

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

PETITION TO APPROVE THE)	GPA DOCKET 24-16
ENERGY CONVERSION)	
AGREEMENT (ECA) AMENDMENT)	ORDER
FOR THE UKUDU POWER PLANT)	
BY GUAM POWER AUTHORITY)	
_____)	



INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC” or the “Commission”) pursuant to the April 9, 2024 Petition to Approve the Energy Conversion Agreement (ECA) Amendment for the Ukudu Power Plant (the “Petition”), filed by the Guam Power Authority (“GPA”).

On July 23, 2024, 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

In November 5, 2019, an ECA was entered into between GPA and Guam Ukudu Power, LLC (“GUP”) for the construction, operation, and eventual transfer of the new 198MW power plant located in Ukudu, Dededo.¹ As indicated in an Order issued in GPA Docket 19-13, “the PUC has been intricately involved in reviewing GPA’s plans for generation capacity and a New Power Plant”; and that the “PUC has worked with GPA in the development of [this new plant], the procurement process, the procurement forms, the technical specifications for the Plant, the land siting of the Plant, pipeline improvements,

¹ Petition, p. 1.

and numerous other aspects.”² Indeed, “[t]he record establishes that the PUC has conducted an extensive review of GPA’s plans for a New Power Plant over the last 10 years.”³

Part of the PUC’s review included its examination of the ECA between GPA and GUP, or KEPCO at that time.⁴ The PUC therefore, through its review, approved the proposed Fixed Capacity, Fixed Operation and Maintenance, Variable Operation and Maintenance, and Fuel charges and costs.⁵

Subsequently, on February 25, 2021, GPA requested PUC approval of certain proposed amendments to the ECA. In particular, the PUC approved the elimination of a 65MW diesel reserve facility at Ukudu, replaced instead with a 41MW diesel reserve facility at Cabras; and rescheduling the Commercial Operation Date from October 31, 2022 to April 2024, with a November 30, 2023 target date.⁶

On February 23, 2023, the PUC approved the total cancelation of the Cabras 41MW Reserve Facility based on a substantial increase of the cost of such facility.⁷ The PUC further required GPA to file an amended ECA reflecting the cancelation of the Reserve Facility.⁸

² Order, GPA Docket 19-13, p. 1 (Oct. 31, 2019).

³ Order, GPA Docket 19-13, p. 2.

⁴ Order, GPA Docket 19-13, p. 3.

⁵ Order, GPA Docket 19-13, p. 3.

⁶ Order, GPA Docket 21-07, p. 11 (Feb. 25, 2021).

⁷ Order, GPA Docket 23-07, p. 7 (Feb. 23, 2023).

⁸ Order, GPA Docket 23-07, p. 7.

A. Contract Review Protocol

Pursuant to 12 G.C.A. §12105, GPA may not enter into any contractual agreements or obligations which could increase rates and charges without the PUC's express approval. Furthermore, GPA's Contract Review Protocol requires that "[a]ll professional service procurements in excess of \$1,500,000" require "prior PUC approval . . . **which shall be obtained before the procurement process is begun.**"⁹

B. GPA's Request for Approval of Certain Amendments to the ECA

As indicated in its Petition, GPA requests approval of amendments made to the ECA. It has submitted with its Petition a proposed Third Amended and Restated Energy Conversion Agreement for PUC review.

Specifically, GPA submits that a change in law regarding the National Pollutant Discharge Elimination System ("NPDES") permit for GWA, issued by the U.S. E.P.A., now requires GWA to treat spent cooling water for phosphate removal in order for it to comply with its NPDES permit.¹⁰ GPA contends that it must now compensate GUP for the construction cost of \$2,732,123 and about \$100,000 annually for operation costs associated with the GUP's treatment of phosphate.¹¹

In addition, while GPA intended on building a diesel Reserve Facility at Cabras, instead of at Ukudu, the costs associated with constructing such facility increased from \$57 million to \$97 million. Due to this significant increase in the cost of new diesel engines,

⁹ GPA's Contract Review Protocol ("GPA CRP"), Administrative Docket 00-04, p. 1 (Feb. 15, 2008) (emphasis in original).

¹⁰ Petition, pp. 1-2.

¹¹ Petition, p. 2.

GPA requested approval to eliminate the 41MW Reserve Facility altogether, which the PUC approved in GPA Docket 23-07.

GPA submitted that from a total of \$21.8 million in costs already extended to the planning and construction of the Reserve Facility, as well as costs related to compliance with unanticipated permitting conditions, and permit delays, lodged by GUP, GPA has determined that it reasonably owes GUP \$6,559,205 for these costs.¹² GPA further submitted that it will reimburse such costs through the adjustment of the Fixed Capacity Charge.¹³ Accordingly, this Third Amended ECA contains the broad deletion of references to a Reserve Facility.

Moreover, GPA maintained that as result of Typhoon Mawar's destructive winds in May of 2023, the Ukudu Power Plant sustained significant damage, which required demolition, repairs to, and replacement of, water and fuel tanks throughout the plant.¹⁴ Consequently, GPA negotiated a new Commercial Operation Date with GUP, amending this date to September 30, 2025.¹⁵

Further, as an incentive for GUP to bring the plant online by that date, GPA has agreed to pay GUP \$4,000,000 as an accelerated cost payment if GUP is able to commercially operate on or before September 30, 2025.¹⁶ According to GPA, any such accelerated cost payment shall be funded through an adjustment of the Fixed Capacity

¹² Petition, pp. 2-3.

¹³ Petition, p. 3.

¹⁴ Petition, p. 3.

¹⁵ Petition, p. 3.

¹⁶ Petition, p. 3.

Charge or through a Supplemental Charge.¹⁷ Otherwise, if the Commercial Operation Date occurs on a date after September 30, 2025, then GPA is entitled to liquidated damages, at a cost of \$240,000 per day.¹⁸

Additionally, in line with accelerating this new Commercial Operation Date, the parties have agreed that GPA will provide the “First Fill” requirement, which GUP was originally required to provide.¹⁹ Under this new arrangement, GUP will repay GPA the cost of this First Fill “in monthly payments over a seven-year payback period with no interest.”²⁰

GPA has also agreed to fund a backup water supply pipeline, which is estimated at \$1,807,503 for the construction of the additional pipeline.²¹ This additional cost will be funded through a recalculation of the Fixed Capacity Charge.²² All other components, responsibilities, and provisions contained in the ECA remain unchanged.

1. **Costs Related to the New NPDES Requirement and Elimination of the Reserve Facility**

GPA submitted that the Ukudu Power Plant is required to treat spent cooling water for phosphate removal under GWA’s NPDES permit. GPA has agreed to compensate GUP the amount of \$2,732,123 for construction costs related to this NPDES requirement, as well as an estimated \$100,000 annually for the phosphate treatment system. These costs

¹⁷ Petition, p. 3.

¹⁸ Petition, p. 3.

¹⁹ Petition, pp. 3-4.

²⁰ Petition, pp. 3-4.

²¹ Petition, p. 4.

²² Petition, p. 4.

will be tied to the Fixed Capacity Charge, as well as the Fixed and Variable Operations and Maintenance costs.²³

With respect to the Reserve Facility costs, according to GPA, certain events led to the cancelation of the construction of a Reserve Facility. The most substantial event, according to GPA, was once the Reserve Facility was allowed to be constructed in Piti by the Guam Legislature, the estimate for the construction of the diesel generators for the Reserve Facility increased from \$57 million to \$97 million.²⁴ This significant increase in cost was prohibitive enough for GPA to fully cancel the construction of the Reserve Facility.²⁵ Indeed, the last section of the ECA formally memorializes the parties' cancelation of the Reserve Facility. Specifically, the provision indicates that the scope of this particular project is eliminated and that all obligations of the parties as to the Reserve Facility are terminated.

Owing to costs related to the Reserve Facility, GUP submitted a claim to GPA that it incurred a total of \$2.53 million in work related to the Reserve Facility.²⁶ This cost is comprised of about \$960,000.00 in legal fees; \$440,000.00 in environmental advisory fees; and \$1.12 million in land surveyor and title insurance fees.²⁷ GUP submitted additional claims to GPA: such as compensation for costs related to compliance with unanticipated permitting conditions, costs related to Heavy Haul permit delays, and costs due to a

²³ See ECA "Schedule 4", pp. 9-12, attached.

²⁴ GPA Resolution No. FY2024-17, pp. 1-2 (Mar. 26, 2024).

²⁵ GPA Resolution No. FY2024-17, p. 2 (Mar. 26, 2024).

²⁶ GUP Letter to GPA, Re: Request for Cost Compensation and Scheduling Accommodation, pp. 3-4 (Apr. 7, 2023).

²⁷ GUP Letter to GPA, Re: Request for Cost Compensation and Scheduling Accommodation, pp. 3-4 (Apr. 7, 2023).

pipeline construction delay.²⁸ The amount for these claims totaled about \$21.76 million. After months of negotiations, GPA maintained that it has reviewed these claims and has determined that GUP is owed \$6,559,205.²⁹ GPA submitted that compensation for these expenses are appropriate through the Fixed Capacity Charge, which will be adjusted to account for these expenses.³⁰

2. Revised Commercial Operation Date and First Fill Payment Delay

According to GPA, the damaging winds of Typhoon Mawar in May of 2023 caused significant damage to the Ukudu Power Plant, which required some demolition and rebuilding of water and fuel tanks, along with repairs to other parts of the power plant, including significant delays to the construction schedules.³¹ GUP submitted a request to GPA for additional compensation to lessen project delays. Due to these circumstances, and after a few months of negotiations, GUP and GPA agreed on a new Commercial Operation Date: September 30, 2025.³²

As part of this agreement, GPA indicated that it will compensate GUP \$4 million to essentially accelerate its completion of the power plant by September 30, 2025.³³ If GUP completes the power plant by September 15, 2025, GPA has agreed to add an additional \$1

²⁸ GUP Letter to GPA, Re: Request for Cost Compensation and Scheduling Accommodation, pp. 4-8 (Apr. 7, 2023); *See also* GPA Resolution No. FY2024-17, p. 2 (Mar. 26, 2024).

²⁹ GPA Resolution No. FY2024-17, p. 2 (Mar. 26, 2024).

³⁰ GPA Resolution No. FY2024-17, p. 2 (Mar. 26, 2024); *See* ECA “Schedule 4”, pp. 9-12, attached.

³¹ Petition, p. 3.

³² Petition, p. 3.

³³ GPA Resolution No. FY2024-17, p. 2.

million, on top of the \$4 million, as part of the acceleration payment.³⁴ Otherwise, the proposed amended liquidated damages provision allows GPA to immediately assess a liquidated damages fee of \$240,000 per day beyond September 30, 2025.³⁵ Any applicable acceleration fees will be covered by an adjustment to the Fixed Capacity Charge, which is identified as a “Performance Incentive.”³⁶ GPA submitted that the acceleration of operations of the Ukudu Power Plant by four (4) months would “provide the reliable power sooner but also provide a net fuel savings of approximately \$13.7 million.”³⁷

With respect to the provisions regarding the procurement and delivery of fuel required for start up, testing and commissioning, under Section 3.3.2 of the ECA, the parties have agreed that GPA will pay for the cost of the “First Fill” of Ultra-low Sulfur Diesel fuel in an amount equal to the amount of fuel necessary to operate the plant for at least 30 days. Accordingly, the parties have agreed to modify this provision to require that GUP reimburse GPA for the cost of this “First Fill” (without markup or interest). In particular, the parties modified this provision such that GUP will reimburse GPA for this First Fill “in equal monthly installments during the first seven (7) years of the Commercial Operation Period either by making monthly payments to GPA or by deducting the monthly installment amount from monthly invoices issued to GPA.” GPA submitted that its provision of this First Fill is meant to further support GUP’s efforts to accelerate the completion of the Ukudu Power Plant.³⁸

³⁴ GPA Resolution No. FY2024-17, p. 2.

³⁵ GPA Resolution No. FY2024-17, p. 2.

³⁶ See ECA “Schedule 4”, pp. 9-12, attached.

³⁷ GPA Resolution No. FY2024-17, p. 2.

³⁸ GPA Resolution No. FY2024-17, p. 3.

3. **Summary of Additional Costs and Savings Related to Amendments**

Original ECA Total Contract Price	\$571,000,000	
Proposed Amendments	Additional Costs	Savings
Cancelation of Reserve Facility		\$57,300,000
Costs related to Reserve Facility and Permit Delays	\$6,559,205	
Costs related to Backup Potable Waterline	\$1,807,503	
Costs related to Construction of Phosphate Treatment Facility	\$2,732,123	
Costs related to Full Payment of Performance Incentive	\$5,000,000	
Subtotals	\$16,098,831	\$57,300,000
New ECA Total Contract Price	\$529,798,831	

Moreover, GPA submitted that they will save an additional \$13.7 million in net fuel costs should the power plant come online by September 30, 2025.

CONCLUSION

As indicated above, the ALJ found that “the PUC has been intricately involved in reviewing GPA’s plans for generation capacity and a New Power Plant”; and “[t]he record establishes that the PUC has conducted an extensive review of GPA’s plans for a New Power Plant over the last 10 years.”³⁹ It is clear that the PUC has supported the commissioning of the Ukudu Power Plant and that its support of this huge endeavor has never wavered. Unfortunately, with construction projects of this scale, there have been some setbacks, which were noted in the record, but most significantly, the very damaging effects of Typhoon Mawar back in May of 2023. This led to some necessary amendments

³⁹ Order, GPA Docket 19-13, p. 2.

to the ECA which require PUC approval. The record reflects that the parties have negotiated in good faith in settling certain differences.

The ALJ further found that additional costs sustained as a result of the issues noted in this docket appear to pale in comparison to the cost savings that GPA estimates it will achieve once the Ukudu Power Plant is in operation. Therefore, the commissioning of the Ukudu Power Plant, sooner rather than later, will indeed benefit ratepayers long-term. Further, the impact of such costs is reflected in the proposed amended "Schedule 4, Determination of Tariff" to the ECA. As shown in Schedule 4, the yearly Fixed Capacity Charge will be reduced by 4.348% owing to the elimination of the Reserve Facility.

Accordingly, based on the documentation provided by GPA in this docket, and for the other reasons set forth herein, the ALJ recommended that the PUC approve GPA's Petition. The ALJ further recommended that GPA should be authorized to amend the ECA, which should include adjusting the Fixed Capacity Charge and Fixed and Variable O&M Charges to compensate GUP for the claims raised, and resolved between the parties, related to additional work and to accelerate the operation date of the Ukudu Power Plant. Accordingly, the ALJ recommended that the proposed Third Amended ECA between GPA and GUP should be approved.

The Commission hereby adopts the findings in the July 23, 2024 ALJ Report and therefore issues the following.

ORDERING PROVISIONS

Upon careful consideration of the record herein, and for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby ORDERS the following:

1. That the instant Petition is hereby APPROVED.
2. GPA is authorized to amend the ECA and its corresponding schedules, which includes adjusting the Fixed Capacity Charge and Fixed and Variable O&M Charges to compensate GUP for the claims raised, and resolved between the parties, related to additional work and to accelerate the operation date of the Ukudu Power Plant.
3. GPA shall file with the PUC an executed copy of the Third Amended and Restated ECA.
4. GPA 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. §§ 12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the PUC.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

SO ORDERED this 25th day of July, 2024.



JEFFREY C. JOHNSON
Chairman



ROWENA E. PEREZ-CAMACHO
Commissioner



JOSEPH M. MCDONALD
Commissioner



PETER MONTINOLA
Commissioner



DORIS FLORES BROOKS
Commissioner

MICHAEL A. PANGELINAN
Commissioner

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