

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:) GPA Docket 23-11
)
The Application of the Guam Power)
Authority to Approve the Piti 8&9) **ORDER**
Contract Extension with Marianas Energy)
Company.)
)
_____)



INTRODUCTION

This matter comes before the Guam Public Utilities Commission ["PUC"] pursuant to the Petition of the Guam Power Authority ["GPA"] for PUC Review and Approval of the Piti 8 & 9 Contract Extension with Marianas Energy Company [MEC]. GPA and MEC have mutually agreed to a five (5) year extension to the Energy Conversion Agreement ["ECA"].¹

BACKGROUND

In 1996, GPA contracted with MEC, as an Independent Power Producer, to Build, Operate and Transfer the Piti 8 & 9 Power Plant. MEC currently manages and operates the Plant under the ECA. The PUC granted MEC a 5-year extension of the ECA in January 2019. The extension expires in January 2024.²

GPA and MEC now seek to further extend the ECA from January 2024 to January 2029.

¹ GPA Petition, GPA Docket 23-11, dated February 28, 2023, at p. 1.

² Id.

The Administrative Law Judge [“ALJ”] filed his Report herein dated March 13, 2023.³

The PUC adopts the conclusions and recommendations in the Report.

DETERMINATIONS

1. The PUC has already previously approved the authority of GPA and MEC to extend the Energy Conversion Agreement.

In GPA Docket 18-13, GPA requested that the PUC approve MEC’s contract extension for the operation and maintenance of Piti 8 & 9 for five years.⁴ Under the ECA, par. 14, MEC was required to transfer ownership of Piti 8 & 9 to GPA in January 2019.⁵ Notwithstanding the transfer of the Power plant to GPA, the parties agreed that MEC should continue the management and operation of the plant for an additional five year period from January 2019 through January 2024.⁶

On May 31, 2018, the PUC determined that extension of the existing Energy Conversion Agreement through a Contract Amendment would help to ensure the continued operation, management and reliability of Piti 8 & 9.⁷ In no uncertain terms, the PUC held that GPA and MEC had the right to “amend” the agreement by mutual agreement of the Parties. Section 32 of the ECA provides that: “This Agreement may be amended at any time by mutual agreement of the Parties in writing and signed by a duly authorized representative of each Party.”⁸ The PUC

³ ALJ Report, GPA Docket 23-11, dated March 13, 2023.

⁴ PUC Order, GPA Docket 18-13 dated May 31, 2018, at p. 1.

⁵ Energy Conversion Agreement for a Diesel Engine Generator Power Station, Piti Project, between GPA and Enron Development Piti Corp., Section 14, dated September 30, 1996, at p. 24.

⁶ PUC Order, GPA Docket 18-13, dated May 31, 2018, at p. 2.

⁷ Id.

⁸ Id.

further held that “[T]he agreement in no manner places any restriction upon the parties regarding the amendment power. It is a broad, unlimited power.”⁹ Based upon the broad amendment power of the Parties, the PUC approved the five-year extension of the ECA with MEC.

Essentially the same issue is raised in this Docket with the request for a second five-year extension. Since the parties have a broad power to extend their contract, they are authorized and empowered to extend the contract for another five years. The same reasoning that the PUC applied to the first request for contract extension is also applicable to the request for a second extension.

2. A Detailed Review of the Energy Conversion Agreement supports the determination of the PUC that the Parties may amend the ECA for the continued Management, Operation, and Maintenance of the Piti 8 & 9 plants by MEC.

The ECA provides that MEC would continue to operate and maintain the plant for a period of 20 years in what is referred to as the “Cooperation Period”, but further indicated that the “Co-operation Period.... **may be extended from time to time** pursuant to the terms hereof...”¹⁰ (emphasis added). Furthermore, the definition of the “Project” included various separate and distinct functions, such as “design, construction, equipping, completion, testing, commissioning, and operation and maintenance of the Power Station.” (emphasis added).¹¹

⁹ Id. at p. 3.

¹⁰ Energy Conversion Agreement for a Diesel Engine Generator Power Station, Piti Project, between GPA and Enron Development Piti Corp., Section 1, dated September 30, 1996, at p. 3, Definition of terms, “Co-operation Period.”

¹¹ Id., at “Project”.

Prior to the transfer of the Plant to GPA in January 2019, GPA and MEC negotiated the initial 5-year extension of the ECA, and the PUC approved the extension. The amendment of the ECA for a 5-year extension of the management, operation and maintenance of the Plant by MEC all occurred prior to the transfer of ownership of the plant to GPA. The ECA provides that “operation and maintenance of the Power Station” is a separate and distinct part of the relationship between GPA and MEC (i.e. aside from design, construction, testing and commissioning of the plant). Since “operation and maintenance of the Power Station” has always been a valid and subsisting element of the ECA, there is nothing that prevented the parties from extending the operation and maintenance duties of MEC for the initial 5-year extension. Under the same reasoning, the parties may again extend the operation and maintenance duties of MEC for another five years.

3. Beyond the issue of legality, both GPA and MEC have offered substantial justifications for the second 5-year extension of the ECA.

In its Issues for Decision, presented to the members of the Guam Consolidated Commission on Utilities at its February 21, 2023, Meeting, GPA stated that “Piti 8 & 9 reliable capacity is most crucial over the next five years as the new Ukudu 198 MW power plant is commissioned and Phase IV renewable bids with full shifting energy storage systems are awarded and commissioned in late 2026. A reliable and efficient Piti Plant is crucial to avoid Load Shedding and producing energy at lower cost most especially because of the high cost of fuel we are experiencing.... GPA has limited production capacity until the new 198MW Ukudu plant is commissioned and the plant has gone through the shake down period of about a year.”¹²

¹² Issues for Decisions on Resolution No. FY2023-09, presented in the CCU Commissioners’ Board Packet on February 21, 2023.

In GPA Resolution No. FY2023-09, Relative to Authorization of Piti 8 & 9 Contract Extension, the Guam Consolidated Commission on Utilities offered several additional justifications for the 5-year contract extension. The CCU stated that “Piti 8 & 9 are baseload units critical to produce the 38% of energy for Guam until approximately one (1) year after the commissioning of the new Ukudu combined cycle units and until adequate reserves are obtained...”¹³ The second five (5) year extension of the current ECA would “ensure the stable management and operation of Piti 8 & 9 by MEC, complimenting the modified Consent Decree Milestone Schedule...”¹⁴ The Consent Decree between GPA and the USEPA in 2020 required the conversion of Piti 8 & 9 to ultra-low sulfur fuel.

GPA and MEC indicated that, without the second 5-year extension, they both would have difficulties in properly managing, operating and maintaining the Piti 8 & 9 Power Plant. GPA would be “challenged to hire and train personnel to manage, operate, and maintain the Plant upon the expiration of the amended ECA in January 2024.” Without a contract extension, MEC would not continue to manage and operate the power plant and would have difficulty in retaining existing workers beyond January 2024.¹⁵ MEC has requested an expedited extension for another five years. It is experiencing difficulties retaining employees because the current contract expires January 2024 and job security has become a major concern with its employees. Due to the military buildup, MEC employees have been hired by other employers.¹⁶

¹³ Guam Consolidated Commission on Utilities, GPA Resolution No. FY2023-09, Relative to Authorization of Piti 8 & 9 Contract Extension, adopted and approved on February 21, 2023, at p. 1.

¹⁴ Id.

¹⁵ Id. at p. 2.

¹⁶ Id.

The Piti power plant had been managed, operated and maintained by IPP MEC since the commissioning of the units in 1999. MEC Management, operators and maintenance employees have successfully operated the plant, with a standard high reliability of 90% or more, for the past 24 years.¹⁷ Piti 8 & 9 is the most efficient plant in the GPA power system. It produces more energy than the other units, on ULSD, at about 15.4 net kWh/gal. and is \$0.09 to \$0.13/net kWh cheaper than Cabras and the reserve units. The Plant produces over 600,000 kWh annually translating to anywhere from \$55M to \$80M in lower fuel cost in comparison to the other generators.¹⁸

The Piti 8 & 9 Annual cost has remained relatively constant. For FY 2022 the cost breakdown is as follows: Fuel Handling, \$2,545,125; Other Contractual, \$9,355,771; Total O&M, \$11,900,896 and Capital Projects Completed, \$1,199,014. The total is approximately \$25M. The annual cost to GPA in FY2020 was nearly \$27M.¹⁹

GPA and MEC have justified the necessity for the five-year extension of the ECA. After the commissioning of the new Ukudu Power Plant, it is anticipated that the capacity factor and use of the Piti units will decrease, allowing for solicitation of a new contract based on its future use.²⁰

¹⁷ GPA Work Session, Presentation To: Consolidated Commission on Utilities, February 14, 2023.

¹⁸ Issues for Decisions on Resolution No. FY2023-09, presented in the CCU Commissioners Board Packet on February 21, 2023.

¹⁹ PUC Order, GPA Docket 18-13, dated May 31, 2018, at p. 2.

²⁰ Guam Consolidated Commission on Utilities, GPA Resolution No. FY2023-09, Relative to Authorization of Piti 8 & 9 Contract Extension, adopted and approved on February 21, 2023, at p. 2.

ORDERING PROVISIONS

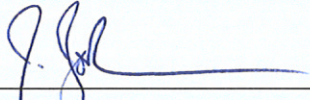
After review of the record herein, including GPA's Petition for PUC Review and Approval of the Piti 8 & 9 Contract Extension with Marianas Energy Company and the ALJ Report, for good cause shown, on motion duly made, seconded and carried by the undersigned Commissioners, the Guam Public Utilities Commission **HEREBY ORDERS** that:

1. The second 5-year extension of the ECA between GPA and MEC (from January 2024 to January 2029), for the management, operation and maintenance of the Piti 8 & 9 Power Plant, is approved.
2. GPA shall file with the PUC an executed copy of the Amendment to the Energy Conversion Agreement authorizing the second 5-year extension of the ECA.
3. 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 §§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
Approval of Piti 8 & 9 Contract Extension
GPA Docket 23-11
March 30, 2023

Dated this 30th day of March 2023.



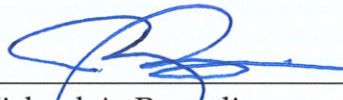
Jeffrey C. Johnson
Chairman



Rowena E. Perez-Camacho
Commissioner



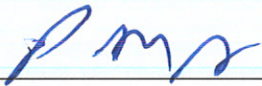
Joseph M. McDonald
Commissioner



Michael A. Pangelinan
Commissioner

Peter Montinola
Commissioner

Doris Flores Brooks
Commissioner



Pedro S.N. Guerrero
Commissioner