

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN THE MATTER OF: ) GPA Docket 22-18  
)  
The Application of the Guam Power )  
Authority to Extend the Management, ) **ALJ REPORT**  
Operation and Maintenance of GPA's Fuel )  
Bulk Storage Facility Contract with Isla )  
Petroleum and Energy, LLC (IP&E Guam) )  
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INTRODUCTION

This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Petition of the Guam Power Authority ["GPA"] for Review and Approval of GPA's Request to Extend the Management, Operation and Maintenance of GPA's Fuel Bulk Storage Facility Contract with Isla Petroleum and Energy, LLC ("IP&E Guam) for an additional 1-year period.<sup>1</sup>

BACKGROUND

On August 31, 2017, the PUC approved GPA's award of the Performance Management Contract to IP&E Guam LLC for the management, operation and maintenance of the GPA Fuel Farm Bulk Storage Facility.<sup>2</sup> The Contract provided a 2-year base period with three optional 1-year extensions.<sup>3</sup> On March 25, 2019, the PUC approved GPA's request to exercise the PMC's first option extending the PMC for an additional one (1) year from October 1, 2019 to September 30, 2020.<sup>4</sup>

<sup>1</sup> GPA Petition to Extend the Management, Operation and Maintenance of GPA's Fuel Bulk Storage Facility Contract with Isla Petroleum and Energy, LLC (IP&E Guam), GPA Docket 22-18, filed August 3, 2022, at p. 1.

<sup>2</sup> PUC Order, GPA Docket 17-04, dated August 31, 2017, at p. 3.

<sup>3</sup> Id., at p. 2.

<sup>4</sup> PUC Order, GPA Docket 19-08, dated March 28, 2019, at p. 2.



On February 23, 2020, the PUC approved GPA's request to exercise the PMC's second and third options, extending the PMC for an additional two (2) years from October 1, 2020 to September 30 2022.<sup>5</sup> GPA's current Fuel Bulk Storage Facility Contract with IP&E terminates on September 30, 2022; no further extensions are provided in the Contract.<sup>6</sup>

GPA issued a Multi-Step Invitation for Bid under IFB GPA-015-22 for the Management, Operation and Maintenance of the Fuel Bulk Storage Facility; however, the IFB was cancelled in May 2022 due to non-compliance by all proponents with a requested affidavit submittal document.<sup>7</sup> On June 2, 2022, GPA issued a Re-Bid for Multi-Step IFB GPA-015-22; however, GPA anticipates a delay in the award of the Contract.<sup>8</sup>

GPA and IP&E have negotiated a mutually agreed upon 1-year extension of the existing contract which would commence on October 1, 2022 and end on September 30, 2023.<sup>9</sup> GPA now requests that the PUC review and approve the 1-year extension of the Contract with IP&E.<sup>10</sup>

## **ANALYSIS**

### **A. Contract Review**

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<sup>5</sup> PUC Order, GPA Docket 20-08, dated February 23, 2020 at p. 3.

<sup>6</sup> Guam Consolidated Commission on Utilities, GPA Resolution No. FY2022-26, Authorizing the Management of the Guam Power Authority to Petition the Public Utilities Commission for the Extension of the Existing Contract for the Management, Operation and Maintenance of the Guam Power Authority's Fuel Bulk Storage Facility with Isla Petroleum & Energy, LLC (IP&E), adopted and approved on July 26, 2022, at p. 1.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id.



PUC must review any GPA contract or obligation which exceeds \$1,500,000. For multi-year contracts, whether the contract exceeds the \$1,500,000 threshold for PUC review is determined by the total estimated cost for the entire term(s) of the contract. The total cost for this contract, from FY 2018 to the present, including the 1-year renewal term, will be \$5,438,400.01.<sup>11</sup> The PUC must review and approve the requested extension of GPA's Fuel Bulk Storage Facility Contract.<sup>12</sup>

#### **B. CCU Resolution No. FY2022-26 (GPA)**

Pursuant to the above Resolution, the Guam Consolidated Commission on Utilities authorized GPA to execute an agreement with IP&E for a one (1) year extension of the contract for the management, operation and maintenance of the GPA Fuel Bulk Storage Facility, commencing on October 1, 2022, and terminating on September 30, 2023. The authorized cost for the 1-year extension is \$1,118,000.00.<sup>13</sup>

The CCU found that there was a need to extend the existing contract with IP&E "to ensure continued operation and maintenance of the facility for the uninterrupted supply of fuel to GPA's baseload and peaking units...".<sup>14</sup> CCU further determined that it was also in "GPA's best interest to have continuity of the existing contract to avoid complications that could occur if GPA converts the facility to ULSFO (0.2% sulfur) and USLD (10ppm sulfur) for compliance with USEPA consent decree requirements...".<sup>15</sup>

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<sup>11</sup> Exhibit A to Guam Consolidated Commission on Utilities, GPA Resolution No. FY2022-26.

<sup>12</sup> Contract Review Protocol for Guam Power Authority, Administrative Docket, §§1.e and 4.b.

<sup>13</sup> Guam Consolidated Commission on Utilities, GPA Resolution No. FY2022-26, Authorizing the Management of the Guam Power Authority to Petition the Public Utilities Commission for the Extension of the Existing Contract for the Management, Operation and Maintenance of the Guam Power Authority's Fuel Bulk Storage Facility with Isla Petroleum & Energy, LLC (IP&E), adopted and approved on July 26, 2022, at p. 1.

<sup>14</sup> Id.

<sup>15</sup> Id.



Unless the contract is extended, GPA will be without a contractor to maintain the Fuel Bulk Storage Facility upon the termination of the contract on September 30, 2022.

**C. Reasonableness of Cost for the 1-Year Extension**

GPA indicates that the cost for this contract will increase from \$911,662.13 for FY2022 to \$1,118,000.00 for the 1-year extension for FY2023. There are justifications for the increased cost. GPA concludes that such increase is “reasonable.”<sup>16</sup>

Brian Bamba, the Managing Director of IP&E, states that the increases are “consistent with increasing costs across all our operations.”<sup>17</sup> Cost increases have occurred for terminal staff, security services, and for contractors that perform work within the facility.<sup>18</sup> There are also increases in management and operations costs (such as LEAC).<sup>19</sup> The original Contract only included delivery of RFO; ULSD is now being delivered to the baseload plants and Piti 8 and other plants. Additional manpower is needed for those deliveries.<sup>20</sup>

In dockets involving other utilities, such as the Port Authority of Guam regarding the H-Wharf procurement, the PUC has recognized and approved increases in procurement costs which have resulted from current economic conditions and the covid pandemic financial impact.<sup>21</sup>

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<sup>16</sup> GPA Petition at p. 2.

<sup>17</sup> Email from Brian Bamba to Albert Florencio dated June 10, 2022 (contained in GPA’s Response to PUC Requests for Information).

<sup>18</sup> Email from Brian Bamba to Albert Florencio dated July 7, 2022 (contained in GPA’s Response to PUC Requests for Information).

<sup>19</sup> Id.

<sup>20</sup> Email from Albert Florencio to Graham Botha dated August 17, 2022 (contained in GPA’s Response to PUC Requests for Information).

<sup>21</sup> PUC Order, PAG Docket 22-05, dated June 16, 2022, at p. 11.



#### **D. Justification for Extension of the Contract**

GPA offers several justifications for the extension of the contract. The 1-year extension will allow GPA sufficient time in resolving the potential delays (e.g., protest) on the ongoing solicitation for a new contract. With the ongoing projects in the facility, the proposed 1-year extension will ensure a proper and safe transition of the facility to the new fuel from RFO to ULSD, with IP&E's familiarity with the management and operation of the facility.<sup>22</sup> GPA is satisfied with IP&E's performance; there have been significant improvements in the maintaining of the facility during its tenure with competent staff.<sup>23</sup>

However, the present contract will terminate on September 30, 2022, and there is no further provision in the contract for extension. The issue is what authority exists for the extension of a contract that, by its terms, has terminated.

On several occasions, the PUC has held that GPA may extend contracts even where the term is expiring. In GPA Docket 18-13, the PUC allowed GPA and Marianas Energy Corporation to enter into a 5-year extension of the Energy Conversion Agreement for the Piti 8 & 9 plants. The PUC determined that the parties had "broad amendment powers" under the contract which allowed the parties to extend it. "The extension of the existing ECA will help to ensure the continued operation, management and reliability of the Piti 8 & 9 plants."<sup>24</sup>

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<sup>22</sup> Email from Albert Florencio to Graham Botha dated August 17, 2022 (contained in GPA's Response to PUC Requests for Information).

<sup>23</sup> Id.

<sup>24</sup> PUC Order, GPA Docket 18-13, dated May 31, 2018, at pgs. 2-4.



In GPA Docket 18-16, the PUC approved GPA's request to extend a fuel supply contract for Residual Fuel Oil No. 6 for the Baseload Power Plants with Hyundai Corporation, for a 3-month period. The 3 months extension was justified to allow for adequate transition to the new fuel supplier.<sup>25</sup> The contract gave the parties broad authority to amend its terms.<sup>26</sup>

More recently, in GPA Dockets 22-11 and 22-14, the PUC authorized GPA to extend the contract with Graphic Center Inc. relating to billing and other services for printing, mailing, and processing for periods of 8 months and 1-year respectively.<sup>27</sup> In those dockets, as in the current docket, GPA was prevented from entering a new contract because of delays in the procurement process. The extensions were necessary because GPA's ability to bill customers would be adversely affected if there were a gap in its professional billing, mailing, processing and other services.<sup>28</sup>

If the current contract with IP&E for the management, operation and maintenance of GPA's Fuel Bulk Storage Facility were not extended, GPA would not have a contractor to run the facility. There could be an interruption of the supply of fuel to GPA's baseload and peaking units. The Fuel Bulk Storage Facility Contract does have provisions which allow the amendment and modification of the contract.<sup>29</sup> However, even if those provisions did not specifically authorize further extension of the contract, it is GPA's position that GPA, and other agencies, have continued contracts where services are essential.<sup>30</sup> Continuation of the contract is justified on the ground of

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<sup>25</sup> PUC Order, GPA Docket 18-16, dated June 26, 2018.

<sup>26</sup> Id., at pgs. 2-3.

<sup>27</sup> PUC Orders, GPA Docket 21-11, dated July 29, 2021, and GPA Docket 22-14, dated May 23, 2022.

<sup>28</sup> PUC Order, GPA Docket 22-14, dated May 23, 2022, at p. 4.

<sup>29</sup> See Contract No. GPA-014-17, Management, Operation and Maintenance of the Guam Power Authority Fuel Bulk Storage Facility, Section 30, Amendment and Waiver.

<sup>30</sup> GPA Response to PUC Requests for Information (by GPA Counsel Graham Botha).



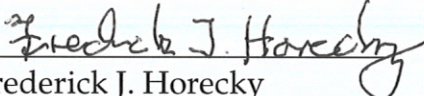
“necessity”; without a contractor there could be an interruption of the power supply and potential harm to the ratepayers.

### **RECOMMENDATION**

Based on the record before the Commission, the Administrative Law Judge (the “ALJ”) recommends that the PUC approve a 1-year extension of GPA’s Management, Operation and Maintenance of GPA’s Fuel Bulk Storage Facility Contract with Isla Petroleum and Energy, LLC. GPA should be authorized to expend up to the amount of \$1,118,000.00 for the additional 1-year contract extension.

A Proposed Order is submitted herewith for the Commissioners’ consideration.

Respectfully submitted this 22<sup>nd</sup> day of August, 2022.

  
Frederick J. Horecky  
Chief Administrative Law Judge