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*Attorneys for Appellant  
GlidePath Marianas Operations Inc.*

RECEIVED  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS  
DATE: 2/20/2020  
TIME: 4:29 PM ✓  
FILE NO OPA-PA: 19-010/20-001

**IN THE OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEAL**

In the Appeal of

GlidePath Marianas Operations Inc.,

Appellant.

DOCKET NOS. OPA-PA-19-010  
OPA-PA-20-001

**MOTION TO ALLOW REMOTE  
TESTIMONY**

GlidePath Marianas Operations Inc. (“GlidePath” or “Appellant”), by and through its undersigned counsel, requests that the Public Auditor allow for remote testimony to be received at the eventual hearing in this procurement appeal. The regulations that control the hearing procedures in this matter allow broad powers to the hearing officer to control the proceedings. 2 G.A.R. §12108(d) explains:

Hearings shall be as informal as may be reasonable and appropriate under the circumstances and shall not be bound by statutory rules of evidence or by technical or formal rules of procedure except as provided by the Guam Procurement Law, Chapter 5 of Title 5, Guam Code Annotated, and with these procurement appeals regulations. The testimony presented shall be written, oral or otherwise. The weight to be attached to evidence presented in any particular form will be within the discretion of the Hearing Officer. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Hearing Officer may require evidence in addition to that offered by the parties. Where not otherwise provided for by these rules and regulations or statute, and where not inconsistent herewith, hearings shall be conducted in accordance with the Administrative Adjudication Law in Chapter 9 of Title 5, Guam Code Annotated, including those provisions on subpoenas and contempt.

2 G.A.R. 12108(d)

ORIGINAL

GlidePath may need to present testimony via remote telecommunication, since a scheduling conflict may exist that would prevent witnesses that GlidePath may rely upon for the presentation of its case from being on Guam for the hearing in this appeal. On January 29, 2020, the Office of Public Accountability (“OPA”) held a scheduling conference in this matter setting certain dates, including setting March 25, 2020, as the first date for the merits hearing. The Public Auditor went on to inform the parties and “if for some reason you guys can’t bring someone in that is critical to the presentation of this case notify us immediately so we can meet and reschedule.” Hearing Audio, January 29, 2020, *available at* <http://www.opaguam.org/procurement-appeals/search-procurement-appeals#9688>. On February 4, 2020, GlidePath informed the OPA that it had learned of a scheduling conflict with potential witnesses it may choose to call, and asked that the proceedings be delayed until April 1, 2020. *See*, Email Correspondence, attached as Attachment A to this Motion. While procuring Agency GPA had no issue with a delay in the proceedings until the week of April 6, 2020, interested party ENGIE objected to any further delay. The OPA subsequently informed the parties that “The Public Auditor has decided to deny GlidePath's request to reschedule the hearing to April 1, 2020.” *Hearing Audio, January 29, 2020*. Based upon this ruling, GlidePath now seeks permission from the OPA to allow for remote testimony to be provided at the hearing in this case scheduled for March 25, 2020.

The presentation of remote testimony will not prejudice any party to this case, complicate the presentation of evidence, or burden the OPA. GlidePath will provide all of the necessary equipment to present any remote testimony offered by it, and will work diligently with OPA personnel that the presentation of remote testimony occurs without disrupting the proceedings. Furthermore, allowing remote testimony in this case will conform to past practice of the OPA in

allowing telephonic and remote testimony when witnesses cannot be physically present at a formal hearing before the OPA. *See, e.g., JMI-Edison v. Guam Memorial Hospital Authority*, OPA-PA-18-001(allowing telephonic testimony from General Electric personnel on May 23, 2018.) Based upon the forgoing, GlidePath respectfully requests that, if the need arises, it be allowed to present remote testimony to the OPA at the eventual merits hearing in this case.

*Respectfully submitted* on February 20, 2020.

**CIVILLE & TANG, PLLC**

By: \_\_\_\_\_

  
**JOSHUA D. WALSH**

**EDWIN J. TORRES**

*Attorneys for Appellant*

*GlidePath Marianas Operations, Inc.*

# **ATTACHMENT A**

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From: **Joshua D Walsh** <jdwalsh@civiletang.com>  
Date: Wed, Feb 5, 2020 at 4:20 PM  
Subject: Re: March 25 hearing  
To: Jerrick Hernandez <jhernandez@guamopa.com>  
Cc: R. Marsil Johnson <rmarsjohnson@bsjmlaw.com>, Graham Botha <gbotha@gpagwa.com>

Received and understood. Thank you.

I offer the following for the record:

ENGIE's objections to a later start for the hearing include two grounds of "delay" attributed to GlidePath. First, ENGIE finds fault with GlidePath's attempt to obtain a deposition. Both ENGIE and GPA were aware of GlidePath's desire to take a deposition of GPA personnel on January 15. Neither ENGIE nor Glidepath expressed an objection to that request until the hearing held on Wednesday, January 29—fourteen days later. The necessity of motion seeking discovery was, therefore, not known until the January 29 hearing. That motion was submitted today.

ENGIE also found fault with the request for a short delay not coming until Tuesday February 4, a date three business days after the status conference where the Hearing date was set. While I certainly appreciate that ENGIE took time to confirm its counsel's availability for the March 25 hearing during the status hearing, I recall the Public Auditor informing the parties to let the OPA know if there were any scheduling conflicts that did arise once the hearing was concluded. I Inquired from the totality of our team that I anticipate participating in the eventual hearing about any date concerns, and learned of the conflict after that.

I respectfully ask that this be included in the record of this matter kept by the OPA.

Sincerely,

Josh

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On Wed, Feb 5, 2020 at 3:40 PM Jerrick Hernandez <jhernandez@guamopa.com> wrote:

Hafa Adai Everyone,

The Public Auditor has decided to deny GlidePath's request to reschedule the hearing to April 1, 2020. Therefore the original scheduling order stands, with the formal hearing scheduled to begin at 10 am on Wednesday, March 25, 2020.

Please confirm receipt of this email. Thank you.

On Wed, Feb 5, 2020 at 8:54 AM Jerrick Hernandez <jhernandez@guamopa.com> wrote:

Hafa Adai Everyone,

Thank you all for your feedback. I will forward your comments to the Public Auditor to take under advisement, and I will let the parties know what the Public Auditor decides.

On Wed, Feb 5, 2020 at 8:01 AM R. Marsil Johnson <rmarsjohnson@bsjmlaw.com> wrote:

Jerrick and Josh,

This is unacceptable.

This is the third delay requested by GlidePath. GlidePath requested a delay in providing their comments on the agency report even though the agency report consisted almost entirely of documents already made available to the parties through the procurement process, a delay so they can request a deposition they admit they are not entitled to under the procurement rules, and now a delay because an unnamed member of their team cannot make it to the hearing date that was set at last week's scheduling conference.

The scheduling conference was called specifically to set the schedule (which includes the hearing date). Engie arrived prepared to set the schedule. It brought a representative to the conference and asked for a pause in the conference to reach out to another representative to make sure the schedule would work. If GlidePath had a

conflict, it should have raised that conflict at the scheduling conference. Instead, it waited a week to inform the OPA and the parties of a conflict. During that week, Engie representatives have arranged their schedules and made plans to ensure they can attend the hearing as scheduled.

GlidePath cannot be allowed to dictate the hearing date like this. Engie insists that the hearing proceed as calendared on March 25.

Regards,

R. Marsil Johnson



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& MARTINEZ

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NOTICE: Please update your address book to reflect my new e-mail address -- [rmarsjohnson@bsjmlaw.com](mailto:rmarsjohnson@bsjmlaw.com). Thank you.

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From: Jerrick Hernandez <[jhernandez@guamopa.com](mailto:jhernandez@guamopa.com)>

Sent: Tuesday, February 4, 2020 4:46 PM

To: Joshua D Walsh <[jdwalsh@civilletang.com](mailto:jdwalsh@civilletang.com)>

**Cc:** R. Marsil Johnson <rmarsjohnson@bsjmlaw.com>; Graham Botha <gbotha@gpagwa.com>  
**Subject:** Re: March 25 hearing

Hafa Adai Mr. Walsh,

I will forward your request to the Public Auditor. In the meantime, I welcome any comments from the other parties regarding the request to move the formal hearing from March 25 to April 1, including whether a third status conference with all the parties needs to be called.

On Tue, Feb 4, 2020 at 2:02 PM Joshua D Walsh <jdwalsh@civilletang.com> wrote:

Hello Mr. Hernandez,

At our last scheduling hearing, the Public Auditor asked that we immediately inform him if we learned of a scheduling conflict with our hearing date. I have since learned that one member of our off island team is unable to meet the March 25 start for a hearing. Is it possible to begin proceedings the following week on April 1, 2020, if that date is available and acceptable to the other parties?

Sincerely,

Josh

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--  
Regards,



Jerrick J.J.G. Hernandez, MA, CGAP, CICA

Auditor

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