

**GUAM PUBLIC UTILITIES COMMISSION
REGULAR MEETING
January 26, 2023
GCIC CONFERENCE ROOM, GCIC BUILDING, HAGATNA**



MINUTES

The Guam Public Utilities Commission ("PUC") conducted a regular meeting commencing at 6:30 p.m. on January 26, 2023, pursuant to due and lawful notice. **Commissioners Jeffrey C. Johnson, Peter Montinola, Joseph McDonald, Doris Flores-Brooks, Rowena Perez-Camacho, and Michael Pangelinan** were in attendance. The following matters were considered at the meeting under the agenda included as *Attachment "A"* hereto.

1. Approval of Minutes of December 19, 2022.

The Chairperson announced that the first item of business on the agenda was the approval of the minutes of December 19, 2022. Commissioner Montinola moved to approve the minutes of the December 19, 2022 meeting subject to corrections, which motion was seconded by Commissioner McDonald; the motion passed unanimously.

2. Guam Power Authority.

The Chairperson announced that the next item of business on the agenda was Guam Power Authority ("GPA") Docket 23-06, LEAC Filing, Authorizing the Management of the Guam Power Authority to Petition the Guam Public Utilities Commission to Maintain the Levelized Energy Adjustment Clause (LEAC) for the Period from February 1, 2023 to July 31, 2023, ALJ Report, and Proposed Order. ALJ Horecky stated that GPA has requested that the LEAC factor be maintained at the present level for the next six months, from February 1, 2023 through July 31, 2023. In October of 2022, the PUC increased the LEAC factor from roughly 29 cents up to nearly 32 cents per kilowatt-hour and that new rate began on or after November 1st, 2022. ALJ Horecky stated that LEAC rate has been in effect since November 1, 2022 to present. In this matter, the CCU authorized GPA to file a petition which would maintain the LEAC factor for the next six months.

ALJ Horecky continued that, in its original petition, GPA argued that the LEAC factor should be maintained because of the under-recovery balance and the Commission has looked at that balance many times over the past year. The under-recovery balance is basically the amount that ratepayers owe to GPA, or unpaid amount for fuel expense that GPA has already incurred; and over the past year the LEAC under-recovery balance has increased. As of November 1, 2022, it was roughly \$41 million.

ALJ Horecky continued, according to the original petition that GPA filed, GPA anticipates that if the current LEAC factor is kept in effect for the next six months (0.318576 cents per kilowatt-hour) that by July 31, 2023, the under-recovery would be \$8.3 million. However, on January 17, 2023, GPA did an update of the fuel prices under our LEAC procedure and at that time, their filing had some good news, which is that if the current LEAC factor is maintained, the under-recovery balance owed by ratepayers as of July 31, 2023 will be \$915,000.00. If the LEAC factor remains the same, the under-recovery balance will essentially be eliminated.

ALJ Horecky advised that when GPA filed its petition on December 7, 2022, the ULSFO fuel was \$159.29 (the average price per barrel) and for diesel about \$120.00 per barrel; however, updated prices reflected the ULFO price was \$133 per barrel, and diesel still about at \$120. ALJ Horecky further suggested that the fact that fuel prices have gone down should not be a basis for reducing the present LEAC factor; as long as there's an under-recovery, steps should be taken to recover the amounts owed. For now, ALJ Horecky recommended that the Commission continue with the present LEAC factor and noted in the ALJ report the existence of Public Law 357-36, which has already provided ratepayers with at least some relief under the Prugrāman Ayuda Para I Taotao-ta Energy Credit Program. Customers will receive another \$500.00 credit towards their power accounts. ALJ Horecky stated this is an opportune time to deal with the under-recovery since there are some protections for the ratepayers under this law, and the ratepayers at least have been used to paying that amount for the past number of months.

While still very high, ALJ pointed out that if the course is stayed here, it's a good possibility that for the next LEAC period beginning in August 2023, the LEAC factor will likely go down, depending on what happens with fuel prices in six months.

ALJ Horecky recommended that the PUC approve the order for GPA Docket 23-06. GPA GM John Benavente concurred with the ALJ report and confirmed the declining fuel prices. A discussion ensued between the Commissioners Johnson, Montinola, GPA GM Benavente, and GPA John Kim concerning declining fuel prices, factors used to determine projections and current under-recovery figures. Chairperson Johnson reminded the Commissioners that the PUC was not locked into the six-month period and that if needed, the PUC can intervene at any point in time.

Commissioner Montinola moved to approve the draft order for GPA Docket 23-06 which motion was seconded by Commissioner Perez-Camacho, and the motion passed unanimously.

3. Guam Water Authority.

The Chairperson announced that the next item of business on the agenda was Guam Water Authority ("GWA") Docket 23-04, Petition to Ratify and Approve Final Payments to Black Construction Corp. for the Completion of the Northern District Wastewater Treatment Plant Upgrade, ALJ Report, and Proposed Order. Commissioner

Michael Pangelinan recused himself from participation due to his law firm representing GWA in a pending litigation. ALJ Alcantara stated that according to GWA, in August of 2016 and April of 2018, the U.S. Department of Defense, specifically the Office of Economic Adjustment, awarded GWA with grants to fund water and wastewater improvement projects, which included the upgrade to the Northern District Treatment plant. According to GWA, these grants were issued to improve the system so that its infrastructure can support the relocation of U.S. Marines and their dependents to Guam. These grants total over \$173 million dollars. From the \$173 million dollars, about \$122 million was authorized by the CCU for the Northern District Wastewater treatment plant upgrade project. GWA then issued an invitation for bid where five contractors responded to the bid. Black Construction was ultimately awarded the upgrade project.

In 2019, the CCU authorized the Black Construction contract at a cost of \$122 million dollars along with the five percent contingency which added another \$6.1 million dollars; GWA and Black Construction entered into a contract for this project.

ALJ Alcantara stated in the current petition, GWA requests that the PUC authorize an additional \$6.7 million in bond funds to pay Black Construction for a cost to close out the project and, as described by GWA in its petition, the upgrade and expansion project was considered urgent; and construction activities were required in order to meet the awarded federal grant schedule requirements as well as the opening of the Marine Corps Base now known as Camp Blaz.

ALJ Alcantara continued with regard to the contract, the bid involved 39 discrete project items such as the construction of a new secondary wastewater treatment plant, the repurposing of existing facilities, demolition work at the existing pipe site, upgrades to existing pump stations and force mains, new plant upgrades such as oxidation ditches, secondary clarifiers, upgrades to the existing dewatering facility, upgrades to the existing septage facility and force main, new yard and infrastructure at and between the existing plant, and the new secondary treatment facilities, upgrades to existing laboratory and control facilities, etc. The cost for these discrete project items ranges from \$3.6 million for mobilization to \$14 million for project management.

The construction cost grant about \$332,000.00 for demolition, about \$10 million for new headworks, about \$10 million for secondary clarifiers and scum pumping station, about \$6 million for UV disinfection system, about \$4 million for a sludge storage facility and pump station; and all of these costs are listed in the bid package that was submitted by Black Construction, which gives an indication of the construction costs that were listed before Black Construction completed the contract.

While GWA received a total of \$122 million from the Office of Economic Adjustment to fund this contract, GWA had already anticipated that there might be a budget shortfall despite this federal funding.

GWA therefore included the wastewater treatment plant secondary upgrade project in its 2020 bond series as a project that would receive funding from the bond proceeds.

ALJ Alcantara continued that, in 2020, the PUC approved the budget of about \$7.5 million in GWA Docket 20-03 in order for GWA to fund and complete the Northern District Wastewater Treatment Plant upgrades. Because of delays caused by the pandemic, like travel restrictions affecting equipment, global supply chain issues, increased supply and labor costs, there was increased cost to the contract which thereby requires the additional \$6.7 million in order to close the contract with Black Construction.

ALJ Alcantara stated GWA has submitted that the PUC ratify about \$2.7 million for payments already made to Black Construction, and approve an additional amount of \$2.9 million to pay all outstanding claims and final change orders that GWA has with Black Construction. The funding source for this \$6.7 million would be from bond funds. ALJ Alcantara indicated, that based on this record, there's no doubt that this Northern District Wastewater Treatment Plant is a vital and crucial expansion as it's significant for the community, and more specifically the upgrade and expansion is necessary to provide treatment with secondary standards that comply with the NPDES permit which ensures long-term reliable operations, and which will support the relocation of the U.S. Marines and their dependents to Guam. ALJ Alcantara recommended that the PUC authorize the amount of \$6.7 million in bond funds to close out its contract with Black Construction, and submitted a proposed order that would set forth PUC's authorization of that amount.

GWA GM Miguel Bordallo added more details about the \$173 million dollars grant funding and the need for bond funds to close. Chairperson Johnson commended GWA for their efforts in ongoing projects and the completion of certain facilities. A discussion ensued between Commissioners Johnson, Montinola, McDonald, Flores-Brooks, and GWA GM Bordallo concerning completion dates, facility staffing, and the contingency amount. Commissioner Montinola moved to approve the draft order granting the petition, which motion was seconded by Commissioner McDonald, and the motion passed with five approvals by Commissioners Montinola, McDonald, Flores-Brooks, and Perez-Camacho.

4. Administrative Matters

The Chairperson announced that the next item of business on the agenda was GWA Water Loss Control Program Status Report by GWA GM Miguel Bordallo. GWA GM Bordallo presented that at the end of November a status report from the Water Loss Control Program was submitted as required by the Rate Order. GWA GM Bordallo passed out a report that summarized and charted the progress.

GWA GM Bordallo stated the primary component of the water loss control program that resulted from work conducted by GWA consultant Water Systems Optimization were prepared to support comprehensive review and update of the GWA five-year financial plan, one of the major components of which was the District Metered Area (“DMA”) Program. The idea behind the district metered areas is that if you break up the distribution system into discrete segments where you can meter what comes in and then through our customer metering program, determine what goes out, the difference is what is lost through leaks within the distribution system.

GWA GM Bordallo continued, the water loss control program is based on the implementation of DMA system, and it contemplated that 36 distinct district metered areas within the distribution system were to be implemented over a three-year period. As of end of August 2022 (year 1), GWA’s target was 13 district metered areas which would mean that GWA would have set up the infrastructure required to meter what was going into those separate areas and then GWA will have the customer meters in place to measure what's going out. GWA’s target was 13, but it completed 16 for year 1. In year 2, which ends in August of 2023, GWA’s target is eight additional DMAs for implementation. As of November 30th, 2022, GWA established two; had two under construction and five that will hopefully get done before the end of this second year for a total of nine. For the next year, year 3, GWA’s target is 15 but with current momentum and progress, GWA will only have 11 to complete in year 3. GWA GM Bordallo stated that , in terms of progress of implementing these DMAs, GWA is ahead of the curve, and reported that the progress has been good.

GWA GM Bordallo presented the schematic representation of the distribution system on the slide documents he passed out to the Commissioners earlier, which displayed all distinct metered areas, meter locations, district meters that are being monitored, and DMAs that are proposed and not yet made and implemented.

GWA GM provided an example of how the DMA system works. He explained that the meter would be what is feeding into a specific area or neighborhood, then GWA would use the customer billing data from the customer meters for all the customers within that DMA to figure out the amount of water coming out, then GWA would analyze the difference. GWA measures from the booster pump station that services the whole area to determine the amount of flow that goes in and then GWA measures the customer usage, which represents the amount of flow that goes out. Any difference in these measurements determines water loss.

To run this DMA program, there is a web-based software solution where the meter data is uploaded into and is used for tracking and monitoring. Reports from that software presents all of the daily flow in terms of gallons per day that goes into the DMA, the billed meter consumption, actual consumption, specified months represented, and the water losses within the district metered areas.

GWA GM Bordallo continued, when GWA first established the DMA, billed metered consumption was less than 200,000 gallons a day, and the total being fed into that was over 400,000 gallons a day. While the DMAs provide the data to show what the system is doing, most of the progress is from sending GWA leak detection crews out into these neighborhoods looking for leaks that are not visible on the surface. It may be low-level leakage; it may be only in the joints or maybe bad service connections; and is not reported. The actual real water losses have decreased significantly.

GWA GM Bordallo concluded that GWA hopes to get the water loss under control, or down to an acceptable level.

A discussion ensued between the Commissioner Johnson, Perez-Camacho, Flores-Brooks, Montinola, and GWA GM Bordallo regarding pipe repairs and replacement, removal of galvanized steel pipes, funding, details on the leak detection teams, and the recent leak in Agana and Marine Drive. Chairperson Johnson and Commissioner Perez-Camacho highly commended GWA for their hard work and service in their efforts to control Guam's water loss issue.

- **Staff Report on Attorney Compensation**

The Chairperson announced that the next item of business on the agenda was the Staff Report on Attorney Compensation. This report was for informational purposes. ALJ Horecky stated that the report showed the results of certain legal rates from various Government of Guam agencies, and compared PUC's caseload to be similar to, if not more than, Guam Airport Authority, which was one of the agencies listed on the Staff Report. Chairperson Johnson stated that no action was needed as this matter was already voted upon during the December 19, 2022 meeting. No further comments or motions were made.

- **PUC Resolution 23-01, Issuance of Requests for Proposals for PUC Consultants**

The Chairperson announced that the next item of business on the agenda was the PUC Resolution 23-01, Issuance of Requests for Proposals for PUC Consultants. ALJ Horecky stated that by the end of September 2023, all the PUC consulting contracts will expire. In 2018, January was about the time that PUC approved proceeding with RFP for the consulting contracts. ALJ Horecky proposed in the resolution that PUC release the RFPs by April, or earlier. ALJ Horecky stated he hopes current consultants will participate in this year's RFP and explained that the resolution drafted basically provides that the PUC authorize the issuance of the RFPs.


A discussion ensued between the ALJ Horecky, Chairperson Johnson, Commissioner Flores-Brooks, Pangelinan, and Montinola, regarding clarification on contract terms, current consultants, and whether Guam's procurement code applies to

the PUC. Commissioner Pangelinan moved to approve the resolution as drafted, which motion was seconded by Commissioner McDonald, and the motion passed unanimously.

- **Review of Quarterly Financial Statements Update**

The Chairperson announced that the next item of business on the agenda was the Review of Quarterly Financial Statements Update. Commissioner Flores-Brooks provided information on the financial statements as she had been working with PUC Administrator Lourdes Palomo. A discussion ensued between the Chairperson Johnson, Commissioner Flores-Brooks, Montinola, Perez-Camacho and Montinola, regarding Time Certificate Deposit, current assets, issues rectified within the accounting program, budget to actuals, reconciliation and PUC's administrative and regulatory accounts. Commissioner Flores-Brooks commended PUC Administrator Palomo for her services and efforts in rectifying the issues pertaining to PUC's accounting program.

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



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 January 26, 2023, Suite 703, GCIC Building, 414 W. Soledad Ave., Hagatna.

The following business will be transacted:

Agenda

- 1. Call to Order**
- 2. Approval of Minutes of December 19, 2022**
- 3. Guam Power Authority**
 - **GPA Docket 23-06, LEAC Filing, Authorizing the Management of the Guam Power Authority to Petition the Guam Public Utilities Commission to Maintain the Levelized Energy Adjustment Clause (LEAC) for the Period from February 1, 2023 to July 31, 2023**
- 4. Guam Waterworks Authority**
 - **GWA Docket 23-04, Petition to Ratify and Approve Final Payments to Black Construction Corp. For the Completion of the Northern District Wastewater Treatment Plant Upgrade, ALJ Report, and Proposed Order**
- 5. Administrative Matters**
 - **GWA Water Loss Control Program Status Report by GWA GM Miguel Bordallo**
 - **Staff Report on Attorney Compensation**
 - **PUC Resolution 23-01, Issuance of Requests for Proposals for PUC Consultants**
 - **Review of Quarterly Financial Statements Update**
- 6. Adjournment**

Further information about the meeting may be obtained from the PUC's Administrator Lou Palomo at 671-472-1907. Those persons who require special accommodations, auxiliary aids, or services to attend the meeting should also contact Ms. Palomo.

This Notice is paid for by the Guam Public Utilities Commission.

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN THE MATTER OF:) GPA Docket 23-06
)
Guam Power Authority Levelized Energy)
Adjustment Clause (LEAC)) **ORDER**
)
)
_____)

INTRODUCTION

This matter comes before the Guam Public Utilities Commission [“PUC”] upon the Petition of the Guam Power Authority [“GPA”] to maintain the current LEAC factor of 0.318576 per kWh for meters read on or after February 1, 2023.¹ On October 27, 2022, the PUC increased the LEAC factor from \$0.296043 to \$0.318576 per kWh for meters read on or after November 1, 2022.² The LEAC factor of \$0.318576 has remained in effect from November 1, 2022, up to the present time. GPA now seeks to maintain the same factor in effect for the next six-month period, from February 1, 2023 through July 31, 2023.³

BACKGROUND

In GPA Resolution No. FY2023-06, dated December 7, 2022, the Guam Consolidated Commission on Utilities authorized GPA Management to petition the PUC to maintain the current LEAC factor for the next six-month period.⁴

¹ GPA Petition, In the Matter of: Guam Power Authority Levelized Energy Adjustment Clause (LEAC) (LEAC FILING), GPA Docket 23-06, dated December 7, 2022.

² PUC Order, GPA Docket 22-15, PUC Review of Levelized Energy Adjustment Clause (LEAC) Factor, dated October 27, 2022, at p. 7.

³ GPA Petition at p. 1.

⁴ Guam Consolidated Commission on Utilities, GPA Resolution No. FY2023-06, Authorizing the Management of the Guam Power Authority to Petition the Guam Public Utilities Commission to

ANALYSIS

I. GPA'S RATIONALE FOR MAINTAINING THE LEAC FACTOR AT ITS CURRENT LEVEL FOR THE NEXT SIX MONTHS IS THAT THE UNDER-RECOVERY BALANCE WILL BE SUBSTANTIALLY REDUCED.

GPA'S initial LEAC filing on December 7, 2022, indicated that the average price per Bbl. of RFO and ULSFO 0.20% for the upcoming LEAC period would be \$159.21 and the average price per Bbl. of Diesel at \$120.20.⁵ The most recent Morgan Stanley market projections indicate declining fuel prices for the period ending July 31, 2023.⁶

The "under-recovery balance" is the unpaid amount that ratepayers owe GPA for fuel expense. It is an unpaid debt. The LEAC factors set by the PUC in the past few years have not been adequate to recover GPA's full cost for fuel oil. Although fuel prices are now declining, the under-recovery balance as of November 1, 2022, was roughly \$41M.⁷ GPA anticipates that, if the current LEAC factor of \$0.318576/kWh is maintained, the under-recovery balance as of July 31, 2023, will be \$8.3M.⁸ GPA's argument is that it is prudent to maintain the current LEAC factor in order to substantially reduce the amount that ratepayers currently owe GPA in deferred fuel expense.

II. REDUCTION OF THE UNDER-RECOVERY BALANCE IS FURTHER SUPPORTED BY GPA'S UPDATED LEAC FILING.

Maintain the Levelized Energy Adjustment Clause (LEAC) for the Period from February 1, 2023 to July 31, 2023,

⁵ GPA Petition, GPA Resolution No. FY2013-06, Exhibit A (GPA Proposed LEAC Rate (\$000), Actuals as of September 30, 2022).

⁶ Id.

⁷ Id.

⁸ GPA Resolution No. FY2013-06, pg. 3, and Exhibit A.

In accordance with PUC LEAC procedure, GPA submitted its updated LEAC Filing on January 17, 2023.⁹ Submitted with the filing is GPA Proposed LEAC Rate (\$000) (Update as of 01/17/2023), attached to the ALJ Report as Exhibit "A". In its updated Exhibit A with the "Proposed LEAC Rate" for the next 6-month period, GPA now states that the average price per Bbl. of RFO and ULSFO 0.20% will be \$148.10 and the average price per Bbl. of Diesel will be \$119.19.¹⁰ There has been a trend in declining fuel oil prices. In addition, the updated filing demonstrates that there has been a substantial reduction in the amount of the under-recovery balance since September 2022 through the end of January, 2023, from \$41M to \$33M.¹¹

The encouraging update is, that if the current LEAC Factor is maintained, the under-recovery balance owed by ratepayers as of July 31, 2023, will be \$915,000.¹² The huge under-recovery that has existed for the past few years will effectively be eliminated.

III. THE PUC SHOULD MAINTAIN THE LEAC FACTOR AT \$0.318576 FOR THE PERIOD FROM FEBRUARY 1, 2023, THROUGH JULY 31, 2023.

Fuel prices are decreasing. As of October 20, 2022 the price for Sing Gas Oil 10ppm, which is equivalent to diesel, was \$133.00 per barrel.¹³ As of January 17, 2023, the price of Sing Gas Oil 10ppm per barrel was \$120.03. Based on declining oil prices, should the LEAC Factor be reduced at the present time to benefit the ratepayers?

⁹ Email by GPA CFO John Kim to PUC ALJ Fred Horecky, Updated LEAC Information, dated January 17, 2023 (use of Morgan Stanley Noon Call fuel prices from January 9, 2023 to January 13, 2023).

¹⁰ Id.

¹¹ Id., at pgs. 2-3.

¹² Id., at Exhibit A.

¹³ Morgan Stanley Asia Morning Call, October 20, 2022.

The LEAC factor should not be reduced at the present time. If the current LEAC Factor is reduced, the under-recovery balance would not be recovered to the same extent. This is the right time to solve the under-recovery problem.

Public Law No. 357-36 has provided GPA customers with some relief.¹⁴ Under the Prugraman Ayuda Para I Taotao-Ta Energy Credit Program, customers will receive another Five Hundred Dollars (\$500) Credit toward their Power Accounts. A credit of \$100 per month will be received by customers for the months of December 2022, January 2023, February 2023, March 2023, and April 2023.¹⁵ This Public Law provides at least some relief to ratepayers from the current high LEAC Factor.

By maintaining the current LEAC Factor now, the under-recovery balance can hopefully be eliminated. There is a good possibility that the LEAC Factor could be reduced for the 6-month period commencing in August 2023.

ORDERING PROVISIONS

After carefully reviewing the record in this proceeding, having considered the LEAC Filings of GPA, and the Administrative Law Judge Report, and after discussion at a duly noticed regular meeting held on January 26, 2023, 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 \$0.318576/kWh shall remain in effect for meters read on or after February 1, 2023.

¹⁴ Public Law No. 357-36, enacted December 17, 2022.

¹⁵ Id., at Section 2.

2. The current singular LEAC factors are hereby maintained, effective February 1, 2023, as shown in the following table:

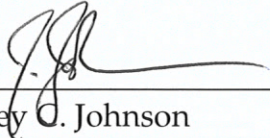
LEAC

Delivery Classification	\$ per kWh
Secondary -	\$0.318576
Primary – 13.8 KV	\$0.309031
Primary – 34.5 KV	\$0.308141
Transmission – 115 KV	\$0.304348

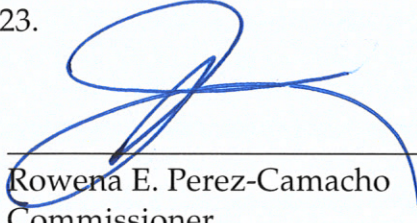
For the entire LEAC period, there is no change in the total bill of the average residential customer.

3. GPA should file for a change in the LEAC factors to be effective August 1, 2023, on or before June 15, 2023.
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.

Dated this 26th day of January 2023.



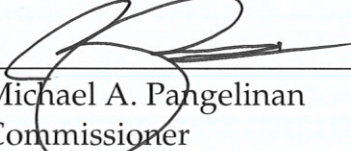
Jeffrey C. Johnson
Chairman



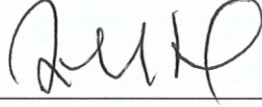
Rowena E. Perez-Camacho
Commissioner



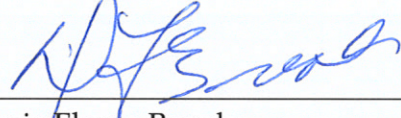
Joseph M. McDonald
Commissioner



Michael A. Pangelinan
Commissioner



Peter Montinola
Commissioner



Doris Flores Brooks
Commissioner

Pedro S.N. Guerrero
Commissioner

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

**PETITION FOR RATIFICATION AND)
APPROVE FINAL PAYMENTS TO)
BLACK CONSTRUCTION)
CORPORATION FOR THE)
COMPLETION OF THE NORTHERN)
DISTRICT WASTEWATER TREATMENT)
PLANT UPGRADE)**

GWA DOCKET 23-04

ORDER



INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC” or the “Commission”) pursuant to the Petition to Ratify and Approve Final Payments to Black Construction Corporation for the Completion of the Northern District Wastewater Treatment Plant (“WWTP”) Upgrade (the “Petition”), filed by the Guam Waterworks Authority (“GWA”) on January 18, 2023.

On January 24, 2023, 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

According to GWA, on August 2016, and April 2018, the U.S. Department of Defense, through the Office of Economic Adjustment, awarded GWA with several grants to fund water and wastewater improvement projects, which included the Northern District WWTP upgrade, the Northern District sewer interceptor rehabilitation, the deep ocean outfall diffuser installation for the Northern District plant, and the Northern Guam Lens Aquifer monitoring system expansion and rehabilitation project.¹

¹ Petition, p. 2.

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According to GWA, the grants were issued to improve GWA's water and wastewater systems so that such systems could support the relocation of U.S. Marines and their dependents to Guam.² In addition, these grants totaled over \$173 million; and according to GWA, \$122,077,088.00 was set aside and authorized by the CCU for GWA's Northern District WWTP Upgrade project.³

On January 11, 2019, GWA issued an Invitation for Bid, requesting technical proposals from qualified bidders to complete the construction required for the Northern District WWTP Upgrade project.⁴ A total of five contractors submitted bids; and thereafter, on May 29, 2019, GWA personnel determined that Black Construction submitted the lowest responsive bid.⁵

On June 5, 2019, the Consolidated Commission on Utilities (the "CCU") authorized GWA to accept Black Construction's bid and to enter into an agreement with Black Construction at a cost of \$122,077,088.00, along with a five percent (5%) of \$6,103,854.40.⁶ On July 9, 2019, GWA and Black Construction entered into a construction contract for the Northern District WWTP upgrades.

A. Review of GWA's Black Construction Contract

Pursuant to 12 G.C.A. §12105, GWA may not enter into any contractual agreements or obligations which could increase rates and charges without the PUC's express approval. Additionally, pursuant to GWA's Contract Review Protocol issued in Administrative Docket 00-

² CCU Resolution No. 37-FY2018, p. 1 (June 5, 2019).

³ Petition, p. 2.

⁴ CCU Resolution No. 37-FY2018, pp. 1-2.

⁵ CCU Resolution No. 37-FY2018, pp. 3-4.

⁶ CCU Resolution No. 37-FY2018, pp. 2-3.

04, GWA must seek PUC's approval for any uses of bond funds.⁷ In this instance, GWA is requesting PUC approval since it intends to use bond funds to pay the remaining balance on the Black Construction Contract.

B. The Northern District WWTP Upgrade and Expansion Project

In its Petition, GWA requests that the PUC authorize a total of \$6,707,990.13 in bond funds to pay Black Construction for costs to “close out” the Northern District WWTP expansion and upgrade project.⁸ As described by GWA in its Petition, “[t]he Northern District WWTP upgrade and expansion project was considered urgent and a prompt initiation of construction activities were required in order to meet the awarded federal grant schedule requirements and the opening of the Marine Corps base, now known as Camp Blaz, from which the plant was planned to receive additional wastewater flows.”⁹

Indeed, the Office of Economic Adjustment awarded GWA a number of grants intended to fund GWA's Northern District WWTP Upgrade.¹⁰ According to GWA, this grant money was specifically intended for water and wastewater improvements that would support the relocation of U.S. marines and their dependents to Guam.¹¹

Further, based on the recommendation of the U.S. Navy, “the design and construction of the [Northern District] WWTP treatment upgrades” should “comply with the current National Pollutant Discharge Elimination System (‘NPDES’) permit” that would, among other things,

⁷ GWA's Contract Review Protocol, Administrative Docket 00-04, p. 1 (Oct. 27, 2005).

⁸ Petition, p. 4.

⁹ Petition, p. 2.

¹⁰ Resolution No. 37-FY2018, p. 1.

¹¹ Resolution No. 37-FY2018, p. 1.

“mitigate impacts to wastewater utilities, nearshore waters, and marine biological resources.”¹² Accordingly, “the upgrade and expansion of the [Northern District] WWTP is necessary to provide treatment to secondary standards in accordance with the NPDES permit and to ensure long term, reliable operations”¹³

C. Black Construction Contract and Scope of Work

As indicated in CCU Resolution No. 37-FY2018, Black Construction was selected from a list of five qualified contractors. The bid involved thirty-nine (39) discrete project items. The work indicated in the bid and in the contract includes: the construction of a new secondary wastewater treatment plant, and the repurposing of the existing facilities.¹⁴ The work also involves demolition work at the existing plant site; upgrades to the existing pump station and force-main; new plant upgrades, such as oxidation ditches, secondary clarifiers, disinfection and solids stabilization facilities; upgrades to the existing dewatering facility; upgrades to the existing septage facility and force-main; new yard and infrastructure at and between the existing plant and the new secondary treatment facilities; and upgrades to the existing laboratory and control facilities, to name a few.¹⁵

The costs for the discrete project items range from \$3.6 million for mobilization, to \$14 million for project management.¹⁶ Other construction costs include: about \$332,000.00 for demolition; about \$10 million for new headworks; about \$14 million for oxidation ditches; about

¹² Resolution No. 37-FY2018, pp. 1-2.

¹³ Resolution No. 37-FY2018, p. 2.

¹⁴ Black Construction Contract, p. 1.

¹⁵ Black Construction Contract, p. 1.

¹⁶ See Base Bid submitted by Black Construction.

\$10 million for secondary clarifiers and scum pumping station; about \$6 million for a UV disinfection system; about \$4 million for an aerated sludge storage facility and pump station; about \$4.5 million for a thickening facility; and about \$9 million for a digester equipment building, just to name a few.¹⁷ According to GWA, Black Construction has already made a request for the issuance of substantial completion.¹⁸

E. Cost and Funding Source

As discussed in depth above, GWA received a total of \$122,077,088.00 from the Office of Economic Adjustment to fund the subject contract. According to GWA, it had anticipated that there would be a budget shortfall despite federal grant funding. As a result, “GWA management included the WWTP Secondary Upgrades Completion in GWA’s Series 2020A Bond project list and as a CIP line item in GWA’s 5-year CIP.” In 2020, the PUC approved a budget of \$7,500,000.00, under project number MP-WW-WWTP-08, in GWA Docket 20-03, to complete the Northern District WWTP upgrade.

In addition, because of certain issues, such as delays caused by the Covid-19 pandemic, like travel restrictions affecting equipment commissioning, global supply-chain issues, and increased supply and labor costs, the project resulted in delays and increased costs.¹⁹ Consequently, the project requires an additional \$6,707,990.13 to “close out” the contract.²⁰ In particular, GWA submits that the PUC need only “ratify” payments already made to Black Construction in the amount of \$3,734,026.62, and “approve” an additional amount of

¹⁷ See Base Bid submitted by Black Construction.

¹⁸ Petition, p. 3.

¹⁹ See Petition, p. 4.

²⁰ Petition, p. 4.

\$2,973,963.51 to be paid to Black Construction, to pay all outstanding claims and final change orders.²¹ As discussed above, GWA has identified bond proceeds as the source of funding for this final \$6.7 million cost.

F. 2020A Series Bond

As indicated in the PUC's March 26, 2020 Order issued in GWA Docket 20-03, this Commission approved GWA's issuance and sale of long-term debt in the form of Bonds for the purpose of financing improvements to the System; as well as approved the issuance of additional bonds for the purpose of financing certain improvements described in "Exhibit A" ("Table of Projects Funded by Series 2020A Bonds") of that Order.²² Based on the "Table of Projects Funded by Series 2020A Bonds," a funding amount of \$7.5 million was set aside for the "completion" of GWA's Northern District Wastewater Treatment Plant, under Project Number "MP-WW-WWTP-08."²³ It is clear that bond funds have been reserved for the subject project. Accordingly, final payments to Black Construction to finish this project squarely aligns with the approved bond-funded projects and uses.

CONCLUSION

There is no doubt that the Northern District WWTP upgrade and expansion is a significant and vital project for the community. Not only is the project crucial in preparing for the growing military presence in Guam, such that the Office of Economic Adjustment of the U.S. Department of Defense awarded several grants to GWA to fund the project²⁴; but also that "the

²¹ Petition, p. 4.

²² Order Approving Long-Term Debt, GWA Docket 20-03, pp. 1-2 (Mar. 26, 2020).

²³ Order Approving Long-Term Debt, GWA Docket 20-03, Exhibit A, p. 2.

²⁴ Petition, p. 2; Resolution No. 37-FY2018, p. 1.

design and construction of the [Northern District] WWTP treatment upgrades” would “comply with the current National Pollutant Discharge Elimination System (‘NPDES’) permit” so as to “mitigate impacts to wastewater utilities, nearshore waters, and marine biological resources.”²⁵

Therefore, “the upgrade and expansion of the [Northern District] WWTP is necessary to provide treatment to secondary standards in accordance with the NPDES permit and to ensure long term, reliable operations” and will support the relocation of U.S. marines and their dependents to Guam.²⁶

In addition, the selection of Black Construction as the contractor for this project was reasonable, especially since the firm was chosen out of five qualified contractors who submitted bids. Further, despite the COVID-19 pandemic creating travel restrictions affecting equipment commissioning, global supply-chain issues, and increased supply and labor costs, Black Construction has been able to complete construction on the project.

Moreover, in reviewing the issuance of additional bonds for the purpose of financing certain system-wide improvements, this Commission has approved the Northern District WWTP Upgrade project and its corresponding budget of \$7.5 million to complete the Northern District WWTP Upgrade project.²⁷ Accordingly, payments to Black Construction from GWA’s bond funds to close out this project squarely aligns with the approved use of such funds.

RECOMMENDATION

Based on this record, and for the other reasons set forth herein, the ALJ recommended that the PUC authorize the amount of \$6,707,990.13 in bond funds for GWA to close out its

²⁵ Resolution No. 37-FY2018, pp. 1-2.

²⁶ Resolution No. 37-FY2018, p. 1.

²⁷ Order Approving Long-Term Debt, GWA Docket 20-03, Exhibit A, p. 2.

contract with Black Construction. Such authorization would “ratify” payments already made in the amount of \$3,734,026.62, and “approve” an additional amount of \$2,973,963.51 to be paid on the contract. As the record indicates, almost all of the construction and work for this contract has been completed; and about 95% of the contract was funded by federal monies.

The Commission hereby adopts the findings in the January 24, 2023 ALJ Report and therefore issues the following.

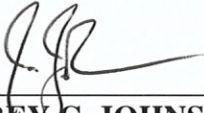
ORDERING PROVISIONS

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; and that GWA is authorized to pay Black Construction Corporation \$6,707,990.13 from bond proceeds.
2. GWA 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 26th day of January, 2023.



JEFFREY C. JOHNSON
Chairman



ROWENA E. PEREZ-CAMACHO
Commissioner



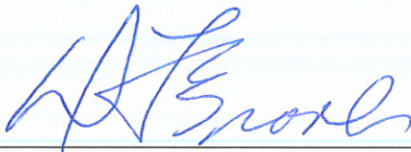
JOSEPH M. MCDONALD
Commissioner

PEDRO GUERRERO
Commissioner



MICHAEL A. PANGELINAN
Commissioner

PETER MONTINOLA
Commissioner



DORIS FLORES BROOKS
Commissioner

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PUBLIC UTILITIES COMMISSION OF GUAM

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Frederick J. Horecky
Chief Administrative Law Judge

Joephet R. Alcantara
Administrative Law Judge

Anthony R. Camacho
Legal Counsel



RESOLUTION NO. 23-01

RE: AUTHORIZING THE PUBLIC UTILITIES COMMISSION TO ISSUE REQUESTS FOR PROPOSALS FOR THE RETENTION OF PROFESSIONAL CONSULTANTS TO ADVISE IT WITH REGARD TO REGULATION OF THE WATER, POWER, PORT, SOLID WASTE UTILITIES, AND TELECOMMUNICATIONS COMPANIES; AND FOR THE ADMINISTRATIVE LAW JUDGE AND LEGAL COUNSEL POSITIONS

WHEREAS, the Guam Public Utilities Commission ("PUC") is an autonomous instrumentality independent of the Executive and Legislative Branches of the Government of Guam;

WHEREAS, the PUC has the authority to retain consultants pursuant to 12 GCA Section 12103 (a), which provides that "[T]he Commission shall retain on an as needed basis those professional services required by the Commission in the performance of its duties";

WHEREAS, the PUC finds that it is in the public interest to retain consultants through a transparent and fair procurement process;

WHEREAS, the PUC has a need to retain the services of professional consultants to provide it with advice and other consulting services with regard to regulation of utilities, including water (GWA), power (GPA), the Port (PAG), telecommunications companies (GTA and other telecom companies), and solid waste (GSPA);

WHEREAS, the PUC also has a need to retain professional consultants such as Administrative Law Judges and Legal Counsel to assist in the processing of its workload;

WHEREAS, the existing consulting agreements of the PUC either have expired or will expire by the end of September, 2023; and

NOW THEREFORE, in due consideration of the above recitals and for good cause shown, the PUC hereby resolves that:

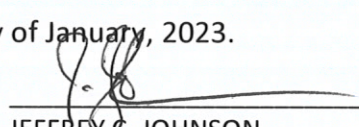
1. The Chief Administrative Law Judge is authorized and directed to cause the preparation and publication of procurement documents for the selection of consultants for water (GWA),

power (GPA), the Port (PAG), telecommunications companies (GTA and other telecom companies), and solid waste (GSWA).

2. The Chief Administrative is also authorized and directed to cause the preparation and publication of procurement documents for the selection of consultants for Administrative Law Judge and Legal Counsel positions;
3. The Chief Administrative Law Judge shall take steps to issue and publish requests for proposals for the selection of all the consultants on or before April 1, 2023;
4. Once proposals are received from prospective offerors, the Commissioners shall evaluate the proposals and select the most qualified offerors.
5. The Commission, through staff, will negotiate price offers with the highest-ranking offerors. At the next scheduled meeting of the PUC after proposals are selected and price negotiated, the Commission shall determine which offerors shall be the PUC Consultants.

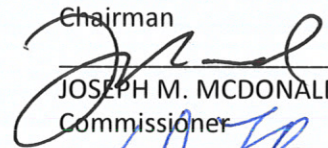
SO ORDERED this 26th day of January, 2023.

Dated: January 26, 2023



JEFFREY C. JOHNSON
Chairman

Dated: January 26, 2023



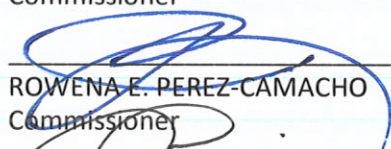
JOSEPH M. MCDONALD
Commissioner

Dated: January 26, 2023



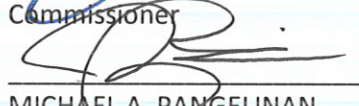
DORIS FLORES BROOKS
Commissioner

Dated: January 26, 2023



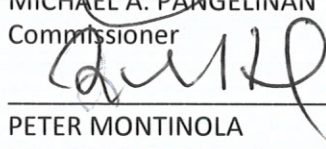
ROWENA E. PEREZ-CAMACHO
Commissioner

Dated: January 26, 2023



MICHAEL A. PANGELINAN
Commissioner

Dated: January 26, 2023



PETER MONTINOLA
Commissioner

Dated: January 26, 2023

PEDRO S.N. GUERRERO
Commissioner