

BEFORE THE COMMONWEALTH PUBLIC UTILITIES COMMISSION

COMMONWEALTH UTILITIES
CORPORATION RATE PETITION

DOCKET 13-01

Hearing Examiner's Report

Background

On July 5, 2013 Commonwealth Utilities Corporation [CUC], a public corporation within the Commonwealth of the Northern Marianas Islands, petitioned the Commonwealth Public Utilities Commission [Commission] for rate relief for its three operating divisions. On November 6, 2013 CUC filed an emergency petition for pipeline funding, which was withdrawn on or about November 18, 2013. On November 8, 2013, CUC filed a first amended petition, which: a) withdrew rate requests related to its water and wastewater divisions; b) requested recognition of an additional \$1.412 million dollar FY14 electric revenue requirement to fund obligations under Telesource Change Order #5; and c) requested that an additional electric revenue requirement of \$1.215 million dollars be recognized to fund electric plant restoration and facility drainage expenses. Accordingly, the net electric division revenue requirement sought by CUC in its petition, as amended, was \$4.9 million dollars.

Under hearing examiner's oversight, CUC and Georgetown Consulting Group [GCG], which serves as the Commission's independent regulatory consultant, engaged in discovery activities and in prehearing conferences, including telephone conferences on October 17 and 30, 2013; a two day settlement conference in Plano Texas [November 17 and 18, 2013]; and a Saipan prehearing conference [December 4 - 6, 2013]. As a result of these prehearing activities, CUC and GCG agreed to joint recommendations for the disposition of CUC's amended petition, which are embodied in their stipulation dated December 6, 2013. The record in this docket to date is summarized in the footnote one below.¹

¹July 5, 2013: CUC petition; August 9, 2013: GCG first discovery requests; September 7, 2013: CUC first discovery responses; October 17, 2013: Hearing Examiner's teleconference minutes; October 21, 2013: GCG second discovery requests; October 30, 2013: Hearing Examiner's teleconference minutes; October 31, 2013: CUC discovery responses; November 6, 2013: CUC emergency pipeline petition; November 7, 2013: Regulatory Order re emergency petition; November 8, 2013: CUC amended petition and testimony and CUC discovery responses; November 12, 2013: GCG discovery re pipeline petition; November 20, 2013: Telesource release of lien; November 22, 2013: Hearing Examiner's Plano Conference Notes; December 3, 2013: CUC Certificate of Public Notice; December 6, 2013: CUC-GCG Stipulation; Written comments submitted at the December 9, 11 and 12, 2013 public hearings; December 24, 2013: Hearing Examiner Report.

The purpose of this report is to summarize regulatory activities in this docket, including the stipulated recommendations by CUC and GCG for the disposition of CUC's petition. This report also presents proposed determinations, which will guide the Commission's deliberative process in rendering a decision on the petition.

Stipulation

The stipulation contains twelve recommendations by CUC and GCG - each of which will now be reviewed:

§1 Trifurcated Agenda.

Section one proposes that the agenda of open regulatory matters be allocated for consideration into the December 2013 session, a Spring 2014 session [*Spring session*], which will commence on April 1, 2014 and a Fall, 2014 session. Stipulation Attachment A provides the agenda for each session. It is understood that new regulatory matters will surface during this period and be added, as necessary, to the session agendas. Hearing examiner should be authorized and directed to oversee CUC and GCG's preparation of each of these session agendas for regulatory consideration.

§ 2. \$2.8 Million Base Rate Increase.

As a result of prehearing activities, the parties agreed that a \$2.8 million base rate increase - excluding funding for the Telesource change order, which is discussed in section 3 below - would be just, reasonable and necessary to enable CUC to finance its capital improvement needs and to cover its operating and debt expenses. This increase would be achieved by: a] a base rate reduction of \$1.3 million dollars, as reflected in the revised base rates depicted in Table B-2 of Attachment B; and b] the establishment of a separate \$0.021 per kWh infrastructure surcharge on all customer classes, which over the next twelve months would fund the \$4.1 million dollars necessary to meet CUC's obligations under its June 2012 *Agreement to Buy Out Contract and Release of Claims with Pacific Marine and Industrial Corporation* - a net \$2.8 million dollar base rate increase. CUC entered into this contract during the period that the Commission was not functioning. Accordingly, the contract did not undergo regulatory review.

Section two also addresses CUC's duty under Public Law 16-7 to provide residential electric ratepayers with a \$3.4 million dollar refund. The parties propose that the refund be accomplished through the establishment of a 36 month \$0.023 per kWh residential credit, which would be funded by a reciprocal increase in commercial base rates. The impact on residential and commercial base rates is shown on Table B-5 of Attachment B. CUC should be ordered to certify to the Commission on or before February 1, 2018 that the residential credit and reciprocal charge on commercial customers were terminated at the expiration of the 36 month refund period.

Stipulation section two does not address the issue of whether excusing the government customer class from sharing the burden of funding the residential credit violates the prohibition in Public Law 15-40 § 8429(c) against undue discrimination between customer classes. During the ten day period that this report is subject to public comment, the parties should make a supplemental filing, which addresses this issue.

§ 3. Telesource Change Order # 5.

Section three presents a disagreement between CUC and GCG whether the \$1.412 million dollar annual revenue requirement, which would be necessary to fund CUC's obligations under Telesource change order #5 [*Change Order*], should be funded through a base rate increase.² While CUC asserts that base rates should be increased to fund this revenue requirement, GCG continues to assert that the Change Order is unreasonable, unnecessary and should not be funded.

During the Commission's December 11 public hearing on Tinian, Mr. Jeffrey L Barr appeared and represented to the Commission that: a) Telesource CNMI, Inc. has assigned and transferred its interest in the Telesource contract to Marianas Energy Technology, Inc [MET]; and b) MET, for which he serves as general manager and technical director, is prepared to discuss amendments to the terms of the Change Order, which would facilitate its regulatory approval.

The Commission should take a careful, deliberative approach to the Change Order. The Commission's November 2011 provisional approval of the Change Order occurred before the current commissioners assumed office. Tapes of the three public hearings and three business meetings at which the Change Order was considered have disappeared. The Change Order represents a significant regulatory decision as its funding would cause an additional \$33 million dollar rate burden on electric customers over its 15 year term. Accordingly, the undersigned recommends that: a) the Commission table its consideration of this revenue requirement until the Spring

² On November 10, 2010, CUC petitioned the Commission for review and approval of Change Order #5 to its June 10, 1997 contract with Telesource CNMI, Inc. [*Telesource*]. The contract has already undergone four change orders. Under the contract review protocol established by the Commission's December 19, 2008 order, GCG undertook a careful review of the Change Order and concluded in reports dated January 24, 2011, October 31, 2011 and November 18, 2011 that it was imprudent and would subject ratepayers to an unnecessary \$33 million dollar expense over its 15 year term. By order dated November 29, 2011, the Commission provisionally approved the Change Order, subject, however, to its being funded through a base rate increase. In its January 27, 2012 rate decision, the Commission considered but rejected CUC's request to fund the change order. In doing so, it determined that: "*in balancing the need to maintain stable, affordable and reasonable rates in these dire economic times against the economic impact, which would result from increasing electric base rates to fund the...change order, the Commission finds, in the exercise of its discretion, that the revenue requirement should not be funded through an additional electric base rate increase at the present time. Accordingly, proposed funding of the \$1.304 million dollar Telesource revenue requirement will be removed from the electric base rate evaluation; and ... a material condition for Commission approval of the change order has not been met and the change order remains unapproved.*"

session; and b] in preparation for this session, he be authorized to facilitate discussions between MET, CUC and GCG on whether: i] Telesource's assignment of interest in the Telesource contract to MET satisfied the requirements of contract section 21.1; ii] adjustments to the Change Order terms could produce a joint recommendation for its funding through base rates; and iii] title to the Tinian plant and related assets will be transferred to CUC pursuant to contract section 24.3.

§ 4. *Infrastructure Surcharge.*

The purpose of the infrastructure surcharge and how it relates to the \$2.8 million dollar base revenue requirement are discussed in section 2 above. Stipulation Attachment D proposes that in preparation for the Fall 2014 regulatory session, the following activities occur under hearing examiner's oversight: a] CUC conduct a study of its electric distribution infrastructure with proposals for necessary investment; and b] preparation of joint CUC - GCG recommendations for continued use of the investment surcharge to fund the implementation of study recommendations.

§ 5. *Electric Residential Customer Block Revisions.*

Section 5 through Attachment E proposes residential customer block revisions. The section states that the attachment will explain the reasons for the proposed revisions. No such explanation appears in the attachment. During the ten day public comment period on this report, CUC should supplement the record with a statement of why the proposed revisions are consistent with generally accepted regulatory principles³, necessary, just and reasonable.

§ 6. *Large Customer Standby Charge.*

The parties recommend that a new standby charge be approved by the Commission. The stipulation states that Stipulation Attachment F will explain the reasons for the proposed charge. No such explanation appears in the attachment. During the ten day public comment period on this report, CUC should supplement the record with a statement of why the proposed revisions are consistent with generally accepted regulatory principles, necessary, just and reasonable.

§ 7. *Non-rate Fees.*

Stipulation Attachment G proposes ten new or amended electric non-rate fees for Commission approval. During the Saipan hearing, the parties tabled their request for regulatory approval of the line extension and pole attachment fees. CUC also clarified

³ P.L. 15-40 § 8409f) provides that any rate change shall be considered by the Commission using standards and financial criteria consistent with generally accepted rate-making principles.

that fee #7 [disconnection at meter] was a proposed new charge for which there is currently no fee. There is no proposed change for fee #8 [reconnection at meter], which is limited by statute to \$60.⁴ The parties recommend that these new and revised fees be approved and made effective upon hearing examiner's approval of the terms and conditions of each fee. During the ten day public comment period on this report, CUC should supplement the record with a statement of why each proposed fee increase or new fee is consistent with generally accepted regulatory principles; necessary; just and reasonable.

Attachment G also proposes nine new or amended water and wastewater non-rate fees for Commission approval. The parties recommend that these new or revised fees be approved and made effective upon hearing examiner's approval of the terms and conditions of each fee. During the ten day public comment period on this report, CUC should supplement the record with a statement of why each proposed fee increase or new fee is consistent with generally accepted regulatory principles; necessary; just and reasonable.

§ 8. LEAC.

The parties' recommendations concerning regulatory activities on CUC's LEAC fuel charge have been addressed in the Commission's December 10, 2013 order. They require no further discussion here.

§ 9. Net Metering Standards.

CUC and GCG recommend that in preparation for the Spring 2014 regulatory session, hearing examiner oversee GCG's review of the net metering standards, which CUC implemented after posting them in the Commonwealth Register on February 29, 2012. P.L. 15-87 (§ 8634(c) provides that the Commission may amend the net metering rate structure, standard contract or tariff by rule or order. This review should be considered by the Commission at a public hearing during the Spring session. Special notice of the hearing should be provided to each of CUC's 61 net metering customers.

§ 10. Liquidity Crisis.

Given the limited time available in this proceeding after the re-engagement of hearing examiner's services on October 16, 2013, CUC's liquidity crisis, which has been caused by the Government's \$19 million dollar delinquent account and an appropriate regulatory response have not received adequate review and consideration. Although Stipulation section 10 states that its Attachment J presents recommendations for an appropriate regulatory response to this crisis; however, no recommendations are included.

⁴ See P.L. 16-17 § 8145(a).

As the liquidity crisis has a material impact on both base rates and the LEAC fuel charge, GCG should be directed under hearing examiner's oversight in preparation for the Spring session to undertake a careful review of this subject, including, without limitation: a] whether residential and commercial customers are subsidizing the revenue shortfall caused by the Government delinquency; b] whether any such subsidy violates the P.L. 15-40 8429(c) prohibition against undue preference and discrimination; c] what, if any, impact the delinquency had upon the need for the \$2.8 million dollar base rate increase requested in this proceeding; d] the impact of the liquidity crisis on CUC's ability to access the financial market place; e] the likely impact of P.L. 18-18 and the October 10, 2013 Executive Directive on the liquidity crisis; f] an examination of the impact, which CUC's failure to comply with the mandate in P.L. 16-17 § 8141(g)⁵ has had on electric base rates; and g] recommendations for appropriate regulatory action.

On or about December 11, 2013, CUC informed the Commission that it had filed suit against the central government, PSS and the hospital for collection of their delinquent accounts. CUC should be directed to file copies of these pleadings and of defendants' responsive pleadings with the Commission and to keep the Commission regularly informed of progress in the litigation.

§ 11. House Resolution 17-105.

The August 12, 2012 Resolution requests that the Commission order CUC to reimburse ratepayers for all sums which CUC has collected pursuant to the June 7, 2011 Decision in Docket 09-1. In this decision, the Commission awarded CUC \$1.02 million dollars in annual rate revenue in anticipation of debt service expenses under a proposed loan for Stipulated Order capital requirements. The loan was never closed. About \$2.5 million dollars have been collected under the June 2011 Decision.

Stipulation section 11 reflects that CUC has accounted for expenditures of about \$1.5 million dollars since the June 2011 Decision for Stipulated Order related capital requirements. CUC represents that the \$1 million dollar balance was used for business expenses. Although the stipulation implies that GCG is satisfied with CUC's explanation of the use of these funds, it does not contain an explicit GCG position. During the ten day comment period on this report, GCG should clarify its position concerning whether CUC should be required to reimburse ratepayers for any portion of the loan related funds. GCG recommends that in future rate orders reasonable restrictions be applied to rate revenue that is awarded for a specific purpose.

⁵ § 8141(g) provides that CUC's accounts receivable for utility service shall not be more than 90 days past due, unless the consumer is actively contesting the billing. CUC shall cut off utility services to consumers who are not actively contesting their billing and who have accounts more than 90 days past due.

§ 12. NMIAC Amendments.

This stipulation section is self explanatory and requires no comment.

Public Hearings

The Commission conducted three public hearings for the purpose of presenting the stipulation as discussed above and receiving public comments regarding CUC's amended rate petition.

Saipan Public Hearing

At 9:12 a.m. on December 9, 2013 a public hearing was convened at the Governor Pedro P Tenorio Multi-purpose Conference Room, Susupe. No one petitioned to intervene or participate in the hearing pursuant to P.L. 15-35 §8409(j).

The hearing began with a power-point presentation by CUC consultant Dan Jackson about basic ratemaking principles and stipulation sections 2, 4, 5, 6 and 7. GCG then provided brief comments, which questioned Jackson's reference to CUC as a "non profit" corporation and which clarified for purposes of transparency that the parties propose that commercial customers pay for the Public Law 16-7 residential rebate [\$1.3 million per year]. GCG then presented stipulation sections 3, 7, 8, 9, 10 and 11.

The Saipan hearing served as the primary evidentiary hearing in Docket 13-01. After the CUC-GCG presentation, seven ratepayers presented public comments - three in writing, which are incorporated into the record.⁶ Comments generally opposed a rate increase. Several comments expressed concern about CUC's estimated billing practices.⁷ It is worth note that Guam has strict statutory restrictions on estimated and back billing [see 12 GCA § 12026 & 12027]. The undersigned recommends that GCG be tasked with examining CUC's estimated and back billing practices and to make recommendations for appropriate regulatory action at the Spring session, including the need for remedial legislation. Public concern was also expressed about the confusing term "LEAC". It was recommended that the term be changed to "fuel charge".

⁶ Comments were submitted by the Public School System [written comments], Patrick Leon Guerrero [written comments], Juan Cabrera, Juan Babauta, Felipe Atalig and Stanley Torres. Gary Sword [written comments] presented comments at the Commission's December 10, 2013 business meeting.

⁷ CUC is mandated by its enabling legislation to accurately meter electricity and water service.

Tinian Public Hearing

In an effort to reach out to all Commonwealth ratepayers, the Commission convened a public hearing at the Tinian court house at 4:30 p.m. on December 11, 2013. The hearing began with a power-point presentation by CUC consultant Robert Young. Six residents then provided public comment on CUC's rate petition,⁸ which focused on the need for an alternative energy initiative, the \$19 million dollar delinquent government account and on the need to carefully review CUC's operational expenses to assure that they are reasonable. Of significant note were comments by Mr. Barr, which are discussed on page 3 of this report.

Rota Public Hearing

A public hearing was convened at 4:30 p.m. on December 12, 2013 at the Rota court house. The hearing began with a power point presentation by CUC consultant Dan Jackson. The Commission then received comments from seven ratepayers.⁹ Comments focused on the need for rates to be fair – particularly in Rota which has recently experienced a significant decline in population. A number of ratepayers complained about the electric water charge, which did not appear to make sense as Rota's water is gravity fed. The increased use of prepaid meters was encouraged. The commissioners informed the public that CUC alternative energy efforts will be examined at the Spring session. Concern was expressed about the \$1.50 "*convenience fee*", which CUC charges for customers who pay their bills by phone or the internet. It is unclear whether the Commission has approved this fee – a matter which should be examined during the Spring session.

Determinations

The undersigned recommends that after this report has been noticed for public comment, the Commission should convene a business meeting to carefully review the public comments and rule on the following determinations, which will create the framework for the decision in this docket. In evaluating each determination, the commissioners should consider whether they are persuaded of its validity¹⁰. CUC bears the burden of providing this persuasive evidence. After a ruling has been made on each

⁸Comments were submitted by Tom Liu of the Dynasty Resort [written comment], Joseph Mendiola, Ray Cing, Jose Cruz, Arley Long and Jeff Barr.

⁹Public comments were made by Pedro Dela Cruz, Angela Manglona, Thomas Mendiola, Kurt Schroder, Kaye Christian, Eusebio Hocog and Barry Toves.

¹⁰ P.L. 15-35 § 8409(c) provides that no rate change may be approved by the Commission unless it is affirmatively established by a preponderance of the evidence that the rate change is necessary. This standard is satisfied if it is more probable than not in a commissioner's judgment that a determination is true.

determination, the meeting should be recessed to permit the undersigned several business days to craft a decision, which is consistent with the rulings. The meeting should then be reconvened to consider and act on the proposed decision.

Administrative

1. CUC provided timely notice of the Commission's December 9, 2013 Saipan public hearing, the December 11, 2013 Tinian public hearing and the December 12, 2013 Rota public hearing in accordance with P.L. 15-35: § 8418(c) and § 8431(a). The Commission duly noticed the public hearings pursuant to the requirements of § 8418(b).
2. No one applied for the privilege to participate in the public hearings pursuant § 8409(j). The public was given the opportunity to present their views at the hearings.
3. The Commission should reserve its continuing jurisdiction in this docket.
4. CUC should be ordered, pursuant to § 8421[d], to pay for the Commission's expenses, including without limitation, consulting expenses and fees and hearing examiner expenses and the expenses of conducting the hearing process and all further regulatory expenses, which are incurred in this docket.
5. All rulings and orders of the hearing examiner during the course of this proceeding should be ratified and confirmed. All motions not heretofore granted or denied should be denied.
6. Hearing examiner should be authorized to interpret the meaning of the decision herein in furtherance of its reasonable and effective implementation, including, without limitation, the resolution of clerical errors in the stipulation schedules.

Substantive

7. The proposed trifurcated agenda set forth in stipulation Attachment A should be approved. Hearing examiner should be authorized to oversee the development of these matters with GCG's assistance and those additional matters, which are addressed herein for regulatory consideration.
8. A preponderance of evidence supports a finding that the rate and tariff adjustments proposed in stipulation sections 2, 4, 5, 6 and 7 are necessary, just and reasonable. These adjustments should be made effective the day after the Commission's decision.

9. CUC should be authorized to increase its electric base rates to produce an additional \$2.8 million dollars on an annualized basis. This increase should be accomplished by the establishment of the infrastructure surcharge discussed in determination 11 below and by a reciprocal reduction in base rates as set forth in stipulation Attachment Table B-2.
10. CUC should be authorized to institute a 36 month residential refund of \$0.023 kWh, which would be funded by a reciprocal increase in commercial rates. CUC should be ordered to certify to the Commission on or before February 1, 2018 that the refund and reciprocal increase in commercial rates have been terminated.
11. Further consideration of the funding of the Change Order should be tabled until the Spring session. In the interim, hearing examiner should be authorized to facilitate discussions between CUC, GCG and MET on whether: a] Telesource's assignment of interest in the Telesource contract to MET satisfied the requirements of contract section 21.1; b] revisions to the Change Order terms could produce a joint recommendation that it be funded through base rates; and c] title to the Tinian plant and related assets will be transferred to CUC pursuant to contract section 24.3.
12. An infrastructure surcharge of \$0.21 per kWh for all customers should be approved to fund CUC's obligations under its June 2012 *Agreement To Buy Out Contract and Release of Claims with Pacific Marine and Industrial Corporation*. Unless extended by Commission order, it should expire on January 1, 2015. Under hearing examiner's oversight, CUC should undertake a study of its electric distribution infrastructure, including estimates for required additional capital investment. The study should be completed by September 2014. CUC should be authorized to petition in this docket for an extension of the surcharge to fund distribution projects recommended in the study.
13. The electric residential customer block revisions presented in stipulation Attachment E should be approved.
14. The large customer standby charge in form set forth in stipulation Attachment F should be approved.

15. The following non-rate fees, as set forth in stipulation Attachment G, should be approved, subject to their terms and conditions being reviewed and approved by hearing examiner: a] *electric*: i] non-sufficient funds; ii] new service – meter change out; iii] inspection; iv] meter test – single and three phase; v] disconnection notice; and vi] disconnection at meter; b] *water/wastewater*: i] lab service charges; ii] WW tipping fees; iii] balckflow device inspection fee; iv] FOG installation inspection fee; v] FOG biannual inspection fee; and FOG remediation fee.
16. GCG should be tasked with examining CUC’s estimated and back billing practices and with making recommendations for appropriate regulatory action at the Spring session, including the need for remedial legislation.
17. Hearing examiner should oversee a GCG review of CUC’s net metering standards for Commission consideration at a public hearing during the Spring session. Special notice should be provided to each of the 61 CUC net metering customers.
18. GCG should be tasked with examining CUC’s “convenience fee” and with issuing a report for Commission consideration at the Spring session.
19. GCG should be authorized under hearing examiner’s oversight in preparation for the Spring session to undertake a careful review of CUC’s liquidity crisis, including, without limitation: a] whether residential and commercial customers are subsidizing the revenue shortfall caused by the Government delinquency; b] whether any such subsidy violates the P.L. 15-40 8429(c) prohibition against undue preference and discrimination; c] what, if any, impact the delinquency had upon the need for the \$2.8 million dollar base rate increase requested in this proceeding; d] the impact of the liquidity crisis on CUC’s ability to access the financial market place; e] the likely impact of P.L. 18-18 and the October 10, 2013 Executive Directive on the liquidity crisis; f] an examination of the impact, which CUC’s failure to comply with the mandate in P.L. 16-17 § 8141(g) has had on electric base rates; and g] recommendations for appropriate regulatory action.
20. CUC should be directed: a] to file a copy of its complaint against the government, PSS and the hospital for their delinquent fuel accounts and of the defendants’ responsive pleadings; and b] to keep the Commission regularly informed of progress in the litigation.

21. In light of its liquidity crisis and the need to fund Stipulated Order capital projects, CUC should not be required to reimburse to ratepayers for any portion of the revenue stream established by the Commission's June 7, 2011 Decision in Docket 09-1.

Respectfully submitted this 24th day of December, 2013.

/s/

Harry M Boertzel
Hearing Examiner