

GUAM PUBLIC UTILITIES COMMISSION

REGULAR MEETING

SUITE 205, 241 FARENHOLT AVENUE, OKA BUILDING, TAMUNING, GUAM

February 27, 2025

MINUTES

The Guam Public Utilities Commission [PUC] conducted a regular meeting commencing at 6:30 p.m. on February 27, 2025, pursuant to due and lawful notice. The meeting was called to order at 6:30 p.m. **Commissioners Jeffrey C. Johnson, Peter B. Montinola, Joseph M. McDonald, Michael A. Pangelinan, Doris Flores-Brooks and Rowena Perez-Camacho were in attendance.** The following matters were considered at the meeting under the agenda included as Attachment "A" hereto.

1. APPROVAL OF MINUTES

The Chairman announced that the first item of business on the agenda was the approval of the minutes from the regular meeting held on January 30, 2025. Commissioner Montinola moved to approve the minutes, subject to corrections, which motion was seconded by Commissioner Pangelinan, and the motion passed unanimously.

2. PORT AUTHORITY OF GUAM ("PAG")

- **PAG Docket No. 25-01: Petition to Increase Funding for the Waterline Replacement Project Agreement and Approval of Amendment No. 2.**

The Chairperson announced the next item of business on the agenda is PAG Docket No. 25-01, which concerned the Port Authority of Guam's request for an increase in funding for the Waterline Replacement Project and an extension of the project timeline. CALJ Horecky presented the matter, explaining that the project was originally awarded to BME and Sons in 2022 for \$4,856,568.91 to replace aging waterlines and improve fire protection infrastructure at the Port Guam Yard and Cabras Island. However, unforeseen conditions arose during construction, necessitating additional work not included in the original scope.

PAG requested \$691,698.65 in additional funding through Amendment No. 2, which would bring the total project cost to \$5,548,267.56. The amendment also included a 394-day extension, setting the new completion date to January 29, 2026. The Port Board approved Resolution 2025-08, endorsing the amendment and requesting PUC's approval.

CALJ Horecky outlined **six major modifications** in the amendment:

1. **Replacement of 22 fire hydrants** due to severe corrosion.

2. **Realignment of the waterline** at Station 20, where a cargo ramp was constructed after project approval.
3. **Addition of 140 linear feet of piping** to connect to the GWA water meter.
4. **Rerouting of pipes** at Stage 41.
5. **Replacement of the corroded CFS building connection pipe** for fire suppression.
6. **Installation of a backflow preventer** for the water tank, which was missing from the original build.

CALJ Horecky confirmed that cost estimates were carefully negotiated, after three rounds of negotiations, with BME's initial proposal of \$705,663.98 reduced to \$691,698.65. He also noted that fire safety regulations and federal compliance requirements made these upgrades necessary. Commissioners inquired about procurement protocols, project oversight, and the reliability of as-built records, which contained discrepancies affecting construction.

PAG GM Rory Respicio, CIP Engineering Manager Clarence Lagutang, and Contracts Manager Steven Muna provided additional details. PAG GM Respicio emphasized that operational safety depended on a reliable water system, as inadequate firefighting infrastructure could result in port shutdowns. He clarified that the request was not due to cost overruns but rather unavoidable additional requirements discovered during construction.

Commissioners Montinola, Pangelinan, and Flores-Brooks raised questions about the lifespan of fire hydrants, the impact of the salty environment, and documentation inconsistencies that resulted in missing pipeline components. Lagutang explained that while fire hydrants typically last **15-20 years**, their lifespan at the Port is significantly reduced due to corrosion.

After reviewing the negotiation process and funding justification, Commissioner Montinola moved to approve the amendment to the construction agreement, and Commissioner Pangelinan seconded the motion. The motion was unanimously approved, allowing PAG to proceed with the amendment and complete the critical infrastructure project.

3. GUAM WATERWORKS AUTHORITY ("GWA")

- **GWA Docket No. 25-05 Petition to Approve a Fund Increase to the JMI-Edison Contract for Wastewater Treatment Chemicals and to Ratify Expenditures.**

The Chairperson announced the next item on the agenda is GWA Docket No. 25-05, which concerned the Guam Waterworks Authority's request to approve a fund increase for its JMI Edison contract for wastewater treatment chemicals and to ratify past expenditures

that exceeded the originally approved contract amount. Commissioner Pangelinan recused himself due to his law firm's legal representation of GWA.

ALJ Joephet Alcantara presented the matter, explaining that in July 2019, GWA entered into a contract with JMI Edison for the purchase of cationic and anionic polymers, essential for wastewater treatment at the Northern District, Hagåtña, and Agat-Santa Rita plants. The Consolidated Commission on Utilities (CCU) originally authorized \$1,170,458.88 for chemical procurement. Since November 2024, GWA has spent approximately \$1,189,761.00, exceeding the cap by \$19,302.00.

GWA initially did not bring this contract before the PUC, believing it was exempt due to a 2011 federal stipulated order. After clarification, GWA committed to seeking PUC approval for all future chemical purchases unless otherwise exempted by the Commission.

To ensure continued chemical supply, GWA requested an additional \$400,000.00, bringing the total authorized contract amount to \$1,589,761.36. The CCU approved this request in Resolution No. 13 FY2025, acknowledging the ongoing need for wastewater treatment chemicals and authorizing additional procurement. ALJ Alcantara confirmed that JMI Edison was the lowest responsible bidder and that the contract had been properly procured.

GWA legal counsel Theresa Rojas provided further details, explaining that new procurements were in progress to replace the existing chemical contract. One bid opening occurred earlier in the week, with another scheduled for Friday. GWA expects to present the new contract for PUC approval, following CCU approval in May. GWA legal counsel Rojas emphasized that wastewater treatment chemicals are mandated by federal and EPA regulations and are critical for compliance with the Clean Water Act standards.

GWA reported that its transition to secondary wastewater treatment at the Northern District, Agat-Santa Rita, and Umatac-Merizo plants has reduced chemical consumption. Currently, only the Hagåtña plant still operates with primary chemical treatment, but future upgrades may further reduce chemical reliance.

Commissioner Montinola inquired about bulk purchasing to secure cost savings. GWA legal counsel Rojas explained that GWA places orders based on demand, as chemical shelf life and storage capacity limit stockpiling. GWA has storage facilities at the Northern and Hagåtña plants, and suppliers agree to store additional inventory, if necessary.

After discussion, Commissioner Montinola moved to approve GWA Docket No. 25-05, and Commissioner McDonald seconded the motion. The motion was unanimously approved authorizing \$1,589,761.36 for continued chemical procurement and ratifying past expenditures.

4. GUAM POWER AUTHORITY (“GPA”)

- **GPA Docket No. 24-25 – Petition of GPA to Approve Phase IV Renewable Energy Acquisition Award to KEPCO-EWP-Samsung C&T Consortium and Core Tech Solar Energy, LLC, for up to 192 MW of Renewal Energy Capacity.**

The Chairperson announced the next item of business on the agenda is GPA Docket No. 24-25, concerning the Guam Power Authority’s petition for the Phase 4 Renewable Energy Acquisition Award to KEPCO-EWP-Samsung C&T Consortium (KES Yona Solar, LLC) and Core Tech Solar Energy, LLC, for up to 192 megawatts of renewable energy capacity. Commissioner Pangelinan recused himself from the discussion due to his law firm’s legal representation of KEPCO. Chairman Johnson confirmed that this item was for informational purposes only, as final approval had already been delegated to CALJ Fred Horecky.

CALJ Horecky provided an update, recalling that on November 5, 2024, the PUC granted conditional approval for GPA to finalize the Phase 4 contract with KEPCO, EWP, and Samsung. At that time, the final contract was incomplete and required additional provisions before full approval could be granted. The PUC had authorized CALJ Horecky to review and certify that the final contract contained no material changes from the approved bid.

On February 3, 2025, GPA submitted two finalized contracts to the PUC:

- 1. The Renewable Energy Purchase Agreement with KES Yona Solar, LLC; and**
- 2. An Interconnection Agreement.**

Both contracts were reviewed and approved by the Attorney General as to form and legality. CALJ Horecky confirmed that after a detailed review, the final agreements contained necessary provisions and corrections. He noted that the final contract was approximately 200 pages long and that GPA and KEPCO had fully agreed to its terms.

Key Contract Provisions:

- The contract includes an unusual dispute resolution clause, allowing parties to seek mediation and arbitration but still retain the right to pursue legal action in court. CALJ Horecky noted that this is uncommon, as arbitration agreements typically prevent court intervention. The Attorney General approved the provision, and both parties accepted it.
- GPA waived sovereign immunity to the full extent permitted by law, ensuring project financiers and stakeholders have recourse in the event of disputes. CALJ Horecky noted that similar waivers were included in past major power plant projects, such as Piti 8 and 9, making this unprecedented.

- Security protections for GPA and ratepayers include:
 - A \$20.9M developer security deposit to ensure compliance before commercial operation.
 - A \$41.8M performance bond to guarantee obligations over the 25-year contract term, with an optional five-year extension.

Project Timeline and Next Steps:

GPA legal counsel Marianne Woloschuk confirmed that the final contract was signed and filed with the PUC on February 26, 2025. The project will be located on Cross Island Road, featuring 132MW of solar power and a 66MW battery storage system. The expected completion date is February 28, 2028.

Commissioners inquired about GPA's ongoing renewable energy projects. Commissioner Montinola asked for updates on Hanwha's project milestones. GPA legal counsel Woloschuk confirmed that Hanwha's letter of credit is still with GPA, and milestone deadlines are approaching, though the company's compliance status remains uncertain.

Commissioner Flores-Brooks sought clarification on contract timelines, including the effective date, commercial operation date, and milestone deadlines. GPA legal counsel Woloschuk confirmed that all dates had been finalized and incorporated into the contract before signing.

Regarding Core Tech Solar Energy LLC, GPA legal counsel Woloschuk reported that discussions were ongoing, with the company proposing new ideas for their renewable energy project.

Commissioner Perez-Camacho raised concerns about the sovereign immunity waiver, questioning why GPA had initially opposed it, while the Attorney General later approved it. GPA legal counsel Woloschuk explained that while the clause was not standard, the Attorney General determined it was legally permissible and necessary for contract finalization.

- **GPA Docket No. 25-07: Petition of the Guam Power Authority for Authorization to Procure Strategic Program Management Office for GPA's Future Projects.**

The Chairman announced that the next item of business on the agenda is GPA Docket No. 25-07, which is a Petition for Authorization to Procure Strategic Program Management Office for GPA's Future Projects. Chairman Johnson stated that this matter is being handled by legal counsel Camacho and is not ready for discussion. This matter is being tabled for the next scheduled meeting.

- **GPA Docket No. 25-08: Petition of the Guam Power Authority for Approval of Additional Projected Costs of Urea Supply Contract.**

The Chairperson announced the next item of business on the agenda is GPA Docket No. 25-08, which involved Guam Power Authority's request for additional projected costs for its Urea supply contract with Pacific Petroleum Trading Company. ALJ Joephet Alcantara presented the matter, explaining that GPA had entered into a three-year contract in 2022 for the supply of diesel exhaust fluid (Urea), with two optional one-year extensions. The base term ends on May 1, 2025, with possible extensions through May 1, 2027.

GPA's Urea consumption significantly increased due to the operation of Aggreko's temporary 20MW power plant, which was contracted in March 2024 to support the grid until the Ukudu power plant becomes operational. Under its agreement with Aggreko, GPA is responsible for supplying Urea, leading to unanticipated procurement costs. On January 28, 2025, the Consolidated Commission on Utilities (CCU) authorized GPA to increase Urea expenditures to \$4,842,501.00 to accommodate this higher demand.

GPA projected the following Urea costs:

- **\$1.5 million by February 2025;**
- **\$2.9 million by the end of FY 2025; and**
- **\$4.8 million by the end of FY 2026.**

To mitigate costs, GPA renegotiated its pricing, reducing Urea prices from \$2.09 per gallon to \$1.35 per gallon for the remaining contract years. ALJ Alcantara noted that Urea is essential for reducing emissions from diesel power plants, converting harmful chemicals into nitrogen and water vapor. Without this chemical, GPA's Yigo diesel plants and Aggreko's units would be non-compliant with environmental regulations.

GPA Assistant General Manager Jennifer Sablan confirmed that Aggreko's temporary power plant contract runs for two years, and GPA's Urea procurement aligns with this timeframe. She stated that once Ukudu becomes operational, Urea consumption would be reevaluated, and additional funding may be requested for potential upgrades to the Yigo diesel plant.

Commissioner Flores-Brooks raised concerns over the significant price reductions, questioning how the cost dropped so dramatically despite inflation. GPA Assistant Manager Sablan explained that initial Urea bids were based on market speculation, but after negotiations, suppliers adjusted pricing to better reflect actual costs. She noted that GPA was previously limited by a sole bidder, restricting price comparison.

Commissioner Montinola inquired about procurement strategies and whether GPA could stockpile Urea for cost efficiency. GPA Assistant Manager Sablan clarified that Urea orders are placed monthly based on projected usage, as storage capacity is limited. GPA also

provides four-week advance projections to ensure timely shipments. If Ukudu becomes operational sooner than expected, GPA will reduce its Urea orders accordingly.

Following discussion, Commissioner Montinola moved to approve GPA Docket No. 25-08, and the motion was unanimously approved, authorizing \$4,842,501.00 for Urea purchases through Fiscal Year 2026.

5. ADMINISTRATIVE MATTERS

- **FYI – FY2024 PUC FOIA Annual Report and Amended Report.**

The Commission reviewed the Fiscal Year 2024 PUC Freedom of Information Act (FOIA) Annual Report and Amended Report. Ms. Leon Guerrero provided an update, confirming that the initial report was submitted by the February 1st deadline as required by law. However, after further review, an additional FOIA request was identified, prompting an amended submission.

Commissioners inquired about the nature of the FOIA request, clarifying whether it was from an individual or part of a broader inquiry. Ms. Palomo and Ms. Salas explained that the request was relatively simple, involving a few documents from March of the previous year. The PUC responded to the request in a timely manner, ensuring compliance with legal obligations. The Commissioners acknowledged that FOIA reporting is conducted annually and commended the effort to maintain accurate records. The discussion concluded with confirmation that the matter had been properly handled and documented.

- **Request for Executive Session.**

The Chairman announced that the next matter of business on the agenda was the request for an Executive Session and then invited CALJ Horecky to explain. ALJ Horecky informed the commission that he had sent a letter recommending the commission go into Executive Session to discuss a pending litigation, pursuant to 5 GCA Section 8111(C)(1). Following this, Chairman Johnson asked for a motion to enter into Executive Session. Commissioner Montinola moved to enter into the Executive Session, which motion was seconded by Commissioner Perez-Camacho. The motion was carried and unanimously passed.

EXECUTIVE SESSION REGARDING PENDING LITIGATION (Executive Session from 7:49 p.m. to 8:10 p.m.)

Upon returning to open session at 8:10 p.m., Commissioner Montinola moved to authorize CALJ Horecky to prepare and file an amicus brief in the Supreme Court of Guam to support the petition of GWA to seek interlocutory appeal of the Superior Court decisions in the pending GWA-Core Tech litigation. This motion was seconded by Commissioner Perez-Camacho. The motion was carried and unanimously passed.

6. ADJOURNMENT

There being no further business before the Commission, Commissioner Montinola moved to adjourn the meeting, which was duly seconded by Commissioner Perez-Camacho. The motion passed unanimously and the meeting was adjourned at 8:12 p.m.

A handwritten signature in black ink, appearing to read 'J. Johnson', is written over a horizontal line.

Jeffrey C. 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 regular business meeting, commencing at 6:30 p.m. on Thursday, February 27, 2025 at 241 Farenholt Avenue, Oka Bldg., 2nd Floor, Suite 205, Tamuning, Guam.

The following business will be transacted:

AGENDA

- 1. Call to Order**
- 2. Approval of Minutes of January 30, 2025 Regular Meeting**

PORT AUTHORITY OF GUAM

- 3. PAG Docket No. 25-01:** Petition – IFB-PAG-CIP-021-005 Waterline Replacement Project – Ten Percent (10%) Increase in Funding; ALJ Report; and proposed Order.

GUAM WATERWORKS AUTHORITY

- 4. GWA Docket No. 25-05:** Petition to Approve a Fund Increase to the JMI-Edison Contract for Wastewater Treatment Chemicals and to Ratify Expenditures; ALJ Report; and proposed Order.

GUAM POWER AUTHORITY

- 5. GPA Docket No. 24-25:** Petition of the Guam Power Authority to Approve Phase IV Renewable Energy Acquisition Award to KEPCO-EWP-Samsung C&T Consortium and Core Tech Solar Energy LLC, for up to 192 MW of Renewable Energy Capacity; Certification of the Chief ALJ Concerning the GPA's Phase IV Renewable Energy Purchase Agreement with Kes Yona Solar LLC.
- 6. GPA Docket No. 25-07:** Petition of the Guam Power Authority for Authorization to Procure Strategic Program Management Office for GPA's Future Projects; Legal Counsel Report and proposed Order.
- 7. GPA Docket No. 25-08:** Petition of the Guam Power for Approval of Additional Projected Costs of Urea Supply Contract; ALJ Report; and proposed Order.

ADMINISTRATIVE MATTERS

- 8. FYI - FY2024 PUC FOIA Annual Report and Amended Report**
- 9. Executive Session Regarding Pending Litigation**

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 THE MATTER OF:

)
) PAG Docket 25-01
)

THE PORT AUTHORITY OF GUAM'S
PETITION TO INCREASE FUNDING
FOR THE WATERLINE REPLACEMENT
PROJECT AGREEMENT AND FOR
APPROVAL OF AMENDMENT
NO. 2

) ORDER
)
)
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INTRODUCTION

This matter comes before the Guam Public Utilities Commission ["PUC"] pursuant to the February 6, 2025, Port Authority of Guam ["PAG"] Petition to increase funding for the BME & Son's, Inc. Waterline Replacement Project Agreement, and for approval of Amendment No. 2.¹

BACKGROUND

On February 24, 2022, the PUC approved the PAG Waterline Replacement Project Award to BME & Son's, Inc. ["BME"] in the amount of Four Million Eight Hundred Fifty-Six Thousand Five Hundred Sixty-Eight dollars and Ninety-One Cents (\$4,856,568.91).² The project is for the construction of a new waterline piping system and Fire Protection pipelines that will feed all infrastructure buildings inside the Port of Guam yard and Cabras Island.³

BME has proceeded diligently to execute the project. However, the Port and BME have identified several conditions in the field that have prevented BME from performing the

¹ PAG Petition, PAG Docket 25-01, dated February 6, 2025 at p. 1.

² PUC Order, PAG Docket 22-02, dated February 24, 2022 at p. 8.

³ PAG Petition at p. 1.

work as designed and planned. In addition, the current scope of work does not include certain items “necessary to have a complete working waterline system.”⁴ The Port is requesting that the PUC approve Amendment No. 2 to the Construction Agreement between the Port and BME. A true and correct copy of Amendment No. 2 is attached to the ALJ Report as Exhibit “1”.

Proposed Amendment No. 2 would increase the total funding for the PAG-BME Waterline Replacement Agreement in the amount of \$691,698.65. This cost increase was negotiated by the parties. The six major changes negotiated to the scope of work of the Agreement are as follows:

- (1) Removal and replacement of 22 total Fire Hydrants;
- (2) Realignment of waterline at STA 20 (a devanning ramp was built previously and there is a need for re-routing of the pipes);
- (3) Addition of 140 linear feet to connect piping to the GWA water meter;
- (4) Re-routing of pipes at STA 41;
- (5) Replacement of CFS Building connection pipe for Fire Suppression System (corroded and unusable), and repair of leak;
- (6) Installation of Water Tank Back Flow Preventer appurtenances (not installed when the tank was built).

The full additional services which BME will perform for the change orders to the Scope of Work are set forth in detail in the attachments to Amendment No. 2 (Exhibit 1 to the ALJ Report). The cost breakdown for each of these six items is indicated in the Memorandum of Negotiations, dated January 10, 2025, and attached to the ALJ Report as Exhibit “2”.

⁴ Id.

The Port has extended the period for performance under the BME Agreement. The original period of performance in the Agreement was for one year (365 calendar days), with the projected completion date as February 4, 2024. The parties, in Amendment No. 1 to the Agreement, extended the time for the waterline project for 331 additional calendar days, with a new contract completion date of December 21, 2024.⁵ Amendment No. 2 would further extend the Contract for 394 Calendar days, for a total of 1090 calendar days from the issuance of the Building Permit. Under the new contract period for performance, the project must be completed by January 29, 2026.⁶

The Port Board of Directors approved the Petition, Amendment No. 2, and the extension of the contract period for performance at its February 27, 2025, monthly meeting.

The ALJ filed his Report herein dated February 14, 2025.⁷ The PUC adopts the conclusions and recommendations stated in the Report.

DETERMINATIONS

1. PAG's Contract Review Protocol.

The PAG petition indicates that it seeks PUC approval under the Contract Review Protocol, PAG Docket 09-01, Section 10: "PAG shall not incur expenses for PUC approved **internally financed contracts and obligations** in excess of 10% over the amount authorized by the Commission without PUC approval." (emphasis added).

⁵ PAG Petition at p. 15, Inter-Office Memorandum dated January 22, 2024, Subject: Proposed Amendment No. 1 for No Cost Time Extension for Waterline Project.

⁶ PAG Petition at p. 4, Amendment No. 2; PAG Petition at pgs. 28-29, Inter-Office Memorandum dated January 27, 2025.

⁷ ALJ Report, PAG Docket 25-01, dated February 14, 2025.

However, this particular provision is not applicable to PAG's petition. The Waterline Replacement Project is not an "internally financed contract" or obligation. This project is funded from Bond Funds.⁸ In accordance with par. 1(d) of the Contract Review Protocol, PAG is required to file a petition with the PUC seeking approval for "any use of bond proceeds."⁹ In addition, Section 10 of the Protocol provides that "**PAG shall not increase the amount of any externally financed obligation without prior PUC approval.**"¹⁰ (emphasis added).

2. An Increase in Funding for the Waterline Replacement Project Agreement is necessary to ensure that its intended purposes are accomplished.

PAG's petition states that "[T]he approval of Amendment No. 2 for IFB-PAG-CIP-021-005, Waterline Replacement Project, will ensure and enhance the Port's capability to supply the water necessary to contain and extinguish a fire."¹¹ The Port receives, transports and stores a variety of cargo and materials, some of which is highly flammable and/or explosive.¹² Certain specialized equipment at the Port contains significant quantities of fuel and other flammable fluids: "implementing fire safety measures is crucial to safe guarding the Port facilities and logistics terminal from potential fire incidents and ensuring the protection of personnel and assets."¹³

The current state of the fire hydrants provides a significant challenge to the Port's fire fighting capabilities should a fire occur on the dock side.¹⁴ As mentioned, 22 total Fire Hydrants will be replaced.

⁸ PUC Order, PAG Docket 22-02, dated February 24, 2022, at p. 3.

⁹ Contract Review Protocol, PAG Docket 09-01, par. 1(d) at p. 1.

¹⁰ Id. at par 10, p. 4.

¹¹ PAG Petition at p. 1.

¹² Id.

¹³ Id. at pgs. 1-2.

¹⁴ PAG Petition, Amendment No. 2, at p. 3.

The waterline must be re-routed around the cargo ramp in order to complete the new connections.¹⁵ The PAG engineering Department recommended that there be modifications from the point of connection to the new waterline.¹⁶ Repairing the water leak in the CFS fire system will activate the CFS Fire Protection System if no other leaks develop.¹⁷

3. The cost for the additional Waterline Replacement Project is reasonable.

The parties negotiated the cost of the six additional items. The BME Cost Proposal was for \$705,663.98. The negotiated cost was reduced to \$691,698.65.¹⁸ The PAG CIP Manager has reviewed the proposed Amendment No. 2 and finds the amount to be fair and reasonable based on cost comparison and pricing data in the original bid.¹⁹ The PAG team used the contract's schedule of values, as well as market research, and field measurements for quantity, to derive the cost estimates.²⁰

ORDERING PROVISIONS

Upon consideration of the record herein, the PAG Petition to increase funding for the BME & Son's, Inc. Waterline Replacement Project Agreement, and for approval of Amendment No. 2, 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:

¹⁵ Id.

¹⁶ PAG Petition, Inter-Office Memorandum dated October 8, 2024 from CIP & Engineering Manager to Rory J. Respicio, General Manager, at p. 43.

¹⁷ Id.

¹⁸ See Exhibit "2".

¹⁹ PAG Petition at p. 1.

²⁰ PAG Petition, Memorandum of Negotiations for Amendment No. 2, dated January 10, 2025, at p. 42.

1. PAG's Petition and Amendment No. 2 to the Agreement between the Port and BME & Son's, Inc., are approved.
2. The Port is authorized to expend the additional sum of \$691,698.65 for the six new items in the scope of work of the Waterline Replacement Agreement. The total Agreement funding is increased from \$4,856,568.91 to \$5,548,267.56.
3. The 394 Calendar Days Contract Extension in Amendment No. 2 is also approved. The deadline for completion of the Waterline Replacement Project is January 29, 2026.
4. PAG 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]

Dated this 27th day of February 2025.



Jeffrey Q. Johnson
Chairman

Rowena E. Perez-Camacho
Commissioner

Joseph M. McDonald
Commissioner

Michael A. Pangelinan
Commissioner

Peter Montinola
Commissioner

Doris Flores Brooks
Commissioner



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

**PETITION TO APPROVE FUNDING
INCREASE TO CONTRACT WITH
JMI-EDISON FOR WASTEWATER
TREATMENT CHEMICALS AND TO
RATIFY EXPENDITURES BY GUAM
WATERWORKS AUTHORITY**

GWA DOCKET 25-05

ORDER

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC” or the “Commission”) pursuant to the January 4, 2025 Petition to Approve Funding Increase to the JMI-Edison Contract for Wastewater Treatment Chemicals and to Ratify Expenditures, filed by the Guam Waterworks Authority (“GWA”).

On February 25, 2025, 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

On July 23, 2019, GWA was authorized to enter into an agreement with JMI-Edison for the purchase of certain wastewater treatment chemicals, specifically cationic polymer and anionic polymer.¹ These chemicals are vital to the operations of, and treatment of wastewater at, GWA’s Northern District Wastewater Treatment Plant, and

¹ Petition, “Exhibit A”, p. 1 (GWA Resolution No. 13-FY2025).

Hagåtña and Agat-Santa Rita Wastewater Treatment Plants.² Pursuant to that approval, GWA was thereby authorized to expend a total of \$1,170,458.88 for the wastewater chemicals.³ Since November 2024, GWA has purchased roughly 480,000 pounds of cationic polymer and 278,000 pounds of anionic polymer, totaling \$1,189,761.36, and thereby exceeding \$1,170,458.88.⁴

A. Contract Review Protocol

Pursuant to 12 G.C.A. §12105,⁵ GWA may not enter into any contractual agreements or obligations which could increase rates and charges without the PUC's express approval. In addition, GWA's Contract Review Protocol requires that "[a]ll professional service procurements in excess of \$1,000,000" require "prior PUC approval under 12 G.C.A. §12004, which shall be obtained before the procurement process is begun"⁶

With respect to multi-year contracts, "[t]he term of a contract or obligation (procurement) will be the term stated therein, including all options for extension or renewal"; and that the "test to determine whether a procurement exceeds the \$1,000,000 threshold for the PUC review and approval (the review threshold) is the total estimated cost of the procurement, including cost incurred in any renewal options."⁷

² See Petition, "Exhibit A", p. 1.

³ Petition, "Exhibit A", p. 1.

⁴ Petition, "Exhibit A", p. 1.

⁵ Formerly 12 G.C.A. §12004.

⁶ GWA's Contract Review Protocol ("GWA CRP"), Administrative Docket 00-04, p. 1 (Oct. 27, 2005).

⁷ *Id.*, p. 2.

B. GWA's Petition

The instant request concerns the approval of GWA's contract with JMI-Edison for the purchase of the wastewater chemicals, anionic polymer and cationic polymer, since July 23, 2019.⁸ GWA submitted that it initially did not bring this particular contract before the PUC because it believed that because these purchases were mandated under the 2011 federal Stipulated Order, these purchases were therefore exempt from PUC review.⁹ GWA, however, has indicated that moving forward, it will request PUC approval for the purchase of wastewater treatment chemicals unless expressly exempted through a separate PUC order.

As further indicated in the Petition, GWA utilizes these chemicals for its treatment of wastewater, and therefore these chemicals are vital to its operations in several of its wastewater treatment plants, such as the Northern District, Hagåtña, and Agat-Santa Rita wastewater treatment plants.¹⁰ Indeed, in prior PUC dockets, GWA has made reference to the requirement that it must operate its wastewater treatment plants using "Chemically Enhanced Treatment" in order to be in compliance with the November 11, 2011 federal Stipulated Order.

The chemicals that are the subject of the Petition are generally used for wastewater treatment. For instance, anionic polymers aid in filtering wastewater and for dewatering sludge; cationic polymers also aid in the clarification of water.

⁸ Petition, p. 1.

⁹ Petition, p. 1 (*citing* PUC GWA Regulatory Matters Order, Item No. 3 (Apr. 11, 2003)).

¹⁰ Petition, p. 1.

GWA submitted that it recently issued two Invitations for Bids, namely: IFB 2024-08, for the purchase of Wastewater Treatment Chemicals for GWA's Northern District WWTP, Agat-Santa Rita WWTP and Umatac-Merizo WWTP; and IFB 2024-16, for the purchase of Wastewater Treatment Chemicals for GWA's Hagåtña WWTP. These procurements are intended to replace the existing chemical contracts GWA currently has in place. Because of time constraints and certain testing of the chemical products, these procurements are not expected to replace the current contract with JMI-Edison until a few more months.¹¹

Presently, GWA purchases anionic chemicals at \$1.23 per pound; and cationic chemicals at \$1.85 per pound.¹² GWA submitted that, initially, it was purchasing anionic chemicals at \$1.16 per pound and cationic chemicals at \$1.63 per pound; but that JMI-Edison had increased the price of these chemicals due to a "shortage in raw materials."¹³ According to GWA, it sought CCU approval for an additional \$400,000 to supplement its current expenditure of \$1,187,761.36.¹⁴ GWA submitted that the funding source for the purchase of these chemicals is its revenue funds.

C. CCU Resolution No. 13-FY2025

The instant petition is supported by Resolution No. 13-FY2025 issued by the CCU at its November 26, 2024 meeting. In the Resolution, the CCU found that since that time, GWA has purchased roughly 480,000 pounds of cationic chemicals and 278,000 pounds of

¹¹ Petition, p. 2.

¹² Petition, p. 2.

¹³ GWA's Response to ALJ's Request for Information, p. 2 (Feb. 18, 2025).

¹⁴ Petition, p. 2. GWA further noted that the CCU original authorization was for \$1,170,458.88, but GWA has since exceeded that amount by \$19,302.48.

anionic chemicals to operate GWA's Northern District, Hagåtña, and Agat-Santa Rita wastewater treatment plants, at a total cost of \$1,189,761.36.¹⁵ It noted that while its original authorization was for \$1,170,458.88, GWA exceeded this amount by \$19,302.48.¹⁶ The CCU indicated, however, that GWA needs to have the ability to procure additional chemicals when required, the CCU approved the additional \$19,302.48 and further authorized another \$400,000.00 to purchase chemicals from JMI-Edison.¹⁷ The CCU, therefore, has authorized a total of \$1,589,761.36.

CONCLUSION

This Commission has indicated in prior dockets that these chemicals are indispensable and required for GWA's daily operation and maintenance, specifically to operate its Northern District, Hagåtña, and Agat-Santa Rita wastewater treatment plants, and to keep GWA in compliance with federal laws, permits and guidelines.

Further, the PUC regularly reviews GWA's purchase of these wastewater chemicals. These chemicals are indeed indispensable in the treatment of wastewater. For instance, anionic polymers aid in filtering wastewater and for dewatering sludge; cationic polymers also aid in the clarification of water.

In addition, there is nothing in the record that indicates that the JMI-Edison agreement was not properly procured; but that the award was due to JMI-Edison being the

¹⁵ CCU Resolution No. 13-FY2025, p. 1.

¹⁶ CCU Resolution No. 13-FY2025, p. 1.

¹⁷ CCU Resolution No. 13-FY2025, p. 3.

lowest responsible bidder.¹⁸ Moreover, GWA has committed to submitting wastewater treatment contracts for the PUC's review.

Therefore, the ALJ recommended that the PUC ratify GWA's agreement with JMI-Edison to purchase these chemicals and correspondingly approve the budget of \$1,589,761.36 for the remainder of the contract term.

RECOMMENDATION

Based on this record, and for the other reasons set forth above, the ALJ recommended that the PUC ratify the contract between GWA and JMI-Edison, for a total cost not to exceed \$1,589,761.36 for the remainder of the contract term, subject to the cost contingency provided under the Contract Review Protocol.¹⁹

The Commission hereby adopts the findings in the February 25, 2025 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.

¹⁸ CCU Resolution No. 13-FY2025, p. 2 (finding that "[t]here was no indication of bad faith or fraud in any of the procurements by GWA management" and that "[a]ll of the procurement herein are in the best interest of the territory of Guam and Guam Waterworks Authority").

¹⁹ See Section 9, GWA's Contract Review Protocol, Administrative Docket 00-004, p. 1 (Oct. 27, 2005).

2. That the contract between GWA and JMI-Edison is hereby RATIFIED, for a total cost not to exceed \$1,589,761.36 for the remainder of the contract term, subject to the cost contingency provided under GWA's Contract Review Protocol.

3. GWA 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 27th day of February, 2025.



JEFFREY C. JOHNSON
Chairman



ROWENA E. PEREZ-CAMACHO
Commissioner



JOSEPH M. McDONALD
Commissioner

MICHAEL A. PANGELINAN
Commissioner



PETER MONTINOLA
Commissioner



DORIS FLORES BROOKS
Commissioner

P253008.JRA



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.)
)
)
)

**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"].¹
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.²
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."³

¹ PUC Order, GPA Docket 24-25, dated November 5, 2024.

² Id at p. 11.

³ 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.⁴
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.⁵
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.⁶
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.

⁴ 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.

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

⁶ 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.⁷ 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

⁷ 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.⁸ 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 11th day of February, 2025.


Frederick J. Horecky
Chief Administrative Law Judge

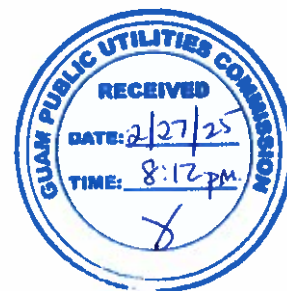
⁸ Article Nine of the Renewable Energy Purchase Agreement, Sections 9.1 through 9.4.

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

**PETITION FOR APPROVAL OF
CONTRACT INCREASE FOR UREA
SUPPLY WITH PACIFIC
PETROLEUM TRADING COMPANY
BY THE GUAM POWER AUTHORITY**

GPA DOCKET 25-08

ORDER



INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC” or the “Commission”) pursuant to the February 12, 2025 Petition for Approval of Contract Increase for Urea Supply with Pacific Petroleum Trading Company (“Pacific Petroleum”), filed by the Guam Power Authority (“GPA”), and referred to hereinafter as the “Petition.”

On February 26, 2025, 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 2022, GPA issued an Invitation for Bid for the supply of diesel exhaust fluid/urea and consequently selected and entered into a contract with Pacific Petroleum.¹ The contract provides a base term of three years with two optional one-year extensions.² Pursuant to the agreement, the three-year base term terminates on May 1, 2025; with the first extension the optional term ending on May 1, 2026; and the second extension ending on May 1, 2027.³

¹ Petition, “Exhibit A” (CCU Resolution FY2025-10), p. 1 (Jan. 28, 2025).

² Resolution FY2025-10, p. 1.

³ Resolution FY2025-10, p. 1.

In March 2024, GPA entered into a contract with Aggreko to install and operate a temporary power plant to provide an additional 20MW capacity to support the GPA's grid until the Ukudu power plant comes online.⁴ Pursuant to its contract with Aggreko, GPA agreed to supply the urea that Aggreko needs for emission controls.⁵

On January 28, 2025, the Consolidated Commission on Utilities (the "CCU") found that urea consumption increased substantially due to the increased operations of the Aggreko units.⁶ Accordingly, the CCU authorized GPA to expend a total of \$4,842,501 for the entire life of the contract.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."⁸ In this instance, GPA anticipates that the subject contract will reach and exceed the threshold provided under the Contract Review Protocol.

B. Pacific Petroleum Purchases for Urea

In the Petition, GPA submitted that since March of last year, it has contracted with Aggreko to operate a temporary power plant that provides an additional 20MW capacity to

⁴ Resolution FY2025-10, p. 1.

⁵ Resolution FY2025-10, p. 1.

⁶ Resolution FY2025-10, p. 1.

⁷ Resolution FY2025-10, p. 1.

⁸ GPA's Contract Review Protocol, Administrative Docket 00-04, p. 1 (Feb. 15, 2008) (emphasis in original).

support the power grid until the Ukudu power plant comes online.⁹ According to GPA, GPA agreed to supply Aggreko with the urea required to control emissions for power generation.¹⁰ As a result, GPA has been purchasing what it deems “substantially greater quantities” of urea than originally budgeted when it entered into its contract with Pacific Petroleum. Accordingly, GPA now needs to increase its budget to purchase urea.

According to GPA, the cost for the purchase of urea will exceed \$1,514,752 by the end of this month.¹¹ In fact, GPA projects that by the end of FY2025, the costs associated with the purchase of urea will reach \$2,885,001; and \$4,842,501 by the end of FY2026.¹² In response to the Request for Information issued by the Administrative Law Judge, however, GPA submitted that for the final three years of the contract, GPA and Pacific Petroleum were able to reduce the cost from \$1.95 per gallon to \$1.35 per gallon for the third contract term; \$2.90 per gallon to \$1.35 per gallon for the first option year; and \$2.90 per gallon to \$1.35 per gallon for the last option year.

Urea, a diesel exhaust fluid, is primarily used to reduce emission from diesel engines “[b]y converting harmful NOx emissions into harmless nitrogen and water vapor.”¹³ Urea not only improves air quality, it “can also help to improve the performance of diesel engines.”¹⁴ GPA submitted that the Yigo diesel plants and the Aggreko units

⁹ Petition, p. 2.

¹⁰ Petition, p. 2.

¹¹ Petition, p. 2.

¹² Petition, p. 3.

¹³ “How Diesel Exhaust Fluid Works to Reduce Emissions”, Fuelfixer, found at <https://www.fuelfixer.co.uk/2023/04/how-diesel-exhaust-fluid-reduces-emissions/#:~:text=By%20converting%20harmful%20NOx%20emissions,the%20performance%20of%20diesel%20engines>.

¹⁴ “How Diesel Exhaust Fluid Works to Reduce Emissions”, Fuelfixer, found at <https://www.fuelfixer.co.uk/2023/04/how-diesel-exhaust-fluid-reduces-emissions/#:~:text=By%20converting%20harmful%20NOx%20emissions,the%20performance%20of%20diesel%20engines>.

cannot “operate in compliance with environmental law without urea” and that it is therefore a “necessary component of their operations.”¹⁵

CONCLUSION AND RECOMMENDATION

As indicated in the Petition, the ALJ found that urea is used to lessen the health and environmental impact of emissions in diesel power plants. Without the use of urea, there is risk of certain environmental impacts, as well as the potential of failing required environmental emissions standards. In sum, the Yigo diesel plants and the Aggreko units cannot “operate in compliance with environmental law without urea” and it is therefore a “necessary component of their operations.”¹⁶ In addition, the ALJ further found that the reduction of the pricing for the final three years of the contract benefits ratepayers since GPA must purchase urea for these diesel units.

Based on the record in this docket, and for the other reasons set forth herein, the ALJ recommended that the PUC approve GPA’s Petition. Accordingly, GPA should be authorized to expend a total of \$4,842,501 for the purchase of urea from Pacific Petroleum, which includes expenditures already made and expenditures anticipated through Fiscal Year 2026.

The Commission hereby adopts the findings in the February 26, 2025 ALJ Report and therefore issues the following.

emissions/#:~:text=By%20converting%20harmful%20NOx%20emissions,the%20performance%20of%20diesel%20engines.

¹⁵ Petition, p. 3.

¹⁶ Petition, p. 3.

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. That GPA is authorized to expend a total of \$4,842,501 for the purchase of urea from Pacific Petroleum Trading Company, which includes expenditures already made and expenditures anticipated through Fiscal Year 2026.
3. 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 27th day of February, 2025.



JEFFREY C. JOHNSON
Chairman



ROWENA E. PEREZ-CAMACHO
Commissioner



JOSEPH M. MCDONALD
Commissioner



MICHAEL A. PANGELINAN
Commissioner



PETER MONTINOLA
Commissioner



DORIS FLORES BROOKS
Commissioner

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