC period alone.

Without an increase in the LEAC Factor, the projected GPA fuel cost under-recovery of \$32M would be at the highest level of any previous under-recovery. The under-recovery could be the highest in GPA's history. During its existence, the PUC has never agreed that this level of under-recovery is acceptable. It has always taken steps to reduce the under-recovery in as soon a time frame as possible.

If the PUC performs its proper function under Tariff "Z" in determining the fuel price, and what LEAC Factor is necessary to prevent further increase of the under-recovery during this LEAC period, it has no other reasonable option other than to raise the LEAC Factor now.

## **II. WHETHER GPA OR THE CCU REQUEST PUC ACTION TO INCREASE THE LEAC FACTOR IS IRRELEVANT TO THE PUCs DUTY TO DO SO.**

Neither Guam Law nor Tariff Z require that GPA/CCU first request PUC to change the LEAC Factor before it does so. PUC is not prohibited or prevented from increasing the LEAC Factor on the basis that GPA has not requested such an increase. Tariff "Z" makes it clear that the only party needed to recommend or approve an increase in the LEAC Factor is the PUC.

PUC is the only party that has the authority to establish and approve a LEAC Factor/Fuel Recovery Charge. Neither GPA nor CCU have any authority under Tariff "Z" to make LEAC determinations or set LEAC Factors. Nothing in Tariff "Z" requires that GPA first make a request for an increase in LEAC before the PUC can increase the Fuel Recovery Charge. There is no condition or requirement anywhere that the PUC can only act upon LEAC after a GPA or CCU request.

Schedule "Z" places the obligation only imposes the obligation solely upon PUC to determine fuel cost and to set the Fuel Charge/LEAC Factor with the application of



the formula in Tariff "Z". No similar obligation or duty is placed upon GPA or the CCU. CCU Chairman Duenas confirmed that it is up to PUC to determine whether to increase the LEAC Factor during the LEAC period, and that GPA/CCU generally only provide information to the PUC for mid-term corrections. PUC would be abdicating its duty and responsibility to adjust the LEAC Factor if it failed to do so based upon the lack of a GPA/CCU request.

### **III. THE PUC SHOULD INCREASE THE LEAC FACTOR TO \$0.209552.**

GPA and CCU took no action on the LEAC Factor even though their own "**GPA PROPOSED LEAC RATE**" (**EXHIBIT "2" HERETO**) demonstrates that a failure to increase the LEAC Factor will result in a \$14.5M increase in the under-recovery. The PUC should note that in Exhibit "2", GPA has already increased the allowed under-recovery from the \$17.5 level that was previously authorized by the PUC. At its January 27, 2022 meeting, the PUC set a LEAC Factor that would not allow the under-recovery to be above \$17.5M. However, in the updated LEAC Rate set forth in Exhibit "2", the under-recovery has been increased to \$20M. Since GPA, in Exhibit "2", allows a greater under-recovery in this LEAC period, there is a reduction in the amount that the LEAC Factor must recover from ratepayers. This gives some savings to the ratepayers.

The proposed LEAC Factors indicated in Exhibit "2" are the result of the update that GPA did in the Morgan Stanley Fuel Oil Pricing for the period of March 11, 2022, to March 17, 2022. Exhibit "2" indicates that, to maintain the GPA under-recovery at \$20M for this six-month LEAC period, the LEAC Factor must be increased from \$0.180837 per kWh to \$0.209552 per kWh. Such increase would represent a 10.31% increase in the total bill and a monthly increase of \$28.69 for the average residential customer.<sup>9</sup>

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<sup>9</sup> GPA Proposed LEAC Rate (prepared 3/18/22), submitted by GPA CFO John Kim in an email to PUC Administrative Law Judge dated March 18, 2022, attached hereto as Exhibit "2".



Alternatively, GPA calculates that if an increase in the LEAC Factor is delayed until May 1, 2022, the Factor would have to increase to \$0.218462, an increase of nearly one additional cent per kWh, to maintain the under-recovery balance at \$20M for this LEAC period.<sup>10</sup>

Attached to the ALJ Report as Exhibit "3" is a chart demonstrating the "GPA Fuel Landed Cost (per barrel) through March 11, 2022".<sup>11</sup> The chart indicates the steep increase in GPA's fuel costs resulting from the Russia/Ukraine Conflict and the OPEC Production cut. The tremendous increase in fuel prices is the justification for raising the LEAC Factor to \$0.209522 per kWh effective April 1, 2022.

Since the LEAC Factor of \$0.180837 was implemented effective February 1, 2022, HSFO and Diesel oil prices have increased 30% and 40% respectively. These increases have occurred in less than two months, as indicated by the attached chart.

	2/4/22	03/22/21	Percentage Increase
SING HSFO 180 CST (per metric ton)	\$519.92	\$671.60	30%
SING Gasoil 10 PPM (per barrel)	\$107.40	\$149.89	40%

For those arguing that the PUC should delay action because of the "uncertainty" of fuel prices, the most up-to-date fuel information is not encouraging. The Morgan Stanley Asia Morning Call Report dated March 25, 2022, states that HSFO price per

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<sup>10</sup> Id.

<sup>11</sup> CCU Member Packet, GPA Work Session, March 17, 2022, at p. 90.



metric ton is now \$694.77 and the equivalent Diesel price per barrel at \$154.62, which indicate price increases respectively of 34% and 44% since February 4, 2022.<sup>12</sup>

#### **IV. NEITHER GPA NOR THE CCU HAVE OFFERED A REASONABLE JUSTIFICATION FOR DELAYING ACTION FOR AN INCREASE OF THE LEAC FACTOR.**

In the CCU Meeting on March 22, 2022, GPA/CCU cited certain alleged “reasons” why they were not recommending a LEAC increase effective April 1, 2022. Although a concern was raised about “kicking the can down the road”, that is exactly what GPA and CCU ended up doing. It was suggested that “we should wait to act on LEAC” because “there is uncertainty in fuel prices, and the price situation can be viewed again in April to determine what action to take.” When is there not “uncertainty” in fuel prices? The future trend of fuel oil prices is always “uncertain.” LEAC Factors, whether for six-month periods, or mid-term adjustments, are always “projections” in an uncertain fuel market. The argument that no action should be taken because of “uncertainty” would prevent PUC from ever determining LEAC Factors, whether for six-month periods or mid-term corrections.

The argument that “uncertainty” in fuel prices is an excuse for not acting is inconsistent with Tariff Z. Under Tariff “Z”, calculations of the LEAC factor are always based on “projections” of fuel price, projections of fuel expense, and projected retail kWh sales over the next six-month period. There is always “uncertainty” in fuel prices, but the LEAC process has always accepted that the PUC establishes the LEAC factor based upon the best current available fuel pricing. That is exactly what has been done here. In arriving at its LEAC calculations, GPA has used the most updated Morgan Stanley pricing from March 11 through March 17, 2022.

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<sup>12</sup> Morgan Stanley Asia Morning Call dated March 25, 2022, at p. 2.



The decision as to whether to increase the LEAC Factor must be made on the best information available at the present time as to fuel price. The PUC cannot fail to set a proper fuel price based upon an assumption that fuel prices “might” go down at some unspecified time in the future. If price volatility were used as an excuse to forego any decision on fuel price, no decisions on LEAC would ever be made. A recent Weekly Report of the Oil & Energy Insider stated that “Oil Price Volatility is here to stay.” As oil prices recently surged back above \$100 per barrel, the International Energy Agency has said that the current energy crisis may worsen in the upcoming weeks, suggesting consumers will have to bear the brunt of a 3 million b/d supply crunch if Russia does not end the invasion of Ukraine.<sup>13</sup>

Waiting before taking action is an inappropriate response. If no action is taken, the under-recovery could potentially even double in this LEAC period. If PUC accepts the “do-nothing” strategy and waits until sometime in April to increase the LEAC Factor effective May 1, 2022, ratepayers will have to pay an even higher rate of \$0.218462 and experience an even greater rate burden. How does delaying a LEAC increase give “leeway” to ratepayers when they will likely end up paying a higher Fuel Recovery Charge on May 1?

Even if fuel prices were unexpectedly to go down over the next month, raising the LEAC Factor now will at least maintain the \$20M under-recovery and potentially even reduce such under-recovery balance further. Increasing the LEAC factor now begins the process of reducing the huge under-recovery balance that already exists; even if fuel prices go down, GPA can start recovering a portion of the \$20M under-recovery.

The argument was also made that GPA can “tolerate” the under-recovery or “get by” without an increase, that it will still be able to purchase fuel even if the LEAC is not now increased, and that GPA can just “wait” (thereby delaying recovery of the debt that

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<sup>13</sup> Oil Energy Insider Report dated March 18, 2021, at p. 5 (“Oil Price Volatility is Here to Stay”).



ratepayers owe GPA). These claims are not recognized by Tariff "Z" and are irrelevant. Tariff "Z" requires that the PUC determine fuel cost and set a LEAC Factor that will recover all fuel costs during the 6-month period. PUC must establish a Fuel Recovery Charge that fully recovers the cost of fuel for the 6-month period.

### **ORDERING PROVISIONS**

After carefully reviewing the record in this proceeding, having considered the LEAC Update filed by GPA ("GPA PROPOSED LEAC RATE"), and the Administrative Law Judge Report, and after discussion at a duly noticed regular meeting held on March 31, 2022, 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 \$0.209552/kWh shall be effective for meters read on or after April 1, 2022.
2. The current singular LEAC factors are hereby adjusted, effective April 1, 2022, as shown in the following table:

LEAC	
Delivery Classification	\$ per kWh
Secondary -	\$0.209552
Primary – 13.8 KV	\$0.203227
Primary – 34.5 KV	\$0.202641
Transmission – 115 KV	\$0.200147



For the remainder of the LEAC period, these changes represent an increase in the total bill of the average residential customer of 10.31%.

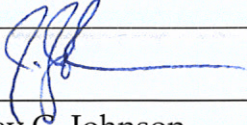
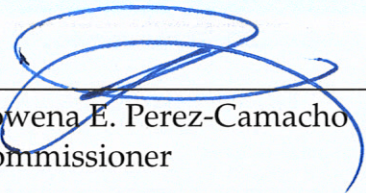
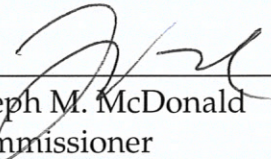
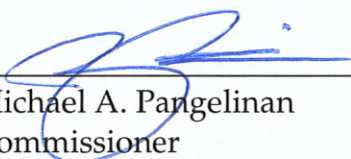
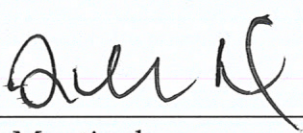
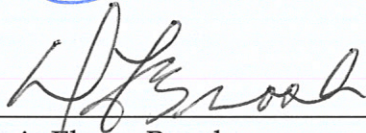

4. GPA is ordered to pay the Commission's regulatory fees and expenses, including, without limitation, consulting and counsel fees and the fees and expenses of conducting the hearing proceedings. Assessment of PUC's regulatory fees and expenses is authorized pursuant to 12 GCA §§12103(b) and 12125(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

**[SIGNATURES TO FOLLOW ON NEXT PAGE]**

Dated this 31st day of March 2022.



Order  
GPA's LEAC  
GPA Docket 22-05  
March 31, 2022

  
\_\_\_\_\_  
Jeffrey C. Johnson  
Chairman  
\_\_\_\_\_  
Rowena E. Perez-Camacho  
Commissioner  
\_\_\_\_\_  
Joseph M. McDonald  
Commissioner  
\_\_\_\_\_  
Michael A. Pangelinan  
Commissioner  
\_\_\_\_\_  
Peter Montinola  
Commissioner  
\_\_\_\_\_  
Doris Flores Brooks  
Commissioner  
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Pedro S.N. Guerrero  
Commissioner