



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE: REQUEST BY THE GUAM) GWA Docket No. 11-01
WATERWORKS AUTHORITY FOR)
APPROVAL OF BOND PROJECTS)
FUNDED BY GWA'S 2010 SERIES) ALJ REPORT
BOND PROCEEDS)

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the "PUC") pursuant to the January 31, 2011 Order signed by the Commissioners, which requested a legal opinion regarding the following: "[W]hether Public Law 30-145 and its mandates should be considered by the PUC prior to approving any future use of bond funds by the Guam Waterworks Authority ['GWA'], and what impact said Public Law has, if any, upon GWA's future use of bond funds."

BACKGROUND

1. On January 12, 2011, GWA petitioned the PUC for approval of its proposed projects funded by GWA's 2010 Series Bond ("Series Bond") proceeds.
2. On January 24, 2011, the Administrative Law Judge of the PUC ("ALJ") issued an ALJ Report recommending that the PUC approve all of the Series Bond projects identified in GWA's January 12, 2011 petition.
3. On January 31, 2011, the Honorable Senator Vicente Pangelinan ("Senator Pangelinan") submitted testimony relative to the Series Bond authorization at the PUC's January meeting. In particular, Senator Pangelinan testified that the \$118.8 million bond sold on

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November 10, 2010 was “intended on being used toward projects that would bring the agency into compliance with the Safe Drinking Water Act and the Clean Water Act.”¹

4. Senator Pangelinan further testified that Public Law 30-145 amended Article 2, Chapter 14, Title 12 of the Guam Code Annotated, which according to Senator Pangelinan, requires that \$20 million of the principal amount of the bond must “be used to pay the balance of the government of Guam Limited Obligation (Section 30) Series 2001A bond and any other portions of Bonds or Loans paid for by General Fund revenues for which the Guam Waterworks Authority has received proceeds.”²

5. Senator Pangelinan additionally testified that of the \$118.8 million, no money has been paid to fulfill such debt obligation. Senator Pangelinan therefore requested that the PUC resolve whether P.L. 30-145 impacts the PUC’s approval of GWA’s use of bond funds.³

6. Thereafter, on January 31, 2011, the PUC issued an Order authorizing GWA to utilize the proceeds from the Series Bond to fund the proposed projects.

7. In addition, the PUC issued a Supplemental Order requesting a legal opinion regarding “whether Public Law 30-145 and its mandates should be considered by the PUC prior to approving any future use of bond funds by the Guam Waterworks Authority [‘GWA’], and what impact said Public Law has, if any, upon GWA’s future use of bond funds.”

8. On February 25, 2011, the ALJ issued an Order requesting that GWA file a response to Senator Pangelinan’s testimony.

¹ Senator Vicente Pangelinan (Committee on Appropriations, Taxation, Public Debt, Banking, Insurance, Retirement, and Land), “Testimony—Senator Vicente (ben) Cabrera Pangelinan” (“Pangelinan Testimony”), p. 1 (Jan. 31, 2011).

² *Id.*

³ *Id.*

9. On April 5, 2011, GWA filed its response to Senator Panglinan's testimony pursuant to the ALJ's February 25, 2011 Order.

10. In GWA's April 5, 2011 response to Senator Pangelinan's testimony, GWA contends that it interprets "the requirements of the statute to mean the following: (1) GWA was authorized to issue Buy America Bonds; (2) GWA was authorized to issue not more than \$240M in bonds in *one or more series* if approved by the PUC; (3) GWA was not required to issue the full maximum cap authorized in its next bond issuance; (4) GWA decided not to issue the full amount authorized and to issue bonds to satisfy the needs of its customers and the requirements of the Stipulated Order as described in Legislative Intent Section; and (5) if GWA decides to issue another bond series, \$20M of that amount would be used to pay of [*sic*] the 2001A Series General Obligations Bond."⁴

DISCUSSION

A. Public Law 28-71

11. The predecessor to P.L. 30-145 is Public Law 28-71 ("P.L. 28-71"), which was enacted on November 3, 2005. The legislative intent behind the passage of P.L. 28-71 was to improve the condition of Guam's water and wastewater infrastructure. In particular, the Guam Legislature expressed: "[t]he severe limitations of the infrastructure to reliably deliver clean and safe drinking water has negatively impacted the quality of life of the people of Guam. Additionally, it is reasonable to assert that Guam's economic development is also being negatively impacted by the inability of a failed system to deliver the most basic of all utility services." P.L. 28-71 §1 (Nov. 3, 2005). Moreover, "[a]fter many years of warning from the U.S. E.P.A. about the inability of Guam Waterworks Authority's (GWA) infrastructure to

⁴ GWA's Response, p. 3 (April 5, 2011).

provide clean and safe drinking water and properly dispose of the wastewater, the U.S. E.P.A. filed a lawsuit in the Federal District Court against the GWA to place the agency in receivership.” P.L. 28-71 §1. In the federal lawsuit, the parties entered in a “Stipulated Order,” which outlines a number of corrective actions that GWA must undertake. P.L. 28-71 §1.

12. The Guam Legislature determined that “the new construction and upgrades that will be needed are estimated to cost approximately Two Hundred Twenty Million Dollars (\$220,000,000).” P.L. 28-71 §1. The Guam Legislature further determined that additional costs were required for “rebuilding, rehabilitating and modernizing the system which are expected to cost an additional Two Hundred Thirty Million Dollars (\$230,000,000.00) thereby bringing the total that GWA needs to Four Hundred Fifty Million Dollars (\$450,000,000.00).” As a result, Public Law 28-71 was enacted. With respect to the provisions relevant to the PUC’s inquiry, Public Law 28-71, Section 4, provides as follows:

The Guam Legislature, I Liheslaturan Guåhan, pursuant to Section 50103 of Title 12 of the Guam Code Annotated, hereby approves the issuance and sale by the Authority of revenue bonds pursuant to Article 2, Chapter 14, Title 12, Guam Code Annotated (the ‘Act’) in one or more series of issues; provided that the issuance, terms and conditions of the bonds shall have been approved by the Guam Public Utilities Commission, and further provided that such bonds shall have a principal amount not to exceed Two Hundred Twenty Million Dollars (\$220,000,000), shall have a final maturity not later than 2055, shall bear interest at such rate or rates and shall be sold for such price or prices as shall result in a yield to the bondholders not exceeding Six and One half percent (6.5%) per annum (treating payments and receipts under any interest rate hedging contracts as if they were payments to and receipts from the bondholders), shall be issued and sold in the manner, for the purposes and subject to the requirements and limitations provided in Article 2, Chapter 14, Title 12, Guam Code Annotated, and shall be issued pursuant to an Indenture in substantially the form as attached to this Act as Exhibit A.

B. Public Law 30-145

13. On May 17, 2010, Public Law 30-145 (“P.L. 30-145”) was enacted into law and amended P.L. 28-71 as follows: “The Guam Legislature, *I Liheslaturan Guåhan*, pursuant to §50103 of Title 12 of the Guam Code Annotated, hereby approves the issuance and sale by the Authority of revenue bonds pursuant to Article 2, Chapter 14, Title 12, Guam Code Annotated (the ‘Act’) in one or more series of issues; provided that the issuance, terms and conditions of the bonds *shall* have been approved by the Guam Public Utilities Commission, and further provided that such bonds *shall* have a principal amount *not to exceed* Two Hundred Twenty [*sic*] Million Dollars (\$240,000,000), *shall* have a final maturity not later than 2055, *shall* bear interest at such rate or rates and *shall* be sold for such price or prices as *shall* result in a net yield to the bondholders *not exceeding* seven and one-half percent (7.5%) per annum, *shall* be issued and sold in the manner, for the purposes and subject to the requirements and limitations provided in Article 2, Chapter 14, Title 12, Guam Code Annotated, and *shall* be issued pursuant to an Indenture in substantially the form as attached to this Act as Exhibit A.” P.L. 30-145§2 (May 17, 2010) (emphases in original).

14. Accordingly, P.L. 30-145 amended P.L. 28-71 to the extent the principal amount of the bond was increased from \$220 million to \$240 million, and the interest rate amount was increased from six and a half percent (6.5%) to seven and a half percent (7.5%). P.L. 30-145§2. Moreover, P.L. 30-145 added language that: “Twenty Million Dollars (\$20,000,000) principal amount *shall* be used to pay the balance of the government of Guam Limited Obligation (Section 30) Series 2001A bond and any other portions of Bonds or Loans paid for by General Fund revenues for which the Guam Waterworks Authority has received proceeds.” P.L. 30-145§2 (emphasis in original).

15. The legislative intent underpinning the passage of P.L. 30-145 was to assist GWA in financing “the projects necessary to continue to make progress in implementing the projects described in the Stipulated Order with the United States Environmental Protection Agency, which outlines the corrective actions that GWA shall undertake” P.L. 30-145§1.

C. The PUC’s Enabling Statutes

16. The PUC is a creature of statute. As a result, the PUC may only act within its powers as specifically granted by the legislature. *See, e.g., Carlson v. Guam Telephone Authority*, 2002 Guam 15, ¶9 (citing *Ada v. Guam Telephone Authority*, 1999 Guam 10, ¶11). As a creature of statute, the powers of the PUC are “dependent upon statutes, so that they must find within the statute warrant for the exercise of any authority which they claim. They have no general or common law powers but only such as have been conferred upon them by law expressly or by implication.” *Id.* (quoting *Ada v. Guam Telephone Authority*, 1999 Guam 10, ¶11). Therefore, the PUC may act in this instance only if such authority is within its powers as granted by the Guam Legislature. The PUC’s powers, duties, and obligations are set forth in 12 G.C.A. §12000 *et seq.*

1. 12 G.C.A. §12005

17. Pursuant to 12 G.C.A. Section 12005, the PUC has authority to examine a public utility’s compliance with all applicable territorial and federal laws and with the provisions of its franchise, articles of incorporation and enabling legislation, which it may exercise in carrying out its mandate to regulate rates. 12 G.C.A. §12005.

2. 12 G.C.A. §12014

18. In addition, pursuant to 12 G.C.A. Section 12014, the PUC has authority to make recommendations with respect to violations of law committed by public utilities. In particular, where the PUC “is of the opinion that any public utility is violating or neglecting to comply with the terms of its loans and contracts, or with any territorial or federal law, or any provisions of its franchise, charter, enabling legislation or articles of incorporation, if any, or any rule, or order of the Commission; or that any rates, assessment costs, or, charges are unreasonable or unreasonably discriminatory; it shall in writing inform the public utility of its conclusions and recommendations, shall include the same in its annual report, and may also publish the same in such manner as it may deem wise.” 12 G.C.A. §12014.

19. Moreover, Section 12014 also provides the PUC with the right to bring suit against a public utility. Specifically, Section 12014 provides that: “[t]he Commission may examine into any of the matter referred to in § 12005, notwithstanding that the same may be within the jurisdiction of any court or other body, and when after the examination of the Commission is of the opinion that the circumstances warrant, it shall effect the necessary relief or remedy by the institution and prosecution of appropriate proceedings or otherwise before such court or other body, in its own name or in the name or names of any complainant or complainants, as it may deem best.” 12 G.C.A. §12014.

20. Thus, based on Sections 12005 and 12014, the PUC is under an obligation to ensure that any public utility agency is not in violation of, or neglecting to comply with, any territorial or federal law that impacts the PUC’s regulation of rates. Public Law 30-145 clearly is a territorial law enacted by the Guam Legislature that impacts the PUC’s regulatory powers, as P.L. 30-145 sets forth approval of GWA to issue and sell in upwards of \$240 million in bonds,

and requires that “Twenty Million Dollars (\$20,000,000) principal amount *shall* be used to pay the balance of the government of Guam Limited Obligation (Section 30) Series 2001A bond and any other portions of Bonds or Loans paid for by General Fund revenues for which the Guam Waterworks Authority has received proceeds.” P.L. 130-145 §2 (amending P.L. 28-71§4).

D. Statutory Interpretation

21. “In cases involving statutory construction, the plain language of a statute must be the starting point.” Pangelinan v. Gutierrez, 2000 Guam 11, ¶ 23 (citing Am. Tobacco Co. v. Patterson, 456 U.S. 63, 68 (1982)). In examining the statute’s language, the task is to determine whether or not the statutory language is “plain and unambiguous.” See Aguon v. Gutierrez, 2002 Guam 14, ¶ 6 (citing Robinson v. Shell Oil Co., 519 U.S. 337, 340, 117 S.Ct. 843, 846 (1997)). “The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.” *Id.* When a statute is ambiguous, the tribunal relies upon legislative intent to determine the intention of the legislature. People of Guam v. Rios, 2008 Guam 22, ¶13 (“The fact that the statute is ambiguous requires us to ‘employ other methods of statutory interpretation’ besides simply examining the plain meaning. In particular, ‘our duty is to interpret statutes in light of their terms and legislative intent.’”). For the reasons discussed herein, the ALJ finds that P.L. 30-145 is ambiguous in certain respects.

22. For instance, the legislative intent of P.L. 30-145 indicates that the Guam Legislature authorized GWA to sell and issue \$240 million in a series of bonds, and that from those proceeds the amount of \$20 million would be paid to the Government of Guam. However, P.L. 30-145 does not specify whether the \$20 million to be paid to the Government of Guam should be from the first or last bond proceeds received by GWA. Moreover, P.L. 30-145 does

not specify what amount should be paid by GWA to the Government of Guam should a sum less than \$240 million be sold and issued.

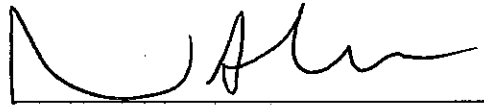
23. The Guam Legislature does not appear to have intended that the sum of \$20 million be paid to the Government of Guam unless the sum of \$240 million was received by GWA. At the same time, the Guam Legislature also did not intend to permit GWA to sell and issue bonds in the sum of \$220 million, and thereby avoid having to pay any funds to the Government of Guam from such proceeds. The ALJ, therefore, concludes that the Guam Legislature intended GWA to pay the Government of Guam a proportionate amount of funds borrowed up to a cap of \$20 million on the total bond amount of \$240 million. This proportionate share would amount to one-twelfth (1/12) of any bond amount sold and issued pursuant to P.L. 30-145. In this situation, inasmuch as the bond amount is \$118 million, the Government of Guam is entitled to one-twelfth (1/12) of that amount, which is \$9.8 million.

CONCLUSION AND RECOMMENDATION

24. In summary, the ALJ finds that the legislative intent underpinning P.L. 30-145 indicates that the Guam Legislature authorized GWA to sell and issue \$240 million in a series of bonds, and that from those proceeds the amount of \$20 million would be paid to the Government of Guam. The ALJ further finds that P.L. 30-145 does not specify whether the \$20 million to be paid to the Government of Guam should be from the first or last bond proceeds received by GWA, nor does P.L. 30-145 specify what amount GWA should pay to the Government of Guam where GWA obtains proceeds less than \$240 million. Accordingly, the ALJ finds that the Guam Legislature intended GWA to pay the Government of Guam a proportionate amount of funds borrowed up to a cap of \$20 million on the total bond amount of \$240 million.

25. The ALJ concludes that this proportionate share amounts to one-twelfth (1/12) of any bond amount sold and issued pursuant to P.L. 30-145. In this situation, inasmuch as the bond amount is \$118 million, the Government of Guam is entitled to one-twelfth (1/12) of \$118 million, which is \$9.8 million.

Dated this 11th day of April, 2011.

A handwritten signature in black ink, appearing to read 'D. Mair', written over a horizontal line.

DAVID A. MAIR
Administrative Law Judge

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