

GUAM PUBLIC UTILITIES COMMISSION
SPECIAL MEETING
December 19, 2023
GCIC CONFERENCE ROOM, GCIC BUILDING, HAGATNA



MINUTES

The Guam Public Utilities Commission [PUC] conducted a special meeting set for 6:30 p.m. on December 19, 2023, pursuant to due and lawful notice. The meeting was called to order at 6:36 p.m. **All Commissioners** were in attendance. The following matters were considered at the meeting under the agenda included as *Attachment "A"* hereto.

1. Approval of Minutes of November 30, 2023.

The Chairperson announced that the first item of business on the agenda was the approval of the minutes of November 30, 2023. Commissioner Montinola moved to approve the minutes of the November 30, 2023 meeting subject to corrections, which motion was seconded by Commissioner McDonald. The motion passed unanimously.

2. Guam Power Authority

The Chairperson declared a modification to the agenda sequence. The initial agenda item being Guam Power Authority ("GPA") Docket 24-09, Petition of the Guam Power Authority to Approve an Increase in Contract Expenditures for Water System Diesel Generators; Legal Counsel Report; and Proposed Order. Commissioner Pangelinan requested to recuse himself due to Morrico Equipment being a client of his law firm.

PUC Legal Counsel Anthony R. Camacho ("PUC Counsel") discussed GPA's request to increase the contract amount for providing Diesel Fuel Oil No. 2 to the GPA water system diesel generators at Guam Waterworks Authority (GWA) sites. The initial contract, entered into on October 1, 2022, was estimated to cost about \$1.1 million, but unforeseen events, such as Typhoon Mawar, led to increased demand for diesel fuel and higher contract costs.

Due to extended power outages during the typhoon, there was a greater need for diesel fuel to operate generators at GWA sites. GPA, facing increased costs and sustained high demand for diesel fuel due to extended load shedding, found that the total cost for the initial contract term would exceed their threshold. GPA requested PUC authorization of an increase in the contract's price to \$3,296,277.00 for all five years of the contract. PUC Counsel stated that this request is reasonable, prudent, and necessary due to increased demand, operational concerns at GWA sites, and the reliance on electric pumps for wastewater treatment systems.

PUC Counsel submitted a proposed order for the Commissions consideration.

A discussion ensued between the Chairperson, Commissioners Guerrero and McDonald and GPA Jennifer Sablan (GPA Sablan) regarding the expenditure projections for diesel fuel. Commissioner Guerrero questioned the high projection of \$578,480 for the next three years, expressing concerns about the likelihood of similar power outages as in the past due to events like Typhoon Mawar. GPA Sablan explained

that the projections are based on historical data, and while they may not use all the funds, they are nearing the threshold for the \$1.5 million authorization.

Chairman Johnson sought information on the use of smaller generators during outages to ease off on load-shedding. GPA Sablan explained that they are used selectively during plant outages to mitigate the need for load shedding.

Another topic raised was the condition of the generators. GPA Sablan mentioned a resolution in the November CCU meeting to replace the nearly 30-year-old generators, which will be presented to the PUC in the following month's meeting. Commissioner McDonald concludes by noting his anticipation for the following month's presentation on generator replacement.

After the discussion, Commissioner Guerrero motioned to approve the proposed order for GPA Docket no. 24-09, which motion was seconded by Commissioner McDonald. The motion passed unanimously.

The Chairperson announced GPA filed for informational purposes the FY2023 Approved Contracts and Obligations. The Commissioners reviewed the filing and had no further questions.

3. Port Authority of Guam

The Chairperson announced that the next item of business on the agenda was Port Authority of Guam ("PAG") Docket 24-01, Petition to Ratify Insurance Coverage; ALJ Report; and Proposed Order.

Administrative Law Judge Joephet R. Alcantara ("ALJ Alcantara") reported on the renewal of PAG's insurance contract with AM for the fiscal year 2024. The original contract was approved in September 2022 for an initial estimated premium of \$3.5 million, covering the period from October 1, 2022, to October 1, 2027. The PAG request for renewal comes at a cost of \$4.9 million.

ALJ Alcantara further stated the renewed coverage included up to \$55 million in blanket coverage for physical loss and damage to real and personal property, encompassing various risks such as flood, rain flood, typhoon, tsunamis, loss of revenue, and business interruption. The total premium cost included \$4.5 million for property insurance, \$325,705 for marine liability, \$5 million for directors' and officers' liability, \$2 million for automobile coverage, and \$1 million for crime coverage. The total cost represented an increase of \$1.4 million, mainly attributed to rate hikes in property and automobile insurance.

ALJ Alcantara continued that AM Insurance justified the property premium increase by citing global catastrophic losses and routine industry rate hikes of 35% to 50% on loss-free policies. AM Insurance point out an increase in PAG's property values, a standing claim related to damage caused by Typhoon Mawar, and a 13% rise in the port's

property values for Fiscal Year 2024. The insurer also noted the impact of severe weather events worldwide on insurance rates.

ALJ Alcantara recommended approving the renewal, considering it reasonable, prudent, and necessary to safeguard PAG's assets from natural disasters and catastrophic events. Maintaining insurance coverage was deemed crucial for the protection of the port's assets, benefiting ratepayers, and ensuring compliance with bond covenants. The renewal terms with AM Insurance for Fiscal Year 2024, totaling \$4.94 million, were endorsed based on these considerations.

PAG General Manager Rory Respicio ("GM Respicio") offered a few comments to the Commission. In his comments, GM Respicio, along with his team, presented a request for ratification rather than approval. He highlighted the challenges faced by the PAG in securing insurance, especially after the recovery from Typhoon Mawar. Despite efforts by Ann Marie Muna to obtain reasonable insurance premiums, the market conditions made it challenging.

GM Respicio emphasized the impact of the pandemic, Typhoon Mawar recovery, a \$15 million public claim, and the absence of structured governance. He acknowledged the Commission's recognition of the port's survivability clause, which granted him authority in the absence of a legislatively constituted quorum.

GM Respicio urged the Commission to send a strong message to the Legislature about the importance of governance and structure for autonomous agencies like PAG. He discussed the need for support in appealing to the Legislature for confirmation of nominees and expressed concern about operating without a duly constituted board. GM Respicio sought the Commission's guidance and support, emphasizing the potential domino effect in the bond market and exposure to natural disasters without proper insurance coverage.

GM Respicio concluded by appealing to the Commission's influential role and expressed his desire for a vote on the governor's nominees. He shared the PAG's financial progress, highlighting the importance of governance for effective operation, especially in the context of national security and advocacy efforts in Washington, D.C.

A discussion ensued between the Commissioners, ALJ Alcantara, ALJ Horecky and GM Respicio regarding the following topics:

- a. **Insurance Claim Status:** Commissioner Flores-Brooks inquired about the PAG's \$15 million claim, seeking details on the distribution between property and business interruption. The GM Respicio provided information on the received amounts, indicating \$2 million for business interruption and \$13 million for property damages.
- b. **Concerns About Board Composition:** Commissioner Pangelinan expressed concern about PAG operating with only two board members and questioned the validity of the survivability clause passed by the board. He suggested adding

language to the order to allow for ratification once a fully constituted board is in place.

- c. **Confirmation Challenges:** GM Respicio discussed challenges in the confirmation of board nominees, mentioning Senator Guthertz's loss by one vote and the two other nominees stuck in committee. He requested the Commission's support and emphasized the importance of having a duly constituted board for the proper functioning of PAG.
- d. **FEMA's Action on the Claim:** Commissioner Perez-Camacho sought clarification on FEMA's action regarding the \$15 million claim. GM Respicio explained that FEMA is considering replacement for resiliency rather than restoring to pre-typhoon conditions.
- e. **Gantry Crane Timelines:** Commissioner McDonald asked about the timelines for placing gantry cranes in 2026. GM Respicio explained that it is part of a service life extension project with pending grants and other funding options.
- f. **Legal Insights:** ALJ Horecky and ALJ Alcantara provided legal insights, discussing the discretion the ALJ may have in considering non-typical filings and emergency actions.
- g. **Amendments to the Order:** Commissioner Pangelinan suggested potential amendments to the order to address concerns about the survivability clause and the need for ratification once a complete board is in place.
- h. **Commission's Support:** GM Respicio expressed appreciation for the Commission's support and discussed the challenges faced in the absence of a fully constituted board.

There being no further discussions, Commissioner Pangelinan moved to approve the proposed order with the amendments discussed, which motion was seconded by Commissioner McDonald. The motion passed unanimously.

4. **Guam Waterworks Authority**

The Chairperson announced that the next item of business on the agenda was Guam Waterworks Authority ("GWA") Docket 19-08, Petition to Amend the PUC's Sept. 28, 2023, Order Re Filing Deadlines, Review Timeframes, and Submittals Required for GWA's FY2025-FY2029 Rate Application Case; ALJ Report and Proposed Order. Commissioner Pangelinan recused himself from all GWA matters due to his law firm representing GWA in an ongoing litigation.

Chief Administrative Law Judge Frederick Horecky ("ALJ Horecky") presented a procedural motion by GWA related to the upcoming 2025 to 2029 rate case. The motion had two aspects: first, an extension of the deadline for filing GWA's multiyear rate plan, and second, requests for determinations on analytical studies for the rate case.

ALJ Horecky explained that GWA requested an extension from the PUC's order to file its multiyear rate plan by April 1, 2024, arguing that the current timeline for public notice was impractical. ALJ Horecky expressed skepticism about GWA's claim, as they had sufficient time to prepare since the previous year. However, acknowledging the utility's discretion in determining when to file, he supported extending the deadline to June 3, 2024. He emphasized that any potential delay in resolving the rate case would be GWA's responsibility.

Regarding GWA's request for determinations on analytical studies, ALJ Horecky argued that it was premature, as there is no filed rate case yet. ALJ Horecky recommended denying these requests, stating that such determinations should be made during the rate case proceedings, not beforehand. ALJ Horecky highlighted that the law grants the PUC unrestricted authority to request any information it deems necessary during a rate case.

In summary, ALJ Horecky proposed amending the PUC's order to extend the filing deadline for GWA's rate plan and emphasized that any potential delays in the rate case would be the utility's responsibility. ALJ Horecky recommended denying GWA's premature requests for determinations on analytical studies, suggesting that such matters should be addressed during the rate case proceedings.

When called upon by the Chairperson for any comments, GWA Legal Counsel Theresa Rojas ("GWA Rojas"), responded to the ALJ's report and proposed order. GWA Rojas explained that GWA filed the petition in response to the Commission's ordering provision from September 2023, which required an amendment to comply. While the ALJ suggested GWA could possibly meet the original deadline of January 1, 2024, GWA Rojas asserted that it was impractical, and they sought an amendment for compliance.

GWA Rojas clarified that GWA had no intention of requesting an extension, but aimed to meet the initial April 1st deadline. The challenge lay in the Ratepayers Bill of Rights requirement to publish proposed rates in a newspaper, and GWA couldn't meet this within 18 days. GWA Rojas emphasized GWA's intent to file a complete rate application by April 1, 2024, and requested the Commission to retain this date for an early review.

GWA Rojas also addressed GWA's second request, seeking clarity from the Commission on the need for additional analytical studies beyond the staffing study. GWA Rojas explained that this request was prompted by a Commission ordering provision, and GWA sought confirmation rather than bypassing the ALJ.

Expressing concerns about the ALJ's report and proposed order, GWA Rojas pointed out a statement suggesting GWA's requests were "illegal." GWA Rojas argued that GWA filed the petition transparently, and the requests aimed at efficiency. She requested the Commission to strike the sentence stating GWA's requests were illegal,

stating that without it, the ALJ's position would remain unchanged. GWA Rojas concluded by asking the Commission to consider these points.

After the comments made by GWA Rojas, Taling Taitano, Chief Financial Officer of GWA ("GWA Taitano"), expressed gratitude to the ALJ for agreeing to a modification of the order and providing clarity on the Tumon pipeline. GWA Taitano stated as someone who joined GWA in September 2019, after the last financial plan was submitted to the PUC, she acknowledged that this was her first experience with the planning of a rate plan from the beginning.

When the order was received in September, GWA Taitano immediately consulted with her team to understand the requirements and procedures outlined in PUC protocols and public law. Recognizing potential challenges with the 90-day ratepayer filing, she explained the complexities involved in the process, including approvals from the CCU, budget considerations, developing a five-year CIP plan, determining revenue requirements, and obtaining approval to move forward. She highlighted concerns about the time needed to ensure a comprehensive and compliant product.

GWA Taitano then discussed the proactive steps taken to strategize and meet the spirit of the order. She mentioned discussions with the GM and legal counsel about timelines and suggested the possibility of filing in March or April. The aim was to allow PUC consultants to begin reviewing the document, initiating discovery, and addressing RFIs so that, by the June filing, most questions would be answered. The goal was to cooperate, ensure transparency, and find efficient ways to meet the specified timelines for the next five-year plan. GWA Taitano appreciated the ALJ's recommendations and expressed a willingness to work cooperatively to meet the established timeline.

After GWA Taitano spoke, Mr. Chris Budasi, General Manager of Administration and acting General Manager of GWA ("GWA Budasi") on behalf of GWA GM Miguel Bordallo, provided additional insights into the second point of the petition concerning analytical studies. GWA Budasi expressed GWA's willingness to provide any necessary information for the PUC to adjudicate the rate case. GWA Budasi noted that analytical studies, especially if complex, often have a long lead time and involve procurement requirements, sometimes taking a year or longer from order to submission.

Highlighting the importance of adjudicating the five-year rate plan by the end of September 2024, GWA Budasi emphasized the significance of having a clear path forward for GWA's Capital Improvement Projects (CIP) and addressing the compounding effect of rates. He shared insights from the last rate case, where there were modest increases in the first two years, a larger increase in the fifth year to compensate for previous shortfalls, and challenges such as deferred maintenance and delayed employee increments due to financial constraints.

GWA Budasi explained that GWA is not opposed to providing analytical studies if requested by consultants or the ALJ during the filing. However, GWA Budasi expressed concerns about potential delays in adjudicating the five-year rate plan if waiting for

these studies. GWA's preference is to address specific studies in the next true-up rather than the comprehensive five-year rate plan adjudication. The goal: to ensure timely adjudication of the rate plan, placing GWA on solid financial footing, and addressing other issues in subsequent true-up proceedings.

ALJ Horecky responded to various points raised by GWA, primarily focusing on the perceived illegality of certain requests in GWA's petition. He expressed his stance on the issue of restricting additional studies, stating that GWA's petition requirements, such as a determination on the necessity of studies, are not consistent with the statute. ALJ Horecky argued that such requirements violate the PUC's right to conduct discovery at any time, as provided by the law.

ALJ Horecky further discussed objections to GWA's petition, pointing out specific instances where he believed GWA was imposing additional, unnecessary requirements that are not in line with the statutory framework. In particular, he contested the need for a determination on additional studies before the rate application, arguing that this is not stipulated in the law and contradicts the PUC's right to discovery.

Regarding the extension of the deadline, ALJ Horecky clarified his position, noting that GWA had several months to work on the filing and challenging the notion that they couldn't have the numbers within 15 days. He emphasized the importance of adhering to schedules and criticized the concept of an advanced draft petition, expressing concerns about its undetermined nature.

In summary, ALJ Horecky defended his use of the term "illegal" to describe certain aspects of GWA's petition, asserting that these requirements violate the statute. He also expressed his commitment to ensuring a timely rate case proceeding, highlighting the PUC's dedication to adhering to schedules and the complexities introduced by GWA's requests.

During the discussion, Chairman Johnson suggested changing the term "illegal" used by ALJ Horecky in his response to GWA's petition to "inappropriate" to alleviate any harshness. ALJ Horecky agreed to this change, stating that he has no pride of ownership in the term "illegal." Chairman Johnson emphasized the importance of starting the new rate case on a positive note, given the challenges faced in the previous five-year rate case.

ALJ Horecky agreed to modify the term to "inappropriate" and took the opportunity to request that GWA refrain from blaming the Commission for delays in prior rate cases. He urged both parties to move forward and focus on the current rate proceeding, emphasizing that it is a new case with a different docket assignment (24-05) and that dwelling on past issues is unnecessary. Chairman Johnson expressed his agreement with this perspective.

A discussion ensued involving the Commissioners, ALJ Horecky and GWA regarding GWA's plans to submit an "advanced draft petition" on March 4th, aiming to give the PUC sufficient time to review the proposed five-year rate plan. This advanced draft is

not the final filing, which is scheduled for June 3rd, meeting the 90-day notice requirement. The intention being stated to share with the Commission a version close to the final petition by April 1st. The discussions covered the constraints imposed by the 90-day notice requirement, the desire for an advanced draft to expedite the process, and the assurance that the draft would closely mirror the final version.

Commissioner Perez-Camacho expressed concerns about potential confusion, referencing past challenges with the RAM model. There were discussions about the need for GWA to present the proposed rates in the January 1st public notice that were originally intended for the final petition on April 1st. The conversation touched on the challenges of a shortened review timeframe if changes were required after the June 3rd filing.

Commissioner Montinola sought clarification on the nature of the draft, emphasizing the importance of understanding its closeness to the final version. The timeline complexities were discussed, with an agreement that the final rates might be presented in April, aligning with the original April 1st deadline for the Ratepayer Bill of Rights.

The discussions also covered the status of analytical studies, historical context on filing timelines, and potential risks if the October 1st deadline is missed. Commissioner Perez-Camacho raised concerns about the timing of information sharing and questioned why potential issues weren't communicated earlier. GWA explained their efforts to meet legal requirements and the challenges of the 90-day notice.

The introduction of the concept of an advanced draft petition was discussed, with some commissioners questioning its necessity. GWA defended it as providing more information than a public notice alone. There were suggestions to make April 1st the deadline for future rate requests, and concerns were raised about GWA's transparency in providing information.

Overall, the discussions highlighted the intricacies of the proposed timeline changes, concerns about transparency, and the balancing act between meeting regulatory requirements and expediting the rate case process. The agreement appeared to lean toward moving forward with the proposed changes to the petition.

There being no further discussion or comments, Commissioner Montinola motioned to approve the proposed order with the correction of the word "illegal" to "inappropriate," which motion was seconded by Commissioner Guerrero. The motion passed, with six in favor and one recusal.

Chairman Johnson noted that ALJ Horecky needed to be excused because he had an early morning flight and had to wake up at 3 a.m.

- **GWA Docket No. 24-01**

The Chairperson announced that the next item of business on the agenda was Guam Waterworks Authority ("GWA") Docket 24-01, Petition to Ratify and Approve

Increased Spending for Outside Conflicts and Legal Counsel Fees; Legal Counsel Report; and Proposed Order.

PUC Legal Counsel Anthony R. Camacho ("PUC Counsel") presented a case involving the GWA seeking approval for exceeding its \$1 million review threshold by \$43,821.20 in a legal services contract. The contract relates to a complex land dispute case in the Superior Court of Guam, and GWA is also requesting authority to increase spending under the contract up to a million dollars. The significant cost is associated with the case against Core Tech International Corporation and Unex Enterprises Corporation. PUC Counsel explained the history of the case and highlighted the extensive legal fees incurred due to the complexity of the litigation. He recommended approving the additional spending, but suggested implementing a requirement for GWA to file an estimated cost for the next year and seek prior approval if it exceeds the proposed million-dollar increase. PUC Counsel emphasized the critical nature of the case for GWA and the potential implications for Guam's wastewater system. The proposed order included these recommendations.

GWA Rojas provided additional context to PUC Counsel's presentation, emphasizing that GWA initially handled much of the case in-house when it intervened in the Department of Land Management's decision to rescind certificates of title held by Core Tech. She highlighted that the legal fees billed to Attorney Vincent Leon Guerrero, as outlined in Exhibit A02, were relatively conservative, amounting to \$1.1 million over five years until July 2023. GWA Rojas acknowledged the increasing complexity of the case, leading to the engagement of more co-counsel and a larger legal team as the litigation progressed. She indicated ongoing pretrial motions and the absence of a trial date due to unforeseen issues, requesting PUC's consideration for contract approval as the legal fees are expected to rise while the case remains active. GWA Rojas noted the unpredictability of the litigation and potential high stakes, with Core Tech seeking over \$200 million in damages.

A discussion ensued between the Commissioners and GWA. In the discussion, Commissioner Flores-Brooks sought clarification about the land dispute case involving the Northern Wastewater Treatment Plant. The case involves certificates of title for the land where the plant sits, initially going back to the Chamorro Land Trust and later involving a transfer to Core Tech through the Guam Ancestral Lands Commission. PUC Counsel explained the convoluted history and highlighted Core Tech's argument that the land had moved from the public domain to private hands. GWA Rojas clarified that the certificates of title date back to around 2014.

Commissioner Montinola inquired about GWA's decision to engage additional law firms, and GWA Rojas explained that Attorney Vincent Leon Guerrero contracted co-counsel from the Calvo, Jacob, Pangelinan firm. The engagement of additional co-counsel was approved by GWA.

Commissioner Flores-Brooks questioned the cost estimate and timeline of the legal proceedings. PUC Counsel provided a brief history of the case, mentioning its

refurbishment in anticipation of the military buildup. Commissioner Montinola expressed surprise at the substantial federal funding of \$179 million for the Northern Wastewater Treatment Plant.

Commissioner Guerrero raised concerns about GWA's involvement in the project, expressing regret that ratepayers were affected. Chairman Johnson clarified that the project serves both military and civilian wastewater and handles the northern civilian wastewater.

The discussion reflected various questions and concerns about the legal case, the history of the land transfer, GWA's engagement of additional law firms, federal funding for the wastewater treatment plant, and the impact on ratepayers.

There being no further discussion or comments, Commissioner Montinola motioned to approve the proposed order, which motion was seconded by Commissioner McDonald. The motion passed, with six in favor and one recusal.


- **Other Matters**

Chairman Johnson mentioned two informational items related to GWA: the filing of Fiscal Year 2023 Approval Contracts and Obligations and the status report on GWA's Water Loss Control Programs. However, an agreement was made between the Commissioners and GWA to wait until the return of GM Miguel Bordallo for further discussion.

5. Administrative Matters.

The Chairperson then announced that the final item of business on the agenda to be discussed an administrative matter, PUC Annual Report for Fiscal Year 2023 for informational purposes only. The PUC Annual Report for Fiscal Year 2023 was reviewed by the Commissioners and no further comments were made.

There being no further business, the Commissioners moved to adjourn the meeting. The meeting was adjourned at 9:07 p.m. on December 19, 2023.



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 special business meeting, commencing at 6:30 p.m. on December 19, 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 November 30, 2023**
3. **Port Authority of Guam**
 - **PAG Docket 24-01:** Petition to Ratify Insurance Coverage; ALJ Report; and Proposed Order
4. **Guam Waterworks Authority**
 - **GWA Docket 24-01:** Petition to Ratify and Approve Increased Spending for Outside Conflicts and Legal Counsel Fees; Legal Counsel Report; and Proposed Order
 - **GWA Docket 24-03:** Petition to Authorize the Issuance and Sale of GWA's Water and Wastewater System Revenue Refunding Bonds, on a Current and Forward Delivery Basis and Associated Documents; ALJ Report; and Proposed Order
 - **GWA Docket 19-08:** Petition to Amend the PUC's Sept. 28, 2023, Order Re Filing Deadlines, Review Timeframes, and Submittals Required for GWA's FY2025-FY2029 Rate Application Case; ALJ Report and Proposed Order
 - **For Informational Purposes Only:** GWA's Filing of FY2023 Approved Contracts and Obligations
 - **For Informational Purposes Only:** GWA Water Loss Control Program Status Report
5. **Guam Power Authority**
 - **GPA Docket no. 24-09:** Petition of the Guam Power Authority to Approve an Increase in Contract Expenditures for Water System Diesel Generator Fuel; Legal Counsel Report and Proposed Order
 - **For Informational Purposes Only:** GPA's Filing of FY2023 Approved Contracts and Obligations
6. **Administrative Matters**
 - **FY2023 PUC Annual Report**

7. Adjournment

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

This Notice is paid for by the Guam Public Utilities Commission

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE:) GWA Docket 19-08
)
GWA DOCKET 19-08 SEPTEMBER 28,)
2023 ORDER FOR TRUE-UP FOR FY2024) **ORDER**
GWA RATES)
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INTRODUCTION

This matter comes before the Guam Public Utilities Commission ["PUC"] pursuant to the Petition of the Guam Waterworks Authority ["GWA"] to amend the PUC's September 28, 2023 Order Re Filing Deadlines, Review Timeframes, and Submittals Required for GWA's FY2025-FY2029 Rate Application Case.¹

SUMMARY OF GWA REQUESTS

GWA makes two requests in its Petition: (1) Extension of Deadline for Filing of its FY2025-2029 Multi-Year Rate Plan. On September 28, 2023 the PUC ordered: "GWA shall file its next multi-year rate plan on or before April 1, 2024."² GWA claims that the filing deadline ordered by the PUC "is not tenable" because the Ratepayer Bill of Rights acquires GWA "to publish a January 1, 2024, public notice informing the public of "any proposed rate increase". GWA requests that the filing deadline be extended to June 3, 2024; (2) Confirmations and Restrictions upon PUC's right to require further Analytical

¹ GWA Petition, Petition to Amend the PUC's Sept. 28, 2023, Order Re Filing Deadlines, Review Timeframes, and Submittals required for GWA's FY2025-FY2029 Rate Application Case, GWA Docket 19-08, dated December 7, 2023.

² PUC Order Re: Annual True-Up for FY2024 Rates, GWA Docket 19-08, dated September 28, 2023 at Ordering Provision No. 4.

Staffing Studies. Six and one-half months before GWA has filed its final rate case petition or final rate plan, it requests that the PUC approve certain “confirmations”, limitations, and prerequisites upon the authority of the PUC to order additional analytical studies.³

ALJ REPORT DATED DECEMBER 15, 2023

The ALJ filed his Report herein dated December 15, 2023. The PUC adopts all conclusions and recommendations stated in the ALJ Report.⁴

DETERMINATIONS

1. **Extension of the Filing Deadline for the multi-year rate plan from April 1, 2024, to June 3, 2024, should be granted.**

GWA should be given additional time to file its plan if it feels that it will not have complete or sufficient information to file its final rate plan by April 1. The Ratepayer Bill of Rights restricts the filing of a rate case by a utility until certain public notice requirements are complied with but leaves any decision as to the date upon which a rate filing will be submitted to the PUC up to the discretion of the utility. 12 GCA § 12102.2. 12 GCA §12016 does require that rate applications “shall be filed with the Commission” but does not dictate the timing of filing.

GWA is the “applicant” for rate relief under Rule 1 of the Commission's Rules for Practice and Procedure and is the party filing an “application for rate change.” The Commission’s Rules for Practice and Procedure do not require that a petition be filed

³ GWA Petition at p. 1.

⁴ ALJ Report, GWA Docket 19-08

upon any particular date or otherwise limit the date upon which a rate application may be filed. GWA should be given some leeway in determining when it is able to file a petition. There are standard filing requirements which a utility must meet to file a rate petition, including testimony of utility personnel or other expert witnesses, revenue requirements, revenues, operating expenses, debt service, construction etc.⁵ The Commission should extend the Filing Deadline for the multi-year rate plan from April 1, 2024, to June 3, 2024.

If GWA does not file its final petition and “final multi-year rate plan” until June 3, 2024, it assumes a risk of delay in the proceedings and a possibility that the proceedings will not be concluded by September 30, 2024. GWA should also file its “advance draft petition” on March 4, 2024. The PUC approves the amendment of Ordering Provision No. 4 of its September 28, 2023, Order Re: Annual True-Up for FY2024 Rates to require an advance draft petition filing on March 4, 2023, and a final petition and final multi-year rate plan filing by June 3, 2024.

2. GWA’s Requests regarding “Analytical Studies” should be denied in their entirety.

GWA has not yet filed its rate case. It will not file an “advance petition” until nearly three months from now or its final multi-year rate plan until nearly six months later. Yet, it is requesting PUC to address hypothetical, conjectural issues that are not even before the Commission at the present time concerning analytical studies. GWA requests: “confirmation that no additional studies shall be ordered without a determination on whether the studies are necessary to support GWA’s next rate application before action on its rate application can be taken.” GWA further requests

⁵ Rules for Practice and Procedure Before Commission, Administrative Docket No. 00-04, dated February 25, 2000.

that “if the completion of any additional study is ordered requiring additional time and costs GWA requests to be informed as early as possible and further requests the PUC confirm that it shall consider whether there is a need to delay action on GWA’s rate application requests if the study or studies cannot realistically be completed before GWA’s final multi-year plan comes due (proposed to be June 3, 2024).

Presently there is no issue pending before the PUC concerning additional “analytical studies” (the parties have already agreed to a staffing study). Because GWA has not filed anything regarding its upcoming rate case, the PUC, the ALJ, and the PUC Consultant do not know what will be in GWA’s advance petition or its final multi-year rate plan, or whether further analytical studies will be necessary. Whether new analytical studies would be required depends on what matters are included in GWA’s Petition and new multi-year rate plan.

What GWA is requesting is akin to a party requesting a court to decide matters even before the case is filed. Any “confirmation” at this time would be premature and inappropriate. None of these issues need to be addressed at all unless the ALJ decides that further analytical studies are necessary after the advance petition or final multi-year rate plan are filed. These issues should not now be addressed by the Commission, but by the ALJ in the first instance in the context of a rate case that has been filed. If the ALJ determines that there is a need for additional analytical studies, he can address such issue in a scheduling order. Any rulings on these issues raised by GWA are unnecessary unless and until the ALJ orders that further analytical studies are necessary.

GWA’s request for “confirmations” before a case is filed, advance requirements for notice to GWA, and restrictions on PUC’s right to conduct discovery are also inappropriate. Applicable law gives the PUC the unrestricted, unfettered right to conduct discovery or order analytical studies whenever it deems appropriate, “at all times, upon request” “that it may require”. When PUC informs GWA of a need for

additional analytical studies, what considerations PUC makes, and what notice PUC provides are up to the PUC. Such matters are not determined by GWA.

The PUC can conduct any discovery it requires in a rate case, or require any studies or financial schedules, at any time that it desires, without any restriction or limitation by GWA. 12 GCA §12108, Public Utilities to Furnish Information, states: (a) **Every public utility shall at all times, upon request furnish to the Commission all information that it may require respecting any of the matters concerning rates and charges, revenues and expenditures which it is given power to investigate...**⁶

All action requested by GWA concerning analytical studies and requested “determinations” should be denied at the present time. Whether further studies will be required, if at all, will be determined after the advance petition and multi-year rate filings are made by GWA in the rate case.

ORDERING PROVISIONS

Upon consideration of the record herein, the Petition of GWA to Amend the PUC’s September 28, 2023 Order Re Filing Deadlines, Review Timeframes, and Submittals Required for GWA’s FY2025-FY2029 Rate Application Case, 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. Ordering Provision No. 4, in the matter of PUC Petition for Approval of GWA’s Third Five-Year Financial Plan (Base Rate Increases), in Re: Annual True-Up for FY2024 GWA Rates, dated September 28, 2023, is hereby amended to read as follows:

⁶ 12 GCA §12108(a).

- “4. GWA shall file an advance draft petition on or before March 4, 2024. GWA shall file its final petition and a final multi-year rate plan on or before June 3, 2024. The “advance draft petition” will, in form and content, satisfy the intent of the PUC September 28, 2023 Order Re Annual True-Up for FY2024 GWA Rates, and comply with all applicable PUC Rules of Procedure and applicable laws.”
2. All Requests by GWA regarding Analytical Studies are denied.
3. GWA 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 are 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.

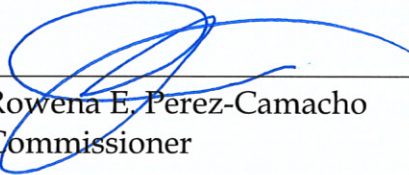
[SIGNATURES TO FOLLOW ON NEXT PAGE]

Order
Re: September 28, 2023
Order re Annual True-Up
GWA Docket 19-08
December 19, 2023

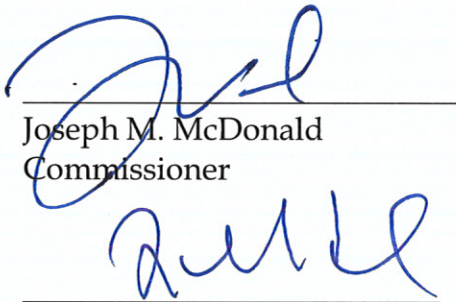
Dated this 19th day of December 2023.



Jeffrey C. Johnson
Chairman

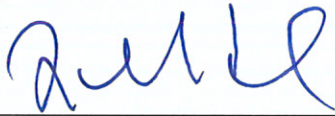


Rowena E. Perez-Camacho
Commissioner

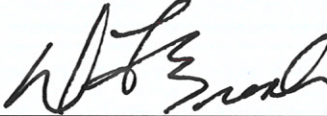


Joseph M. McDonald
Commissioner

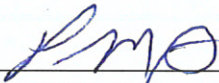
Michael A. Pangelinan
Commissioner



Peter Montinola
Commissioner



Doris Flores Brooks
Commissioner



Pedro S.N. Guerrero
Commissioner

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:

PETITION FOR RATIFICATION AND
APPROVAL OF INCREASED
SPENDING FOR CONFLICTS / LEGAL
COUNSEL PURSUANT TO GWA-RFP-
2018-01 FOR CV1198-18

GWA DOCKET 24-01

ORDER



INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] pursuant to the Guam Waterworks Authority's ["GWA"] Petition for Ratification and Approval of Increased Spending for Conflicts / Legal Counsel Pursuant to GWA-RFP-2018-01 for CV1198-18.¹
2. GWA requests that the PUC ratify the amount of \$438,021.20 that it has currently spent over GWA's PUC Contract Review threshold of \$1,000,000, and that the PUC authorize GWA to spend up to \$1,000,000 on this contract for anticipated future legal work in CV1198-18.²

BACKGROUND

3. *The Government of Guam, Michael B. Borja as Director of the Department of Land Management, and Guam Waterworks Authority v. Core Tech International Corporation and Younex Enterprises Corporation*, CV1198-18 (Superior Court of Guam, 2018) [CV1198-18] is a complex lawsuit concerning a land dispute wherein GWA is seeking quiet title to real property where its northern water treatment plant and other infrastructure are located and wherein the Department of Land Management, Government of Guam, is attempting to rescind and correct certificates of title given to the defendants in that case. A defendant or the defendants have filed counter-claims against GWA alleging inverse condemnation and ownership of a portion of the real property where GWA's northern treatment plant is located and there is a claim of approximately \$220,000,000 in damages against GWA.³

¹ Petition for Ratification and Approval of Increased Spending for Conflicts / Legal Counsel Pursuant to GWA-RFP-2018-01 for CV1198-18 filed on November 14, 2023 [GWA Petition] at 1.

² GWA Petition at 3.

³ Id., at 4.

4. The Guam Consolidated Commission on Utilities [CCU], the Guam Power Authority [GPA], and GWA issued RFP-2018-01 for Conflicts / Outside Counsel and on May 21, 2018, they awarded a contract for legal services with the law firm of Vincent E. Leon Guerrero on May 21, 2018. Under this contract, the CCU, GPA, and GWA separately request and pay for legal services from their respective funds and GPA and GWA each pay 50% of the legal work required by the CCU under the contract.⁴
5. GWA authorized Attorney Leon Guerrero to appear as co-counsel with GWA's in-house attorney in CV1198-18. The contract between Attorney Leon Guerrero and GWA states that the contract will continue until the attorney-client relationship is terminated or until CV1198-18 or any related appeals conclude.⁵
6. GWA has paid the following legal fees under the contract. From May, 2018 to May, 2019, GWA paid \$6,316.50. From June, 2019 to May, 2020, GWA paid \$235,643. From June, 2020 to May, 2021 GWA paid \$85,337.20. From June 2021 to May, 2022 GWA paid \$429,672.47. From June, 2022 to November, 2023 GWA paid \$681,052. Hence, since May, 2018, GWA has paid the total amount of \$1,438,021.17 in legal fees under the contract and the majority of these legal fees arose from CV1198-18.⁶
7. On July 25, 2023 the CCU passed GWA Resolution No. 32-FY2023 which ratified the amount of \$438,021.20 that GWA has currently spent over GWA's PUC Contract Review threshold of \$1,000,000, and which authorized GWA to spend up to \$1,000,000 on this contract for anticipated future legal work in CV1198-18 subject to the PUC's approval.
8. On December 16, 2023, Legal Counsel for the PUC filed his report in this matter.

⁴ GWA Petition at 4. NOTE: Page numbers listed herein are the PDF page numbers of the Petition and its exhibits due to the internal page numbers of the petition and its exhibits not being continuous.

⁵ Id., at 5.

⁶ Id.

DETERMINATIONS

9. GWA must obtain the PUC's authorization to pay the amount of \$438,021.20 that it has currently spent over GWA's PUC Contract Review threshold of \$1,000,000, and GWA must obtain the PUC's authorization for GWA to spend up to an additional \$1,000,000 on this contract for anticipated future legal work in CV1198-18. The PUC's Contract Review Protocol mandates that GWA obtain PUC approval for any contract that exceeds the amount of \$1,000,000.⁷ Here, as stated above, GWA's existing legal services contract has exceeded the review amount because GWA has spent the total amount of \$1,438,021.17 for work arising from the contract. Further, GWA is prohibited from incurring expenses for PUC approved contract and obligations in excess of 20% over the amount authorized by the PUC without prior PUC approval.⁸ Here, GWA has failed to comply with this requirement because it has spent the amount of \$438,021.17 in excess of the \$1,000,000 review threshold without obtaining the PUC's prior approval. Additionally, it should be noted that GWA knew or should have known that it would or did exceed the contract review threshold around November, 2022 and this petition was not filed until approximately 1 year later.
10. GWA's requests that the PUC ratify the amount of \$438,021.20 that it has currently spent over GWA's PUC Contract Review threshold of \$1,000,000, and that the PUC authorize GWA to spend up to \$1,000,000 on this contract for anticipated future legal work in CV1198-18 are reasonable. GWA's legal costs under the contract are being driven by CV1198-18 which is a complex litigation that threatens GWA's ownership of the northern wastewater treatment plant, and which may subject GWA to approximately \$220,000,000 in liability if the defendant or the defendants prevail in the counter-claim. Further, it appears that Attorney Leon Guerrero is providing GWA with the additional legal representation in CV1198-18 that it requires. Finally, if the Court denies the Defendant or Defendants' motion to dismiss, GWA will need the additional \$1,000,000 authorization to cover the additional legal costs that will arise from litigating CV1198-18 and litigating any resulting appeals from a judgement in that case. Despite the reasonableness of the requests, the PUC must make these authorizations conditional on GWA's adherence to the Contract Review Protocol Process. Generally, for multi-year

⁷ Contract Review Protocol for GWA, Administrative Docket 00-04 dated October 27, 2005 at Par.1(e).

⁸ Id., at Par: 9.

contracts with fixed terms and variable annual costs such as the legal services contract at issue here, on each anniversary date during the term of the contract, GWA will file a cost estimate for the coming year of the contract, and GWA shall seek PUC approval in the event the contract's cost should exceed 120% of the aggregate cost initially approved by the PUC.⁹ Here, to avoid future payments that exceed this threshold, the PUC should require GWA to file a cost estimate on May 21st of each year of the contract, and the PUC should require GWA to seek PUC approval if the contract should exceed 120% of the \$1,000,000 contract limit authorized by the PUC for the upcoming year.

11. GWA's requests that the PUC ratify the amount of \$438,021.20 that it has currently spent over GWA's PUC Contract Review threshold of \$1,000,000, and that the PUC authorize GWA to spend up to \$1,000,000 on this contract for anticipated future legal work in CV1198-18 are prudent. As stated above, if GWA does not prevail in this litigation, GWA might lose ownership of the northern wastewater treatment plant and GWA may be subject to approximately \$220,000,000 in liability if the defendant or the defendants prevail in the counter-claim. Albeit GWA has spent the amount of \$1,438,021.17 for work arising from the contract, this expenditure is prudent because GWA may lose real estate and infrastructure assets that are worth far more than these legal fees and it may be subject to hundreds of millions of dollars' worth of liability if it does not prevail in CV1198-18. Thus, GWA's requests are prudent.
12. GWA's requests that the PUC ratify the amount of \$438,021.20 that it has currently spent over GWA's PUC Contract Review threshold of \$1,000,000, and that the PUC authorize GWA to spend up to \$1,000,000 on this contract for anticipated future legal work in CV1198-18 are necessary. The northern water treatment plant is a critical asset for GWA's wastewater system and GWA must engage in litigation to clear GWA's title to the real property on which that asset is located. Additionally, GWA must do all it can to defend against the counter-claim to prevent an additional \$220,000,000 in liability. Therefore, GWA's requests are necessary.
13. Based on the foregoing, GWA's requests that the PUC ratify the amount of \$438,021.20 that it has currently spent over GWA's PUC Contract Review threshold of \$1,000,000, and that the PUC authorize GWA to spend up to \$1,000,000 on this

⁹ Id., at Par: 4(d).

Order
Petition by GWA for Ratification
And Approval of Increased Spending
For Conflicts / Legal Counsel
Pursuant to GWA-RFP-2018-01
For CV1198-18
GWA Docket 24-01
December 19, 2023

contract for anticipated future legal work in CV1198-18 are reasonable, prudent, and necessary.

ORDERING PROVISIONS

After review of the record herein, GWA's Petition for Ratification and Approval of Increased Spending for Conflicts / Legal Counsel Pursuant to GWA-RFP-2018-01 for CV1198-18, and for good cause shown, on motion duly made, seconded and carried by the undersigned Commissioners, the Guam Public Utilities Commission **HEREBY ORDERS** that:

1. GWA's Petition for Ratification and Approval of Increased Spending for Conflicts / Legal Counsel Pursuant to GWA-RFP-2018-01 for CV1198-18 is hereby approved.
2. GWA's expenditure of the amount of \$438,021.20 over GWA's PUC Contract Review threshold of \$1,000,000 is hereby approved.
3. GWA is authorized to expend no more than an additional \$1,000,000 on the contract without prior PUC approval.
4. GWA shall file a cost estimate on May 21st of each year of the remainder of the contract term, and GWA shall seek the PUC's prior approval if the contract should exceed 120% of the \$1,000,000 contract limit authorized by the PUC in the upcoming year.
5. GWA 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 the 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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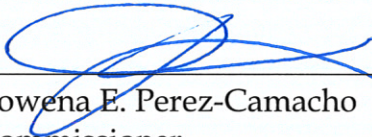
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Order
Petition by GWA for Ratification
And Approval of Increased Spending
For Conflicts / Legal Counsel
Pursuant to GWA-RFP-2018-01
For CV1198-18
GWA Docket 24-01
December 19, 2023

Dated this 19th day of December, 2023.

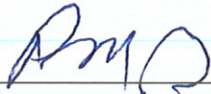


Jeffrey C. Johnson
Chairman



Rowena E. Perez-Camacho
Commissioner

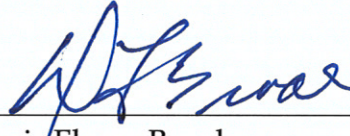
Michael A. Pangelinan
Commissioner



Pete Guerrero
Commissioner



Joseph M. McDonald
Commissioner



Doris Flores Brooks
Commissioner



Peter Montinola
Commissioner

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:

GUAM POWER AUTHORITY WATER
SYSTEM DIESEL GENERATOR FUEL
CONTRACT EXPENDITURE

GPA DOCKET 24-09

ORDER



INTRODUCTION

1. This matter comes before the Public Utilities Commission ["PUC"] pursuant to the Guam Power Authority's ["GPA"] Petition to Approve an Increase in Contract Expenditures for Water System Diesel Generator Fuel.¹
2. GPA requests that the PUC approve an increase in its contract with Morrico Equipment, LLC [Morrico] for the supply of Diesel Fuel Oil No. 2 to the GPA Water System Diesel generators at Guam Waterworks Authority's [GWA] sites [Contract] from \$1,150,200 to \$3,296,277.²

BACKGROUND

3. In FY2022 GPA issued GPA-IFB-012-22 (Multi-Step) (Diesel Supply to GPA WSD and GWWA Generators) and only received one bid from Morrico in response to the solicitation. On or about July 26, 2022 GPA and Morrico entered into the Contract which had a three (3) year initial term that began on October 1, 2022 and that expired on September 30, 2025 and GPA estimated that the Contract would cost \$1,150,200 for this three (3) year initial term, and the Contract provides for two one-year extension options renewable annually by mutual agreement of both parties.³
4. GPA's estimate that the cost of the Contract's initial term would be \$1,150,200 was based on its assumption that the Contract would cost \$383,400 for each year of the initial term. However, Typhoon Mawar struck Guam in May, 2023 during the Contract's first year, and due to the increased demand for generator fuel at sites the Contract supplied fuel to, and due to the sharp rise in prices for diesel fuel during

¹ GPA Petition to Approve An Increase in Contract Expenditures for Water System Diesel Generator Fuel, GPA Docket 24-09, dated December 6, 2023 [GPA Petition].

² Id., at 2.

³ Id., at 1.

that same period, GPA expended the amount of \$982,359 for the Contract's first year, and it estimates that it will spend \$578,480 for the remaining two (2) years of the Contract's initial term, for a total cost of \$2,139,318 for said term.⁴

5. GPA estimates that cost for the two (2) year extension option is \$1,156,959, and that, with the revisions and the exercise of the two (2) year extension, the total Contract cost is estimated to be \$3,296,277.⁵
6. On November 28, 2023, the Guam Consolidated Commission on Utilities passed Resolution No. FY2024-05 which authorized an increase in the Contract's price to \$3,296,277 for the five (5) year contract period subject to the PUC's approval.⁶
7. On December 17, 2023, the PUC Legal Counsel issued his report on this matter.

DETERMINATIONS

8. GPA must obtain the PUC's authorization to increase the Contract from \$1,150,200 to \$3,296,277. Generally, GPA's Contract Review Protocol requires that GPA must obtain prior PUC approval for any contract or obligation which exceeds \$1,500,000 and, with regard to multi-year contracts, the test to determine whether a procurement exceeds the \$1,500,000 threshold for PUC review and approval is the total estimated cost of the procurement, including cost incurred in any renewal options.⁷ Here, GPA's revised estimates, inclusive of the two (2) year extension options show that the Contract is expected to cost a total of \$3,296,277. Therefore, the PUC must review and approve the contract prior to GPA expending amounts in excess of \$1,500,000 on it.
9. The increase in the Contract's estimated cost is reasonable. The extended power outages in the months following Typhoon Mawar, and the load shedding that Guam is currently experiencing as a result of the unscheduled outages of GPA's baseload plants, have caused an unexpected increase in the demand for the diesel fuel that GPA and GWA rely upon to operate the generators that keep pumping stations functional during these power outages. This increased demand coupled

⁴ Id., at 2.

⁵ Id., at 8. NOTE: The GPA Petition's PDF page numbers are used here because the page numbering in the petition and its exhibits are not continuous.

⁶ Id., at 9.

⁷ Contract Review Protocol for GPA, Administrative Docket, filed February 15, 2008 at Par: 1(e) and 4(b).

with the increase in fuel prices has resulted in the Contract's cost estimate increasing to \$3,296,277. Therefore, the Contract's price increase is reasonable.

10. The increase in the Contract's price is prudent. Increasing the Contract's price now is prudent because load shedding and increased fuel prices are expected to continue into the next couple of fiscal years. Therefore, the increase in the Contract's price is prudent.
11. The increase in the Contract's price is necessary. GWA relies on electric pumps to operate its pumping stations in both its drinking water and wastewater systems and the diesel generators at these pumping stations are necessary to keep these pumping stations operational during extended periods when the Island Wide Power System is unable to provide electricity. GPA must continue its supply of diesel fuel for these generators to ensure that they are always available should there be a power outage. Therefore, the increase in the Contract's price is necessary.
12. Based on the foregoing, GPA's increase in the Contract's price to \$3,296,277 is reasonable, prudent, and necessary.

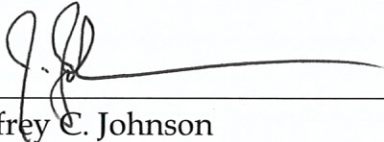
ORDERING PROVISIONS

After careful review and consideration of the above determinations, GPA's Petition to Approve an Increase in Contract Expenditures for Water System Diesel Generator Fuel, 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. GPA's request to increase its contract with Morrico Equipment, LLC for the supply of Diesel Fuel Oil No. 2 to the GPA Water System Diesel generators at GWA sites from \$1,150,200 to \$3,296,277 is 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.

PUC Order
GPA Water System Diesel Fuel
Generator Contract Expenditure
GPA Docket 24-09
December 19, 2023

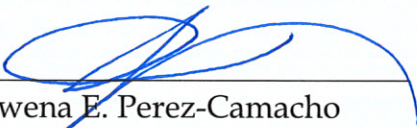
Dated this 19th day of December, 2023.

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Jeffrey C. Johnson
Chairman

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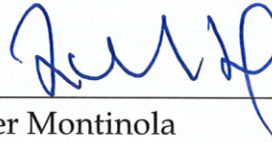
Joseph M. McDonald
Commissioner

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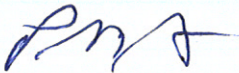
Rowena E. Perez-Camacho
Commissioner

A handwritten signature in blue ink, appearing to be 'Doris Flores Brooks', written over a horizontal line.

Doris Flores Brooks
Commissioner

A handwritten signature in blue ink, appearing to be 'Peter Montinola', written over a horizontal line.

Peter Montinola
Commissioner

A handwritten signature in blue ink, appearing to be 'Pete Guerrero', written over a horizontal line.

Pete Guerrero
Commissioner

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE: PETITION TO RATIFY) PAG DOCKET 24-01
INSURANCE COVERAGE FOR)
THE PORT AUTHORITY OF) ORDER
GUAM)
)



INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC”) pursuant to the November 14, 2023 Petition to Ratify Insurance Coverage (hereinafter referred to as the “Petition”), filed by the Jose D. Leon Guerrero Commercial Port, Port Authority of Guam (“PAG” or the “Port”).

On December 18, 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

Back in August 2022, PAG issued an Invitation for Bid seeking a carrier for insurance coverage of its assets. On September 29, 2022, the PUC approved the contract award to AM for insurance coverage, and further approved an estimated premium cost of \$3,545,119.30 per year. The term of the contract for insurance is from October 1, 2022 through October 1, 2027. PAG is returning to the PUC for approval of the fiscal year 2024 renewal terms for continued insurance coverage with AM.

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. Additionally, pursuant to PAG's current Contract Review Protocol, "[a]ll internally financed contracts utilizing O&M funds in excess of \$1,000,000" "shall require prior PUC approval"¹ Further, PAG must seek PUC approval in the event a multi-year contract exceeds 120% of the aggregate cost initially approved by the PUC.²

2. PAG's Petition

PAG requests that the PUC approve its renewal purchase of marine liability and property insurance, as well as other types of insurance, such as automobile and crime, and insurance for its directors and officers at a premium of \$4,936,673.38.³

3. Proposed Insurance Coverage

This year's insurance coverage provides: up to \$55 million in blanket coverage for physical loss and damage to all real and personal property, including earthquake, flood, typhoon, tsunami, loss of revenue, business interruption, and machinery breakdown (\$4,491,649.45), insuring about \$278 million in Port assets; and up to \$50 million in marine liability (\$325,705.00). The renewal terms also offer coverage for directors' and officers' liability of \$5 million (\$69,747.60); \$2 million in automobile coverage (\$36,084.33); and \$1 million crime coverage (\$13,487.00). As indicated by PAG, the total

¹ Contract Review Protocol, PAG Docket 09-01, p. 1 (June 20, 2011).

² Contract Review Protocol, PAG Docket 09-01, p. 3.

³ Petition, p. 2.

cost for insurance coverage this fiscal year increased by \$1,391,554.08.⁴ The increase is reflected only in the rates for property and automobile insurance. The rates for the other lines of coverage remain the same.

4. Justification for the Increase

According to AM Insurance (hereinafter “AM”), the increase in the property premium is primarily due to global catastrophic losses. AM submitted that industry rate hikes are expected between 35% and 50% for loss free policies. AM further submitted that the increase in PAG’s premium for property insurance is reasonable given an increase in PAG’s property values and an outstanding claim due to the damage caused by Typhoon Mawar. In particular, AM indicated that the rise in the premium for property insurance is due in part to PAG’s \$15 million claim relating to property damage and business interruption caused by Typhoon Mawar back in May. AM also indicated that the increase in the premium is due to a 13% increase in the Port’s property values in fiscal year 2024, from a stated value of \$245,748,336 to \$277,803,815.

In addition, AM contended that “extreme weather events worldwide” appear to be increasing, resulting in carriers raising their rates, especially in areas exposed to catastrophic events, or pulling out of the market altogether. AM further contended that “inflation” is driving up prices for goods and services, which—according to AM—has a direct impact on insurance cost, such as property valuation, construction costs and labor. With regard to the increase in the automobile premium, AM submitted that since PAG has added 4 more vehicles to its insured fleet, the premium for automobile insurance increased by 4%.

⁴ Petition, p. 2.

5. Board Approval

In its approval of the Port's Fiscal Year Budget for 2024, PAG's Board of Directors authorized the General Manager of the Port to present any matter to the PUC without prior Board approval during instances where the Board lacks quorum due to pending legislative confirmations. Particularly, pursuant to a "Survivability Clause" made part of the Fiscal Year 2024 Budget, the General Manager is "henceforth authorized, without prior Board approval, to present to the Guam Public Utilities Commission any matter so required for presentment and PUC approval"⁵

CONCLUSION AND RECOMMENDATION

Based on the documentation provided, the ALJ found that the purchase of insurance coverage certainly safeguards PAG's assets from risks such as natural disasters or catastrophic events, as well as, coverage for liabilities resulting from PAG's operations. Indeed, this Commission has consistently highlighted the importance of maintaining insurance since such insurance benefits ratepayers with regard to the protection of assets by assisting with recovery efforts after natural disasters such as typhoons, earthquakes, or other calamities.

It is crucial to PAG and its operations to maintain insurance coverage. The ALJ found that, without such coverage, for instance, the devastating effects of Typhoon Mawar on the Port's assets would have to be completely absorbed by PAG. Since the Port maintains insurance on its assets, it has been able to file a \$15 million claim for property damage and business losses due to Typhoon Mawar.

⁵ PAG FY2024 Approved Budget, p. 33 (Aug. 31, 2023).

Moreover, the ALJ further found that insurance coverage is essential to PAG's compliance with its bond covenants. As stated in "Appendix D" to the 2018 Port Revenue Bond Indenture, titled "Summary of Certain Provisions of the Indenture," "[t]he Authority will maintain or cause to be maintained insurance on the Port with responsible insurers in such amounts and against such risks (including accident to or destruction of the Port) as are usually maintained by prudent operators of ports similar and/or similarly situated to the Port and which it shall deem advisable or necessary to protect its interests and the interests of the Bondowners so long as such insurance is available to the Authority on the open market from responsible insurers at reasonable cost."⁶ In particular, "[t]he Authority will maintain such other insurance which it shall deem advisable or necessary to protect its interests and the interests of the Bondowners, which insurance shall afford protection in such amounts and against such risks as are usually maintained by prudent operators of ports similar to the Port."⁷

Accordingly, the ALJ further found that PAG must purchase and maintain insurance that similarly situated and prudent port operators would maintain. If not, then PAG could potentially be in violation of the terms of its bond indenture. The ALJ therefore recommended that the PUC approve PAG's renewal of its contract for insurance with AM for coverage indicated in the Petition and its attachments, and at a total premium cost of \$4,936,673.38 for fiscal year 2024.

The Commission hereby adopts the findings in the December 18, 2023 ALJ Report and therefore issues the following.

⁶ Port Revenue Bond Indenture, p. D-23 (2018).

⁷ Port Revenue Bond Indenture, p. D-23 (2018).

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 ratification of PAG's contract renewal with AM Insurance is hereby APPROVED for coverage indicated in the Petition, at a total premium cost of \$4,936,673.38 for fiscal year 2024.


2. That PAG shall return to the PUC regarding this contract once there is a fully constituted PAG Board of Directors, and provide the PUC with authorization by such Board of Directors for the renewal of the contract.

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]

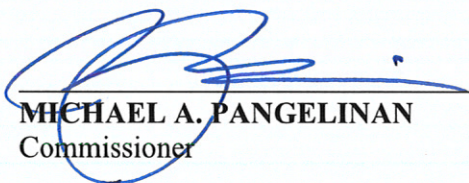
SO ORDERED this 19th day of December, 2023.



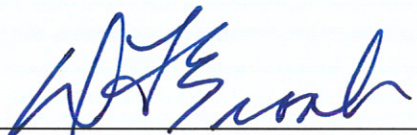
JEFFREY C. JOHNSON
Chairman

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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