



By order of the Court, Associate Judge Lillian Ada Tenorio

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IN THE SUPERIOR COURT OF THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

AP ENERGY LLC,	)	CIVIL CASE NO. 26-0033
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>ORDER DENYING PETITIONER’S</b>
	)	<b>MOTION FOR STAY AND</b>
<b>COMMONWEALTH UTILITIES</b>	)	<b>TEMPORARY RESTRAINING</b>
<b>CORPORATION,</b>	)	<b>ORDER</b>
	)	
<b>Respondent.</b>	)	
_____	)	

I. INTRODUCTION

THIS MATTER came before the Court for a hearing on Petitioner’s Motion for Stay and Temporary Restraining Order (“Motion”) on March 11, 2026, at 2:00 p.m. in the CNMI Superior Court, Guma’ Hustisia, Courtroom 223A. Richard Miller, Esq., appeared on behalf of AP Energy LLC (“AP” or “Petitioner”). Assistant Attorney General Tina Ngo, Esq., appeared on behalf of the Commonwealth Utilities Corporation (“CUC” or “Respondent”).

Petitioner’s Motion alleged that Respondent had improperly disqualified AP in round one of procurement for a large-scale renewable energy infrastructure project. Petitioner’s Motion moved the Court to order a stay in CUC’s evaluation of phase two proponents. Respondent opposed Petitioner’s Motion, arguing that it rested on a selective reading of one appendix in CUC’s Request for Proposal (“RFP”). The Court now issues this order **DENYING** Petitioner’s Motion.

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1 **II. BACKGROUND**

2 A. The RFP

3 CUC published CUC-RFP-25-021 on August 26, 2025. The RFP, titled “Independent Power  
4 Producer-Solar Photovoltaic with Battery Energy Storage System (BESS) for All Islands, CNMI,”  
5 requested proposals for a large-scale renewable energy infrastructure project in the Commonwealth.  
6 The proponent selected by CUC will enter a 25-year multi-million-dollar contract to construct solar  
7 installations, battery storage, and other improvements to the CNMI energy grid.

8 The RFP contained a Scope of Work document and five accompanying appendices,  
9 designated A-E. *See* Ex. 2, Scope of Work. Section 3 of the Scope of Work document contains  
10 Subsection 3.1, “Overview of Required Information” and Subsection 3.2, “Documents and Forms.”  
11 *See id.*, 12-15. Subsection 3.1 states that “Proponents should provide as detailed and comprehensive  
12 as possible responses to *all* of the required components, in order to maximize the chances of their  
13 proposals being considered complete, responsive, and qualified.” *See id.*, 12 (emphasis added).

14 Subsection 3.2 “provides descriptions and checklists of the required components for proposals  
15 in order for them to be considered complete and responsive.” *See id.*, 13. Documents “such as . . .  
16 audited financial statements . . . are also required.” *See id.* Subsection 3.2 contains Table 3.2:  
17 “Documents, Forms, Templates, Worksheets.” *See id.* Table 3.2 lists “Audited financial statements  
18 for the last three years” as a requirement that “Must be submitted with other proposal materials as  
19 part of ‘Technical Proposal’” by an October 30, 2025 deadline. *Id.* In a column titled “Additional  
20 Instructions,” Table 3.2 describes audited financial statements as “Statements of net assets (balance  
21 sheet), revenues and expenses; and cash flows are required at a minimum.” *Id.*

22 Section 8 of the RFP, “Technical Proposal Requirements for Developer Qualification and  
23 Development Risk,” contains Subsection 8.3, “Proponent’s Project Financing and Credit  
24 Worthiness.” *See id.*, 28-30. Section 8 “describes the required components to be included as part of

1 each proponent’s Technical Proposal regarding qualifications, experience, and expertise as well as  
2 the ability to obtain eventual financing and the associated development risks for the project being  
3 proposed.” *Id.*, 28. Subsection 8.3 requires proponents to provide a showing of their “ability to  
4 fund/finance their obligations under the proposal and provide support for their credit-worthiness.”

5 *Id.*, 29. Subsection 8.3 states that

6 Appendix B contains the “Project Financing and Credit Worthiness Template” which  
7 is a series of questions and requirements that must be answered/completed by all  
8 proponents.

9 Proponents are required to provide responses to all questions to demonstrate the  
10 financial viability of their project and their credit worthiness. This template also  
11 outlines the required submittal of documents such as audited financial statements . . .

12 *Id.*, 30.

13 Appendix A of the RFP contains Section 3, “Proposal Submittal Checklist.” *See id.*, App. A,  
14 5-8. This Section provides a “checklist of required documents and information to be included as part  
15 of each proponent’s technical proposal submittal.” *Id.*, 5. The checklist requires “Audited Financial  
16 Statements, Last Three Years.” *Id.*, 6. It also exhorts proponents to “check” a box indicating  
17 completion and to provide the “applicable proposal section/page number(s) or file/document name”  
18 where audited financial statements have been included in the proposal. *Id.*

19 Appendix B of the RFP is titled “Technical Proposal and Evaluation Forms, Templates, and  
20 Worksheets.” *See id.*, App. B, 1. Its contents list 9 documents, including item 6, “Project Financing  
21 and Credit Worthiness Template.” *Id.* Items 3-9 of Appendix B must be “completed and provided as  
22 part of each proponent’s Technical Proposal submittal.” *Id.*, 2.

23 Item 6 of Appendix B, “Project Financing and Credit Worthiness Template,” states that  
24 proponents “are required to demonstrate the financial viability of their proposed project . . . and their  
long-term credit-worthiness as a provider of power supply resources to CUC.” *Id.*, 14. Question 9 of

1 Item 6 requires that proponents provide “copies of the most recent three years of audited financial  
2 statements or annual report for each proponent, including affiliates of the proponent.” *Id.*, 15.

3 B. The Proposal

4 The RFP listed a proposal deadline of October 30, 2025. Table 1.6 of the RFP allowed  
5 proponents to submit any Requests for Information (“RFI”) / Requests for Clarification (“RFC”) by  
6 September 26, 2025. *See id.*, Scope of Work, 5. Petitioner submitted such a request prior to the  
7 deadline. Question 9 of Petitioner’s request asked “Can proponents propose alternative forms of  
8 financial security (e.g., letters of credit or letters) to support Audited Financial Statements, or is this  
9 requirement non-negotiable?” *See Decl. of Marcela Tenorio, Ex. 2, ¶ 6.* CUC responded

10 The requirement for audited financial statements is mandatory and non-negotiable.  
11 CUC requires this documentation to verify the financial standing and creditworthiness  
of proponents.

12 However, supplementary documentation such as letters of credit or parent company  
13 guarantees may be submitted in addition to the audited financial statements for  
additional support.

14 *Id.* Respondent emailed this response to AP and posted it to CUC’s website on October 10, 2025.

15 Petitioner submitted its proposal in time for the October 30, 2025 deadline. *See Exhibit 6, 6.*  
16 However, the “financial statements submitted by AP Energy and its affiliate company AP Group for  
17 fiscal years 2022-2024 were . . . labeled ‘Unaudited Financial Statements – Reviewed Annual  
18 Report.’”<sup>1</sup> *Id.* CUC determined that unaudited financial statements did not comply with the RFP,  
19 which required audited financial statements for the last three years. *Id.* Respondent submitted a letter

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21 <sup>1</sup> AP Energy LLC Managing Member Perry A. Inos later submitted a declaration to the Court on March 10, 2026. The  
22 declaration listed the entities included in Petitioner’s proposal, their roles in the project, and the financial  
documentation provided for each entity. *See Decl. of Perry Inos, 3-4.*

23 For “Lead Proponent” AP Energy LLC, the declaration lists “Annual reports of members” as “Financial Documentation  
provided.” *Id.*, 3. Development Partner AP Group LLC lists “annual reports,” Project Partner Prime LLC lists “Annual  
reports of members,” Financing Partner Ion Ventures lists “annual reports,” as do Project Partner Apadana Energy and  
24 Engineering Partner TurboMech. *Id.*, 3-4. Only construction Partner HYC Corporation (Hong Ye) lists “Audited  
Financial Statements.” *Id.*, 4

1 to Petitioner on November 24, 2025, informing them that “AP Energy’s proposal has been deemed  
2 Non-Qualified to move on to Phase 2 (Costing Phase) of the evaluation process for the following  
3 reason(s): Deficiency in submission – Proponent did not submit audited financial statements for the  
4 last three years for AP Energy.” *See* Exhibit 4.

5 C. The Protests

6 Pursuant to CUC regulation NMIAC § 50-50-401(a)(1), Petitioner submitted a protest to  
7 CUC’s Executive Director on December 1, 2025. *See* Ex. 5. The Director issued a response on  
8 December 11, stating that “audited financial statements for the last three years” had been a  
9 requirement in the RFP, one that “Unaudited Financial Statements” did not fulfill. *See* Exhibit 6;  
10 NMIAC § 50-50-401(a)(3).

11 Petitioner next appealed the Executive Director’s decision to the CUC Board of Directors on  
12 December 18. *See* Ex. 7; NMIAC § 50-50-405(c). On January 30, 2026, CUC’s Board voted 4-1 to  
13 “affirm management’s decision to disqualify AP Energy . . . for failing to submit an audited financial  
14 report as required under CUC-RFP-25-021.” *See* Exhibit 1. One of CUC’s board members who voted  
15 to “affirm management’s decision” was Rosemund Santos-Sword. Mrs. Santos-Sword’s husband,  
16 Gary Sword, appeared at an August 18, 2025 pre-proposal conference for CUC-RFP-25-021. He  
17 signed into the conference on behalf of Eastern Power Solutions, “one of three proponents who CUC  
18 qualified in Phase 1.” *See* Petition, ¶ 25.

19 On January 9, 2026, Petitioner emailed CUC that “AP Energy is willing to testify or attend a  
20 hearing on their appeal” and to “advise if the Board wishes for a hearing.” *See* Ex. 8A. On January  
21 14, 2026, Petitioner emailed CUC requesting “an opportunity to present their appeal to the Board”  
22 pursuant to NMIAC § 50-50-405(h). *Id.* CUC determined that the request was untimely and denied  
23  
24

1 the conference.<sup>2</sup> AP filed its Petition for Judicial Review on February 19, 2026, and submitted the  
2 instant Motion the next day.

### 3 III. LEGAL STANDARD

4 A Petitioner may move the Court to stay an agency’s final decision by written motion. *See*  
5 NMI R. P. Admin. App. 3; *see also* 1 CMC § 9112(e). The standard of review for granting a stay is  
6 that which governs similar motions in civil matters. *See* NMI R. P. Admin. App. 3(e). The Court must  
7 consider four factors when determining whether to grant a stay:

- 8 “(1) whether the plaintiff has a strong likelihood of success on the merits;  
9 (2) the level of the threat of irreparable harm to the plaintiff if the relief is not granted;  
10 (3) the balance between the harm the plaintiff will face if the injunction is denied and the harm  
11 the defendant will face if the injunction is granted; and  
12 (4) any effect the injunction may have on the public interest.”

13 *See Villanueva v. Tinian Shipping & Transp., Inc.*, 2005 MP 12 ¶ 20. Alternatively, a stay is  
14 appropriate if Petitioner shows either “a combination of probable success on the merits and the  
15 possibility of irreparable harm, or the existence of serious questions going to the merits and a balance  
16 of hardships tipping in its favor.” *Id.*; *see also ANAKS Ocean View Hill Homeowners Ass’n v. Inos*,  
17 2023 MP 1 ¶ 16 (citing *Vaughn v. Bank of Guam*, 1 NMI 318, 321 (1990)).

18 Courts provide deference to agencies in determining success on the merits, but this deference  
19 is not unlimited. *Pac. Sec. Alarm, Inc v. Commonwealth Ports Authority* 2006 MP 17 ¶ 14. “Where

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21 <sup>2</sup> The parties dispute whether this January 14, 2026 conference request was timely. An appeal from the CUC Executive  
22 Director’s decision must be received by the Board no later than “ten (10) days after” the decision. *See* NMIAC § 50-50-  
23 405(c). Part 400 “Protests and Disputes” contains 401 “Protests to the Director” and 405 “Appeals of Director’s  
24 Decisions to Board of Directors.” Unless specified, “all ‘days’ referred to in this **part** are deemed to be working days of  
the Commonwealth government.” *See id.*, 401(d)(1) (emphasis added).

Section 405(c) refers to “days” and is contained within Part 400. Therefore, appeal timeliness in that section should be  
calculated using working days. Ten working days after December 30, 2025 is January 14, 2026. Petitioner’s request for  
a conference was therefore timely under CUC regulations.

1 a protester and agency disagree over the meaning of solicitation language, [courts] . . . resolve the  
2 matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions.”  
3 *See C&S Corp.*, B-411725 (U.S. GAO, Oct. 7, 2015); *see also* B-243624.2 (U.S. GAO, Oct. 10,  
4 1991).

#### 5 IV. DISCUSSION

6 To succeed on a motion for a stay, the four-factor test in *Villanueva* requires the Court to  
7 consider likelihood of success on the merits, threat of irreparable harm, balance of hardships, and  
8 effect on the public interest.<sup>3</sup> *See Villanueva*, 2005 MP 12 ¶ 20. The alternate test described in *Anaks*  
9 holds that if Petitioner is not likely to succeed on the merits, it must show “the existence of serious  
10 questions going to the merits and a balance of hardships tipping in its favor.” *See Anaks*, 2023 MP 1  
11 ¶ 16.

##### 12 A. Four-Factor Sliding Scale

13 On the merits, Petitioner’s case rests on its reading of Appendix B, specifically the language  
14 stating that proponents must provide “copies of the most recent three years of audited financial  
15 statements or annual report for each proponent, including affiliates of the proponent.” *See* Exhibit 2,  
16 App. B, 15. While this language appears to give proponents the option to submit “audited financial  
17 statements **or** annual reports,” solicitations such as CUC-RFP-25-021 must be read “as a whole and  
18 in a manner that gives effect to all of [their] provisions.” *See C&S Corp.*, B-411725 (U.S. GAO, Oct.  
19 7, 2015).

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22 <sup>3</sup> The four-factor test in *Villanueva* mirrors a federal standard that sees differing interpretations. The U.S. Supreme  
23 Court determined that movants “must establish” each of the factors to succeed. *See Winters v. NRDC, Inc.*, 555 U.S. 7,  
20 (2008).

24 However, the Ninth Circuit Court of Appeals holds that courts should employ a “sliding scale” approach, whereby  
failure to establish one factor may not be dispositive. *See Alliance For The Wild Rockies v. Cottrell*, 632 F.3d 1127,  
1131 (9th Cir. 2011). The Court here employs a Ninth Circuit “sliding scale” approach.

1 Reading the RFP “as a whole” reveals that “audited financial statements” are a requirement.  
2 Subsection 3.2 of the Scope of Work states that “audited financial statements . . . are . . . required.”  
3 See Exhibit 2, Scope of Work, 12. Table 3.2 lists “Audited financial statements for the last three  
4 years” as a requirement that “Must be submitted with other proposal materials as part of ‘Technical  
5 Proposal.’” *Id.* The table even describes what constitutes audited financial statements: “Statements  
6 of net assets (balance sheet), revenues and expenses; and cash flows are required at a minimum.” *Id.*

7 Subsection 8.3 states that

8 Appendix B contains the “Project Financing and Credit Worthiness Template” which  
9 is a series of questions and requirements that must be answered/completed by all  
proponents.

10 Proponents are required to provide responses to all questions to demonstrate the  
11 financial viability of their project and their credit worthiness. This template also  
outlines the required submittal of documents such as audited financial statements . . .

12 *Id.*, 30. This description of the section of Appendix B to which Petitioners cite includes audited  
13 financial statements among required submissions. A “checklist of required documents and  
14 information to be included as part of each proponent’s technical proposal submittal” is included in  
15 Appendix A. The checklist requires “Audited Financial Statements, Last Three Years.” *Id.*, App. A,  
16 6.

17 Item 6 of Appendix B requires that proponents provide “copies of the most recent three years  
18 of audited financial statements or annual report for each proponent, including affiliates of the  
19 proponent.” *Id.*, App. B, 15. However, reading this provision to imply that annual reports may be  
20 submitted *in lieu* of audited financial statements would fail to give effect to every other provision of  
21 the RFP that explicitly requires the statements. Annual reports are not audited financial statements, a  
22 truth supported by AP’s submission titled “Unaudited Financial Statements – Reviewed Annual  
23 Report.”

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1 Reading Appendix B to allow proponents to submit unaudited reports in lieu of audited  
2 statements would fail to give effect to the four other provisions in the RFP that explicitly require the  
3 latter. *See C&S Corp.*, B-411725 (U.S. GAO, Oct. 7, 2015). This is especially true for the submittal  
4 checklist in Appendix A. Petitioner’s interpretation of Appendix B is therefore a selective reading of  
5 the RFP, one the Court cannot accept while guided to read the solicitation “as a whole.” *Id.*

6 Furthermore, even if Appendix B had created a reading of the whole RFP that allowed  
7 unaudited reports in lieu of audited statements, CUC explicitly clarified that such a reading was  
8 improper. CUC’s response to AP’s request for information stated that “The requirement for audited  
9 financial statements is mandatory and non-negotiable.” *See Decl. of Marcela Tenorio*, Ex. 2, ¶ 6.  
10 Information “disseminated during the course of a procurement that is in writing, signed by the  
11 contracting officer, and provided to all vendors, contains all of the essential elements of an  
12 amendment—even where not designated as an amendment—and is sufficient to operate as such.” *See*  
13 *Energy Engineering & Consulting Services, LLC*, B-407352 (U.S. GAO, Dec. 21, 2012).

14 CUC’s response was in writing, signed by the contracting officer, emailed to AP, and posted  
15 on CUC’s website for all vendors. *See Decl. of Marcela Tenorio*, Ex. 3, ¶ 7. Therefore, this  
16 clarification was binding on all proponents. *Cf. Energy Engineering & Consulting Services, LLC*, B-  
17 407352 (U.S. GAO, Dec. 21, 2012). This precluded a reading that Appendix B altered the requirement  
18 of audited financial statements. AP’s Petition rests on the merits of this reading. Therefore, despite  
19 deficiencies with CUC’s timeliness calculation and Board of Directors vote, Petitioner does not have  
20 a “strong” or “probable” likelihood of success on the merits.

21 The second *Villanueva* factor is the threat of irreparable harm if the stay is not granted. The  
22 harms cited by Petitioner are loss of ability to compete fairly, potential profits, and potential  
23 experience. *See Michael Stapleton Assocs., Ltd. v. United States*, 163 Fed. Cl. 297, 350 (2022); *see*  
24 *also Palantir USG, Inc. v. United States*, 129 Fed. Cl. 218, 292–93 (2016), *aff’d* 904 F.3d 980 (Fed.

1 Cir. 2018). However, Petitioner has not demonstrated that it has been deprived of its ability to  
2 compete fairly. AP Energy was disqualified based on objective criteria reinforced by an explicit  
3 response to its information request. Furthermore, as it had not advanced to Phase 2, AP’s claimed  
4 loss of potential profits and experience is speculative.

5 The third *Villanueva* factor requires that this harm is balanced against the hardship to CUC if  
6 a stay is granted. Granting a stay would jeopardize CUC’s ability to select a proponent before a July  
7 4, 2026 tax credit deadline imposed by the federal One Big Beautiful Bill Act. Missing this deadline  
8 would increase the cost of the project. Furthermore, finding meritorious an argument that Appendix  
9 B allowed unaudited financial statements would reduce CUC’s ability to evaluate whether proponents  
10 “demonstrate the financial viability of their project and their credit worthiness.” For such a long-term  
11 and multi-million-dollar project, CUC would be harmed if proponents could simply attest to their  
12 own financial viability and credit worthiness without independent verification. This harm outweighs  
13 the speculative injury AP will face if the stay is not granted.

14 According to the final *Villanueva* factor, therefore, granting a stay is also not in the public  
15 interest. The public interest favors timely pursuit of federal tax credits and a utilities agency that  
16 prioritizes proponents with independently verified financial solvency. These measures together will  
17 tend to reduce the rate customers pay for utilities in the Commonwealth. While competitive contract  
18 bidding may be in the public interest, the marginal benefit of reintroducing AP into the proponent  
19 pool is outweighed by measures designed to make energy more available and affordable to ratepayers.

20 Applying the Ninth Circuit “sliding scale” approach, each of the four factors in *Villanueva*  
21 independently weigh against granting a stay. Therefore, the Court will move to the alternate “serious  
22 questions.”

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1           B. Alternate Tests

2           The decision in *Anaks* describes two alternate means by which a movant may be granted a  
3 stay. A stay is appropriate where a Petitioner shows either “a combination of probable success on the  
4 merits and the possibility of irreparable harm, or the existence of serious questions going to the merits  
5 and a balance of hardships tipping in its favor.” *See Anaks*, 2023 MP 1 ¶ 16. The first of the two  
6 alternate stay avenues requires both “probable success” *and* the “possibility” of irreparable harm.  
7 Whether irreparable harm is possible or not, the Court previously established that Petitioner has not  
8 shown “probable” success on the merits. *Supra*, 9 ¶ 19-20. Therefore, Petitioner has not met its burden  
9 to pass the first of the two alternate tests in *Anaks*.

10           To be granted a stay, Petitioner must therefore show “the existence of serious questions going  
11 to the merits and a balance of hardships tipping in its favor.” *See id.* “A ‘serious question’ is one in  
12 which the moving party has ‘a fair chance of success on the merits.’” *CUC v. Johnson*, 218 F. Supp.  
13 3d 1136, 1142 (D. N. Mar. I. 2016).

14           Insofar as the timeliness calculation or Board conflict of interest vote may have raised “serious  
15 questions,” Petitioner still had to show that the balance of hardships tips in its favor if a stay is not  
16 granted. As previously described, this balance tips in CUC’s favor because the speculative harm  
17 argued by Petitioner does not outweigh the harm to CUC’s timeline and procurement procedures if  
18 the stay is granted. *Supra*, 10 ¶ 6-13. Therefore, even if Petitioner’s timeliness and Board vote conflict  
19 of interest arguments raise “serious questions going to the merits,” the balance of hardships tips in  
20 Respondent’s favor. *See Anaks*, 2023 MP 1 ¶ 16. As Petitioner has not met its burden under applicable  
21 case law and NMI R. Admin. App. 3, its Motion must be denied.

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**V. CONCLUSION**

For the foregoing reasons, the Petitioner’s Motion is hereby **DENIED**. The Court now sets this matter for a status conference on **April 8, 2026**, at **9:00 a.m.** in Courtroom 223A.

**SO ORDERED** this 16<sup>th</sup> day of March 2026.

/s/ \_\_\_\_\_

**LILLIAN A. TENORIO**  
Associate Judge