



RESOLUTION NO. 2021-20

Relative to Approving the Proposed Amendment to the Consent Decree with the United States Environmental Protection Agency (USEPA)

WHEREAS, the U.S. Environmental Protection Agency (USEPA) filed a complaint against GPA alleging violations of the Clean Air Act (“CAA”), and on April 20, 2020, the Court entered a negotiated Consent Decree to resolve the alleged violations of the CAA; and

WHEREAS, the COVID-19 pandemic has adversely impacted GPA’s ability to timely fulfill some of the Consent Decree compliance requirements. The pandemic’s impacts, which include the government of Guam’s quarantine requirements and travel restrictions, have also impacted GPA’s energy partners in Asia and hindered Guam’s administrative operations, including the permitting and historic preservation work needed to fulfill the Consent Decree requirements; and

WHEREAS, the military buildup on Guam also has impacted GPA’s schedule for fulfilling certain Consent Decree compliance requirements. This buildup has resulted in competition for materials and resources, labor shortages, and more stringent government oversight and approval processes, and other factors – including fuel storage limitations, permitting delays, and significant adverse weather conditions – have impacted GPA’s ability to timely comply with certain Consent Decree provisions as well; and

WHEREAS, the State Implementation Plan (“SIP”) requires GPA to be in compliance by April 2023 by switching to a lower sulfur fuel, and in order to reach attainment with federal standards for sulfur dioxide emissions, GPA has agreed to transition to a fuel that is “cleaner” than the fuel required under the existing Consent Decree. Specifically, GPA has agreed to transition to a fuel with sulfur content of no greater than 0.2% to power Cabras Units 1 and 2 until their retirement. This will substantially reduce emissions as compared to the low sulfur residual fuel oil (“RFO”) allowed by the Consent Decree; and

WHEREAS, the parties have agreed to certain modifications of the Consent Decree, most of which pertain to the schedules for implementing the injunctive relief required by the Decree.

30 The following is a redline and strikeout summary of the proposed modifications:

- 31 a. Paragraph 18: By ~~May 1, 2021~~ December 31, 2021, construction of the new
32 ULSD pipelines described in Paragraph 16 shall be completed.
- 33 b. Paragraph 22: By ~~December 31, 2021~~ July 31, 2022, and continuing
34 thereafter, GPA shall: (1) complete the installation of oxidation catalysts at
35 Piti Units 8 and 9; (2) use only ULSD as a fuel to power Piti Units 8 and 9; and
36 (3) otherwise comply with all requirements of the RICE NESHAP at those
37 Units.
- 38 c. Paragraph 23: Beginning ~~December 31, 2021~~ July 31, 2022, and continuing
39 thereafter, GPA shall test the sulfur content of all fuels used at Piti Units 8
40 and 9. GPA shall arrange for such tests by sampling and analyzing each
41 shipment of fuel to be used at these Units, both before it leaves its location
42 of origin (e.g., Singapore) and after it arrives at the Apra Harbor unloading
43 dock on Guam. GPA shall use the test methods contained in ASTM D2880 in
44 ascertaining the sulfur content of these fuels, and shall maintain records of
45 the fuel sulfur content as part of the recordkeeping obligations established in
46 Paragraphs 24 and 25.
- 47 d. Paragraph 24: By ~~December 31, 2021~~ July 31, 2022, and continuing
48 thereafter, as long as MEC operates Piti Units 8 and 9 and the requirements
49 of Paragraph 22 have not yet been met, MEC shall create and maintain for at
50 least five years, in a form suitable for inspections, a daily record showing the
51 amount(s) (e.g., gallons) and type(s) of fuel (e.g., ULSD or RFO) used to power
52 Piti Units 8 and 9.
- 53 e. Paragraph 25: By ~~December 31, 2021~~ July 31, 2022, and continuing
54 thereafter, if at any time GPA operates, directly or through a third party, Piti
55 Units 8 and 9, and the requirements of Paragraph 22 have not yet been met,
56 GPA shall create and maintain for at least five years, in a form suitable for
57 inspections, a daily record showing the amount(s) (e.g., gallons) and type(s)
58 of fuel (e.g., ULSD or RFO) used to power Piti Units 8 and 9.

- 59 f. Paragraph 27: On-site construction activities for the new power plant
60 described in Paragraph 26 shall meet the following interim milestones: (1) all
61 concrete foundations and pads shall be poured and completed by July 31,
62 ~~2021~~ 2022; (2) a complete engineering report for the entire project shall be
63 completed by January 31, 2021; and (3) installation of the new generating
64 units shall commence by ~~April 1, 2022~~ November 1, 2022.
- 65 g. Paragraph 28: By ~~October 31, 2022~~ April 30, 2024, GPA shall operate 180
66 MW of new generation utilizing only ULSD, at least initially, but capable of
67 burning natural gas.
- 68 h. Paragraph 29: At the time one of the two main tanks at the Peterra Tank
69 Farm is removed from service so that it can be refurbished to handle ULSD,
70 GPA shall submit a notification to EPA setting forth the identification of the
71 tank removed from service (#1934 or #1935) and the date it was emptied
72 and removed from service ("Tank Refurbishment Date"). ~~Beginning no later~~
73 ~~than the Tank Refurbishment Date and continuing thereafter, GPA shall use~~
74 ~~only Low Sulfur Residual Fuel Oil as a fuel to power Cabras Units 1 and 2.~~
75 Once the other, second tank has been emptied of high sulfur RFO, including
76 all sludge from the high sulfur RFO, but in no event later than December 31,
77 2022, and continuing thereafter, GPA shall use a blended fuel with no greater
78 than 0.2% sulfur by weight to power Cabras Units 1 and 2.
- 79 i. Paragraph 30: Beginning on ~~the Tank Refurbishment Date~~ December 31,
80 2022 and continuing thereafter until GPA, or a third party on behalf of GPA,
81 no longer operates Cabras Units 1 and 2, GPA shall test the sulfur content of
82 all fuels used at Cabras Units 1 and 2. GPA shall arrange for such tests by
83 sampling and analyzing each shipment of fuel to be used at these Units, both
84 before it leaves its location of origin (e.g., Singapore) and after it arrives at
85 the Apra Harbor unloading dock on Guam.

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- 88 GPA shall use the test methods contained in ASTM D2880 in ascertaining the
89 sulfur content of these fuels and shall maintain records of the fuel sulfur
90 content as part of the recordkeeping obligations established in Paragraph 31.
- 91 j. Paragraph 31: Beginning on ~~the Tank Refurbishment Date~~ December 31,
92 2022, and continuing thereafter until GPA, or a third party on behalf of GPA,
93 no longer operates Cabras Units 1 and 2, GPA shall create and maintain for at
94 least five years, in a form suitable for inspections, a daily record showing the
95 amount(s) (e.g., gallons) and type(s) of fuel (e.g., Low Sulfur Residual Fuel Oil
96 or RFO) used to power Cabras Units 1 and 2.
- 97 k. Paragraph 32: By October 31, ~~2022~~ 2024, GPA shall permanently Retire
98 Cabras Units 1 and 2.
- 99 l. Paragraph 42: Within 30 Days of the Effective Date, GPA shall award a
100 contract for at least 100 MW of solar power, with construction to be
101 completed by December 31, ~~2021~~ 2023. This 100 MW of power is in addition
102 to 25 MW of solar power that GPA has already installed at the Dandan
103 facility.
- 104 m. Paragraph 43: ~~Within 30 Days of the Effective Date~~ By March 1, 2021, GPA
105 shall complete installation and operation of a 40 MW energy storage system.
106 The energy storage system shall consist of: (1) a renewable integration
107 system at the Talofofu Substation with an instantaneous delivery capacity of
108 16 MW and a storage capacity of 16 MW hours; and (2) a frequency
109 regulating system at the Agana Substation with an instantaneous delivery
110 capacity of 24 MW and a storage capacity of 6 MW hours.
- 111 n. Paragraph 55.e: Failure to use only ULSD at Piti Units 8 and 9 after ~~December~~
112 ~~31, 2021~~ July 31, 2022, pursuant to Paragraph 22, \$1,500 per Day for the first
113 30 Days of noncompliance, \$4,500 per Day for the 31st through 60th Day of
114 noncompliance, and \$7,500 per Day thereafter for either Unit or both Units.

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- 117 o. Paragraph 55.g: Failure to commence operation of 180 MW of new
118 generating power at the new power plant by ~~October 31, 2022~~ April 30,
119 2024, pursuant to Paragraph 28, \$1,000 per Day for the first 30 Days of
120 noncompliance, \$1,500 per Day for the 31st through 60th Day of
121 noncompliance, and \$2,000 per Day thereafter.
- 122 p. Paragraph 55.h: Failure to use only Low Sulfur Residual Fuel Oil at Cabras
123 Units 1 and 2 after ~~the Tank Refurbishment Date~~ December 31, 2022
124 pursuant to Paragraph 29, \$1,000 per Day for the first 30 Days of
125 noncompliance, \$2,000 per Day for the 31st through 60th Day of
126 noncompliance, and \$5,000 per Day thereafter for either Unit or both Units.
- 127 q. Paragraph 55.i: Failure to Retire Cabras Units 1 and 2 by October 31, ~~2022~~
128 2024, pursuant to Paragraph 32, \$1,000 per Day for the first 30 Days of
129 noncompliance, \$3,000 per Day for 31st through 60th Day of noncompliance,
130 and \$5,000 per Day thereafter for either Unit of both Units.

131
132 **WHEREAS**, in addition to CCU approval, the amendment to the Consent Decree must be
133 authorized by the Assistant Attorney General for the Environment and Natural Resources
134 Division of the Department of Justice. Once the Department of Justice (DOJ) files the
135 amendment to the consent decree with the United States District Court of Guam, a public
136 notice will be published in the Federal Register, after which the public will have 30 days in
137 which to submit comments. After the close of the public comment period, the DOJ, in
138 coordination with EPA, will respond to any comments submitted and request that the Court
139 approve the amendment to the Consent Decree as an order of the court.

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141 **NOW THEREFORE, BE IT RESOLVED**, by the Consolidated Commission on Utilities, as follows:

- 142 1. For all the reasons listed herein, and based on all the additional information
143 provided by GPA over the course of the extensive negotiation process with the
144 USEPA and the US Department of Justice (DOJ), the CCU determines that is in the
145 best interest of the ratepayers of Guam to proceed with the proposed amendment
146 to the Consent Decree with USEPA and DOJ.

147 **RESOLVED**, that the Chairman of the Commission certifies and the Secretary of the
148 Commission attests the adoption of this Resolution.


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150 **DULY and REGULARLY ADOPTED** this 27th day of July, 2021.

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Certified by:

Attested by:



JOSEPH T. DUENAS
Chairperson
Consolidated Commission on Utilities



MICHAEL LIMTIACO
Secretary
Consolidated Commission on
Utilities

152 **I, Michael Limtiaco, Secretary for the Consolidated Commission on Utilities (CCU), as**
153 **evidenced by my signature above do certify as follows:**

154 The foregoing is a full, true, and correct copy of the resolution duly adopted at a regular
155 meeting of the members of Guam Consolidated Commission on Utilities, duly and legally held at
156 the meeting place properly noticed and advertised at which meeting a quorum was present and
157 the members who were present voted as follows:

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159 Ayes: 4

160 Nays: 0

161 Absent: 1

162 Abstain: 0

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