



Regular Board Meeting
CCU Conference Room, Gloria B. Nelson Public Service Building
5:30 p.m., May 28, 2019

MINUTES

1. CALL TO ORDER

The Chairman called the CCU May 28, 2019 regular monthly meeting of the Consolidated Commission on Utilities to order at 5:38 p.m. He said all five (5) Commissioners were present. Others in attendance include:

Commissioners:

Joseph T. Duenas	CCU Chairman
Francis E. Santos	CCU Vice Chairman
Michael T. Limtiaco	CCU Secretary
Judith P. Guthertz	CCU Treasurer
Simon A. Sanchez	Commissioner

Executive Mgmt.:

Miguel Bordallo	GM / GWA
John Benavente	GM / GPA
Melinda Mafnas	AGMO / GPA
John Cruz	AGMET / GPA
Tricee Limtiaco	AGMA / GPA
Chris Budasi	AGMA / GWA
John Kim	CFO / GPA
Gilda Mafnas	CFO (A) / GWA
Kelly Clark	Legal Counsel / GWA
Graham Botha	Legal Counsel / GPA

Management & Staff:

Paul Kemp	AGM Compliance & Safety / GWA
Heidi Ballendorf	Communications / GWA
Ron Topasna	O&M Mgr, Water Treatment / GWA
Tom Cruz	Chief Engineer / GWA
Vince Pangelinan	GWA
Vince Leon Guerrero	Outside Counsel / GPWA
Dave Fletcher	GWA
Ann Borja-Gallarde	Mgmt. Analyst / GWA Ex. Office
Lou Sablan	Board Secretary / CCU

Guest:

George Castro	Court Reporter
Mark Miller	Commissioner / PUC

2. APPROVAL OF MINUTES

The Minutes of the CCU Special Meeting on May 10, 2019 was presented for approval. He said this meeting was recessed and resumed at different dates and times. He asked the body to review and said he will entertain a motion.

Meanwhile, the Chairman asked a clarifying question of legal counsel's Clark and Botha relative to action taken at the special meeting, The question was that if there's a question in the Minutes in terms of a motion that was made and reflected in the minutes, can the minutes be amended by making another motion to amend or should the Commission make a new motion in open session at this current meeting to address the clarification

Comm. Limtiaco further clarified that during the Special Meeting of May 10 he made a motion to release the minutes of executive session but did not cite the date of the meeting in question although in context of the discussions of the entire meeting it is clear that the related meeting was that of Nov. 27, 2018. His question is does he need to make a motion that clearly specifies that he was referencing the executive session meeting minutes of 11/27/18.

Counsel Kelly responded that this question should be directed to outside counsel Vince Leon Guerrero.

In response Counsel Leon Guerrero opined that a new motion should be made to clarify this point and yes it could be made at this current meeting.

Comm. Limtiaco then stated [and put in context] that relative to the motion that he would like to proper would be a motion to release all minutes, recordings and all documents that were discussed at the Ex. Session Meeting of the CCU Meeting of Nov. 27, 2018. The motion was second by Comm. Guthertz.

In discussion to the motion, Comm. Sanchez asked what constitutes Minutes. Counsel Kelly responded that it could be recorded audio, hand written or transcribed. If under executive session, the audio recordings are the minutes. The law does not require written minutes for non-litigation discussions such as personnel matters and that the recording suffices for minutes, in this instance.

Comm. Sanchez then asked if a requestor FOIA'd for documents, what would constitute documents? Counsel Kelly responded that documents would be any handouts that were, reviewed, referenced, looked at or circulated during the executive session discussion

Comm Duenas asked what does it mean when we say Minutes of the meeting? Counsel Kelly said it depends on what is produced at the meeting - if there was a recording only then the recording would be the Minutes; if there was a recording and a written synopsis / transcription of the meeting then it would be both the recording and the written synopsis / transcription. There was discussion which has greater weight the recording or the written synopsis and both counsel's Clark and Botha said it would be the recording because the transcriber could make an error when preparing the transcription.

Comm. Sanchez asked counsel's Clark and Botha who issued the affidavit at the Nov. 27, 2018 meeting recommending the Commission to go into executive session. Both counsel Clark and Botha said they do not remember.

Comm Duenas asked what does the affidavit mean and stated there was nothing on the affidavit that says we can or cannot discuss salaries in executive session. It's usually only a general statement saying the Commission can move to executive session to discuss either litigation or personnel matters or both.

Comm. Sanchez said he is interested in a written legal opinion from the counsel who wrote the affidavit for the Nov. 27, 2018 meeting as to why go into executive session. What is their interpretation of the law and why he issued an affidavit? Chairman Duenas asked both counsels Botha and Kelly to provide their respective opinions.

Comm. Sanchez mentioned that prior CCU counsel opined that you must discuss evaluations only in executive session and salary or monetary matters in open session. Prior counsel provided an affidavit to Comm. Sanchez [then CCU Chair] with these specific instructions. Comm. Sanchez said there is a slightly different view from a previous colleague that is very specific. In the meeting of Sept. 2014 your previous colleague provided an affidavit for this meeting which was very specific and the minutes of the Sept. 2014 meeting also reflects his instructions where the evaluation was conducted in executive session and the salary was discussed in open session. Comm. Sanchez said there's an obvious difference of opinion even from our own counsels. Both counsels Kelly and Botha were present at the Nov 27th meeting and neither offered guidance not to discuss salary in executive session. Comm. Sanchez said to be fair to both counsel Kelly and Botha – he asked them what is their view of the law relative to discussion of personnel matters and requested for their written legal opinion.

Comm. Guthertz said she felt compelled to comment that in today's paper there was article about a 2014 opinion made by a former CCU legal counsel who provided an opinion to the Commission about personnel matter discussions in executive session, that only evaluations should be discussed in private and salaries must be discussed in public. Comm. Guthertz said that this is a difficult experience which was totally avoidable if that earlier opinion would have been made available to the Commission and she certainly wish it had. She would like to state for the record that this earlier opinion was not made available to her and if it had, this entire issue would have been avoided. Comm. Sanchez clarified that former CCU legal counsel did not provide an opinion but rather an affidavit for an executive session meeting for a CCU meeting held on Sept. 2014 that dealt with personnel matter and in that affidavit, he specified that only evaluations must be discussed in executive session and that salaries must be discussed in open session. Comm. Sanchez said Commission members who were present at that Sept 2014 meeting were advised and knew then. because that's what the Commission ended up doing as reflected in the Sept. 2014 meeting minutes.

Chairman Duenas said he did not know about the email from the former CCU legal counsel to Comm. Sanchez. Comm. Sanchez stated that the members of the Commission who were present at that Sept. 2014 meeting were definitely aware of then GWA legal counsel Sam Taylor's guidance which specifically states to discuss evaluations in executive session and salary in open session.

On motion made by Comm. Limtiaco and second by Comm. Guthertz to release the audio recording, minutes and all documents discussed at the Ex.Session of the CCU meeting held on Nov. 27, 2018. The vote passed with 4-ayes, and 1 nay. For the record the vote was Sanchez – yes, Limtiaco - yes; Duenas – no; Guthertz – yes and Santos - yes.

Relative to the Minutes of the CCU Special Meeting of May 10, 2019, Comm. Limtiaco motioned to approve the Minutes subject to verification and written correction; second by Comm. Guthertz. The motion passed unanimously.

3. **COMMUNICATIONS**
3.1 **Public Comments - None**

4. **GWA**
4.1 **New Business**
4.1.1 **GM Report**

4.1.2 **Financials**
The financials were not discussed at this meeting.

4.1.3 **Resolution No. 24-FY2019 Change Order Baza Garden Wastewater Cross-Island Pumping and Conveyance Phase II Construction Contract**

This resolution seeks CCU approval to increase the project fund authorization to address an unresolved claim from the contractor involving additional excavation necessary to meet/hit hard stable ground surfaces and filling up of flowable fill at the new SPS that was deemed by the contractor as additional work. The contractor ultimately moved forward with completing the new SPS so that the project can progress however the claim stayed unresolved. GWA's project engineers/Chief Engineer have further reviewed the claim and agree that additional work and material were used and as such approve the claim. The fund authorization to date is insufficient to work towards executing a Change Order thus GWA management is seeking CCU approval to increase project fund authorization.

Work related to the pending Change Order Proposal is part of the new Windward Hills SPS with anticipated completion of June 2019

GWA management is seeking CCU approval for additional funding for Change Order Proposal related to Phase II contract in the amount of Fifteen Thousand Two Hundred Twenty-Two Dollars and Twenty-Five Cents. (\$15,222.25). The approval of this resolution will bring the total authorized funding for Phase II to Six Million Three Hundred Seventy-Two Thousand Ninety-Three Dollars and Three Cents (\$6,372,093.03). The funding source is from wastewater bond funds applicable to the project.

Comm. Santos motioned to approve Resolution 24-FY2019, second by Comm. Guthertz. There was no further discussion or objection and the motion carried unanimously.

4.1.4 **Resolution No. 25-FY2019 Change Order Baza Gardens Wastewater Cross-Island Pumping and Conveyance Construction Management Contract**

The construction management change order(s) for CM services will allow for a continuity of services as it relates to any construction extension at the Baza Gardens Pump Station, Route 17 / Route 6 [wastewater conveyance project] due to contractor issues. The construction contractor of Phase III, Sumitomo Mitsui Construction Company (SMCC), has submitted to GWA time extension requests stating that the delay is due to inclement weather and sludge removal approximately 3,080 cubic yards were hauled and transported to Layon Landfill that push the completion of the project through June 2019.

GWA management still seeks CCU approval of additional funding not to exceed the amount of One Hundred Sixty Thousand Dollars (\$160,000.00) for the extended contract performance period through July 2019 including documentation of the project close out. Notwithstanding the fund increase request GWA will be negotiating down the fee proposal given the level of staffing and construction activities will ramp down towards the end of the construction period.

The approval of the One Hundred Sixty Thousand Dollars (\$160,000.00), which GWA will view on a Time and Materials basis, will bring the total authorized funding for the Construction Management contract to Three Million Three Hundred Thirty-Two Thousand Five Hundred Sixty-Four Dollars and Fifty-Nine Cents

(\$3,332,564.59). Funding will be from any available bond funds under the line item - WW 11-03 "Baza Gardens STP Replacement", and Internally Funded CIP funds as well as Liquidated Damages of \$3,000 per day from the contractor. The actual construction completion is projected to be by June 2019 however GWA anticipates the CM services will extend to July 2019.

Comm. Guthertz motioned to approve Resolution 25-FY2019, second by Comm. Limtiaco. There was no further discussion or objection and the motion passed unanimously.

4.1.5 Resolution No. 28-FY2019 Change Order No. 1 ConstrMgmt Services Contract for the GWA SCADA System for Water & WW Facilities Phase A-1

The project objective is primarily to install communication equipment on site to allow communication with Fadian SCADA servers. This also includes installation of instrumentation such as pressure and flow sensors as well as intrusion switches on site to record site conditions along with other existing instruments.

Due to contractor delays and compliance issues with contract requirements, GWA has negotiated a remedy to extend the contractor's project completion date contingent on the contractor agreeing to a list of conditions which includes a deductive change order on the construction contract. The deducted amount from the construction contract is used here to pay for additional CM services needed for the extended construction time as well as additional efforts needed to ensure contractor's execution of and compliance with contract requirements. This Change Order will extend contract completion date to 2019 JAN 30.

This project encompasses the wells at the following locations:

- Wells A-01, A-03, A-05, A-06, A-23, A-25, A-29, A-31, A-32, M-17B, M-20A;
- Route 16 Sewer Pump Station;
- Fujita Sewer Pump station; and
- Hagatna Wastewater Treatment Plant.

Original CM Contract was \$515,631.00. This Change Order No. 01 will add \$383,589.00; bringing the total contract value to \$899,220.00. GWA management also seeks CCU approval of a 10% contingency to the original contact price, or \$51,563.10 to bring the total authorized amount to Nine Hundred Fifty Thousand Seven Hundred Eighty-Three Dollars and Ten Cents (\$950,783.10). The funding source will come from CIP line item EE 09-09 SCADA Improvements – Phase 4.

Comm. Guthertz motioned to approve Resolution 28-FY2019 second by Comm. Santos. There was no further discussion or objection and the motion carried; the vote was unanimous.

Comm. Limtiaco asked what was being deducted the GM responded that the scope of work is the same but a couple of the design elements were eliminated and will be handled under another design contract for the reservoir project when ready. The contract price was reduced but minor change in the design changes.

On the motion there was no further discussion or objection and the motion carried unanimously.

4.1.6 Resolution No. 29-FY2019 Change Order Yigo and Astumbo Reservoir ConstrMgmt Contract

The objective of the change order is to continue the construction management services for the Yigo reservoirs site along Route 1 near the entrance to Anderson Air Force Base and the Astumbo reservoir is located off Ysengsong Road on Chalan Paluan, and increase funding to the contract. The continued services are required due to delay by the contractor (Pernix) in completing the project. The Contractor

has agreed through a Memorandum of Understanding to pay for the additional construction management cost for the duration of the project until final completion.

The Yigo and Astumbo Tank Construction project are Court Ordered thus the urgency is to complete the project as soon as possible but maintain adequate Construction Management oversight.

GWA and the construction management firm has negotiated the cost of One Hundred Twenty-Three Thousand One Hundred Ninety Dollars (\$123,190.00) to extend the services to August 16, 2019 for both sites. The cost is on a time and material basis. If the project finishes before the August 16, 2019 deadline, any unused portions will result in a deductive change order. The funding for this project will be from the bond funds under the line item - PW 09-11 "Water System Reservoirs 2005 Improvements" and PW 12-05 "Tank Major Repair Yigo #1, Mangilao #2, Astumbo #1". The funding sources will be replenished by money received from the contractor through a deductive change order from the contractor's contract.

The construction management services will continue up until August 16, 2019. Should the contractor delay the project past the projected August 16, 2019 deadline, GWA will negotiate to extend the construction management contract. Cost will be covered by the contractor.

Comm. Sanchez motioned to approve Resolution 29-FY2019 second by Comm. Guthertz.

In discussion Comm. Sanchez asked clarified on resolution line 29, page 53 of Board Books if cost goes beyond the \$123k or August 16, 2019 completion date, the contractor pays the difference? GM Bordallo confirmed yes.

On the motion there was no further discussion or objection and the motion carried unanimously.

4.1.7 Resolution No. 30-FY2019 Change Order No. 4 Central Guam Reservoirs Design

The objective of the change order is to authorize additional design services that are necessary for GWA to improve water distribution system functionality and reliability for service areas associated with the Hyundai, Pulantat/Manenggon, Chaot No. 2, Tamuning No. 1 (Airport), Tumon No. 1 (Nissan), and Piti reservoir. The following are part of this proposed change order:

Task A: Design changes to install a new pump controller unit at the new Hyundai Tank Booster Pump Station.

Task B: Design changes to the Chaot No. 1, Chaot No. 2, and Agana Heights Reservoirs SCADA.

Task C: Programming of the Chaot No. 1, Chaot No. 2, and Agana Heights Reservoirs SCADA.

Task D: Programming of the Manenggon, Tamuning No. 1 (Airport), and Piti Reservoirs SCADA.

Task E: Tamuning No. 1 (Airport) Reservoir - Tiyan Booster Pump Station, Sewer Line Rehabilitation, and Water Line Abandonment.

Task F: A-23 and A-25 (Serves Chaot and Agana Heights Reservoir) GAC System Additional Design.

Task G: Manenggon Reservoir Access Pump Station Additional Design.

Task H: Additional Structural Design to Increase Tamuning No. 1 Reservoir (Airport) from 2 Million Gallon Capacity to 3 Million Gallon Capacity.

GWA finds that it is in the best interest of the agency that the current engineering consultant conducts the additional work so as to expedite the design package preparation and provide cost savings given the design consultant is already aware of the system improvement needs.

The cost for the additional design services is \$200,458.00. The funding source will be from CIP line item PW 09-11 Water System Reservoirs 2005 Improvements and EE 09-09 SCADA Improvement – Phase 4. If

the Change Order is approved, the design schedule will have the final tank design tasks completed by December 2019; however, the date may be adjusted if new issues arise.

Comm. Santos asked the status of the airport project and the GM said he is waiting the GIAA attorney to review and get back to GWA.

Comm. Limtiaco asked if the design work being proposed already completed the GM said no – some still need to be completed. The design was taken up to a certain level and this contract will add the SCADA component.

Comm. Santos asked if the original contract was not completed. There was discussion on why GWA allows contractors to come back for more work if they cannot complete a project the first time. It was discussed that these projects were supposed to be completed in 2017. The GM explained that management utilizes the contract mechanisms in place in order to get the performance needed. Management worked with the bonding company to come to resolution. Management felt their needs were met and the personnel involved were changed out and they [the contractors] stepped up their end.

Comm. Santos motioned to approve Resolution 30-FY2019 second by Comm. Guthertz. There was no further discussion and the motion passed unanimously.

4.1.8 Resolution No. 31-FY2019 Approval of the Chlorine Bid Under PUC Contract Review Protocol

If approved Resolution 31-FY2019 will provide sufficient supply of liquid chlorine used to treat and disinfect GWA's drinking water in accordance with the Safe Drinking Water Act and as required by federal and local laws and regulations.

The purpose of this procurement and the use of product (liquid chlorine) supplied under this procurement are necessary for the protection of public health and safety, and are a mandatory and critical part of GWA's water operations, and therefore are inherently necessary and urgent. The chlorine purchased will be used at various GWA locations island-wide.

The three (3) Year contract cost is per the following:

150lbs. Chlorine Cylinder \$618.00 each

1 Ton Chlorine Cylinder \$6,097.78 each

Bid Specified amount estimated for 150lbs. is 1,260 cylinders Annually

Bid Specified amount estimated for 1 Ton is 12 cylinders Annually

Cost for 150lbs. Chlorine Cylinder \$586.68/\$778,680.00 Annually

Estimated Cost for 1 Ton. Chlorine Cylinder \$6,097.78/\$73,173.36 Annually

Total Cost \$851,853.36 Annually

Total expenditure for the 3-year contract term is **\$2,555,560.08**

The procurement of these essential treatment chemical is intended to be funded from revenues (O&M) and will be completed in three years.

Comm. Duenas asked if there was a current contract in place and the management confirmed yes.

Comm. Guthertz motioned to approve Resolution 31-FY2019 second by Comm. Santos. There was no further discussion or objection and the motion passed unanimously.

4.1.9 Resolution No. 32-FY2019 Ratification of Expenditures for Track Me Guam, LLC.

There is an ongoing need to maintain the fleet and fuel management software services which were provided under a previous Memorandum of Understanding, and GPA-led procurement for such services. The original contract for these services expired in January 2018, and GWA procured additional services for system access & data communication, also referred to as on-board vehicle diagnostics and GPS tracking, for proprietary fleet management devices already installed in active GWA Vehicles under a separate sole-source procurement.

An open competitive procurement is in process for fleet and fuel management services for GWA vehicles and is anticipated to be awarded shortly. However, the recurring monthly service charges prior to the issuance of the existing sole-source procurement were unauthorized, and GWA Management is requesting ratification of the existing procurement so that payment can be made.

The service has been provided for active GWA fleet vehicles in which the proprietary fleet management devices have already been installed and are used island-wide (Tracking Services). The amount GWA Management is seeking for ratification is \$24,640.00 and will be revenue funded. This contract is on-going through FY2019.

Comm. Santos motioned to approve Resolution 32-FY2019 second by Comm. Guthertz.

In discussion it was mentioned that the procurement is sole source because of the proprietary nature of the equipment already in some of the vehicles. AGMA Budasi mentioned that GPA released another bid at the end of last FY that did not include GWA. It was mentioned that he will discuss this matter with GM Benavente to confirm the rationale for not doing dual procurement. Santos expressed that he is upset that GPA was not on board with GWA on this program stating that GPA and GWA should be one utility supporting the entire island.

Comm. Limtiaco asked if current solicitation was already released and AGMA Budasi confirmed yes – the bids are in already but the evaluation is still pending.

There was discussion on who is tracking the vehicles and the mechanism amongst the supervisory team for proactive use. GM Bordallo confirmed that management uses it proactively but not at the frequency to justify the expense. GWA does not have enough people so some managers use it proactively and some do not. Comm. Sanchez said perhaps this should be revisited to up the productivity since we have the tool it should be used.

Comm. Limtiaco mentioned that he saw bucket trucks at Gun Beach while running one Saturday morning and he noted license plates and reported it but to date have not received any feedback.

Comm. Duenas said that it is understood that not all procurement can be combined but for economies of scale it is possible to do so on some items and he strongly recommended to GM Bordallo to work together with GM Benavente to take advantage of volume purchase and lower pricing.

On the motion there was no further discussion and the motion passed unanimously.

4.1.10 Resolution No. 33-FY2019 Approval 1-yr Extension Indefinite Quantity Contract with Badger Meter, Inc. for Additional Purchase of Water Meters

The objective is to exercise the available one (1) year option period under the existing contract to authorize the purchase of additional water meters that are needed for meter replacements and to insure

there is adequate stock available to meet the requirements of the 2011 Court Order and new service applications.

GWA management is seeking CCU approval to exercise the one (1) year extension of the indefinite quantity contract with Badger Meter Inc. and for additional purchases under that contract extension. Price adjustments allowable under the terms of the contract have been proposed by Badger Meter and have been found to be reasonable by management. The project is necessary to keep sufficient meters and accessories in stock for operational needs, and for the on-going meter replacement program – the meters will be used to replace old and/or install new meters throughout GWA's systems.

Additional meter purchases are estimated to cost up to One Million Five Hundred Fifty-Nine Thousand Eight Hundred Eighty-Three and Nineteen Cents (\$1,559,883.19) which brings the total authorized funding to Five Million Three Hundred Seventy Thousand Five Hundred Eighty-Eight Dollars and Twenty-Eight Cents (\$5,370,588.28) under IFB 2015-13. GWA Management is still negotiating with Badger Meter Inc. for cost adjustments related to meters management believes should be replaced under warranty, and as such, the additional costs estimated do not reflect anticipated credit adjustments. The source of the funding for the purchase of additional water meters will come from Internally Funded Capital Improvement Projects and any other appropriate funds identified by finance. The contract term is from February 23, 2019 through February 23, 2020.

Comm. Santos motioned to approve Resolution 33-FY2019 second by Comm. Guthertz.

Comm. Limtiaco wanted confirmation that the purchase order is for no guaranteed quantity and that the price is stable. GM Bordallo concurred that the purchase is for an indefinite quantity contract and the price only thing locked in is the price.

On the motion there was no further discussion or objection and the motion carried. The vote was unanimous.

5. GPA

5.1 New Business

5.1.1 GM Report

GM Benavente announced that he will be conducting employee briefings; when asked how often he does this he responded that he tries to do this twice a year or every 6 months. He said his presentation is about 120 pages long. Chairman said he wanted this info for the record because it is important to reach out to employees and not only for bad news.

Comm. Santos asked the status of GPA's Drug Workplace Policy and the GM said there is no change from the last update. Chairman Duenas said the former AG rendered an opinion citing the 4th amendment and that GPA cannot just randomly test everyone. There was discussion on research that GWA's counsel performed and opined that he found precedence and agreed with the former AG's opinion. As a result, GWA amended their Drug Workplace Policy and about 73% of their employees who fall under the Test Designated Positions [TDP] list and are subject to random testing the other 27% do not. GM Benavente said he will have GPA's counsel verify with the current AG on this matter. Comm. Santos said he would like GPA to get this done by the next meeting. It was mentioned that if GPA does not want to change its drug policy that's fine but please update the Commission.

GPA counsel Botha said that the previous AG rendered this opinion and she is not there anymore so it is his opinion that GPA is not in violation. GM Benavente said he will discuss this matter further with counsel to get the current AG's opinion and then action this matter accordingly.

5.1.2 Financials

GPA Financials were not discussed at this meeting.

5.1.4 Resolution 2019-06 Tank Farm New ULSD Pipeline System

If approved, Resolution 2019-06 will allow GPA to comply with USEPA's Consent Decree. The objective is for GPA to significantly reduce power plant emissions. GPA will comply with USEPA's requirement by procuring services for the design and construction of the Tank Farm New ULSD Pipeline System to supply ULSD oil to the Piti Tank Farm, and Power Plants TEMES 7, MEC 8 and MEC 9. The ULSD pipeline system consists of 8-inch, 12-inch, and 24-inch diameter pipes with supports/pedestals, pipe manifolds, valves, and pumping station to include motor, pumps, concrete roof, berms and pads. The 24-inch ULSD pipeline will be interconnected from the US Navy tie-in to tanks 1934 and 1935, the 12-inch pipeline will be interconnected from tanks 1934 and 1935 to the pumping station and the 6-inch pipeline will be interconnected from the pumping station to the Power Plants TEMES 7, MEC 8 and MEC 9. The ULSD pipeline system will be operated and maintained under USEPA and American Petroleum Institute (API) guidelines and regulations.

The anticipated cost for this project is \$100,000 for engineering / construction management, \$3,495,944 for AYM Design-Build Contract for total of \$3,595,944 and will be funded by Cabras 3&4 insurance proceeds. The project will begin in July 2019 and will be completed in July 2020

Comm. Sanchez motioned to approve Resolution 2019-06 second by Comm. Limtiaco. There was no further discussion or objection and the motion carried unanimously.

5.1.5 Resolution 2019-07 Approval of Utility Energy Service Contract (UESC) Costs

This resolution seeks authorization to petition the PUC for the contract increase approval of Siemens to \$1,933,374 for projects related to demand side management and energy efficiency programs. Siemens was awarded the contract from the Request for Proposal No. GPA-RFP-16-013 issued in May 2016 for Partnering Opportunities for the Development of Demand-Side Energy Conservation Programs and Utility Energy Services Contract Programs. The Utility Energy Services Contract supports GPA's demand side management program in the implementation or execution of energy efficiency and renewable projects for our large customers which may include financing as well as technical support.

The tasks include energy efficiency projects at GDOE and potentially other schools on the island. The opportunity for the projects at Carbullido, George Washington and Southern schools will be during this summer while school is out of session. The projects for Carbullido, GW and Southern schools are expected to be completed by Summer 2019. The project under the Guam Energy Office must be completed before December 2020.

Most of the current contract costs will be used for energy efficiency projects at Carbullido Elementary School and the George Washington and Southern High Schools. In addition, some funds will be used at other schools, yet to be determined, for energy audits and an energy efficiency conference through the Guam Energy Office grant award. The current contract costs are totaling \$1,933,374. The funding source will come from grant funds (68%), \$500k from bond refinancing savings [approved by CCU and PUC in January 2018] and the balance through CIP's in FY2020.

Comm. Guthertz motioned to approve Resolution 2019-07 second by Comm. Limtiaco. There was no further discussion or objection and the motion passed unanimously.

5.1.6 Resolution 2019-08 Relative to LEAC Filing

The Guam Public Utilities Commission (GPUC) has established a Tariff under which the Guam Power Authority (GPA) is allowed to recover its fuel costs and fuel related costs under a factor which is reset and trued up every (6) six months through the Levelized Energy Adjustment Clause (LEAC). The deadline for the next filing is June 15, 2019. For the LEAC period covered from February 1, 2019 through July 31, 2019, GPA requested to maintain the LEAC rate of \$0.154242/kWh that was approved by the CCU and GPUC.

The average market price of fuel in the initial filing for the current period was approved at \$66.73/bbl for the (6) six-month period ending July 31, 2019, the current projection for the same period is \$72.87/bbl and the projected price of fuel for the period ending January 31, 2020 is \$74.18/bbl;

Although GPA will file the required LEAC schedules, it has determined that it will not petition for a change in the LEAC factor for secondary voltage service customers as well as alternative voltage customer for the period of August 1, 2019 to January 31, 2020.

GPA management recommended no change in LEAC and to keep the LEAC rate at \$0.154242/kWh effective for the period from August 1, 2019 thru January 31, 2020.

Based on this status quo approach, an under-recovery of about \$9M is anticipated by the end of the LEAC period on January 31, 2020 which will have some impact on the working capital and other financial ratios; however, GPA will be able to manage for a short-term period.

Comm. Guthertz motioned to approve Resolution 2019-08 second by Comm. Limtiaco.

Comm. Sanchez said for last year GPA was able to support some under recovery and next February the under recovery is expected to still be about \$9M. If GPA can live without recovering this shortfall for a year, would management consider absorbing the \$9-13M under recovery. GM Benavente responded that it is too early to consider this because we are not over the hump yet but will take a look at it.

Comm. Santos asked why does the LEAC adjustment overlap the budget period. Currently the first four (4) months of the FY is being impacted because of the timing of the LEAC adjustment. Comm. Sanchez said it's a pass thru expense and does not impact revenues. It was mentioned that management could petition the PUC to change the LEAC periods to coincide with the start of the FY.

On the motion there was no further discussion or objection and the motion passed; the vote was 5 ayes.

6. ANNOUNCEMENTS

6.1 Next CCU Meetings

The Chairman said the next CCU meeting would be a CCU meeting on June 5 to discuss the 5-year rate plan and vertical construction of secondary treatment for Northern District.

Comm. Sanchez said he thought that there would be a work session after the GWA outreach and feedback to review the sensitivity analysis for various options for the related rates. It was decided to keep the sensitivity analysis discussion at the June 5th meeting instead of a work session.

GWA counsel Clark said that there were two (2) litigation matters for GWA and a court reporter is present for proper transcription. It was clarified that if the litigation matter is settled the matter becomes public in three (3) months; if not settled it will be made public in six (6) months. It was also

clarified that a court reporter is only there to transcribe discussions relative to litigation and that it was not necessary to transcribe discussions relative to personnel.

Comm. Santos motioned to move to executive session for items 7.1 and 7.2 second by Comm. Guthertz. On the motion there was no further discussion and the motion passed unanimously

The Chairman called for a 5-minute recess before executive session. It was 6:20 p.m.

7. EXECUTIVE SESSION

7.1 Atty. Kelly Clark – GWA Litigation Matter

7.2 Atty. Kelly Clark – GWA Litigation Matter

7.3 Atty. Vince Leon Guerrero – CCU Litigation Matter

7.4 Atty. Vince Leon Guerrero – CCU Litigation Matter

The meeting returned to regular session and the Chairman said he would entertain a motion.

Comm. Guthertz motioned to approve Resolution 34-FY2019, a claim for Jose Delos Trilnos for \$91,500 second by Comm. Santos. There was no further discussion or objection and the motion passed unanimously. *[For the record Resolution 34-FY2019 was not listed on the Agenda because it was a litigation matter and any action taken by the Commission was dependent on the outcome of discussions in Executive Session relative to this litigation matter].*

The meeting moved back to Executive Session to discuss item 7.3. For the record 7.4 was considered moot and was not discussed.

In discussion Comm. Sanchez asked if in the future more detail could be provided on the agenda for executive session items for the purpose of clarity. The Chairman said absolutely and that he would discuss this matter with both counsels Clark and Botha.

Outside Legal Counsel Vince Leon Guerrero read his affidavit and said he recommends that the meeting be moved to executive session to discuss a litigation matter ref Joaquin Leon Guerrero vs. GovGuam SP88-19

Comm. Guthertz motioned to move to executive session second by Comm. Santos

Comm. Sanchez said because he did not see his affidavit, he asked outside counsel Leon Guerrero if he Mr. Joaquin Leon Guerrero's name was included in his affidavit, his response was no it was not. Comm. Sanchez asked if outside counsel was amending his affidavit verbally to include the name of the litigant Joaquin Leon Guerrero and Counsel Leon Guerrero confirmed yes, he was.

The meeting moved to Ex. Session. After executive session, the meeting moved back to Regular Session

Comm. Sanchez motioned that outside counsel proceed to respond to the Leon Guerrero litigation as discussed in executive session second by Comm. Guthertz.

Comm. Sanchez asked outside counsel if the motion was legally sufficient and outside counsel Leon Guerrero said yes, he believed it was.

Comm. Limtiaco said that last month opened everyone's eyes that there are some procedural items that the Commission can fine tune i.e. rules and regulations that can be put in place. He said he would like to

make a motion to establish a Rules Committee, volunteering to chair this committee, so that a set of standards can be developed to fully understand the duties of the CCU elected officers. The CCU Rules Committee would be similar to the legislative standing rules committee. It was discussed that definitions be included in the draft. Comm. Duenas also recommended that the Rules Committee formalize the Standard Operating Procedure (SOP) for appointments, employment and termination in executive session. The Committee would work with counsel to develop the definitions, prepare the draft citing the supporting case law, where necessary. It was discussed that all members of the Commission would be members of the Rules Committee. All agreed that this was a good recommendation and thanked Comm. Limtiaco for volunteering to chair the CCU Rules Committee.

Comm. Limtiaco restated his motion - to establish a Standing Rules Committee for the Consolidated Commission on Utilities to include all five members of the Commission as members second by Comm. Guthertz. On the motion there was no further discussion or objection and the motion passed unanimously.

Outside Counsel Leon Guerrero advised that the Chairman asked him to draft a letter to the Attorney General advising him of the CCU action/s to date relative to his 4/23/19 letter addressing the Executive Session meeting of Nov. 27, 2018. Outside Counsel read his draft which specified all actions taken by the Commission to date – to rescind all pay raises given, to rescind all bonuses given, to payback pay adjustment / bonus, to release Minutes, documents and recordings of Executive Session of Nov. 27, 2018. It was agreed that he would draft the letter and that Chairman Duenas would sign the letter and send to Atty. General Camacho.

Comm. Limtiaco asked outside counsel about the (5) opinions that the Commission asked him to draft and whether or not he would still provide a response i.e. the declaratory judgement issue and others. Outside counsel apologized and said he thought the matter was moot and that is why he did not do so to date. After some discussion it was decided to have outside counsel proceed to draft the opinion and deliver via the Chairman who will then disseminate to the other four Commission members.

8. ADJOURNMENT

There being no other business to bring before the Commission, the meeting adjourned at 7:40 p.m.

||s||

Bls

Attested



JOSEPH T. DUENAS, Chairman



MICHAEL T. LIMTIACO Secretary