


I MINA'BENTE NUEBI NA LIHESLATURAN GUÅHAN
2007 (FIRST) Regular Session

Bill No. 122 (EC)

Introduced by:

J.A. Lujan 

7 JUN 14 10:15
for

AN ACT TO AUTHORIZE THE SALE OF ELECTRIC ENERGY BY COMMERCIAL POWER PRODUCERS DIRECTLY TO CONSUMERS, AND DIRECTING THE PUBLIC UTILITIES COMMISSION TO ESTABLISH REASONABLE RATES FOR ACCESS TO GUAM POWER AUTHORITY TRANSMISSION FACILITIES, TO BE KNOWN AS THE “POWER BILL REDUCTION AND STABILIZATION ACT OF 2007”

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 Section 1. This Act shall be known as the “*Power Bill Reduction and*
3 *Stabilization Act of 2007*”.

4 Section 2. §8301 of Title 12, Guam Code Annotated, is amended to read: “This
5 Article shall be known as the *Alternate Energy Plan Policy for Guam Act*.”

6 Section 3. The current §8302 of Title 12 Guam Code Annotated, on Findings of
7 the Seventeenth Guam Legislature, is redesignated as Subsection (a), with paragraphs
8 (i) through (x), inclusive. A new Subsection (b) is added to §8302 to read as follows:

9 “(b). *I Mina’ Nuebi Na Liheslaturan Guåhan* finds:

1 (i) Power bills have risen faster than other components of inflation. Most of the
2 increase is directly attributed to increased fuel costs. Some of these increases can be
3 mitigated by more efficient and effective administration of the Guam Power
4 Authority's assets, as directed by this Act.

5 (ii) The U.S. Department of Energy recently updated its Territorial Energy
6 Assessment. This Act adopts its recommendations for Guam and upgrades the decades-
7 old Plan in Title 12 Guam Code Annotated, Article 3 from a set of planning
8 considerations to a more aggressive statement of policy direction.

9 (iii) Guam expects a significant increase in total electrical utility demand with
10 the increase in military activities. The Legislature recognizes that cost effective
11 commercial means to expand and improve electrical services are available without
12 burdening current rate payers. This Act encourages private investment in more efficient
13 forms of alternate power generation, and requires establishment of a regulatory regime
14 to facilitate their access to customers through GPA's transmission and distribution
15 plant, to offer immediate rate relief."

16 **Section 4.** Title 12 Guam Code Annotated §8303, on Adoption of U.S.
17 Department of Energy's Territorial Energy Assessment Final Report, is repealed and
18 reenacted to read as follows:

1 “**§8303.** The United States of America Insular Areas Energy Assessment Report
2 (2006 Update of the 1982 Territorial Energy Assessment) is hereby adopted as
3 authoritative guidance for alternate energy development policy by the government of
4 Guam, subject to prevailing relative costs of fuel, construction and specific
5 technologies as they evolve, and all applicable laws, including provisions of this
6 Article.”

7 **Section 5.** §8304 of Title 12, Guam Code Annotated, is repealed and reenacted
8 to read:

9 “**§8304. Unsolicited Proposals.**

10 (a) Under such Build – Operate – Transfer or other authority as exists in Guam
11 law or delegated powers, the Guam Power Authority is authorized and directed to
12 consider unsolicited proposals for relatively efficient alternate sources of electrical
13 generation. Unsolicited proposals may be accepted by Guam Power Authority on a
14 negotiated basis, provided, that all the following conditions are met:

- 15 1. The proposal offers an alternate concept, technology or energy source;
- 16 2. No direct government guarantee, subsidy or equity is required; and
- 17 3. The proponent of the unsolicited proposal must submit a bid bond together
18 with its unsolicited proposal. For purposes of this section, a “bid bond” is a guarantee
19 that the proponent of the unsolicited proposal will enter into the agreement under

1 consideration by the Guam Power Authority if the agreement is awarded to the
2 proponent. The bid bond shall also guarantee that the proponent will supply the
3 required performance bond in the event the agreement is awarded to it. The amount of
4 the bid bond required under this section shall be one-half of one per cent (0.5%) of the
5 total estimated project cost as contained in the proposal, plus a non-refundable fee of
6 ten thousand dollars (\$10,000) to defray part of the cost to review the proposal.

7 (b) Within five days of receipt of an unsolicited proposal by the Guam Power
8 Authority, the Guam Power Authority shall invite comparative or competitive
9 proposals within sixty (60) days by publication of the unsolicited proposal in a
10 newspaper of general circulation and on its website, in the same manner as its
11 publications for procurement and requests for proposals.

12 (c) Price Matching. When a comparative or competitive respondent submits a
13 lower price proposal following publication by Guam Power Authority and the original
14 proponent matches that price within thirty (30) working days, then the Guam Power
15 authority and the independent qualified consultant shall recommend to the
16 Consolidated Commission on Utilities to approve the proposal submitted by the
17 original proponent.

18 (d) Evaluation of Unsolicited Proposals. The Guam Power Authority shall retain
19 an independent qualified consultant to impartially evaluate all unsolicited proposals for

1 technical and financial merit within ninety (90) days of receipt. The Guam Power
2 Authority shall submit the consultant's report, its recommendations and the proposal
3 itself to the Consolidated Commission on Utilities. A decision shall be rendered by the
4 Consolidated Commission on Utilities within thirty (30) calendar days of receipt. All
5 such reports and any documents submitted in support or included shall be public
6 documents.

7 **Section 6.** Paragraph 8306(7) of Title 12, Guam Code Annotated, is amended as
8 follows:

9 “(7) Any contract to purchase alternate energy (including power generated from
10 windmills, solar ponds and Ocean Thermal Energy Technology) must provide that
11 neither the government of Guam nor the Guam Power Authority shall be obligated to
12 purchase electrical power not needed by the Guam Power Authority unless generating
13 such power is more efficient by 10% or greater, as determined by comparing the price
14 per kilowatt-hour offered by the alternate energy supplier, with Guam Power
15 Authority's current average net generation cost per kilowatt hour (net generating costs
16 means gross generating cost per kilowatt-hour net of power generating station usage
17 and transformation losses) of various Guam Power Authority power plants (excluding
18 costs of transmission and distribution), as cited before the Public Utilities Commission
19 as the basis for rates charged to various classes of customers.”

1 **Section 7.** 12 Guam Code Annotated §8307 is amended to read:

2 “(a) The Power of Eminent Domain (condemnation) shall not be used by the
3 government of Guam or the Guam Power Authority to provide land for alternate energy
4 sources or to provide land to lease to alternate energy suppliers. It shall be the exclusive
5 responsibility of the alternate energy supplier to cope with land/easement problems,
6 and neither the government of Guam nor the Guam Power Authority shall be under any
7 obligation to provide land to alternate energy suppliers, except as provided in (b) of this
8 Section.

9 (b) The government of Guam and Guam Power Authority may not unreasonably
10 withhold, from alternate energy suppliers (including Commercial Power Producer),
11 access to established public easements and utility easements without charge, provided,
12 that if power poles are used, a reasonable tariff for such use may be established, and
13 that any such use must conform with currently applicable engineering specifications
14 and standards.”

15 **Section 8.** A new §8311 is added to 12 Guam Code Annotated to read:

16 “**§8311. Transfer of Guam Energy Office to Guam Power Authority.**
17 Effective October 1, 2007, the operations, staff and funding for the Guam Energy
18 Office shall become part of Guam Power Authority, to be assigned within the
19 Authority as appropriate.”

1 **Section 9.** A new §8314 is added to Title 12, Guam Code Annotated, to read:

2 “**§8314. Commercial Power Producers.** (a) Notwithstanding the provisions of
3 12 GCA §8234, regarding Limitation as to Competitive Projects, or any other provision
4 of law inconsistent herewith, any duly licensed company generating electrical power in
5 conformance with federal and Guam law, and Guam Power Authority interconnection
6 technical standards and specifications, may sell power service directly to any consumer
7 of power in Guam as a Commercial Power Producer. A Commercial Power Producer is
8 not a Public Utility, and as such is not subject to the General Powers and Duties of the
9 Public Utilities Commission as described in 12 GCA §12004, unless and until such
10 producer individually, or in any non-competitive cooperation or joint venture with
11 other producers (including Guam Power Authority), owns more than sixty percent
12 (60%) of the total generating capacity in Guam.

13 (b) Guam Power Authority shall provide a Commercial Power Producer with
14 access to customers through its transmission and distribution capital facilities. A
15 reasonable Wheeling Rate for Commercial Power Producer access and use of Guam
16 Power Authority’s transmission and distribution plant shall be established by the Public
17 Utilities Commission. The Public Utilities Commission shall also establish, in
18 accordance with the Administrative Adjudication Act, such reasonable technical
19 standards, and rules and regulations, as are necessary for a Commercial Power

1 Producer to connect to the Guam Power Authority's transmission and distribution
2 facilities as a matter of right.

3 (c) A Commercial Power Producer may install underground power lines directly
4 to its customers within public easements, subject to all applicable standards and
5 permits, and is entitled to reimbursement from Guam Power Authority for the
6 remaining depreciable value of such plant upon conveying title to Guam Power
7 Authority, if such conveyance is acceptable and agreed by both the Commercial Power
8 Producer and Guam Power Authority. Any Commercial Power Producer may retain
9 ownership of any underground power lines that it installs. In the event such
10 underground power lines are connected to the Guam Power Authority' transmission
11 and distribution facilities, it may be used by Guam Power Authority and other
12 Commercial Power Producers, provided that a reasonable fee is paid for use of said
13 commercial underground power transmission facilities. This reasonable use fee, and
14 corresponding rule and regulations for such use, shall be established by the Public
15 Utilities Commission pursuant to the Administrative Adjudication Act for said use.

16 (d) The Public Utilities Commission shall, consistent with the Administrative
17 Adjudication Act, adopt such rules and regulations to allow it to arbitrate any dispute
18 between the Guam Power Authority and any Commercial Power Producer or any

1 combination thereof which may arise between them concerning or relating to any
2 matter contained in this Section.

3 (e) The Public Utilities Commission, subject to the Administrative Adjudication
4 Act, may establish such reasonable fees it requires from any Commercial Power
5 Producer and the Guam Power Authority for filing and reviewing or arbitrating any
6 petition made to it under this Section.

7 (f) If the Public Utilities Commission has not made or issued any rule or
8 regulation authorized herein then a Commercial Power Producer may directly petition
9 the Superior Court of Guam for the relief it seeks. Such a petition shall be heard by the
10 Superior Court as a summary proceeding requiring a hearing on the merits of the
11 petition within twenty one (21) days of service on the Guam Power Authority and a
12 judicial decision within thirty (30) days on the conclusion of presentation of the
13 evidence thereof. Any judge who does not issue a decision within the required time
14 shall not collect his or her paycheck until such decision is issued. Upon appeal the
15 appellant shall post bond equal to the full value of any potential economic loss by the
16 appellee. The prevailing party shall be entitled to reimbursement of all reasonable
17 attorney's fees and costs incurred. If the Superior Court or the Public Utilities
18 Commission determines that any actions by the Guam Power Authority have been
19 willfully undertaken to delay or unnecessarily increase the expenses of a Commercial

1 Power Producer from providing power services to the community, the Superior Court
2 and the Public Utilities Commission may assess any responsible Guam Power
3 Authority manager and the Consolidated Commission on Utilities, jointly and
4 severally, for all or part of the attorney's fees and costs incurred by the Commercial
5 Power Producer caused by such willful delay.”

6 **Section 10. Severability.** *If* any provision of this Law or its application to any
7 person or circumstance is found to be invalid or contrary to law, such invalidity shall
8 *not* affect other provisions or applications of this Law which can be given effect
9 without the invalid provisions or application, and to this end the provisions of this Law
10 are severable.