



CONSOLIDATED COMMISSION ON UTILITIES

Guam Power Authority | Guam Waterworks Authority
P.O. Box 2977 Hagatna, Guam 96932 | (671) 648-3002 | guamccu.org

CCU Regular Board Meeting

CCU Conference Room, Gloria B. Nelson Public Service Building
5:30 p.m., Monday, February 21, 2023

MINUTES

1. CALL TO ORDER

The Chairman opened the meeting at 5:34 p.m. He announced that all five (5) Commissioners were present.

Commissioners:

Joseph (Joey) T. Duenas	CCU Chairman
Michael T. Limtiaco	CCU Vice-Chairman
Pedro Roy Martinez	CCU Secretary
Francis Santos	CCU Board Member
Simon Sanchez	CCU Board Member

Executive Management:

GPA	GWA
John Benavente, GM (online)	Miguel Bordallo, GM
Melinda Mafnas, AGMO (online)	Thomas Cruz, AGMO
John J. Cruz, Jr., AGMETS (online)	Chris Budasi, AGMAS
Tricee Limtiaco, AGMA	Taling Taitano, CFO
John Kim, CFO	Therese Rojas, Legal Counsel
Graham Botha, Legal Counsel	

Management and staff:

GPA	GWA
Joyce Sayama, Communications Manager	Ann Borja-Gallardes, Management Analyst IV
Candice Ananich, Management Analyst IV	Mauryn McDonald, Senior Engineer Supervisor
Reginald Diaz, Management Analyst III	Brian Hess, Senior Engineer Supervisor
Vien Wong, Computer Technician II	Vangie Lujan, Senior Regulatory Analyst
Vladimir Navasca, Help Desk Technician	
Selma Blas, Administrative Officer	

Guests:

Mike Park, Ratepayer
Annmarie Muna, AM Insurance
Rino Manzano, MEC (online)

2. APPROVAL OF MINUTES

The minutes of November 14, 2022 SPECIAL meeting was presented for approval.

[Francis] Motion to Approve.

[Pedro Roy] Second.

[Joey] Any further discussion? Subject to written correction? All those in favor signify by saying "Aye"?

[Commissioners] "Aye"

[Joey] Motion 5 Ayes, 0 Nays – Motion carries.

3. PUBLIC COMMENT: Mike Park

[Mike Park] Hi, I am Mike Park, resident of Guam, ratepayer, and FD graduate.

I'm here to request to make a sewer line connection to my family's commercial building (Lot number 2105-1). Located across from AK Toyota, right behind where the new landowners for Auto Spot is, right next to that movie theater area. So we're kind of squished up against the big landowners on one side and Iriarte Road on the other side.

I have been working with Mr. Hess and Mauryn McDonald. They've been very helpful in letting me know the situation. I know currently there's been a cesspool elimination study. Mr. Duenas, a couple of weeks ago, you said "if we do this, there is going to be people coming in and we've got to make priorities". I understand you guys have your own priorities too but I'm here to make a request that you consider making a sewer line to my property.

I do have a planned use that will benefit Guam. I'm partnering with one of the doctors at FHP, Dr. Edwin Supit. He used to be the former owner of Heavenly Veggies. He did close down during COVID. We want to open something to serve healthy food for Guam but as you know, running a restaurant without a sewer line connection is very challenging. I do have Maps here. I didn't print enough, if anybody would want to take a look at it. I do have digital files floating around with Mauryn and Mr. Hess.

I'm kindly requesting that you guys consider my request for a commercial sewer line connection to my property.

[Joey] Okay, I just have one quick question, is this a new development you're going to put up?

[Mike Park] No, there is an existing building, built by my father it in the early 90s. He was planning to put a sewer line and I have all the correspondence from back then. DPW actually blocked it, saying that there was a Navy easement in the area. So we did have intentions to make a sewer line connection but upon moving forward to building it, it was blocked by DPW.

[Joey] So the building is existing?

[Mike Park] Yes.

[Joey] There's no restaurant in it yet?

[Mike Park] No. No restaurant.

[Joey] It's just a commercial building?

[Mike Park] Yes.

For the past 30 years since we built it in the 90s, we've been very limited by just having a septic tank so for the past 25 years. The building was occupied by a Korean church, but they have since moved out, during the pandemic.

I met with Dr. Supit, he wants to do something that's closer to where he works, which is at FHP. This is something that will benefit the island. So, I kindly request for your consideration.

[Simon] Have you discussed with GWA, what is the problem with connecting to the existing sewer lines near you? Is there a problem connecting with existing sewer lines by your property?

[Mike Park] There are no sewer lines within a 500-foot radius (holds up picture). There's no real way to connect through the public sector, for 30 years, this is not the first time we were approached GWA. My father did it, throughout the years but they always tell us, oh just go next door and talk to the landowners and maybe you can connect to their private sewer line. And so that's how it's kind of been pushed along through all these years. I've read all the reports it seems like you guys are taking action on eliminating cesspools.

[Simon] Have you brought this issue to GWA management and the process of applying to connect? And if you did, what did they say to you?

[Mike Park] It's never gone this far because I never met with Mr. Hess and Mauryn. In previous years, maybe about five years ago, when I came they did the same thing. They just looked and they go, the closest manhole is on the Mr. Del Carmen's property, so you need to go ask him if he can connect.

That's how they left it and I didn't really push it. I thought there was no other option but you know the more I did some reading, our studies are coinciding with the same intent, to eliminate cesspools. I think now is a good time for me to come before the CCU and at least make an official request so that at least it's on the record.

[Simon] Miguel maybe you can help me, isn't it our normal practice, we would tell a customer to connect to the nearest sewer line at their expense?

[Miguel] Under the service rules, if it's an area that's outside of our service area and the connection is desired, then the cost of that connection would be by the developers.

In this instance, the recommendation about having the nearest line (a private line) which we don't own and for which we understand there are no easements, so there would need to be an agreement between Mr. Park and owner of that private line to connect to that private line.

The request here is, if that is not an option, and GWA is in the process of extending its collection system, would we take this opportunity to extend in this area, such that you can connect to a public sewer?

The study that was done, the septic tank elimination study, and the recommendations within that study, call for us to prioritize extending the collection system in areas where it impacts our well heads. Unfortunately, this area is not on that basis going to be a priority based on the recommendations of the study.

However, there are other reasons to do it, if there's an economic benefit, that becomes a priority for the Board. But, that's not currently in the study nor the study's recommendations. So the way we would carry it out, would be to follow the recommendations in the study in terms of prioritizing projects. I think Mr. Park is just expressing that he considers this to be a priority, he may not align with ours, but he's asking for consideration.

[Simon] Do you have a recommendation from your point of view?

[Miguel] At this point, I still have questions for our engineering department. The other issue that comes up is, even if were to extend it, how would we get it? This goes through rights of ways, which I do not have defined yet. That's one of the questions that I have.

A little more research is needed for my part to understand what all of our options are but I think the engineering team has done a good job of presenting what they know as of now and what the recommended course of action would be without this particular request in place.

[Simon] And the recommended course of action is not to shift our priorities for line extensions?

[Miguel] For expediency, the recommended course of action is there is an existing private line that you can connect to which is within closer distance than any public line at this point, if there is an urgent need to connect to it, you would seek to obtain an easement from the owner of that.

[Simon] But in the meantime, we don't have immediate plans to extend the system in our list of extending the system, this particular area, is not in our immediate priorities?

[Miguel] It's not it has not been identified as an immediate priority.

[Simon] We are extending sewer lines but the first place we're going is where we pump up water, where the wells are. We want affect those wells from any kind of wastewater cross contamination or sewage. The challenge is we are extending the system but you know Guam's a small island then Guam's kind of a big island, in the sense that, as we plan to extend the system, we don't have immediate plans to extend the system in this area. He (Miguel) has to juggle that. We approve macro expenditures; we don't necessarily get involved with every individual customer's particular situation. You can still work with management and it's been unusual in all the years, that we order management to change their Capital Improvement plan to say, instead of being in this area, go be in this area for customer so and so. Not that we're against any customer but we have to prioritize

where we spend the money to extend the system. If I'm hearing management right, the area you're asking us to prioritize is not something that we're going to be doing in the next year, two or three years.

[Michael] Miguel in this area, are there any other owners of property that would benefit from this?

[Miguel] There are an existing 18 water accounts in the area, that if sewer service was extended, could potentially take advantage of that.

[Michael] Have we done the cost benefit analysis? What is it going to cost to put in? What would that wastewater revenue stream over time be?

[Miguel] Not for this particular case but in general, when we did the analytical study the general conclusion was that this is a cash flow negative proposition. The reasons for doing it and extending the collection system won't be justified by the amount of revenue that you're going to bring in, from a business perspective. But which is why the priorities are based on protecting the aquifer, which provides the other benefit. So even if it is cash flow negative, it still is something that needs to be done and can be justified specifically with respect to protecting the aquifer.

[Michael] And the cash flow negative is based on the purchase of the easement? Or is there no purchase of easements and its just the cost of extension?

[Miguel] That is just the cost of the extension, without property acquisition.

[Joey] Thank you (Mike Park), we heard your thoughts and we usually let management do their jobs.

[Miguel] There is still some additional information that I would seek first, if the board wanted me to get back to it on our findings or recommendations.

[Joey] We would ask our general manager to work on this to see where we can go, if possible.

[Mike Park] I appreciate the opportunity, thank you very much.

4. GWA

4.1 GM REPORT

[Joey] Do you have anything else for your GM report? Or did you cover it all?

[Miguel] There is no changes to the report. There is one correction on the graph that I pointed out so it's not anything that you guys aren't expecting.

[Joey] Okay, so you want to go through with the resolutions?

4.2 FINANCIAL

4.3 RESOLUTION NO. 10-FY2023*

* tabled

4.4 RESOLUTION NO. 11-FY2023

[Miguel] This resolution is seeking approval for the construction management contract for the Tamuning and Manenggon reservoirs. This is a court order project. It is necessary and urgent for us to complete the construction of these tanks. This would cover professional construction management services for a 3 million gallon Tamuning reservoir No. 2 and a 2 million gallon Manenggon reservoir No. 2.

Work includes a construction of the tanks and pipelines, bolts, valves, instrumentation and other improvements. The location as I mentioned, Tamuning, near the airport and the Manenggon reservoir near Leo Palace.

Proposed cost for the construction Management Services we've negotiated after the most qualified offer and that is at \$1.84 million and we're seeking that amount with the 10% contingency as is standard, for total funding requested of \$2.025 million.

We anticipate a 16-month construction period with an anticipated start date in April for the construction for the CM contract. We're still working also on the bringing you another resolution for the construction of the reservoirs themselves.

This would be funded from CIP line item PW 09-11 for water system reservoir improvements.

There were 12 firms who registered for the RFP for this particular procurement. Five firms submitted. Duenas, Camacho and Associates was selected and recommended for award.

[Francis] Motion to approve.

[Simon] Second.

[Joey] Any further discussion?

[Michael] Miguel this seems like a lot of interests, and more proposals submitted than normal, or is that about is it about average?

[Miguel] For the engineering procurements and the CM procurements, this is about average. We're having a tougher time with the construction contract.

[Joey] Any further discussion? All those in favor of the motion signify by saying "Aye"?

[Commissioners] "Aye"

[Joey] Motion carries, five (5) affirmative votes.

4.5 RESOLUTION NO. 12-FY2023

[Miguel] Next up, resolution number 12-FY2023 relative to another CM contract, adding contract authorization for the CM contract for the Santa Rosa, Sinifa, and Santa Rita Tanks. Also court ordered projects. The remaining work, we have had some delays on the Santa Rita project. So the construction on that project is going to be extended and therefore we would need additional time

for the CM to be on the site. For Santa Rosa and Sinifa, those tanks are constructed and are online but there is some remaining work for the booster pump station at Santa Rosa and for the Control building and some other site upgrades at Sinifa.

We're expecting those projects to wrap up July 2023 and May 2023, respectively, for Santa Rosa and Sinifa. We don't have a firm completion date yet on the Santa Rita, as I discussed, there are some issues with the foundations that we're still working with. But we are seeking to authorize the CM for the continued services necessary until these projects wrap up. So we are seeking an additional, not to exceed amount of \$955,000 in additional funding which would bring the total authorized funding to \$6.6 million.

We anticipate the work to be completed by January of 2024. That's for the anticipated project current projected schedule for Santa Rita. This is funded out of bonds with the CIP line item PW 09-11 for water system reservoir improvement.

[Joey] Questions? Discussion? Any motion?

[Santos] Motion to approve.

[Sanchez] Second.

[Joey] All those in favor of the motion signify by saying "Aye"?

[Commissioners] "Aye"

[Joey] Motion carries with five (5) Aye votes.

4.6 RESOLUTION NO. 13-FY2023

[Miguel] Next Mr. Chair is resolution number 13-FY2023 and this is additional construction funding for the Yigo sewer pump station mitigation.

During the work session I highlighted some of the issues that we've been having with the Yigo pump station in terms of flooding during heavy rain events. The additional construction work is needed to rectify some of those issues by changes in design for the motor control center, hoist and platform to be reconfigured, in order to fit in the space available.

The change order is in the amount of \$184,000 dollars which would bring the total authorized funding to \$1.1 million.

We also anticipate that this would be completed in 2023 in July. It is bond funded because we are now exceeding the original contract amount was under a million with this change order it would exceed a million. We would also be seeking your permission and approval to take this before the Public Utilities Commission in accordance with the contract review protocol.

[Joey] Any further discussion? Any questions?

[Francis] Move to approve.

[Pedro Roy] Second.

[Joey] There being no further discussion all those in favor of the motion signify by saying "Aye"?

[Commissioners] "Aye"

[Joey] Motion carries with five (5) Aye votes.

4.7 RESOLUTION NO. 14-FY2023

[Taling] Commissioners for your approval is resolution 14-FY2023 relative to authorizing management to invest funds. Guam Waterworks has cash balances that are not immediately needed and with interest rates rising, we believe that it would be prudent to invest available funds. Instruments like TCDs, treasuries and the like.

GWAs accounts are currently with the Bank of Guam and they would charge a fee of 0.25 percent of market value or a minimum annual fee of \$375 dollars per account.

We would work to identify funds not immediately needed and invest those funds and latter maturity dates to make sure that we would have adequate cash balances as needed.

We anticipate that we would invest funds out of our unrestricted funds, the sewer revolving loan fund, eligible non-bond CIP project funds, and the system development charge fund. And we would work with our existing bank, Bank of Guam.

[Santos] Motion to approve.

[Simon] Second.

[Joey] Questions?

[Michael] Do we have a rough magnitude of the dollar amount that you're looking at that comprises these various funds?

[Taling] For the sewer revolving loan fund we have about \$2 million dollars available. For the eligible non-bond CIP project funds, we have \$8.6 million. We have \$6 million in the sewer development charge fund. There is a cash schedule G as part of this CFO report. For the unrestricted funds we would be looking through those funds to make sure that we have what we need in the bank to fund our monthly O&M costs.

[Michael] What's the rough interest revenue that you are projecting by moving the money into the short term interest bearing accounts?

[Taling] When I looked a couple of weeks ago, I was seeing annual interest rates at more than 4 percent.

[Michael] The estimated revenue associated with that interest bearing account, what's that going to amount to roughly?

[Taling] I don't have a total amount, except for the unrestricted funds. I know generally how much we would have in the other three accounts.

[Michael] It sounding like in excess of \$20 million earning 4 percent short term.

[Joey] Taling, could you give an email to the commissioners to give us the breakdown so that we could understand. Any further questions? All those in favor of the motion signify by saying "Aye".

[Commissioners] "Aye"

[Joey] Motion carries with five (5) Aye votes.

4.8 RESOLUTION NO. 15-FY2023

[Miguel] The last resolution we have on the agenda is 15-FY2023 seeking the approval for an increase for the PM/CM contract related to the Guam water and wastewater infrastructure improvements program. This is the OEA grant funded projects.

As I discussed at the work session the extension is being sought so that we can wrap up the closeout of all the grants. There is a significant amount of documentation and closeout requirements that Brown and Caldwell is helping us with, so we are seeking a slight increase in their contract for about \$300,000 dollars, which would bring the total authorized contract amount to \$16.99 million. We anticipate that we'd be able to wrap up all of the closeout requirements by the end of March. This would be funded from applicable bond funds and system development charges. This should take care of all of the remaining work on closing out the grants.

[Santos] Motion to accept.

[Pedro Roy] Second.

[Joey] Any further discussion?

[Francis] How long have we had this relationship with Brown and Caldwell?

[Miguel] They've been working with the authority since 2006.

[Joey] Now, they were working for us though as a PMO originally? They are no longer a PMO, correct?

[Miguel] That's correct, the PUC asked us to bring that to them, which we did. Several years back, we transitioned to smaller contracts with several firms providing various services that were provided previously, just by one firm.

[Joey] But this is all the military projects?

[Miguel] Yes, that grant required us to have a PMC as a condition to the grant.

[Joey] All those in favor of the motion signify by saying "Aye"?

[Commissioners] "Aye"

[Joey] Motion carries unanimous with five (5) votes.

5. GPA

5.1 GM REPORT

[Joey] We have our acting General Manger, Tricee Limtiaco.

[Tricee] Thank you, Mr. Chair, our GM report has not changed with the exception of adding the financials. Did you want to have John Kim review the financials?

5.2 FINANCIAL

[John Kim] On the page here is the residential average. The residential average was about 882 kilowatt hours per resident for the month of January. Prior year was about 942, so the consumption went down but in actuality, if you look at the graph in January, it's actually greater than the pre-pandemic areas, at the time. Overall it's still good.

The other things that happened, the weather chart, we tend to have the weather average temperature was up, lower, pretty much low at the same time we had more rain than previously. So that contributed to the consumption being lower in January.

We looked at the hotel's consumption. We didn't get the hotel occupancy. Guam Visitors Bureau didn't have it for the last quarter. However, we see an increase in the hotel consumption. Compared to last year, it's little over a million kilowatt hours. So it's pretty good, it's growing.

A lot of things that happen in February that are impacting us will be, one, there was a military exercise, a lot of the officers were stationed in the hotels. And the other thing that happened in January was Camp Blas. One building that is online and eventually probably more. They are transmission level customer.

[Joey] There is a meter there?

[John Kim] Yes, we still have the meters on whatever substation that goes in there.

[Mike] So we're still like 25% off of a pre-pandemic consumption?

[John Kim] Yes, closer to 20%.

So the base rate in January, we did pretty good compared to last year. Then also very close to budget and also in kilowatt sales, very close. In terms of operations, fuel revenues, we did 38, that's probably because of, I guess much hotter than compared to last year. In Cost of Sales, O&M we did about 5.8, which is better than budget however it's higher than prior year and that's because of the at the insurances, other parent related items.

In terms of customers, we did increase residential, we have about 96 customers, residential is slowly our customer base is still increasing.

Our debt service is 1.61.

In terms of under recovery, its still high. In January, we have about \$32 million dollars under recovery. We did recur about 3 million in January but it's still slow progress.

[Simon] The LEAC for February 1, the expectation is the under recovery will begin to drop at a more aggressive rate. At \$3 million a month, we are 12 months away from \$36 million. My quick senses were cost plus six million is our goal. In the current LEAC, from February to August, where 6 times 6, is the 36 million comes back in and the hope, depending on oil, is that, after August, we just go to cost, instead of cost plus six.

So again, part of the reason the current LEAC is so high is because we are scheduled to recover almost all of the \$37 million we advanced during the COVID years in the next in the next six months. Then, our hope is there'll be some relief come August assuming oil behaves. By then we will have fully recovered. Hopefully we can do that for our ratepayers is to finally get them to a point where we can get them some relief by August.

5.3 GPA RESOLUTION NO. FY2023-09

[Tricee] Mr. Chair, if you will, we can go to GPA resolution FY2023-09. With that I'm going to turn that over to Attorney Botha.

[Graham] We're requesting that we extend the current contract, the ECA amend that, it is expiring January 2024. We would ask that it be extended until January 2029. That will allow us to bring online the Ukudu power plant which is scheduled to come online in sometime in 2024. The GM is projecting April 2024 but it may be delayed as a result of any of the transportation and other factors that have resulted in some slight delays, even though they're moving forward.

Additionally, in the last six months, they installed and changed from the residual fuel oil to ULSD. They're fine-tuning that and they are of course, now compliant with all of the EPA rules and regulations. Even after Ukudu is commissioned there will be a period of time for the new plant to shake down and work out all the bugs.

We anticipate that we would still be limited on capacity until that has come online along with the renewables. We believe that it's essential to continue the contract for an additional five years based on the needs that we have now.

Also, we have not operated this plant contrary to what we've done with Cabras 1 and 2 and Temes 7. We've not operated this plant at all, ever. It has not been with our own workers; it's been with the MEC workers. We do not have an established base of workers now that would be able to take over and run 8 and 9.

Simply, we are short of all generation workers at this time, not to mention the ones needed for 8 and 9. MEC has run that for the last 24 years, reliably and successfully, they have institutional knowledge with that. It is also the most efficient power plant that we have.

After we converted Cabras 1 and 2 to the 0.2% RFO, which is quite an expensive fuel, now Diesel 8 and 9 is the cheapest plant that we have. Once Ukudu comes online and more renewables come

online, then we would look at transitioning MEC from a baseload plant to a peaking plant, but not for the next several years.

I have also provided a copy that I was provide from MEC, from the Arriola Law Firm, that I believe closely tracks the opinion that I previously provided to the board as to why an extension is legally possible. Similarly, as we had done for the last one, the ECA does have a provision that allows for that. We exercised it the last time and even when the ECA was amended in Amendment 4, the last time it did allow for any additional ones as mutually agreed upon by the parties. The extension terms proposed by MEC are very reasonable in terms of inflationary costs, below three percent for the O&M, variable O&M, and their fixed costs as well.

Simply, GPA does not have the ability to either hire those workers or bring them on or to secure other workers in the time that we have that we have left for the current extension is up. Also, MEC has advised us that they would appreciate if we're going to do an extension that it be expedited. Given that workers, are like anybody else, if they see their employment expiring they may go elsewhere whether it's DZSP or any of the other contractors that hire electrical folks. So for those reasons I would request that we approve the extension in our GPA resolution FY 2023-09.

[Simon] Mr. Chairman, I moved to approve GPA resolution FY 2023-09 relative to the authorization of Piti 8 and 9 contract extension.

[Michael] Second.

[Joey] Any further discussion?

[Simon] I've been very comfortable with our history of public-private partnerships. I think GPA is a role model for exactly how to contract for partnerships. This is a classic case, originally under Osaka gas and MEC is the Guam corporation that emerged from it.

A private partner built it, has run it, has staffed it, and it's been very successful. We did extend it once already, in 2018 or 2019. I'm comfortable with the legal capacity to extend the agreement. Having reviewed counsels, and now the Arriola firm's review, I remain confident that this is in the best interest of the rate payer. The rate adjustment for the extension is reasonable, as counsel has just pointed out. They know how to run it.

We've been very good about getting out of the generation business. We have essentially outsourced it, other than Cabras and even Cabras, we've used private contractors over the years. So given the short window of time and the uncertainty that we would create if we don't approve it, we don't know what the result would be if we put out a bid? What would their price be? This one we know what the price will be. Relatively speaking the price adjustment is pretty modest, so for that reason I urge our colleagues and I'm going to support the contract extension.

[Michael] In our prior discussions, I know that you were concerned with what constitutes to Build/Operate/Transfer agreement? What terminates that agreement? You made a point that when you transfer over the ownership, that contract terminates. Based on the survivability Article 26 in the ECA, does that points it out that the survival of provision

So if one provision has expired, let's say that transfer section has now transferred over to GPA. I think what their what that provision allows for is that the remaining provisions of the contract can

exist. So now, you're done with the build, you're done with the transfer, you're just in that operate provision. I just wanted to see if that addresses your concerns because it addresses my concerns.

[Joey] Having just seen this now, it still doesn't address my concerns. I would pose a question, so you have a contract, with somebody, to do something, does the contract go on forever?

[Michael] I think that's what this article is saying and Graham, you want to jump in here from a legal opinion and talk about the Article 26 and the survival of provisions that exist in the ECA?

[Graham] Basically, what that had provided for, notwithstanding the other provisions which I think the chairman was focusing on too is, the transfer. We got the legal ownership back. We own the plant and have owned it since 2019.

The 20 years, at the time, we now are 25 years with the new Okkudu plant. It's 25 years plus one five-year option. The new contract, we succinctly wrote in an option. With this, there was no option other than the fact that you could amend the agreement based on the mutual agreement of the parties. Which is another way of writing an option, just not is calling it out as specific at the other one.

The survival section said that one part of it may terminate, in other words, we terminated the fixed capital lease payments we made for 20 years, because we now own the plant, but there was an operating provision in there that allowed us to mutually agree for a period of time. We could do that under that agreement to operate and maintain although we've owned it and not pay the ownership payments. And so that was the justification in 2019. Now, there is a cap on that. I hope I made that clear the last time is, the cap is, you cannot extend any contract past 30 years.

Our statute, we specifically amended that statute to allow for Power Plants, Long-Term Renewables because we were advised when we were trying to buy out the MEC contract was, they needed a longer period of time to amortize it to make it cheaper. 25 years is a better timeframe for that but yet we had put in 30 years, so any extension had to be limited to that 30-year max. With the 20 plus 5 years plus an additional 5 years for this we would still be under the 30 years that were allowed by statute.

[Joey] So you're saying that the contract is limited by law?

When we signed this contract originally with Enron, the authorization for us to get into a contract said that the contract cannot last more than, what? I thought I just heard you say that there's a limit of 30 years?

[Graham] Yes.

[Joey] Graham, what I'm trying to look at is, usually when you get into contracts, even an insurance contract, the insurance contract has a date, the policy is effective from this date to this date. Now you can always go in and extend the contract and do all sorts of things. There is usually is a date that is set where the policy is enforced from January of one year, it's good for two years, it's good for one year, and then the parties can extend that period.

I thought I heard you just say now, this is where you have to correct me, I want to make sure I'm hearing you correctly, that there is a part of our law for getting into these contracts that states that it cannot go past a period of 30 years?

[Graham] Yes, under 12 GCA section 8104(N), it says the Guam Power Authority may enter into long-term contracts for a period up to and not exceeding 30 years for renewable energy contracts, purchase power agreements, Re-Furbish/Operate/Maintain contracts, and Build/Operate/Transfer contracts that cost 30 million or more.

So in other words, it has to meet the dollar threshold.

[Joey] Is there any date in this current contract that we started with Enron that says this contract is valid from this date to this date? None?

[Graham] None that I am aware of.

It just had the original 20-year term. It didn't say you couldn't extend it.

This one was signed actually two years before the plant actually went into COD, so the 20 years actually didn't start from the date of the signing of the contract. It started from the date of operation.

[Joey] There was no specific date when the contract terminated?

[Graham] It just said the contract is for 20 years - from 1999 to 2019, then we extended it for five years.

It was actually signed a couple years before that.

[Michael] So we're basically in our 25th year?

[Joey] Well, that's what I'm trying make sure.

[Michael] And then the additional five years would put us at the maximum per statute, which would be 30.

[Joey] If I'm hearing you correctly, you're saying that when this contract hits the 30th year, from when it started operation, you have to build it first. So you could argue and say the first year when you're getting your financing, you're getting the plan drawn up, you're getting the permits that you need, the contract is for a period of operation of 20 years and then they operated for the 20 years. They built it, they operated for 20 years, and then they transfer at the end of 20 years. The transfer is a fixed date in that contract?

[Graham] Yes. At the last page, it's at a notary public on 30 September 1996, appeared a representative Enron, Richard Unpingco and Frank Shimizu as Chairman of the Board. So obviously, the plant didn't start running until January 1999.

[Michael] It's my understanding that all provisions terminated in 20 years. All provisions of the contract would have terminated in 20 years but certain provisions were extended. In the last 5-year iteration, the last 5-year extension, was the operate section.

[Graham] I think I was asked at one point, did we extend it prior to the expiration of the contract and clearly we did. Even the PUC order is in 2018, it would have expired January 2019 but in fact the PUC approved it. We came to CCU before that and then a couple months later the PUC approved it in May of 2018. So clearly before the expiration of the contract.

We amended the ECA to reflect that the capital payments would no longer be made but they would be operating it for the additional five-year period.

[Simon] So the PUC recognized the extension?

[Graham] Yes.

[Michael] On reading what is the project's objective, is it necessary and urgent, there's discussion here or reference to the conversion to Ultra Low Sulfur Diesel, that conversion, what are the ramifications? What would be the worst case scenario if we did not extend the contract? Was the current contractor responsible for the conversion?

[Graham] It was a \$15-million-dollar project and I might add, these are the slow speed diesel units. There is not a lot of them on land. I think there is less than half a dozen or something. So this particular project, they have converted some ship once because it has to burn out much cleaner fuel but not the ones on land. And so, MEC would be responsible for the warranty work under doing the fuel conversion.

Let's say we bid it out, and there was a different bidder, that bidder would say that had to do with the guy that installed this stuff, I'm just the operator, I'm not going to warranty it.

[Michael] What is the warranty, Graham?

[Graham] I believe it's a 1-year warranty on the work and everything.

[Michael] Oh so that's going to expire soon though, right?

[Graham] No, we just finished this conversion in September 2022.

[Michael] Okay, so another 20 months.

[Francis] But we paid them for this conversion?

[Graham] Yes, we did. So they hired BWSC who is one of the manufacturers.

[Francis] MEC won the bid and subcontracted it. So MEC is the record.

[Michael] The only reason why I bring that up is, we just bought new tractors for our company and if anybody other than the dealer works on those, the warranty is void. That's a financial concern.

[Francis] So Graham, now that we have an opinion from a law firm, who requested this?

[Graham] I did not.

[Francis] So why is it now in our hands?

[Graham] Well I was provided a copy by MEC.

[Francis] And they asked us to present this tonight to us?

[Graham] I spoke with my boss and my boss suggested that I'm presented to the five Commissioners, it is a different opinion. I didn't have anything to do with writing the opinion or consulting with them.

[Francis] My question is how did it surface when this was written February 15th.

[Graham] Mr. Benavente asked me to present a copy to the five Commissioners showing that there was another opinion out there. Obviously, it's done by MEC, for the benefit of MEC.

[Michael] It does answer some of your questions.

[Joey] Well, it addresses the question, I don't know if it answers the questions in my opinion.

[Graham] For the record, I did not speak with Mrs. Arriola, I did not solicit the opinion, I did not speak with Manzano regarding or anything else like that. It was provided to me, Mr. Benavente suggested that that would be helpful to have another opinion and present it to the board.

[Simon] So Graham did you say you are in general concurrence or do you want to take an opinion on this opinion? It seems to reflect some of the things that I that I've said.

[Graham] It does reflect some of the things that I have said before not as eloquently as Mrs. Arriola can do so, certainly not as lengthy of an opinion.

[Francis] So just to be clear, the next step, it goes to the PUC. What happens if OAG says, I don't agree with you?

[Graham] We cannot proceed.

[Francis] Does our Attorney General get involved with this? Can he get involved with this?

[Graham] No. This is not a new procurement. There is a policy that requires you send notice of all new procurements greater than \$500,000 dollars to the Attorney General's office. That has been in place for 30 to 40 years. Now what they have or haven't done with it, is a different matter.

They have never asked for amendments, extensions, anything else like that. It's just a new procurement and what I was advised as the policy years ago was, they had been caught when people basically didn't notify them. They did an entire procurement, they signed the contract, and then they sent to the AG, and say, "Mr. AG, would you please approve it".

So that was why they wanted to be advised at the beginning so if there were issues, they could correct them prior to trying to force them to sign the contract. I don't think that policy has changed now.

[Joey] So it doesn't go into effect until the PUC approves it?

[Graham] That is correct.

[Joey] I'm still trying to process all the newer information that you just provided. My thinking is, I'd probably vote for it and let's see what the PUC does with it. Relying on you and relying on your endorsement of this opinion, you stand by this opinion and Arriola?

[Graham] By the opinion, yes.

[Joey] I saw something, I wasn't sure, I had to ask the question, and I'm still a little confused on, when does the contract end? I've always been led to believe that a Build/Operate/Transfer is just that, you'll build it, you operate it, and then you transfer it, at that point, the other party owns it, and can do anything they want to do with it. At that point, if they wanted to continue with an operating agreement they would go out and bid one out. That's the traditional way I thought of it.

[Graham] That would have been one other option. As I said before, it's not that this was the only way of doing things. There were two choices, one was bid it out as an entirely brand new agreement and the other was an extension.

[Simon] The extension was in the original contract?

[Graham] Yes.

[Simon] So even in the implementation of the BOT, the parties, in particular GPA, gave themselves an option to extend the "O" part of the "B" and the "T" because you're right, the "B" is done and the "T" is done. Arguably the "O" is something you can extend and it was in way back in 1999.

The contract was approved with that language that you could amend it by a prior board.

[Graham] Could be amended both in 2019 obviously, or 2018, both the CCU and the PUC, at that time, thought that it could be extended.

[Simon] And we did pass the 20 years to 25 years and now it's just, do you want to take it out to 30 years? I think that the legal questions are very good and important to make sure. The other part of me that worries though is, we've got a good group running it, we know what the cost will be, the uncertainty of the bid. But that's the risk of not doing this then you risk, who is going to run it? What are they going to charge?

[Francis] I just want to note that Mr. Graham, since you stepped up, you are in support of the opinion written by outside counsel? I want to make that clear. It is not our opinion but you accept that this be submitted for the record of the CCU.

[Graham] I have no objection to that.

[Francis] Mr. Chairman is that a motion in order because I want that stated for the record that an opinion was given to the CCU, it was not proffered, it was not requested of us.

[Simon] It was provided by management.

[Francis] It was not, Mr. Sanchez. It was provided to them but like I said, how did this just surface, today? It was written on February 15th.

[Simon] Well the General Manager chose to submit it, just like in board books, he submits what he would like us to approve. We don't have to but...

[Francis] I'm sorry, someone got this and got it into the hands of the General Manager and now it's before our eyes. All I'm asking is, for the record, this is going to be submitted into our records, because it's giving Graham the pass.

[Simon] And we're publicly discussing it, it has to be.

[Francis] But it's giving Graham the pass to say he's all good because here's the other. I just want to make sure that's what we're being...

[Graham] I think it should be submitted with a record, it's part of what's being discussed.

[Simon] He (*Graham*) had his own opinion.

[Francis] That's why because we're now relying on page 305, titled "Survival of Provisions". That's the basis for us, at least for us, given...

[Simon] I'm relying on his earlier opinion at the work session instead, so I'm not relying on, I didn't see this till today either...

[Michael] I didn't see this till today either.

[Simon] I'm relying that council is recommending and management is recommending approval of the extension and we're debating it, which is our duty, and I'm okay with that.

[Michael] I don't think it's a coincidence though that a lot of the things were answered in here were what we discussed in our last meeting which was available to the public. I'm sure that they were watching and saying "hey, we should answer that question!"

[Graham] YouTube does allow it to be downloaded and viewed.

[Francis] I'm not questioning that. This just surfaced. If we're comfortable, are we also comfortable putting this on the record?

[Simon] I think we have to now that we've discussed it. I'm with you on that. That's full disclosure and that's exactly what we should do.

[Joey] This is what I suggest - that when the motion is made, the motion is made to approve the resolution, and to include in the approval of that resolution, this opinion.

[Simon] Frankly, the fact that we've discussed it makes it part of the record. I mean we're discussing it and I would not support any CCU opposition to a member of the public saying, you discussed this, I want this in the record. I'm with Commissioner Santos on this. This is included.

[Joey] I suggest that whoever wants to make a motion, make the motion to approve the resolution...

[Francis] Already.

[Michael] The resolution has already been passed, we are in discussion.

[Simon] It's either a yes or no. We can make another motion.

[Peter Roy] Wouldn't this be an automatic thing? It's already presented here?!

[Joey] Since we have a motion, we could always amend it and say that this be part of the record.

[Simon] If it will make you feel better, I think it's already part of the record because we're discussing it. Clearly, we are discussing it.

[Joey] I don't.

[Simon] I'm with Commissioner (*Santos*). We put it on board books.

[Francis] No, we just can't put it on. This is not part of our records, this is not part of our books. That's what I'm asking, now, because we are in discussion, we put it in.

[Simon] The way I think about it is, like when our public comment, that's on the record, that is to be included.

[Joey] I know but this is a little different.

[Simon] No, to me it's not, because it's unanticipated by the body. It wasn't on the agenda.

[Francis] Then they are going to ask Mr. Sanchez, who's presenting it, not the public.

[Simon] GPA is. GPA Management. Counsel said it was from Mr. Benavente to provide to the (*Board*), he's (*Graham*) on record for that.

[Joey] I think it's important that we just make amend the motion and I'll tell you why, because this is a legal opinion from an attorney to her client. It's not really a public document. We're making it a public document by discussing it.

[Simon] Once a government entity introduces it to its governing board, I don't care what the private party may have intended, I'm with Commissioner Santos, this is public record.

[Graham] Commissioners, we can certainly make note that we will add it to the minutes of this meeting reflecting that the document was produced, it was discussed by the Commissioners, and it will be attached to the minutes.

[Francis] So it's safe to say that Mr. Manzano gave authorization to Mr. Benavente to present this?

[Graham] Yes.

[Francis] And that was done in what manner? That's what I'm trying to say Graham.

[Graham] All I know is, Mr. Benavente asked me to provide it to the board today.

[Joey] Okay then that's the answer.

[Francis] How did Mr. Benavente get the document?

The fact that it shows up on the evening of our meeting, okay, I get that part but it went to Mr. Benavente from the client. An opinion offered from his legal firm to his client.

[Graham] Yes.

[Francis] So he's basically given authorization from his law firm to present this to us?

[Graham] Well, anytime you published it in the record and you give it to somebody it's no longer...

[Francis] You really know that?! What if they mark "confidential" on the top? What would we have done?

[Simon] Well maybe then it's confidential.

[Francis] Well no, but I mean it doesn't say but would we have done if a document surfaces in a public meeting marked "confidential"? What do we do?

[Graham] It would not be our document anyways.

[Francis] I'm okay guys, I'm just saying, the record needs to state that we just got this document.

[Michael] I think your concern is that, in discussing this contract, you have the beneficiary of the current contract submitting, what would be public testimony.

It would be no different if they came in like Mr. Park did and say "hey, I have a comment on what you guys were talking about at the working session, here's my opinion". It would be no different.

[Francis] It's very different Mr. Limtiaco, because the persons that are presenting this, happens to be the CCU, not the public. I'm not the public tonight Mr. Limtiaco, I'm the CCU.

[Michael] Well, I don't think we're presenting it. We're talking about it.

[Graham] I would argue that management presented it at the directive of Mr. Benavente to the Board. The Board is merely reviewing it, commenting, discussing on it, there's no presentation by the CCU.

[Francis] John (*Benavente*) is not here to tell us how he got the document.

[Michael] I think he (*Mr. Benavente*) is online, right?

[Candice] He's (*Mr. Benavente*) is online now.

[Francis] No, I don't want to do that. I'm just telling you. Why don't we just hold on the motions, we have done enough.

[Joey] John?!

[John Benavente - online] I can only say that there was a transmittal letter with the document. Like was noted earlier, in lieu of the previous CCU meetings and the on the discussions on the matter of legality, MEC themselves, asked their lawyer to come up with their opinion because that is prudent for them on their side.

We didn't ask for this. It just came, MEC Mr. Manzano, sent it to me and in fact, in the email, noted everything I am telling you. And said we can use it for the purpose of providing the CCU. So us presenting it to you makes it a public document. It is not a confidential document. This is all based on an open discussion that they were watching and then they decided to put in another opinion to that and that is what you have in front of you today.

[Joey] Okay John, would you be opposed to having an amendment to the motion acknowledging that this is being proffered in support of the resolution? And that you're the one who proffered it?

[John Benavente - online] I didn't proffer it. I'm not quite sure what this is trying to imply Mr. Chairman. All I'm saying is that, we have been given authorization by MEC to provide the CCU this document. Again, as a result of viewing the CCU meetings and the discussion of legality, they themselves, notice unto next year that they, you know, want it legally binding for themselves also.

So therefore, yes, so making it a matter of record just like earlier, I did a letter in the additional stages for Mr. Manzano was asking for a quicker resolution on this matter because he's concerned about losing manpower. It is a matter of record for the CCU.

So in my opinion, it could be a matter of record also, as was given to me, for sharing, on the issue. It has given MEC confidence that the contract will be legal and for me to provide the permission that provides you better confidence that there is a second opinion.

Then, I'd say it would be like a third opinion, because the OAG in the 2018 report get recommended approval of the contract with the provisions that, yes there needs to be a provision to allow.

[Joey] And I guess what we're saying is, if we adopt the resolution as the current motion states then we just adopt the resolution. Graham and you, will present the resolution and the requests to approve and you're not going to attach this. It's not necessary to attach this.

[Graham] So what goes with the documents is the resolution and generally I attach the copy of the proposed changes to the ECA and basically all the rest remain the same. But that the price would go up the 2.6%. I would provide the resolution, the contract changes, and provide what the General Manager provided as part of his handout, because that is part of the record, that's part of board books.

[Joey] So this part of his record? This is part of his handout, you would provide?

[Graham] That is not part of what the board books was submitted. It is part of now what I would propose, is that we include as the minutes of this particular hearing, which would reflect that a document was provided. Same as if any individual would provide a document.

[Joey] Then you would provide this to the PUC?

[Graham] If requested, I can.

[Simon] Well, we can take up that topic if it's a concern of ours.

If we don't approve it, it's moot - it's a good conversation and we vote. If we do approve it, we can take up the Chairman's concerns about whether we should include it. My sense of being on board meetings for many, many years is that, this isn't part of the record.

The fact that board books gets amended sometimes five minutes before we walk in and sometimes even after the fact, “hey this didn't make the board books, here it is”. Long before there was Board Books, when a GM hands a board a document in a legal published open government meeting properly done, it's all on the record. Just like that gentleman who asked for the sewer extension, that is on the record. We discussed it.

[Joey] Simon, the question is simple. I'm just saying that if we vote with the current motion, this will be part of the record that you will provide to the PUC. That's what I'm asking. It's a direct question, yes or no?

[Graham] Yes.

[Joey] Okay. Any further questions?

All those in favor of the motion signify by saying “Aye”?

Motion carries with five (5) Aye votes.

5.4 GPA RESOLUTION NO. FY2023-12

[Tricee] So Mr. Chairman, for GPA resolution FY 2023-12 solicitation of new bid for the bulk supply of diesel fuel no.2. So we've reviewed this in the work session. We're asking for permission to go out for bid for the bulk supply of diesel fuel oil no.2.

Our last bid, we had three bidders, Mobil, IP&E and Hyundai. From your last authorization, Mobil won. We'd like permission from the CCU to simply go out to bid.

[Francis] Motion to accept.

[Simon] Second.

[Joey] I just have a question, just clarify for me, the contract that exists right now, started when?

[Tricee] It would expire on January 31, 2024.

[Joey] It was a two-year contract?

[Simon] For an initial period of 2 years.

[Joey] What I'm trying to get that is, I just wanted to note that this bid will go out and you have time to get the bidders in before the expiration of January 2024?

[Tricee] Yes, we do and I believe that we discussed in the last meeting and we will also try to negotiate, that's still on the table.

[Joey] The reason why I'm asking is because my recent history on the commission is, it seems like our oil supplier always protests if they don't win.

[Simon] That's not untrue.

[Joey] I'm thinking we're going to testify on the bill at the legislature to limit protests on anything over \$5 million and this is way over \$5 million. I'm just saying there is a lot of zeros here.

I'm just saying you know, as we go forward with the testimony, I think you might want to add this one in that in the past this has happened and this is why this is important to limit protests.

We're not saying no protests at all, we're trying to say limit it so that you can't just automatically run in protest and you know pay your attorney and drag this out for two years. That has happened in the past on fuel oil contracts and its usually the current contractor that protests if he doesn't win.

[Tricee] In the event of a protest and there is a stay of procurement, we do negotiate with the with the incumbent.

[Joey] I'm aware, we've done this before. Six months, and then six months, but you might want to, as you prepare your testimony, this might be a good one to add in and say, we're in the middle right now of trying to go out to bid and you this has been our prior practice.

We're talking big numbers and it's the rate payers who have to pay, not us, not the politicians. The ones are risk are the ratepayers.

[Francis] Just to be clear, we are still talking to the current contractor?

[Tricee] Correct.

[Graham] That is correct. If we can reach a one-year extension, on terms that we feel are still reasonable, and bring it back to you. We just wanted to get started on the procurement because...

[Tricee] Because time is of the essence.

[Graham] We have to go here (CCU), next month we have to go to the PUC just to be able to put it out for bid. In the case we can't reach an agreement we like to at least like to get the process started.

[Joey] I'm just saying, this is a good one to highlight in your testimony so they get the full importance of what that bill is.

Any further discussion? All those in favor signify by saying "Aye"?

[Commissioners] "Aye"

[Joey] Motion carries with five (5) Aye votes.

5.5 GPA RESOLUTION NO. FY2023-13

[Tricee] Mr. Chair, our last resolution is GPA resolution number FY 2023-13. We are again, asking for an extension for our professional printing, mailing, processing and other services. Basically, our bill printing services. So speaking of procurement issues and protests, Graham and John Kim can explain more but it still is in the Superior Court.

[Graham] This is one, I mean, not that it normally takes a long time but Mr. Manahero, who is the plaintiff's lawyer, passed away. So then it took several months for them to get another lawyer and get the process started. We are moving along but you know hopefully we'll have a decision in the next six months. Sometimes things are delayed further.

[Joey] Another one for you to put in the testimony. That's the reason why, when you go to the court it's not the fastest place in the world to be. It's the rate peers that are on the hook.

[Francis] Motion to accept.

[Simon] Second.

[Joey] Any further discussion? All those in favor by saying "Aye"?

[Commissioners] "Aye"

[Joey] Motion carries with five (5) Aye votes. Anything else?

[Tricee] Would you like me to go through the GM report?

[Joey] No!

6. OTHER DISCUSSION

[Simon] There was no addition, there was just one slide was changed, updated.

[Francis] So the generators are moving?

[Michael] They move to the site tonight. Two gas turbines being delivered tonight.

[Simon] These are the expensive pieces.

[Michael] Six (6) units.

[Joey] Are we halfway through?

[Michael] No.

[Joey] When is our projected finish moving? Does anybody know?

[Tricee] The billboards say May.

[Michael] By the third week of March we'll have all the on-island stuff.

[Joey] So hopefully by April or May we'll finish moving them up.

[Simon] That's what the sign says.

[Michael] We would be waiting for additional equipment to come in by then.

[Joey] Okay, not everything would be in.

[Francis] The slow-moving stuff is still in April?

[Michael] There's still stuff that still hasn't come in.

[Joey] But the thing where we're using these creepy crawler things will be done with them?

[Michael] Oh no, we still have to finish in April. The IPs and LPs have to come in.

[Joey] You know, I do get asked by people, "when is this ending"?

[Simon] I think it's pretty good, the fact that they split it up now, take it out over two nights, a learning curve.

[Joey] We're not making the news which is good but it's still, you know, I do have people say to me, "you know, I was behind that thing, and what the hell is going on?" And I said, "well you know, you want power right?!" So anyway motion to adjourn?

7. ANNOUNCEMENTS

7.1 NEXT CCU MEETINGS:

Tuesday, March 21, 2023 at 8:30 a.m. – GWA Work Session

Thursday, March 23, 2023 at 8:30 a.m. – GPA Work Session

Tuesday, March 28, 2023 at 5:30 p.m. – CCU Meeting

8. ADJOURNMENT

[Francis] Motion to adjourn.

[Pedro Roy] Second.

[Joey] All in favor say "Aye"?

[Commissioners] "Aye"


[Joey] All in favor. We're done. Adjournment at 7:01 p.m.

\s\
R. Diaz

Attested



Joseph T. Duenas
CCU Board Chairman



Pedro Roy Martinez
CCU Board Secretary

