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DATE: 7/2/2020

TIME: 9:30 AM PM BY: Thyza

FILE NO OPA-PA: 19-010 ; 20-001

Attorneys for Party in Interest ENGIE SOLAR

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

In the Appeal of)
)
GlidePath Marianas Operations,)
Inc.)
)
Appellant.)
)
)
)

Docket No. OPA-PA-19-010
OPA-PA-20-001
INTERESTED PARTY ENGIE
SOLAR'S OBJECTIONS AND
MOTION TO STRIKE APPELLANT'S
UNTMELY AMENDED WITNESS LIST

Interested Party and Winning Bidder ENGIE Solar ("ENGIE") hereby submits these Objections to the untimely Amended Appellant's Witness List.

2 GAR 12109(g) provides that the Public Auditor may "[f]ix time limits for submission of written documents in matters before such officer." The Scheduling Order in this case was issued on January 30, 2020. It mandates that all parties file their Witness Lists on March 13, 2020. All parties timely filed their Witness Lists on that date.

On the eve of the evidentiary hearing in this matter scheduled to take place on Monday, July 6,

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2020,¹ Appellant GlidePath filed an Amended Witness List identifying a Witness Number 19: “Robert P. Charles”. This witness was never identified previously in any of GlidePath’s filings, including its Trial Brief, or any of its documents in support of its appeal. GlidePath did not seek leave to file an Amended Witness List and failed to provide any explanation of its untimely identification of a new expert witness.

ENGIE is severely prejudiced by this last-minute addition of a nineteenth witness by GlidePath. The Scheduling Order was issued five months ago and the filing deadline of Witness Lists was three months ago. The parties have been preparing for the July 6 evidentiary hearing for weeks now with no hint that another expert witness would be presented by GlidePath. The parties have had two logistics meetings at the OPA hearing room, the last one on July 1, 2020, and GlidePath never whispered a word about calling another expert witness. ENGIE’s entire case is premised upon the identification of GlidePath’s witnesses in its Witness List filed on March 13, 2020. To try to prepare for another expert witness now places ENGIE at a great disadvantage.

In a telephone conversation with GlidePath’s counsel on July 2, 2020 about who Robert P. Charles is, Mr. Razzano stated that he is a second expert witness, he works at Sargent & Lundy, L.L.C., the same firm where their other expert witness Vince Maione works, and « he will talk about the same thing Vince Maione will testify about. » A. P. Arriola Decl. Given this admission, the Public Auditor should refuse to allow Richard P. Charles to testify or to give any evidence, since such evidence would be cumulative, duplicative, and unnecessary. See 2 GAR § 12109(f) (Public Auditor may exclude evidence or testimony which are “irrelevant, immaterials, or unduly repetitious”).

The Public Auditor may “[r]egulate the court of this hearing and conduct of participants therein.” 2 GAR § 12109(e). The Public Auditor may also impose sanctions against any party or

¹ It is the “eve” of the evidentiary hearing because there is an intervening holiday (July 3) and a weekend.

person failing to obey an order under these procedures, which sanctions may include refusing to allow the disobedient party « to support or oppose designed claims or defenses, or prohibiting that party from introducing designated matters in evidence. 2 GAR § 12109(h)(1).

CONCLUSION

For all of the foregoing reasons, Interested Party ENGIE SOLAR respectfully requests that the Public Auditor grant ENGIE SOLAR's Motion to Strike Amended Appellant's Witness List and refuse to allow Richard P. Charles to present any testimony at the hearing of this matter.

Dated at Hagåtña, Guam: July 2, 2020.

ARRIOLA LAW FIRM
Counsel for Interested Party
ENGIE SOLAR

By: 
ANITA P. ARRIOLA