



**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF: ) GPA Docket 24-25  
)  
GUAM POWER AUTHORITY'S PHASE )  
IV RENEWABLE ENERGY PURCHASE )  
AGREEMENT WITH KES SOLAR )  
LLC. )  
)  
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**CERTIFICATION OF THE CHIEF ADMINISTRATIVE LAW JUDGE  
CONCERNING THE GUAM POWER AUTHORITY'S PHASE IV RENEWABLE  
ENERGY PURCHASE AGREEMENT WITH KES YONA SOLAR LLC**

FREDERICK J. HORECKY hereby certifies and declares as follows:

1. I am the Chief Administrative Law Judge of the Guam Public Utilities Commission ["PUC"].
2. On November 5, 2024, in GPA Docket 24-25, the PUC approved the Phase IV Renewable Energy Acquisition Award to KEPCO-EWP-Samsung C & T Consortium [known as "KES Yona Solar LLC" and hereinafter referred to as "KES"].<sup>1</sup>
3. The PUC determined that GPA had justified the need for the KES Phase IV solar project. However, the PUC did not issue approval of the contracts as GPA had not submitted to the PUC final versions of such contracts which both GPA and KES had agreed to.<sup>2</sup>
4. The Order provides that "[U]pon certification by the ALJ to the Commissioners that the final contract does not contain any material changes that were not in the draft, and that the missing contract provisions have been provided, approval will be final."<sup>3</sup>

<sup>1</sup> PUC Order, GPA Docket 24-25, dated November 5, 2024.

<sup>2</sup> Id at p. 11.

<sup>3</sup> Id.

5. On February 3, 2025, GPA filed two contracts with the PUC, the Renewable Energy Purchase Agreement and the Interconnection Agreement between GPA and KES. The Office of the Attorney General approved both agreements as to form and legality.<sup>4</sup>
6. I have fully and carefully reviewed the final versions of the Renewable Energy Purchase Agreement and the Interconnection Agreement filed with the PUC by GPA.
7. I have ascertained from GPA Legal Counsel Marianne Woloschuk that both GPA and KES have agreed to the terms of the two agreements.<sup>5</sup>
8. I certify that any changes in the final agreements from the original drafts were approved by the Attorney General and negotiated by the parties. Missing provisions in the drafts have, to a great extent, been filled in, with the exception of the Commercial Operation Date. The Commercial Operation Date will be inserted into the agreements prior to execution by the parties.<sup>6</sup>
9. I would like to add a few comments concerning the final agreements:
  - A. The Mediation and Arbitration provisions of the Renewable Energy Purchase Agreement allow a party to file court litigation even where the parties are engaged in mediation or arbitration. These provisions are unusual in that ordinarily, when parties participate in mediation or arbitration, any court litigation is stayed, as the parties do not resort to litigation until the mediation or arbitration is concluded. However, KES insisted upon these provisions, and the Office of the Attorney General approved the same.

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<sup>4</sup> Memorandum from Joseph A. Guthrie, Chief Deputy Attorney General, to GPA dated January 31, 2025, Subject: Review of Renewable Energy Purchase Agreement and Interconnection Agreement.

<sup>5</sup> Telephone conversation between GPA Counsel Marianne Woloschuk and PUC ALJ Frederick J. Horecky on February 7, 2025.

<sup>6</sup> Id.

- B. Section 12.18 of the contract indicates that the Guam Power Authority “waives immunity to the full extent permitted by the law.” GPA Counsel did not concur with this provision. Normally governmental entities, such as GPA, have sovereign immunity from suit unless such immunity is waived. However, the Office of the Attorney General, as the Chief Legal Officer of the government, of Guam, approved GPA’s waiver of sovereign immunity in the Purchase Agreement. I note that, on numerous prior occasions, GPA has waived its immunity for larger power plant projects and for bond issuances.
- C. I have suggested certain typographical corrections to GPA Counsel regarding the Interconnection Agreement and the filling in of Milestone dates. GPA Counsel indicates that corrections will be made; the Milestone dates will be filled in when the effective dates of the agreements are determined by the parties.
- D. In my October 29, 2024 Report, I determined that GPA has justified the necessity for the KES Solar Yona LLC Renewable Energy Project. The form of the final KES Agreement is commercially reasonable. There are numerous provisions in the final agreements which adequately protect the interests of GPA and its ratepayers.<sup>7</sup> A primary protection includes the Development Security of \$20,934,562, which KES must post in order to secure Seller’s obligations prior to the Commercial Operation of the Facility. In order to secure Seller’s obligations after Commercial Operation of the Facility, and during the Delivery Period, Seller must post as security either a Letter of Credit or Cash for a Payment and Performance bond in the amount of \$41,869,124, or a subordinated lien on all real

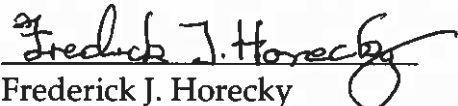
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<sup>7</sup> ALJ Report, Phase IV Renewable Energy Acquisition Award, GPA Docket 24-25, dated October 29, 2024, at p. 8.

and personal property constituting the project.<sup>8</sup> These funds or security interests should be available to GPA in the event of a default by KES.

10. Based upon the foregoing considerations, the GPA-KES Solar Yona LLC Renewable Purchase Agreement and the Interconnection Agreement are hereby granted final approval. GPA and KES Yona Solar LLC are authorized to enter into said Agreements.
11. Once the Agreements has been executed by GPA and KES Yona Solar LLC, true and correct copies of the final GPA-KES Solar Yona LLC Renewable Purchase Agreement and the Interconnection Agreement shall be filed with the PUC.
12. I certify that the statements in this Certification are true and correct to the best of my knowledge.

Respectfully submitted this 11<sup>th</sup> day of February, 2025.

  
Frederick J. Horecky  
Chief Administrative Law Judge

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<sup>8</sup> Article Nine of the Renewable Energy Purchase Agreement, Sections 9.1 through 9.4.