



PUC's authority to review the utility contracts is strictly limited to "contracts and obligations" that could result in an "increase in rates and charges." No further statutory oversight on this subject has been granted to the PUC.

"A statute that grants power to an administrative agency must be *strictly construed* and the administrative authority drawn from such statute must be granted plainly, because *doubtful power does not exist.*" Lake Isabella Development, Inc. v. Village of Lake Isabella, 675 N.W. 2d 40, 45 (Mich. App. 2003); *See also*, In re Complaint of City of Southfield Against Ameritech Michigan vs. Michigan Public Service Commission, 599 N.W. 2d 760, 763 (Mich. App. 1999) ("The enabling statutes are *strictly construed* and the administrative authority drawn therefrom must be granted plainly, because *doubtful power does not exist.*").

## **II. Management of Utilities and Procurement Compliance.**

GCG interprets Section 12004 to not merely obligate the PUC to review contracts and obligations for the impact they might have on "rates and charges," but also to require that the PUC be the ultimate manager of the utilities, and thereby be held accountable for "imprudent" or "bad" utility decisions. Additionally, GCG would have the PUC assume responsibility for making sure that the utilities comply with the procurement laws of Guam, which, by doing so, would result in the PUC being held accountable if it failed to do so. Nothing in the plain language of Section 12004 bestows such sweeping authorities or responsibilities on the PUC, and, as already noted, administrative agencies cannot confer on themselves "doubtful powers."

### **A. The Utilities and the CCU Are Responsible For Management.**

Contrary to the assertions of GCG, the PUC is neither responsible for managing the utilities nor responsible for their bad management decisions. The responsibility for public

utility management rests with the utility itself, and, in the case of GWA, ultimately with the Consolidated Commission on Utilities (“CCU”). *See* 12 GCA §§ 14105 and 79100, *et. seq.* Had Guam’s Legislature intended to authorize the PUC to micromanage the utilities’ decisions, and refuse management plans merely because the PUC members thought such decisions and plans were not a “good idea,” then Guam’s Legislature could have done so in clear and plain language. Instead, Guam’s Legislature merely authorized the PUC to review contracts for the limited purpose of determining whether they “could increase rates and charges.”

**B. The PUC Is Not Responsible For Procurement Compliance.**

Similarly, GCG is simply wrong when it argues that the PUC is responsible for determining whether a utility has complied with the procurement laws of Guam. Under Guam law, the Attorney General of Guam “shall act as legal advisor *during all phases* of the solicitation or procurement process.” 5 G.C.A. § 5150. Section 12004 does not authorize the PUC to assume any responsibility for making sure the utilities have complied with the procurement laws. GCG’s efforts to impose this obligation on the PUC is not only unauthorized, but may potentially expose the PUC to unnecessary criticism and liability should the utilities, for whatever reason, fail to comply with the procurement laws.

**C. Regulations and Procedures in Other States Are Irrelevant.**

GCG has cited to regulations and procedures in Hawaii and New Hampshire as examples that should be followed by the PUC. First, there is no evidence that those jurisdictions have the same or even similar statutory authority relating to contract review. Second, both Hawaii and New Hampshire have many times the population of Guam, and, as a consequence, it is understandable that they would have more complicated regulations and procedures. Third,

unlike Guam, Hawaii and New Hampshire may not also have a CCU - an additional public agency in Guam with responsibility for management of utilities. Fourth, unlike Guam, the statutory schemes in Hawaii and New Hampshire may not place the Attorney General in exclusive charge of enforcing procurement laws during all phases of the procurement process.

**D. The PUC's Authority Is Limited to Examining Compliance.**

While 12 G.C.A. Sections 12005 and 12014 provide the PUC with authority to examine a public utility's compliance with all applicable territorial and federal laws, and to make recommendations or effect proceedings to compel compliance with such laws, these enabling provisions cannot possibly be construed as providing the PUC with police powers to ensure that the utilities are complying with these laws. Construing the PUC's enabling statutes as a police power would obligate the PUC to engage in a whole host of activities that clearly belong within the province of the utilities themselves. For example, if the PUC had such police powers, then the PUC would be required to hire environmental consultants to ensure that the utilities are not in violation of any federal environmental laws and regulations; it would also require the PUC to hire personnel consultants to ensure that the utilities are complying with local civil service provisions, and federal employment laws.

Moreover, it would require the PUC to engage in policing the utilities to ensure that such utilities are compliant with all federal discrimination laws, all occupational safety and health regulations, and all federal disability laws, just to name a few. This type of construction of the PUC's enabling statutes would make obsolete the roles of the Attorney General's office, as attorneys for the line agencies, as well as the role of private counsel in the case of autonomous agencies. The obvious intent behind Sections 12005 and 12014 is to authorize the PUC to

conduct investigations of utilities where the PUC suspects and has reason to believe that the utility is engaged in some wrongdoing that is affecting the rights of the ratepayers, and not to police these utilities.

**III. Uniformity of Regulations.**

The PUC's contract review authority pursuant to Section 12004 is identical for all the public utilities. Hence, as both a practical and legal matter, there should be uniformity in the contract review protocol for the utilities. The ALJ has proposed similar contract review protocols for both PAG and GWA. Neither PAG nor its mainland consultants have any objections to the contract review protocols that have been proposed by the ALJ. Were GCG's objections to GWA's proposed contract review protocol to be upheld, and PAG's approved, then there would be multiple contract review protocols for public utilities based on the same statutory authority.

**IV. Reporting Requirements.**

GWA has requested that its reporting requirements be modified. The ALJ agrees that there are numerous and over-lapping reporting requirements which should be streamlined for the benefit of both GWA and the PUC. At this time, however, as noted in the proposed Order, the ALJ is not prepared to recommend any changes, but will study the matter further and address this issue in a subsequent ALJ report.

**V. The ALJ Agrees With Certain GCG Suggestions.**

The ALJ agrees with the recommendation of GCG in paragraph 6 of Report that Section 1b of the existing Protocol, regarding "[a]ll capital items by account group," continue to

be subject to the contract approval process, and therefore retained in the proposed Contract Review Protocol.

The ALJ further agrees with GCG's suggestion that the present requirement in the GWA Protocol, that GWA provide the PUC with a cost-benefit analysis for projects, be retained. Such an analysis will assist the PUC in determining whether the benefit of a particular project justifies the cost.

Finally, the ALJ concurs that the PUC should be advised of all procurements and contracts of GWA which utilize bond funds in excess of \$1,500,000. A filing procedure for all bond related procurements and contracts has been added to the protocol. A copy of the revised proposed Contract Review Protocol for the Commission's consideration is attached and incorporated hereto.

Dated this 18<sup>th</sup> day of February, 2011.

  
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**DAVID A. MAIR**  
Administrative Law Judge