

BEFORE THE PUBLIC UTILITIES COMMISSION
OF GUAM

ADMINISTRATIVE DOCKET)
_____)



RESOLUTION

Preamble

The Guam Public Utilities Commission is in receipt of a June 18, 2002 memorandum from Attorney General Kono¹, which requests documents relating to the Commission's position on whether it is obliged to comply with the Guam Procurement Law [5 GCA 5001 *et sec.*] After diligent search, the Commission has been unable to locate opinions, minutes or other writings which have addressed this point. However, in the spirit of providing General Kono with a prompt response to his inquiry, the Commission now memorializes the constant advice, which it has received and implemented on this subject.

Findings

After due consideration and for good cause shown, the Commission finds that:

1. The Commission does not regularly employ legal counsel, to whom the general's memo is addressed. The Commission does employ the services of Harry M. Boertzel, a Guam resident, to fill the statutory position [12 GCA 12002(b)]² of administrative law judge. Pursuant to its authority under 12 GCA 12002(a)³ the Commission also employs as its independent regulatory consultant, Georgetown Consulting Group.
2. The Guam Procurement Law is applicable to entities within the Executive branch of the government of Guam [5 GCA 5030(k)]⁴. The Commission is not within the Executive Branch, as is evident by the following discussion. Accordingly, the Commission is not subject to the Guam Procurement Law.

¹ *Attachment A*. The Commission expresses puzzlement about what precipitated this AG inquiry.

² See P.L. 26-78 enacted on May 31, 2001. See also the Commission's Rules and Regulations, which establish the ALJ's authority, outside individual regulatory orders.

³ See also 12 GCA 12004, which authorizes the Commission to seek advice from an independent utility expert.

⁴ 5 GCA 5030(k) provides that a *governmental body* means any department, commission, council, board, bureau, committee, institution, agency, government corporation, authority or other establishment or official of the *executive branch of the government of Guam...*

- a. Public Law 17-74:2, which was enacted in October 1984, established the Commission as an instrumentality “within the Executive Branch of the Government”.
- b. In response to a Federal requirement that an independent regulatory body be established to oversee aspects of the customer relationship between Guam Power Authority [GPA] and the U.S. Navy⁵ and as part of Guam’s compliance activities to establish that relationship, Public Law 20-31:5 was enacted on June 20, 1989, which transformed the Commission from an executive branch instrumentality into a public corporation and autonomous instrumentality of the government of Guam. In specific response to Federal requirement, reference to “within the Executive Branch” was expressly omitted from the new legislation,⁶ thereby removing the Commission from the Executive branch.
- c. GPA’s bond covenants, which the Executive and Legislative branches have pledged to honor, require the existence of an independent regulatory body with jurisdiction over GPA rates.⁷
- d. The Commission’s independence from the Executive and Legislative branches has most recently been recognized by Public Law 26-18:1, which provides that “*I Liheslaturan Guahan finds that a strong public interest is served by maintaining a strong, independent Public Utilities Commission of Guam, which is independent of the Executive and Legislative Branches*”.

3. The Commission has infrequently exercised its contract power. It has on three occasions retained the services of firms to conduct management audits of regulated utilities [Guam Power Authority in 1992; Guam Telephone Authority in 1993; and Guam Memorial Hospital Authority in 1999]. On each of these occasions, the Commission elected to utilize, as a convenient and effective process, the procurement protocol contained in the Guam Procurement Code.

4. In 1988, the Commission retained the services of its administrative law judge and regulatory consultant. At the time of these procurements, the Commission was still an instrumentality of the Executive branch and, therefore, accomplished these procurements pursuant to the Guam Procurement Act. However, since 1989, the Commission has been independent of the Executive branch and has decided for good cause from time to time to

⁵ See *Attachment B*. 98th Congress Second Session Conference Report 98-1159 re H.J. Res. 648 at p. 254 and U.S. Statute 101 Stat. 1329 at section 111.

⁶ See *Attachment C*. June 20, 1989 letter from Acting Governor Frank Blas to Speaker San Agustin.

⁷ See for example, section 6.20 of GPA’s 1992 Series A Bond Indenture, dated December 1, 1992.

extend the services of its administrative law judge and its regulatory consultant [“staff”] for the following reasons:

- a. The Commission’s effectiveness is substantially due to the historic continuity, professionalism, quality work and institutional knowledge, which has been provided by its staff. In contrast, the Commission has found that the regular turnover of the regulated utilities’ management and governing boards has had a detrimental effect upon their ability to provide their customers with reliable, reasonably priced service. The Commission has chosen to exercise its independent contractual power to preserve the continuity and stability provided by its staff as a valuable Commission resource.
- b. The Commission’s independence and freedom from conflicts is an essential part of its effectiveness. The Commission’s staff does no other business on Guam except for its service to the Commission. In 1997, the Commission tested whether local regulatory consulting services were available to assist the Commission in regulating Guam Waterworks Authority. Strict conflict of interest standards were established for this solicitation of interest. No company responded to the public solicitation notice.
- c. The Commission has recently invested considerable regulatory effort in assisting Guam Waterworks Authority in crafting a financial plan in compliance with the United States Environmental Protection Agency’s Order on Consent. This plan requires GWA to secure and invest over \$90 million dollars during the next five years in complying with the USEPA Order. Under the financial plan, which has been approved by USEPA, the Commission is tasked with overseeing GWA activities, including its use of long term financing which will fund the plan activities. Pursuant to USEPA requirement and as a condition for its approval of the GWA financial plan, the Commission was required during the March 2002 regulatory session to commit to USEPA that it would provide a continuity of regulatory oversight and rate regulation expected of it under the plan. Prior to making this commitment, the Commission determined that it was essential that its administrative law judge and its regulatory consultant commit in kind to remain in the Commission’s service for this important effort. Accordingly, at its March 14, 2002 meeting and although their current contracts would not expire until January, 2003, the Commission sought and obtained staff’s commitment to extend their employment relationship with the Commission until October 2006. With these commitments in hand, the Commission adopted its March 14, 2002 Order in Docket 02-02 [EPA Financial Plan] by which it made the regulatory commitments sought by USEPA.

Resolution

By reason of the above findings and after discussion at a duly convened special meeting held at noon on June 24, 2002, the Guam Public Utilities Commission by unanimous vote hereby **RESOLVES THAT:**

1. The above findings are adopted as a correct statement of the Commission's interpretation of its enabling legislation and further as its position in response to General Kono's June 18, 2002 memo.
2. The Commission's executive director is authorized and directed to deliver this Resolution to General Kono, with copies to other interested government officials.

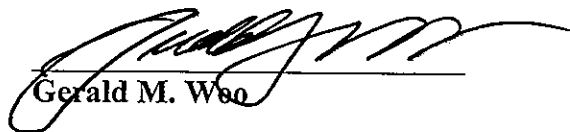
Dated this 24th day of June, 2002.



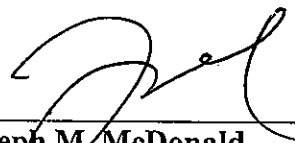
Terrence M. Brooks



Filomena M. Cantoria



Gerald M. Woo



Joseph M. McDonald



Edward C. Crisostomo

CARL T.C. GUTIERREZ
Maga'láhi
Governor

MADELEINE Z. BORDALLO
Tñiente Gubetnadora
Lt. Governor



ROBERT H. KONO
Hininát Abugao, Akto
Attorney General, Acting

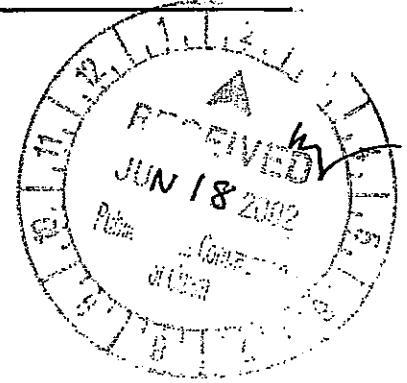
Ufisinan Hinirát Abugao
Hagátña, Guáhan
Office of the Attorney General
Hagátña, Guam

June 18, 2002

Memorandum

Ref: PUC 02-0264

To: Legal Counsel, Public Utilities Commission
From: Attorney General, Acting
Subject: *Sunshine Act Request*



Hafa Adai!

This memo constitutes a request for inspection and copying of any public writings pursuant to 5 G.C.A. §10103, that the following be produced for inspection and copying: any and all minutes of meetings or any and all writings addressing the issue whether in hiring the services of an attorney or of a consultant, the Public Utilities Commission is required to follow the procurement laws of Guam.

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ROBERT H. KONO

F:AG_DATA/Solicitor/AK/PUC.foia.m01/jlr

ATTACHMENT "A"



Commonwealth Now!

APPENDIX 1

98TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
98-1159

MAKING CONTINUING APPROPRIATIONS FOR THE FISCAL
YEAR 1985, AND FOR OTHER PURPOSES

OCTOBER 10, 1984.—Ordered to be printed

Mr. WHITTEN, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.J. Res. 648]

The Committee of Conference on the disagreeing votes of the two Houses on the amendments of the Senate to the joint resolution (H.J. Res. 648) "making continuing appropriations for the fiscal year 1985, and for other purposes," having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 1, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 20, 27, 28, 29, 30, 31, 33, 34, 35, 36, 44, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 70, 71, 72, 75, 77, 95, 96, 104, 111, 112, 113, 114, 115, 117, 120, and 123.

That the House recede from its disagreement to the amendments of the Senate numbered 2, 22, 24, 39, 40, 41, 42, 43, 46, 47, 48, 50, 52, 69, 74, 76, 78, 79, 80, 81, 84, 86, 87, 88, 89, 90, 91, 92, 93, 94, 97, 98, 100, 101, 102, 103, 105, 106, 107, 109, 110, 116, 118, 119, 124, 125, 128, 129, 130, 131, 132, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, and 161, and agree to the same.

Amendment numbered 3:

That the House recede from its disagreement to the amendment of the Senate numbered 3, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment insert the following:

(b) *Such sums as may be necessary for programs, projects, or activities provided for in the District of Columbia Appropriation Act, 1985 (H.R. 5899), to the extent and in the manner provided for in the conference report and joint explanatory statement of the Committee of Conference (House Report Numbered 98-1088), filed in the*

★ 39-153 O

ATTACHMENT "B"

The managers note that this is the fourth year in which OCS moratoria have been included in this bill. The managers will not continue such blanket moratoria in future years unless a case can be made that the pre-lease negotiation process with the Department of the Interior is inadequate to ensure that all resource values and Department of Defense needs are provided proper consideration and protection in specific areas, and then such moratoria will not exceed the geographic limit of such areas. The Department is urged to pursue a resolution of the long-term leasing status of these areas through continuing negotiations with the appropriate Congressional, state, and local officials, and it is expected that adequate consultation with these officials will occur pursuant to the Outer Continental Shelf Lands Act, as amended.

The managers agree to delete House provisions prohibiting exchanges in Alaska conservation areas and in National Wildlife Refuges and National Park Units. The managers expect the appropriate committees of jurisdiction to be consulted before exchanges in these areas are proposed.

Sec. 112. Prohibits nonreimbursable details unless consistent with the Office of Personnel Management regulations.

Sec. 113. Extends the obligation deadline for Urban Park, Land and Water Conservation Fund, and Historic Preservation Fund funds provided in Public Law 98-8 from September 30, 1984 to March 1, 1985.

Bill language concerning the transfer of power facilities on Guam has not been included at this time in lieu of the following directive of the managers:

On October 5, 1972, the Department of the Navy and the Guam Power Authority (GPA) entered into an agreement which provided for the pooling of power production and transmission systems and for an equitable sharing of costs. The ultimate objective of this agreement was to transfer the control of the islandwide power production and transmission systems to the Guam Power Authority after GPA had demonstrated the capability to successfully operate the system. The Department of the Navy then would become a customer of GPA.

Because GPA's financial viability has been tenuous, primarily caused by the Guam legislature's interference in rate setting, the military has been reluctant to terminate the existing arrangement. It is essential that the military operations on Guam have an assured adequate supply of electric power. Therefore, the managers believe that an independent rate-setting body needs to be established in Guam before the power pool agreement is terminated, and the financial condition of GPA must be monitored carefully.

There is no intent on the part of the managers to transfer military base distribution assets or assets which are necessary to supply emergency power for military operations or which are needed in a reserve capacity for national defense. However, the managers would anticipate that military-owned power generating and transmission facilities and easements, which are not needed solely for these purposes, be transferred to GPA, or be made available for use, at no cost to GPA. GPA shall operate and maintain the power facilities that are not reserved exclusively for military

base distribution or stand-by purposes, in accordance with electric utility standards for similar areas and situations.

It is the intent of the managers to see the customer-supplier relationship established. The Secretaries of Interior and Navy shall commission an independent third party in coordination with GPA to identify financial, management, and service criteria for GPA, and recommend a plan, with performance standards and milestones, for takeover by GPA of island-wide power responsibilities. In addition, the Independent third party shall insure that the plan addresses adequately the specific minimum power required now and for the next twenty years by any Department of Defense Agency or facility currently sited on Guam. The Independent third party will judge when the plan's performance standards and milestones are met, and shall complete the plan and present it to the House and Senate Committees on Appropriations within 12 months of the enactment of this Act.

The plan shall approach the transfer in a phased manner, with the following objectives: (1) developing a contract whereby GPA will operate and maintain Tanguisson power plant; (2) transferring maintenance responsibilities to GPA for the transmission (and distribution) system; and (3) developing a contract for GPA to provide reliable electric service to the military in accordance with electric utility standards including the levels of cold reserve and spinning reserve for similar island areas and stable year-long weather situations.

A critical first step is the joint manning of GPA's dispatch control center. The managers expect that Navy and GPA will establish together a training program which will promptly provide for joint manning not later than July 1985 or as soon thereafter as any necessary additional operating equipment can be procured by GPA, installed and tested.

The aforementioned plan presupposes that (1) the legislature of Guam will establish an independent rate setting body and (2) the GPA will attain a level of financial stability, both of which must be acceptable to the Secretary of the Interior. The Secretary will certify his acceptance to the Committees on Appropriations after consultation with the Secretary of the Navy. When both criteria have been met, and the plan has been completed and reported to the Committees, the Secretaries of both Departments will insure that it is implemented promptly, but in any event, not later than 12 months following completion of the plan or the certification, whichever comes later. Should GPA's financial situation deteriorate following certification, the period for implementing the plan will be extended for the period of time necessary for financial health to be restored, as determined by the Secretary of the Interior. Moreover, the independent third party, with the approval of the House and Senate Committees on Appropriations, may also extend the period for implementation whenever, in its discretion, a particular performance standard or milestone is not being met.

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Territory of Guam
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OFFICE OF THE GOVERNOR
 UFSINAN I MAGALAH
 AGANA, GUAM 9690 U.S.A.

JUN 20 1989

TO	INITIAL	DATE
Special Assistant		6/20
Gov	✓	6/20
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The Honorable Joe T. San Agustin
 Speaker
 Twentieth Guam Legislature
 Agana, Guam

Dear Mr. Speaker:

Transmitted herewith is Substitute Bill 299 which I have signed into law as Public Law 20-31.

I have signed this measure because of this administration's continuing commitment to the independence of the Public Utility Commission. In acting, I had two reservations, first, expansion of the government is contrary to this administration's commitment to an efficient, smaller, reorganized government. However, the Public Utility Commission has had before it several important matters affecting provision of basic services to the people such as an improved power system and a more modern telephone system. Action of these essential issues has been excruciatingly slow, jeopardizing the delivery of services in the future. Changing the status of the Commission to a fully operational, autonomous entity should streamline its consideration of the various proposals from Guam's public utilities.

My second reservation results from a serious technical defect of Section 5 of the measure. Section 5 amends 12 GCA Section 12001 regarding the legal standing of the Commission to make it "a public corporation and autonomous instrumentality" of the government. The amendment apparently was intended to affect only the opening paragraph of the section. However, the amendment results in the deletion of Subsections (a) through (j).

When the amendatory act purports to set out the original act or section as amended, all matter in the act or section that is omitted in the amendment is considered repealed.
Sutherland Statutory Construction, Section 22.32


Although the anomaly created by Section 5 might be corrected

ATTACHMENT "C"

The Honorable Joe T. San Agustin
Page Two

through legal gymnastics, the defect in Section 5 could be easily corrected through remedial legislation. I request that the Legislature act expeditiously to correct this problem.

Sincerely,

A handwritten signature in black ink, consisting of a horizontal line with a small loop in the middle and a vertical stroke at the end.

FRANK F. BLAS
Governor of Guam
Acting

**PUBLIC UTILITIES COMMISSION
SPECIAL MEETING
JUNE 24, 2002
SUITE 202, GCIC BUILDING
414 WEST SOLEDAD AVENUE, HAGATNA, GUAM**

A special meeting of the Guam Public Utilities Commission was convened upon due and lawful notice at Suite 207 GCIC Building at noon on June 24, 2002. Commissioners Brooks, Crisostomo, Cantoria and Woo were present at the commencement of the meeting. Commissioner McDonald arrived during deliberations on agenda item four below and participated in all further discussions. The following matters were considered at the meeting pursuant to the agenda made *Attachment A*.

1. Approval of minutes.

After review and discussion of the minutes of its March 14, 2002 meeting and on motion duly made, seconded and unanimously carried the Commission resolved to approve the minutes.

2. Guam Power Authority [Docket 96-04].

After review of the favorable recommendation of GPA and Georgetown Consulting Group, the Commission on motion duly made, seconded and carried by the affirmative vote of four Commissioners adopted the order made *Attachment B*, which establishes a 34.5 kv discount for GPA rate schedules "P" and "L". No other agenda item concerning GPA was considered.

3. Guam Waterworks Authority.

No agenda item concerning GWA was considered.

4. Emergency 911 System [Docket 99-10].

The Commission reviewed a proposed order, which was submitted by the administrative law judge to establish a protocol under which 911 collection agents would collect and deposit the surcharge and report to the Commission. Collection agent responsibilities were the subject of a public

hearing held on June 11, 2002. After discussion and on motion made, seconded and carried by the affirmative vote of five Commissioners, the Commission adopted the order, in form made *Attachment C*.

5. Administrative Matters.

After due consideration, the Commission by the affirmative vote of five Commissioners adopted the following administrative resolutions:

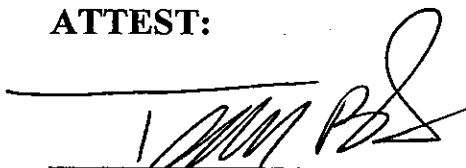
- a. **RESOLVED**, that the resolution in form made *Attachment D* be adopted to respond to Attorney General Kono's June 18, 2002 inquiry concerning the Commission's procurement authority.
- b. **RESOLVED**, that in the event litigation should ensue in reaction to the resolution discussed in subparagraph [a] above, the chairman be and is hereby authorized to retain counsel to defend the Commission.
- c. **RESOLVED**, that the Commission will make Mr. Madan available to appear before a proposed July 10, 2002 GPA oversight hearing if he is available and if the Legislature agrees to pay his expenses.

There being no further business, the meeting was adjourned.



Monessa C. Leon Guerrero

ATTEST:



Terrence M. Brooks
Chairman