

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
THE GAS COMPANY, LLC dba HAWAI'IGAS)
For Approval (1) to commit funds in)
Excess of \$500,000 for the proposed)
SNG System Backup Enhancement)
Project, (2) of the Fuel Supply)
Agreement, (3) of the Fuel Delivery)
Contract, and (4) to include the)
Costs of the Fuel Supply Agreement)
And Fuel Delivery Contract in the)
Fuel Adjustment Clause of The Gas)
Company, LLC dba HAWAI'IGAS.)

DOCKET NO. 2013-0184

DECISION AND ORDER NO. 31964

2014 MAR -6 P 1:12
PUBLIC UTILITIES
COMMISSION

FILED

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 Company, LLC dba HAWAI'IGAS.)
 _____)

Docket No. 2013-0184

Decision and Order No. **31964**

DECISION AND ORDER

By this Decision and Order, the commission dismisses in part and approves in part, subject to certain conditions, the requests set forth in the Application¹ filed by THE GAS COMPANY, LLC dba HAWAI'IGAS (the "Company," "Applicant," or "TGC"), on August 12, 2013.²

¹"Application, Attachments 1 to 10, Verification, and Certificate of Service," filed on August 12, 2013 (collectively, "Application").

²The Parties to this proceeding are THE GAS COMPANY, LLC dba HAWAI'IGAS and the DIVISION OF CONSUMER ADVOCACY OF THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), a party, ex officio, to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a). No persons or organizations have moved to intervene or participate in this proceeding.

Specifically, the commission dismisses the Applicant's request to commit funds in excess of \$500,000 for the proposed SNG System Backup Enhancement Project. The commission approves: (1) the Fuel Supply Agreement ("Supply Agreement"), set forth in Attachment 1 to the Application, subject to certain conditions, (2) the Fuel Delivery Contract ("Delivery Contract"), set forth in Attachment 2 to the Application, subject to certain conditions, and (3) TGC's request to allow inclusion of the costs of the Supply Agreement and Delivery Contract in the Fuel Adjustment Clause ("FAC") of the Company to the extent that these costs are not recovered in base rates.

I.

Background

TGC is a duly franchised public utility whose principal place of business is at 745 Fort Street, Suite 1800, Honolulu, Hawaii 96813. TGC engages in both regulated and non-regulated gas operations through its Oahu, Hawaii, Kauai, Maui, Molokai and Lanai Gas Divisions.

TGC's regulated gas operations consist of the purchase, production, transmission, distribution (through its underground gas pipelines), and sale of synthetic natural gas ("SNG") and liquefied petroleum gas ("LPG"). TGC's regulated operations serve residential, commercial, and industrial customers.

TGC's non-regulated gas operations involve the purchase, distribution, and sale of tanked and bottled LPG to residential, commercial, and industrial customers.

TGC's Oahu operations include an SNG plant located at Campbell Industrial Park, where it manufactures SNG that is fed into TGC's Oahu transmission and distribution system.³ The SNG plant currently receives 100% of its feedstock from the Kapolei refinery ("Refinery"), previously owned by Tesoro Hawaii LLC, and now owned and operated by Hawaii Pacific Energy LLC, a subsidiary of Par Petroleum Corp.⁴ Currently, the sole source of stored SNG on Oahu is TGC's transmission and distribution pipeline that runs from Campbell Industrial Park to Hawaii Kai.⁵ TGC currently relies on a Propane-Air Backup System ("PABS"), located at Pier 38, that can produce a propane and air mixture, to supplement the stored SNG in its distribution pipeline during planned or unplanned outages.⁶

³See Application at 7-8.

⁴See Application at 4.

⁵See Application at 7.

⁶See Application at 8.

On August 12, 2013, TGC filed its Application, thus commencing the present proceeding. On September 3, 2013, Hawaiian Electric Company Inc., ("HECO") filed a Motion to Intervene; however, on September 11, 2013, HECO withdrew its Motion.

On September 27, 2013, the Consumer Advocate filed its Interim Statement of Position. On November 15, 2013, the Consumer Advocate filed its "Division Of Consumer Advocacy's Final Statement of Position" ("CA's Final SOP"). On November 21, 2013, TGC filed its "Response Statement Of The Gas Company, LLC DBA HAWAII GAS, To The Division Of Consumer Advocacy's Final Statement Of Position" ("Response Statement").

II.

The Instant Application

As noted above, TGC requests that the commission approve the following: (1) its request to commit funds in excess of \$500,000 for the proposed SNG System Backup Enhancement Project ("Backup Project"), (2) the Supply Agreement, (3) the Delivery Contract, and (4) its proposal to include the costs of the Supply Agreement and the Delivery Contract in TGC's FAC to the extent that these costs are not recovered in base rates.⁷

⁷TGC filed its Application pursuant to section 2.3.f.2 of the commission's General Order No. 9 ("G.O. No. 9"), Standards for Gas

The Backup Project proposed by TGC consists of three major components: (1) LNG equipment, as needed to store, transport, and regasify the required LNG, (2) a Supply Agreement with TGC and a non-Hawaii based LNG supplier, and (3) a Delivery Contract relating to the delivery of both full and empty International Organization of Standardization ("ISO") containers from the LNG supplier to TGC on Oahu and vice versa.

In its Application, TGC generally states that the Backup Project is necessary in order to "address potential disruptions to the SNG Plant's operations, as [TGC] is concerned that such disruptions may occur more frequently and/or for longer durations than in the past."⁸ TGC further states the Backup Project will "supplement and substantially increase [TGC's] existing SNG system backup capacity... by providing a source of lighter-than-air gas that can be mixed with the propane-air and injected into the SNG pipeline, thereby increasing the amount of blended gas available for distribution to SNG customers...."⁹

Service, Calorimetry, Holders & Vessels in the State of Hawaii,
HAR Chapter 6-61, and HAR § 6-60-6(2).

⁸Application at 4.

⁹Application at 8.

TGC asserts that the Backup Project will help provide "continuous, reliable utility gas service"¹⁰ for two reasons: (1) the Backup Project will mitigate the increased risk of SNG plant outages in connection with the transfer of ownership of the Refinery from Tesoro to Par Petroleum; and (2) the Backup Project will increase backup capacity flexibility in order to allow for more timely and cost effective maintenance and repair of the existing SNG system.¹¹

A.

Backup Project Equipment

Specifically, TGC is proposing to purchase: (1) three liquefied natural gas ISO containers and (2) a trailer mounted mobile re-gasifier ("Re-Gasifier") (collectively known as "LNG Equipment"). TGC also notes that two of the ISO containers, as well as the Re-Gasifier, were previously purchased as described in Docket No. 2013-0075, and were "intended... to serve both utility and non-utility customers"¹² by having TGC's non-utility operation supply natural gas to its utility gas district on Oahu.¹³

¹⁰Application at 9.

¹¹Application at 9.

¹²Application at 12.

¹³See Application at 12. See also TGC's Response to PUC-IR-104 at 7-8.

TGC asserts that HRS § 269-19.5, pertaining to relations with an affiliate, does not apply to the proposed sale of LNG Equipment from TGC's non-regulated business to its utility business because "the proposed transfer of equipment between [TGC's] non-utility and utility business segments [] is not between a public utility and an 'affiliated interest' as such term is defined under HRS § 269-19.5."¹⁴ Instead, TGC asserts that its "regulated and non-regulated business segments are operated by the same entity, The Gas Company, LLC d/b/a Hawaii Gas, and neither segment is operated by an 'affiliated interest' of the other."¹⁵

B.

Backup Project Supply Agreement
And Delivery Contract

While the previously discussed LNG Equipment makes up a substantial portion of the proposed Backup Project, a more significant portion relates to the acquisition and transportation of the LNG necessary to implement the Backup Project. TGC originally examined two supply models for acquiring the necessary LNG for the Backup Project. The first called for TGC to purchase the LNG from a supplier and arrange for shipping

¹⁴TGC's Response to PUC-IR-102 at 2.

¹⁵TGC's Response to PUC-IR-102 at 3 (emphasis in original).

separately.¹⁶ The second called for TGC to negotiate a contract with a third party to handle both the LNG procurement as well as the transportation of the LNG utilizing TGC's ISO containers.¹⁷ TGC asserts that "[t]he results of the two pricing models shows that having [TGC] separately negotiate the LNG supply and shipping contracts resulted in a better delivered price of LNG on a per therm basis."¹⁸

TGC's Application requests commission approval of the Supply Agreement, which calls for TGC to purchase LNG from a particular supplier that is "offering acceptable contract terms and the most competitive currently available price of LNG on a per therm basis."¹⁹ TGC is also requesting approval of the Delivery Contract that TGC has already entered into, which calls for "roundtrip door-to-door pickup and delivery of the ISOs from the LNG supplier to [TGC] on Oahu."²⁰

¹⁶See TGC's Response to CA-IR-9 at 21.

¹⁷See TGC's Response to CA-IR-9 at 21.

¹⁸TGC's Response to CA-IR-9 at 21.

¹⁹Application at 13.

²⁰Application at 13.

III.

TGC's Previous Liquefied Natural Gas Docket

On March 28, 2013, Docket No. 2013-0075 was opened upon TGC's filing of an application pursuant to HAR § 6-60-6 requesting commission approval of:

1. The Liquefied Natural Gas Transfer Price Mechanisms ("LTPM") by which [TGC's] non-utility operation will supply natural gas consisting of approximately 99.0% pure methane to [TGC's] Oahu Utility Gas District; and
2. The inclusion of the LTPM costs, including without limitation, the costs associated with natural gas, including transportation, storage, and related taxes in the Oahu Utility Gas District's FAC to the extent that the costs are not recovered in base rates or other recovery mechanism.²¹

In its application TGC stated that "[t]he use of redundant systems and multiple sources of supply are critical to ensuring uninterrupted gas supply in Hawaii."²²

TGC further stated:

²¹See In Re The Gas Co., LLC, DBA Hawai'iGas, Docket No. 2013-0075, Application, filed on March 28, 2013, at 1 ("March 28 Order").

²²March 28 Order at 4.

Closure of the Tesoro refinery will disrupt the supply of naphtha used to manufacture SNG and eliminate one of two local sources of LPG. To mitigate this supply disruption, [TGC] intends to introduce LNG as a third source of energy into its supply mix. LNG is the cleanest burning fossil fuel available and will diversify [TGC's] portfolio of clean energy fuels, reduce the risk of an outage for both utility and non-utility customers, and improve energy security. LNG is also expected to lower fuel costs for O'ahu Utility Gas District ratepayers.²³

Upon the opening of Docket No. 2013-0075, several interested organizations filed motions to intervene, including, the Sierra Club, Life of the Land, and Blue Planet Foundation.

On May 1, 2013, TGC notified the commission that it was withdrawing its application in Docket No. 2013-0075, without prejudice. In its notice to the commission, TGC stated that:

[TGC] has secured a replacement of its feedstock from Tesoro through mid-summer.... it is immediately imperative that [TGC] focus on and dedicate its time and resources to: (i) continuing to execute the elements of its feedstock supply plans by negotiating and finalizing additional short term and long-term feedstock supply arrangements to ensure that [TGC] can continue to provide safe and reliable gas utility services after the cessation of Tesoro's refinery operations, and (ii) obtaining any necessary Commission approvals that may be required in connection

²³March 28 Order at 4.

with such short-term and long-term feedstock supply arrangements.²⁴

IV.

Positions Of The Parties

A.

The Consumer Advocate

In the CA's Final SOP, the Consumer Advocate stated that it "does not object to the proposed Synthetic Natural Gas System Backup Enhancement Project, associated Fuel Supply Agreement, and the Fuel Delivery Contract."²⁵ The CA's Final SOP further stated that the Consumer Advocate initially had concerns with TGC's requested relief.²⁶ However, through the Consumer Advocate's review process, TGC "has provided clarifications and has recalculated the estimated cost savings associated with the proposed Backup Enhancement Project."²⁷

The Consumer Advocate noted the following benefits. First, "[t]he implementation of the proposed Backup Enhancement Project, including the cost of the Fuel Supply Agreement and

²⁴See TGC Letter dated and filed on May 1, 2013, in Docket No. 2013-0075, notifying the commission that TGC was withdrawing its application in the subject proceeding (footnote omitted).

²⁵See CA's Final SOP at 1-2.

²⁶CA's Final SOP at 6.

²⁷See CA's Final SOP at 6.

Fuel Delivery Contract, should result in cost savings..."²⁸
Second, "the Backup Enhancement Project will enable [TGC] to increase its ability provide continuous, reliable utility gas service to the Company's SNG customers..."²⁹ Third, "there are terms [] which should diminish the risk to [TGC's] customers if the proposed Backup Enhancement System does not capture the anticipated benefits."³⁰

The Consumer Advocate also noted that the proposed Supply Agreement and Delivery Contract both contain automatic extension clauses, and recommended that:

[TGC] be required to file a concurrent notice with the Commission and the Consumer Advocate at the time [TGC] or the other party to the agreement or contract provides notice that it seeks to terminate the agreement. At the same time, [TGC] should also provide its plan regarding the Backup Enhancement Project. The Company's Plan should include, but not be limited to: 1) whether the Backup Enhancement Project is still needed or not; 2) if it is still needed, how [TGC] will procure the necessary LNG; and 3) potential impacts on [TGC's] operations and customers; and 4) all contingency related matters.³¹

²⁸CA's Final SOP at 6.

²⁹CA's Final SOP at 7.

³⁰CA's Final SOP at 8.

³¹CA's Final SOP at 9.

The Consumer Advocate also noted that it is "uncertain how the use of LNG for the proposed Backup Enhancement Project relates to [TGC's] long term plans for LNG."³² The Consumer Advocate recognized that "assuming that LNG prices maintain [their] current comparative position to propane and naphtha prices, the Backup Enhancement Project may also offer greater value in the future... which might mean lower bills to the Company's customers."³³

B.

The Company

On November 21, 2013, TGC filed its Response Statement. In its Response Statement, TGC stated that "[TGC] has confirmed with the Consumer Advocate that the Consumer Advocate does not object to the Commission's Approval of [TGC's] requested relief, subject only to the condition set forth in section II of the [Consumer Advocate's] Final SOP."³⁴ TGC further stated that it does not object to this condition and that the Application is "now ready for decision making...."³⁵

³²CA's Final SOP at 9.

³³CA's Final SOP at 9-10.

³⁴Response Statement at 3.

³⁵Response Statement at 3.

V.

Discussion

A.

Capital Expenditures

Section 2.3(f)(2) of G.O. No. 9 states:

Proposed capital expenditures for any single project related to plant replacement, expansion or modernization, in excess of \$500,000 or 10 per cent of the total plant in service, whichever is less, shall be submitted to the Commission for review at least 60 days prior to the commencement of construction or commitment for expenditure, whichever is earlier. If the Commission determines, after hearing on the matter, that any portion of the proposed project provides facilities which are unnecessary or are unreasonably in excess of probable future requirements for utility purposes, then the utility shall not include such portion of the project in its rate base. If the utility subsequently convinces the Commission that the property in question has become necessary or useful for public utility purposes, it may then be included in the rate base. Failure of the Commission to act upon the matter and render a decision and order within 90 days of filing by the utility shall allow the utility to include the project in its rate base without the determination by the Commission required by this rule. The data submitted under this rule shall be in such form and detail as prescribed by the Commission.³⁶

³⁶G.O. No. 9, Rule 2.3(f)(2) (emphasis added).

In its Application, TGC requests commission approval to commit funds in excess of \$500,000 in order to implement its proposed Backup Project.³⁷ Specifically, TGC is seeking to commit approximately \$950,725³⁸ for (1) three LNG ISO containers, (2) a trailer chassis, (3) a trailer mounted mobile Re-gasifier, and (4) certain improvements to Pier 38, where TGC's current Backup system is located.³⁹

TGC asserts that the Backup Project will provide "substantially increased backup capacity for [TGC's] SNG customers."⁴⁰ TGC further asserts that this increased backup capacity is needed as [TGC is] concerned that the "transition of Tesoro Hawaii LLC's [Refinery]... to a new owner and operator..." could lead to increased SNG Plant outages.⁴¹

With respect to this issue, the commission specifically finds and concludes as follows:

1. Over the past twenty-four (24) months, the commission has issued four orders in dockets in which TGC

³⁷Application at 12.

³⁸Application at 17.

³⁹Application at 12-17.

⁴⁰Application at 4.

⁴¹Application at 4.

was seeking retroactive commission approval for capital expenditures under Rule 2.3(f)(2) of the commission's G.O. No. 9.

First, on April 27, 2012, the commission issued Order No. 30351 in Docket No. 2011-0328, In Re The Gas Co., LLC, DBA Hawai'iGas ("Docket No. 2011-0328"). In that docket, TGC was seeking commission approval to commit funds in excess of \$500,000 for the East Kapolei II Distribution System Project after at least a portion of the project had already been completed.

While the commission ultimately approved TGC's application in Docket No. 2011-0328, it noted the following:

[I]t appears that TGC, in March 2011, expended funds to complete a portion of the new distribution system without first filing its capital expenditure application. The commission notes that such action does not appear to comply with the applicable requirement of section 2.3.f.2 that TGC file its application at least sixty days prior to the commencement of construction or commitment for expenditure, whichever is earlier. Thus, TGC proceeded at its own risk in expending funds to complete a portion of the new distribution system in the absence of the commission affirmative approval. . . . TGC is reminded that, for future reference, it shall timely file its capital expenditure applications in compliance with section 2.3.f.2 of General Order No. 9.⁴²

Second, on April 8, 2013, commission issued Order No. 31156 in Docket No. 2013-0061, In Re The Gas Co., LLC, DBA

⁴²In Re The Gas Co., LLC, DBA Hawai'iGas, Docket No. 2011-0328, Decision and Order No. 30351, filed on April 27, 2012, at 8-9.

Hawai'iGas ("Docket No. 2013-0061"), in which it declined to review and adjudicate the merits of TGC's application. TGC's application was seeking after-the-fact approval to commit funds in excess of \$500,000 for two projects to "upgrade portions of its gas transmission pipeline as part of the federally-mandated Transmission Integrity Management Program...."⁴³

In dismissing TGC's application, the commission stated:

[The commission] declines to establish a precedent whereby a gas or electric utility is able to obtain the commission's after-the-fact approval to expend funds for a capital expenditures project the public utility has already completed, and which meets or exceeds the applicable monetary threshold which triggers the commission's pre-approval process. Such a precedent is ill-advised and has the potential for abuse and does not address management's conduct of neglecting to file a timely application that seeks the commission's approval to commit funds for proposed capital expenditure project.⁴⁴

Third, on April 26, 2013, the commission issued Order No. 31206 in Docket No. 2013-0076, In Re The Gas Co., LLC, DBA Hawai'iGas ("Docket No. 2013-0076"), in which the commission again declined to review and adjudicate the merits of TGC's application. TGC's application was seeking after-the-fact

⁴³In Re The Gas Co., LLC, DBA Hawai'iGas, Docket No. 2013-0061, Decision and Order No. 31156, filed on April 8, 2013, at 1.

⁴⁴In Re The Gas Co., LLC, DBA Hawai'iGas, Docket No. 2013-0061, Decision and Order No. 31156, filed on April 8, 2013, at 11 (emphasis in original).

approval to commit funds in excess of \$500,000 for TGC's Distribution System Phase 1 Project, which was "to serve the University of Hawaii West Oahu Campus and surrounding mixed commercial and residential area [.]"⁴⁵

Fourth, on May 15, 2013, the commission issued Order No. 31230 in Docket No. 2012-0389, In Re The Gas Co., LLC, DBA Hawai'iGas ("Docket No. 2012-0389"), in which the commission again declined to review and adjudicate the merits of a TGC application. TGC's application was seeking after the fact approval to commit funds in excess of \$500,000 for "the purchase and installation of a two megawatt backup diesel generator."⁴⁶ In dismissing TGC's application based on "its failure to state a claim upon which relief can be granted,"⁴⁷ the commission once again stated that "...Rule 2.3(f)(2)(2) does not apply to this actual expenditure of funds that have already been spent by TGC."⁴⁸

2. As discussed herein, as well as in Docket Nos. 2012-0389, 2013-0061, and 2013-0076, the commission again reiterates that the scope of Rule 2.3(f)(2) of G.O. No. 9

⁴⁵In Re The Gas Co., LLC, DBA Hawai'iGas, Docket No. 2013-0076, Decision and Order, filed on April 26, 2013, at 1-2.

⁴⁶In Re The Gas Co., LLC, DBA Hawai'iGas, Docket No. 2012-0389, Decision and Order, filed on May 15, 2013, at 1 ("May 15 Order").

⁴⁷May 15 Order at 1.

⁴⁸May 15 Order at 6.

is limited to a gas utility's application for proposed capital expenditures for any single project in excess of \$500,000.⁴⁹

3. The total cost of the Backup Project, including ISO containers, Re-Gasifier, trailer chassis and pier modifications, is estimated to be \$950,725. TGC has already purchased and is in possession of two ISO containers, the mobile Re-Gasifier, and the chassis, for a total cost of more than \$500,000, which constitutes a substantial portion of the estimated \$950,725 total cost of TGC's Backup Project. Thus, Rule 2.3(f)(2) does not apply, as a portion of these funds in excess of \$500,000 has already been expended by TGC.

4. Consistent with its orders in Docket Nos. 2011-0328, 2012-0389, 2013-0061, and 2013-0076, the commission declines to review and adjudicate the merits of TGC's request seeking approval to commit funds in excess of \$500,000 in its Application for the proposed Backup Project. Instead, the commission, on its own motion, dismisses TGC's request seeking approval to commit funds in excess of \$500,000 because Rule 2.3(f)(2) does not apply to a situation where a utility has already made the capital expenditure.

⁴⁹See Docket No. 2013-0061, Order No. 31156 at 6; Docket No. 2013-0076, Order No. 31206 at 5; and Docket No. 2012-0389, Order No. 31230 at 5-6.

B.

Supply Agreement And Delivery Contract

TGC requests that the commission find that the Supply Agreement and Delivery Contract are each reasonable and in the public interest.⁵⁰ While these two agreements are separate and distinct from each other, the commission will review them together herein.⁵¹

The main purpose behind TGC's Backup Project is "to supplement and substantially increase [TGC's] existing SNG backup capacity by providing a source of lighter-than-air gas (i.e., gasified LNG, aka methane) that can be mixed with the propane-air and injected into the SNG pipeline, thereby increasing the amount of blended gas available for distribution to SNG customers."⁵²

⁵⁰See e.g., In re Hawaiian Elec. Co., Inc., Docket No. 2010-0172, Decision and Order, filed on May 13, 2011 (finding a HECO Facility Fuel Supply Contract reasonable and in the public interest); and In re Kauai Elec. Div., Docket No. 98-0220, Decision and Order No. 16722, filed on December 3, 1998 (finding a Kauai Electric Fuel Supply Contract reasonable and in the ratepayers' best interests).

⁵¹Because TGC filed its Application under partial confidential seal, certain information has been withheld from the public disclosure.

⁵²TGC's Response to CA-IR-3 at 7-8.

While a large portion of the proposed Backup Project involves the capital expenditures already discussed in Section II.B above, just as important to the Backup Project are the necessary Supply Agreement and Delivery Contract. These contracts are part of TGC's proposed Backup Project, and are for very limited quantities of LNG. Furthermore, the LNG purchased pursuant to these contracts will be used as a secondary fuel source for TGC's existing PABS, currently located at Pier 38.

[TGC] does not intend to replace propane with LNG as part of the proposed Backup Enhancement Project. The use of LNG in the proposed Backup Enhancement Project, together with the continued use of the existing PABS, will extend the backup capability for the SNG utility system.⁵³

As discussed above, the Consumer Advocate stated that the proposed Backup Project "should result in cost savings..."⁵⁴ as well as "enable [TGC] to provide continuous reliable utility gas services to [its] SNG customers...."⁵⁵

With respect to this issue, the commission specifically finds and concludes as follows:

1. Given the very limited quantity of fuel that is being discussed, the commission believes that the proposed

⁵³TGC's Response to CA-IR-4 at 9.

⁵⁴CA's Final SOP at 6.

⁵⁵CA's Final SOP at 7.

Backup Project will have limited, though positive, value for TGC's utility customers. TGC asserted that it "anticipates when LNG is delivered to the utility system, the FAC will decrease based on the anticipated lower cost of the LNG compared to the SNG it will replace."⁵⁶ TGC further asserted that "each of these rate schedules [Residential, Multi-Unit, Comm/Ind, Large Firm] is expected to be lower."⁵⁷

2. Based on its review of the entire record, the commission finds and concludes that the terms and conditions set forth in both the Supply Agreement as well as the Delivery Contract are reasonable. To the extent that the proposed Backup Project will reduce TGC's SNG customer's rates, and increase reliability by allowing TGC to better schedule the maintenance outages of its SNG plant (thus leading to a better and more reliably maintained plant), the commission also finds that the Supply Agreement and Delivery Contract are in the public interest.

3. Accordingly, the commission approves TGC's Supply Agreement and Delivery Contract, subject to the following conditions:

- A. TGC is required to file concurrent notice with both the commission and the Consumer Advocate in the

⁵⁶TGC's Response to CA-IR-1 at 1.

⁵⁷TGC's Response to CA-IR-1 at 4.

event that TGC or the other party to either the Supply Agreement or the Delivery Contract provides notice that it seeks to terminate the Agreement or Contract.

- B. Any termination notice filed pursuant to the above condition shall be accompanied by a revised plan regarding the Backup Project. This revised plan shall at a minimum include, but not be limited to:
- (1) whether or not the Backup project is still needed;
 - (2) how TGC plans to procure and/or transport the necessary LNG if it is still needed;
 - (3) a description of the potential impacts that the termination of the Agreement and/or Contract will have on TGC's operations and SNG customers;
 - and (4) any and all related contingency matters affected by the termination of the agreement and/or contract.

C.

Inclusion Of The Costs Of The Supply Agreement And
The Delivery Contract In TGC's Fuel Adjustment Clause

Finally, TGC seeks approval to include the "payments (including applicable taxes and assessments) that are incurred by [TGC] under the Fuel Supply Agreement and the

Fuel Delivery Contract, for recovery in and through [TGC's] FAC, to the extent that such costs are not recovered through [TGC's] base rates or other cost recovery mechanism."⁵⁸

With respect to this issue, the commission specifically finds and concludes as follows:

1. HRS § 269-16(g) states that an automatic fuel adjustment clause shall be designed, as determined by the commission, in its discretion, to address five specific factors. One such factor is that the clause should allow a public utility to "mitigate the risk of sudden or frequent fuel cost changes that cannot otherwise be reasonably mitigated through other commercially available means, such as through fuel hedging contracts." HRS § 269-16(g)(3).

2. HAR § 6-60-6 provides in pertinent part:

Automatic adjustment clauses. The utility's rate schedules may include automatic rate adjustment clauses, only for those clauses previously approved by the commission. Upon effective date of this chapter, any fuel adjustment clause submitted for commission approval shall comply with the following standards:

(1) "Fuel adjustment clause" means a provision of a rate schedule which provides for increases or decreases or both, without prior hearing, in rates reflecting increases or decreases or both in cost incurred by an electric or gas utility for fuel and purchased energy due to changes in the unit cost of fuel and purchased energy.

⁵⁸Application at 21.

(2) No change in fuel and purchased energy costs may be included in the fuel adjustment clause unless the contract or prices for the purchase of such fuel or energy have been previously approved or filed with the commission.

(3) The fuel adjustment clause shall cover only increases or decreases in the unit cost of fuel and purchased energy adjusted for the resulting changes in revenue taxes, from those found reasonable in the last rate case proceeding for the utility; where such unit cost were included in the base rate for each schedule.

(4) The adjustment shall be effective on the date of change and when a cost change occurs during a customer's billing period, the fuel adjustment shall be prorated for the number of days each cost was in effect.⁵⁹

3. The commission observes that the Consumer Advocate does not object to this request.

4. Based on these findings, and pursuant to HAR § 6-60-6, the commission concludes that the costs associated with the TGC's Supply Agreement and Delivery Contract may be recovered through TGC's FAC to the extent that such costs are not recovered in TGC's base rates.

⁵⁹HAR § 6-60-6(1)-(4).

VI.

Orders

THE COMMISSION ORDERS:

1. TGC's request for approval to commit funds in excess of \$500,000 for the proposed SNG Backup Enhancement Project is dismissed.

2. TGC's request for approval of the Supply Agreement is granted, provided that: (A) TGC files concurrent notices with both the commission and the Consumer Advocate in the event that TGC or the other party to the Supply Agreement provides notice that its seeks to terminate the agreement; and (B) any termination notice filed pursuant to the above condition shall be accompanied by a revised plan regarding the SNG Backup Enhancement Project as discussed herein.

3. TGC's request for approval of the Delivery Contract is granted, provided that: (A) TGC files concurrent notice with both the commission as well as the Consumer Advocate in the event that TGC, or the other party to the Delivery Contract provides notice that its seeks to terminate the Contract; and (B) any termination notice filed pursuant to the above condition shall be accompanied by a revised plan regarding the SNG Backup Enhancement Project as discussed herein.

4. The inclusion of the costs of the Supply Agreement and the Delivery Contract in TGC's FAC is approved, to the extent that such costs are not recovered in TGC's base rates.

DONE at Honolulu, Hawaii MAR - 6 2014.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By *Hermina Morita*
Hermina Morita, Chair

By *Michael E. Champley*
Michael E. Champley, Commissioner

By *Lorraine H. Akiba*
Lorraine H. Akiba, Commissioner

APPROVED AS TO FORM:

Ryan D. Hurley
Ryan D. Hurley
Commission Counsel

2013-0184.sr

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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