

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:) GPA Docket 24-15
)
GUAM POWER AUTHORITY AWARD)
OF 20 MW OF TEMPORARY POWER) **ALJ REPORT**
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INTRODUCTION

This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Second Amended Petition of the Guam Power Authority ["GPA"] for Review and Approval for the Award of a Contract to Aggreko International Projects Limited (hereinafter "Aggreko") for the Supply, Installation, Operation, and Maintenance of 20MW of Temporary Power Services at the Yigo CT site.¹

BACKGROUND

A serious problem faced by GPA in recent months is that it has had insufficient generation capacity in the island wide power system to fully meet the customer load demand. In September, October, and November of 2023, there were 290, 115, and 301 hours respectively of power outage.²

The cause of load shedding has been an insufficiency of generation capacity to meet load. The beginning of the problem of insufficiency of generation capacity may well go back to the explosion at the Cabras Nos. 3 & 4 plants on August 31, 2015. The explosion

¹ GPA Second Amended Petition to Approve the Award of 20MW of Temporary Power, GPA Docket 24-15, dated March 13, 2024.

² GPA Second Amended Petition, Exhibit A, Memorandum from the GPA General Manager to Assistant General Manager, Administration: Re: Certificate of Emergency (5 GCA §5215), Procurement to Increase Generation Capacity, at p. 3.

resulted in the total loss of the Cabras 3 & 4, which deprived the IWPS of 80MW of generation capacity.

A number of additional and more recent events have further deprived GPA of expected generation capacity, thus precipitating the need for this temporary power project: (1) after a three year delay due to an unsuccessful bid protest, the selected contractor withdrew from a 40MW solar PV project in mid-2022 because of inability to honor its original pricing; (2) Hanwha failed to complete a 60MW solar PV project between 2018 and 2021; the project will not come online until late 2025 or early 2026; (3) recent GPA efforts to overhaul the 39 Yigo Diesel units was thwarted by a bid protest of the performance management contract; (4) in May of 2023, Typhoon Mawar damaged two above ground storage tanks of the new 198MW Ukudu power plant, which was originally scheduled to be completed by Spring 2024; the plant is not now contemplated to be completed until Autumn 2025; (5) in addition, Typhoon Mawar damaged the 20MW Yigo Combustion Turbine and has taken the plant out of operation (pending necessary repairs).³

The existing nearly 50-year-old Cabras 1 & 2 plants continue to experience problems due to their age and are required to be taken offline from time to time.⁴ While load-shedding has decreased in recent weeks and months, such decrease is attributable to a decrease in customer demand during the cool weather of the recent months. However, “[A]s the weather grows warmer, given the constraints on GPA’s generation capacity, load-shedding will likely return to previous levels, beginning in May [2024].”⁵ The GPA General Manager has issued a Certificate of Emergency detailing the threats to

³ GPA Second Amended Petition at pgs. 1-2.

⁴ Id. at p. 2.

⁵ Id. at pgs. 2-3.

public health, welfare and safety resulting from the lack of sufficient generation capacity.⁶ He indicates that: “Frequent and prolonged outages negatively impact critical needs of residents and businesses, especially those dependent on powered medical devices; public infrastructure (traffic lights, streetlights, water and wastewater operations); telecommunication, etc.”⁷

GPA solicited Temporary Power Services through GPA RFQ 38586. GPA selected Aggreko as the most qualified and responsive offeror.⁸

In GPA Resolution No. FY2024-16, the Guam Consolidated Commission on Utilities authorized GPA to petition the PUC to award Aggreko to supply, install, operate, and maintain 20MW of Temporary Power Services at the Yigo CT site for an estimated \$25M over two years for the Capacity Charge, Fixed O & M Charge, Energy Conversion Charge, and mobilization.⁹

ANALYSIS

1. GPA has demonstrated the need to procure 20MW of Temporary Power.

Attached as Exhibit “B” to its Petition, GPA has presented a Determination Need and an explanation as to why the procurement is required¹⁰:

“Emergency procurement of 40MW of Temporary Power Services is required to maintain sufficient reserves and prevent load shedding due to

⁶ GPA Second Amended Petition, Exhibit A, Memorandum from the GPA General Manager to Assistant General Manager, Administration: Re: Certificate of Emergency (5 GCA §5215), Procurement to Increase Generation Capacity, at p. 3.

⁷ Id.

⁸ GPA Second Amended Petition at p. 4.

⁹ Guam Consolidated Commission on Utilities, GPA Resolution No. FY2024-16, Relative to Authorizing Guam Power Authority (GPA) Management to Award 20MW of Temporary Power, adopted and approved on January 23, 2024.

¹⁰ GPA Second Amended Petition at p. 3.

potential outages of the Cabras 1 & 2 units. The Ukudu Power Plant's 14.5-month delay and degradation of ILP participant generators further amplify the issue. The emergency generators must be operational by May 2024 to prevent extensive load shedding during the summer which is typically the year's peak demand period."¹¹

Due to cost factors, GPA has since reduced its original request to 20MW of temporary power services. Unless GPA is quickly able to bring additional power into the IWPS, there is a strong possibility that further load shedding will occur in May and the summer months beyond: "The emergency generators must be operational by May 2024 to prevent extensive load shedding by the summer, which is typically the year's peak demand period."¹²

GPA has proposed the best plan it can come up with to quickly provide additional power. In its bid, Aggreko was the one vendor who indicated an ability to supply the temporary power within 100 days of contract execution.¹³ With a two-year term for the proposed contract, GPA will hopefully have sufficient power to handle system load until the Ukudu plant begins operation in late 2025 or early 2026.

2. Public Law 37-81 authorizes GPA to procure 20MW of Temporary Power Services, subject to the Approval of the PUC.

The Law was approved by the Legislature and then enacted by the Governor on March 8, 2024. The Law amends a section of the GPA Enabling Act, 12 GCA §8113.15, which authorizes GPA to procure 20MW of temporary power generation at the Yigo site on a two (2) year base contract. The provision extends the normal 90-day limitation on emergency procurement to two (2) years for this procurement only. The procurement provisions whereby a procurement is "stayed" upon the filing of a protest are waived

¹¹ GPA Second Amended Petition, Exhibit "B".

¹² Id.

¹³ GPA Second Amended Petition at p. 3.

for this procurement. The Law also provides for the review and approval of the procurement by the Attorney General as to form and legality within five days of the receipt of the procurement package from GPA.

3. GPA has complied with most of the requirements for an “Emergency Procurement”, pursuant to 5 GCA §5215 and Public Law 37-81.

The General Manager of Guam Power Authority, John Benavente, has issued a Certificate of Emergency with a Determination of Need for Emergency Procurement. See GPA Petition, Exhibits A (Certificate of Emergency, Dec. 7, 2023, Verified Feb. 1, 2024 & B (Determination of Need, Dec. 11, 2023). GPA has satisfied most of the requirements of 5 GCA §5215, Emergency Procurements and Public Law 37-81.

The Certificate of Emergency incorporates by reference the contents of the appended Determination of Need. The GPA General Manager certifies that the contents of the appended Determination of Need are true, correct, and complete. Certified copies have been provided to the Governor and the Speaker. In affirming the Determination of Need, the GPA General Manager certifies that there is an imminent threat to public health; that the threat of load shedding could not have been foreseen through the reasonable and prudent use of management procedures and could not have been addressed by other methods of source selection.

The Governor of Guam has approved the Certificate of Emergency in writing.¹⁴ The Determination of Need executed by the General Manager of GPA meets the requirements of §5215(c) and includes a statement that there is a threat to public health, welfare and safety: “the threat of load shedding looms with the pending repairs to the diesel power plants and projected increase in power demand beginning in May 2024.

¹⁴ GPA Second Amended Petition, Exhibit D-2.

Monthly load shedding schedules have been and will continue to be issued monthly until sufficient backup generating capacity is achieved.”¹⁵

4. However, A Few Requirements of Public Law 37-81 have not yet been complied with.

In accordance with Public Law 37-81, the Attorney General must review and approve the proposed contract as to the contract’s form and legality within five (5) calendar days of receipt of the procurement package from GPA.¹⁶ The Attorney General reviewed the contract and returned it to GPA for revisions. These included prohibitions against gratuities, kickbacks and favors, prohibitions against contingent fees, a statement concerning ethical standards, and a prohibition against employment of sex offenders. Some of the revisions dealt with dispute remedies, such as removing provisions requiring mediation and arbitration.¹⁷

GPA implemented changes requested by the Attorney General. However, when GPA returned the contract to Aggreko, Aggreko wished to negotiate further with GPA concerning the changes proposed by the Attorney General. Aggreko and GPA are still negotiating the changes, and there is no final negotiated agreement at present.¹⁸ Also, the final contract must be signed by the Attorney General.

5. The Cost of the Contract is expensive, but GPA does not appear to have other options.

¹⁵ GPA Second Amended Petition, Exhibit A, at p. 2.

¹⁶ Public Law 37-81 at p. 2.

¹⁷ <https://edition.pagesuite-professional.co.uk/html5/reader/production/default.aspx?pubname=&edid=bf5bbe31-1f6f-40f1-bc2a-10e9f0535da4&pnum=1>, The Guam Daily Post, March 18, 2024, at pgs. 1, 7.

¹⁸ Phone Conversations between GPA Counsel Marianne Woloschuk and PUC ALJ Fred Horecky between March 8-20, 2024.

The draft contract between GPA and Aggreko provides for a cost of approximately \$25M over the two-year base period. The terms provide for a capacity charge of \$27.35/kW/month; a fixed O & M charge of \$192,081.00/month; and an energy conversion rate of \$9.00/MWH. The cost also included a one-time \$1M fee for the initial mobilization of the project.¹⁹

This cost is very high, which is probably to be expected when a contractor must deliver to Guam and provide 20 MW of power on a temporary basis. However, Aggreko is the only contractor that can provide temporary power within one hundred days. The only options available are for GPA to either purchase power from Aggreko or suffer the possible consequences of load shedding.

RECOMMENDATION

GPA has proven that there is a need for 20MW of temporary power to increase the load capacity of the island wide power system. Without such power, there is a substantial likelihood that Guam and its ratepayers will be subject to periods of load shedding. However, the ALJ cannot presently recommend that the PUC approve the award and contract to Aggreko to supply, install, operate, and maintain 20MW of Temporary Power Services at Yigo CT site. There are conditions that must be satisfied before the PUC can approve the procurement: (1) the Attorney General must approve the contract between GPA and Aggreko as to form and legality; and (2) GPA and Aggreko must negotiate a final contract.

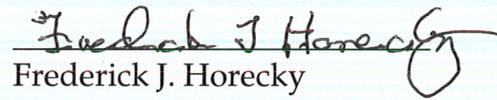
The ALJ recommends that the PUC issue an Order which provides as follows: (1) GPA has proven that there is a need for 20MW of temporary power to increase the load

¹⁹ GPA Second Amended Petition at p. 3.

capacity of the island wide power system and to avoid load shedding. (2) If GPA satisfies all remaining conditions for the procurement (negotiation of the final contract by GPA and Aggreko, and execution of the contract by the Attorney General), the Chairman of the PUC, upon the recommendation of the ALJ, may approve the award and contract to Aggreko to supply, install, operate, and maintain 20MW of Temporary Power Services at Yigo CT site. (3) The procurement is an emergency procurement and should not have to await PUC action until its April 25, 2024, Meeting; (4) The Chairman is authorized to approve the procurement on behalf of the PUC pursuant to 12 GCA sec. 12105(b). (5) Any Order issued by the Chairman is subject to ratification by the PUC at its April 25, 2024, Meeting.

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

Dated this 23rd day of March, 2024.


Frederick J. Horecky
Chief Administrative Law Judge