

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN THE MATTER OF:) GPA Docket 24-02
)
Guam Power Authority Casualty)
Insurance Contract for FY 2024 with Two) **ALJ REPORT**
One-Year Renewal Options)
)
_____)

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Guam Power Authority ["GPA"] Petition for approval of its Casualty Insurance Contract for FY 2024 with Two One-Year Renewal Options.¹
2. GPA's proposed contract with AM Insurance and its affiliates for Casualty Insurance is for a one (1) year policy period beginning November 1, 2023, to October 31, 2024, with two one-year options to renew.²

BACKGROUND

3. GPA filed this request for approval of its Casualty Insurance Policy on October 24, 2023, two days before the PUC hearing on October 26. GPA's present line of casualty insurance policies was awarded in 2018 and will expire on October 31, 2023.³

¹ GPA Petition for PUC Approval of Casualty Insurance Contract for FY 2024 with Two One-Year Renewal Options, GPA Docket 24-02, filed October 24, 2023.

² Id. at p. 1.

³ Guam Consolidated Commission on Utilities GPA Resolution No. FY2024-02, To Authorize the Management of Guam Power Authority to Award the Casualty Insurance, adopted and approved on October 24, 2023, GPA Petition at Exhibits A-001-004.

4. This Petition only requests approval of GPA's Casualty Insurance Policy currently, but not its Property Insurance Policy. When it issued its Insurance Solicitations in July 2023, GPA decided to issue separate requests for proposals for casualty and property insurance. GPA did this to enable at least one of the bids to move forward with procurement if the other bid became "bogged down."⁴
5. GPA's solicitation for Casualty Insurance included commercial general liability, commercial auto physical damage and commercial auto liability, crime, excess liability, Directors' and Officers', professional liability and excess workers' compensation insurance under multi-step bid MS GPA-062-23.⁵ Only one bid was received for a premium total of \$712,192.00, which substantially exceeded GPA's price estimates for such policy. GPA cancelled the casualty insurance procurement and conducted sole source negotiations with AM Insurance for the Casualty Insurance.⁶
6. Following sole source negotiations, GPA negotiated a lower total premium of \$688,323. The contract term was revised from a three-year term with 2 one additional one-year options to extend to a one-year term with two additional one-year options to extend.⁷

⁴ GPA Responses to PUC Request for Information, dated October 22, 2023 (email from GPA Counsel Theresa Rojas to PUC ALJ Frederick Horecky).

⁵ GPA Petition at p. 2.

⁶ GPA Petition at p. 2.

⁷ Id.

7. On October 24, 2023, the Consolidated Commission on Utilities approved the casualty line of insurance policies offered by AM Insurance for a combined annual premium of \$688,223.⁸

ANALYSIS

8. The PUC-GPA Contract Review Protocol mandates that any contract which exceeds \$1,500,000 requires PUC approval.⁹ For this proposed multi-year casualty insurance contract, the price for all terms thereof is estimated to be \$2,064,968. The contract must be reviewed by the PUC.¹⁰
9. GPA has established that its Bond Indenture Agreement requires GPA to carry insurance “of a scope and nature as that usually carried in the industry...”¹¹ GPA cites Section 6.13 of its Bond Indenture, which unequivocally requires it “to obtain adequate workmen’s compensation, general liability, automotive, and fidelity insurance on all officers and employees responsible for funds and other insurance consistent with that of similar utilities.”¹² A true and correct copy of Section 6.13 of its Bond Indenture is attached hereto as Exhibit “1”.
10. GPA’s costs for casualty insurance premiums have increased considerably over the last six-year period (from FY2018-FY2023):

⁸ Guam Consolidated Commission on Utilities GPA Resolution No. FY2024-02, To Authorize the Management of Guam Power Authority to Award the Casualty Insurance, adopted and approved on October 24, 2023, GPA Petition at Exhibits A-001-004.

⁹ Contract Review Protocol for Guam Power Authority, Administrative Docket, dated February 15, 2008, at par. 1(e).

¹⁰ GPA Petition at p. 3; Contract Review Protocol for Guam Power Authority, Administrative Docket, dated February 15, 2008, at par. 4(b).

¹¹ GPA Revenue Bonds Indenture dated December 1, 1992-Section 6.13 Insurance.

¹² GPA Petition at p. 1.

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
GL	88,277	76,536	76,536	76,536	76,536	\$ 76,536
Auto	105,005	62,565	69,879	89,879	67,559	\$ 70,106
Professional	-	102,000	102,000	102,000	102,000	\$ 102,000
Excess	204,804	204,804	204,804	204,804	204,804	\$ 204,804
Workmen's	15,236	15,236	15,236	15,236	15,236	\$ 15,236
Blanket Crime	38,700	32,895	32,895	32,895	32,895	\$ 32,895
D&O	68,229	68,229	68,229	68,229	96,667	\$ 102,037
	520,251	562,265	569,579	589,579	595,696	\$ 603,614

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10. In GPA Resolution FY2024-02, the CCU indicates that the breakdown of the FY2024 Annual premium of \$688,323 is as follows:

<u>Life of Insurance</u>	<u>Premium</u>
GL	\$ 81,275
Auto	88,124
Professional	145,350
Excess	204,804
Workmen's	15,236
Blanket Crime	49,034
D&O	104,500
	<u>\$ 688,323</u>

11. The proposed increase for Casualty Insurance for the one-year period from FY2023-FY2024 is from \$603,614 to \$688,323. The premium increase from FY2023-2024 (\$84,709) is greater than the increase for the prior six-year period from FY2018-2023 (\$83,363). The overall increase for FY2024 from FY2023 appears to be in the vicinity of 13%. The increase will apply to each year for three years if the contract extensions are exercised by GPA. Prior year increases were minimal.

¹³ GPA's Response to PUC Request for Information, dated October 22, 2023 (email from GPA Counsel Theresa Rojas to PUC ALJ Fred Horecky).

12. The overall increase for FY2024 appears to be in the vicinity of 13%.
13. GPA was able to negotiate a savings of \$23,870 per annum for its proposed Casualty Insurance premiums (from \$712,192 to \$688,323). GPA indicates that the total premium amount of \$688,323.00 is required by GPA's bond indenture and is "reasonable, prudent and necessary."¹⁴
14. The ALJ is unable to conclude that the proposed increase in the Casualty Insurance Premium is "reasonable." There is no information in the record justifying the increase or why the premium increase is so great for this fiscal year.
15. The PUC should require GPA and AM Insurance to explain why the cost is so much higher for this fiscal year, and whether the difficulty lies in the facts that this is a sole source procurement, there is little apparent competition in the local insurance market, and there do not appear to be other insurance alternatives. There may need for there to be consideration as to whether GPA could be authorized to self-insure any of the risks through the Self Insurance Fund.
16. After hearing such presentation, the Commissioners can decide whether they view the increase as "reasonable", or whether the petition should be granted on grounds of prudence and necessity.
17. The ALJ does recognize that approval of the increase may be "necessary." If the PUC does not approve the contract, GPA will be without Casualty Insurance effective November 1, 2023, in possible violation of Section 6.13 of the Bond

¹⁴ GPA Petition at p. 3.

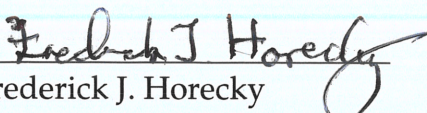
Covenant for Insurance. However, Section 6.13 only requires GPA to acquire insurance **“to the extent that such insurance is obtainable at reasonable cost.”**

18. Approval of the premium for Casualty Insurance may be “prudent.” Without casualty insurance in place, GPA runs the risk of loss or liability for all matters for which the Casualty Insurance Policy provides coverage.

RECOMMENDATION

19. GPA and AM Insurance should justify why the proposed Casualty Insurance is “reasonable.”
20. Based upon such presentation, the Commissioners should determine whether they deem the increase to be reasonable.
21. The PUC could reasonably decide to approve the GPA contract for Casualty Insurance with AM Insurance based upon the prudence and necessity standards, if it determines that such coverage is “obtainable at reasonable cost.”
22. A Proposed Order is submitted herewith for the consideration of the Commissioners.

Dated this 25th day of October, 2023.


Frederick J. Horecky
Chief Administrative Law Judge

calculation of the amounts required to be calculated pursuant to Section 6.11 and the estimated amount of Revenues to be collected in such Fiscal Year.

Section 6.12. Construction and Maintenance of the System. The Authority will acquire and construct the 1992 Series A Projects and any other Projects to be financed with the proceeds of the Bonds in a sound and economical manner, with all practicable dispatch, in an expeditious manner and in conformity with law so as to complete the same as soon as possible.

The Board will operate the System continuously, to the extent practicable under conditions as they may from time to time exist, in an efficient and economical manner, and will at all times maintain, preserve and keep, or cause to be maintained, preserved and kept, the System, including all parts thereof and appurtenances thereto, in good repair, working order and condition, and in such manner that the operating efficiency thereof will be of the highest character and so that all lawful orders of any governmental agency or authority having jurisdiction in the premises will be complied with (provided the Board shall not be required by this Indenture to comply with any such orders so long as the validity or application thereof shall be contested in good faith), and the Board will from time to time make, or cause to be made, all necessary and proper repairs and replacements so that the business carried on in connection with the System by the Board for the production, transmission and distribution of electric energy at all times may be properly and advantageously conducted in a manner consistent with prudent management, and the rights and security of the holders of the Bonds fully protected and preserved.

Section 6.13. Insurance. The Board will secure and maintain adequate workmen's compensation insurance for all employees of the Authority at any time employed in the construction, operation, maintenance, repair or reconstruction of the System, and will secure and maintain general and automotive liability insurance relating to the operation of the System. Such general and automotive liability insurance shall be in an amount not less than \$1,000,000 for injuries, including death, to any one person, and in an amount not less than \$2,000,000 for injuries, including death, to two or more persons, on account of any one accident, and property damage insurance in an amount not less than \$1,000,000 for each occurrence. The Board will also take out and maintain adequate fidelity insurance or bonds on all officers and employees handling or responsible for funds of the Authority. The Board will also secure and maintain property insurance on all facilities constituting the System against risks of loss or damage caused by or resulting from fire and also from action of the elements (including loss from typhoons, earthquakes, floods and tidal waves), to the extent that such insurance is obtainable at reasonable cost.

Such insurance shall be carried with companies duly authorized to transact insurance business on Guam. All such insurance shall be of a scope and nature as that usually carried in the industry. All such policies of insurance shall be in form ~~satisfactory to the Trustee and shall contain a clause making all~~ losses payable to the Trustee, as its interests may appear.

Any insurance required under this Section may be maintained under a self-insurance or deductible program so long as such self-insurance or deductible program is maintained in the amounts and manner customarily maintained by prudent operators of power systems similar to the System. The Authority shall, every third year, engage an insurance consultant to review the Authority's self-insurance or deductible program and to make recommendations for any necessary modifications, including, but not limited to, any modifications necessary to comply with this Section. Each such report shall be filed with the Trustee.

The proceeds of such insurance shall be deposited with the Trustee and held separate and apart from all other funds and moneys, to the end that such proceeds of insurance shall be applied to the reconstruction and restoration of the System to at least the same good order, state of repair and condition as it was in prior to the damage, insofar as the System may be restored from said proceeds. The Trustee shall permit withdrawals of the proceeds of such insurance from time to time, but as to each withdrawal only upon (i) a written request of the Authority, stating that the Authority has expended moneys or incurred liabilities to an amount requested in such request to be paid over to it for the purpose of reconstruction and restoration of the System, and specifying the items for which such moneys were expended or such liabilities incurred in such reasonable detail as may be required by the Trustee in its discretion, and (ii) a certificate of a qualified Independent Consultant that, in its opinion, the amount to be withdrawn is reasonable, necessary and currently required for the purposes requested. Any balance of any proceeds of insurance not required for the purpose of reconstruction and restoration as aforesaid shall be deposited by the Trustee in the Bond Reserve Fund to the extent of any deficiency therein, and any remaining balance shall be applied by the Trustee to the purchase of Bonds in the same manner as moneys are applied to the purchase of Bonds under the provisions of Section 5.04(E).

Section 6.14. Eminent Domain. If all or any part of the System shall be taken by eminent domain proceedings, the net proceeds realized by the Authority shall be deposited with the Trustee in a special fund in trust and shall be applied and disbursed by the Trustee subject to the following conditions, to wit:

(a) If such funds are sufficient to provide for the payment of the entire amount of principal due or to become due