

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

In Re: Request by the Guam Waterworks Authority for Approval of Reprogramming Bond Proceeds for Water Reservoir Inspection and Minor Repairs, Groundwater Chlorination, Sinajana Transmission Line and Old Agat Wastewater Collection Programs)
GWA Docket 10-04

PUC COUNSEL REPORT

Background

This matter comes before the Guam Public Utilities Commission [PUC] upon the Petition of Guam Waterworks Authority [GWA] for Expedited Approval of Bond Reprogramming to Fund the Water Reservoir Inspection and Minor Repair, Groundwater Chlorination, Sinajana Transmission Line and Old Agat Wastewater Collection System Programs.¹ The PUC has the responsibility under 12 GCA §12004 and the Contract Review Protocol to review and approve all uses of bond proceeds.² In its October 27, 2005, Order, the PUC authorized the use of bond funds by GWA for various "Stipulated Order" [SO] projects and for certain other purposes.³ The PUC authorized GWA to expend bond funds for a number of projects which it is obligated to complete under the Stipulated Order (District Court of Guam Civil Case No. 02-00035). In previous orders, the PUC authorized GWA to program bond proceeds to fund

¹ GWA Petition for Expedited Approval of Bond Reprogramming to Fund the Water Reservoir Inspection and Minor Repair, Groundwater Chlorination, Sinajana Transmission Line and Old Agat Wastewater Collection System Programs, GWA Docket 10-04, filed November 19, 2010.

² PUC Order Re: Petition of Guam Waterworks Authority to Issue General Revenue Bonds and for Related Actions, Docket 05-10, issued October 27, 2005; see also Contract Review Protocol for Guam Waterworks Authority, Docket 00-04, issued October 27, 2005, which requires, in ¶1(d), that any use of bond funds by GWA be approved by the PUC.

³ PUC Order Re: Petition of Guam Waterworks Authority to Issue General Revenue Bonds and for Related Actions, Docket 05-10, issued October 27, 2005, Attachment C.

various capital improvement projects associated with its duties under the Stipulated Order.⁴

Here GWA is requesting that PUC allow it to reprogram funds to four specific projects, three of which are required under the Stipulated Order: Groundwater Disinfection (chlorination), Water Reservoir Inspection and Minor Repair, and Sinajana Water Transmission Line.⁵ GWA further submits that the fourth project, Old Agat Wastewater Collection Project is critical to reduce the amount of infiltration and inflow (“I/I”) that is overloading the Agat Wastewater Treatment Plant and causing it to be non-compliant with the NPDES permits.⁶

GWA seeks to use certain “unobligated funds” for purposes of reprogramming to the specified projects.⁷ These are funds designated for specific projects that were not needed for those projects. GWA indicates that it has reserved certain funds for ongoing projects as contingencies against Change Orders and project cost overruns; however, now that those projects are closed out, GWA is able to reallocate those funds to the projects requested in the Petition.⁸ GWA seeks the approval of PUC to reprogram unallocated bond funds for these four projects in the total amount of One Million Nine Hundred and Ninety Thousand Dollars (\$1,990,000.00). The following table summarizes GWA’s request for reprogramming bond funds:

Project	Proposed Reallocation
WASTEWATER	
Old Agat Collection System	\$250,000
WATER	
Groundwater Disinfection	\$390,000
Water Reservoir Inspection and Minor Repair (part of SO ¶ 38C)	\$750,000
Sinajana Water Transmission Line (SO ¶ 38B)	\$600,000

⁴ See Order executed by Chairman Jeffrey C. Johnson, Docket 05-10, filed on July 8, 2008; also, Order executed by Jeffrey C. Johnson, Docket 05-10, filed September 16, 2008, authorizing GWA to transfer not to exceed \$9,184,301 to provide additional funding required for certain other Stipulated Order Projects.

⁵ GWA Petition for Expedited Approval of Bond Reprogramming, GWA Docket 10-04, p. 1-2.

⁶ Id. at p. 2.

⁷ See “Unobligated Project Cost” set forth in Attachment A to the Petition, “Schedule of 2005 Series Bond Status”.

⁸ E-Mail from GWA Legal Counsel to PUC Legal Counsel dated November 19, 2010.

TOTAL	\$1,990,000
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The Necessity to Reprogram Bond Funds

There is a compelling necessity for GWA to fund the projects required to be completed by the Stipulated Order. In its Order issued in Docket No. 05-05 on February 25, 2010, the PUC has already recognized that the Water Reservoir Condition Assessment and the Chlorination Programs under the Stipulated Order are required to be funded by GWA. GWA is obligated to expend funds to complete these programs, or it runs the risk of additional fines being issued by the United States Environmental Protection Agency.⁹ The Sinajana Water Transmission Line project is also required to be carried out under the Stipulated Order. These projects are required to be completed within strict timelines by the Stipulated Order.

For each of these three projects, Groundwater Disinfection (Chlorination), Water Reservoir Condition Assessment, and Sinajana Water Transmission Line, GWA has already been fined in varying amounts.¹⁰ Given the impending fines or the levying of additional fines by US EPA, there is a need for expedited review and approval process in order to avoid fines and to complete the projects as quickly as possible for the betterment of the people of Guam.¹¹

In addition, on October 19, 2010, the Consolidated Commission on Utilities, in Resolution No. 01-FY2011, approved the reallocation of bond funds requested herein by GWA and found that "the bond reallocation is necessary to continue to comply with the Stipulated Order for Preliminary Relief (as Amended).¹² Pursuant to the CCU Resolution, the justification and rationale for reallocation of funds is that the projects are overdue under the Stipulated Order and are critical to GWA coming into compliance with the Order.

⁹ PUC Order, Docket No. 05-05, issued February 25, 2010.

¹⁰ See Exhibit B to GWA Petition for Expedited Approval of Bond Reprogramming, GWA Docket 10-04, filed November 19, 2010.

¹¹ GWA Petition for Expedited Approval of Bond Reprogramming, GWA Docket 10-04, p. 2, filed November 19, 2010.

¹² CCU Resolution No. 01-FY2011, issued October 19, 2010.

Once GWA is obligated to carryout these three above referenced projects under the Stipulated Order, the prudence of said projects is exempt from review under the Contract Review Protocol.¹³ The Old Agat Wastewater Collection project is not a Stipulated Order Project; however, such project does not raise prudence concerns under the Contract Review Protocol. The source of funding for this project is US EPA Grant.¹⁴ The amount to be funded from the bond fund reallocation is only \$250,000, which is below the ordinary contract review threshold. There is a project justification: a major collection system rehabilitation program is needed in this area due to capacity-related sewer back-ups, overflows, and the age and material of the pipe.¹⁵

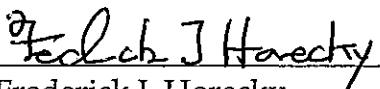
Recommendation

PUC Counsel recommends that the Commissioners approve GWA's Petition for Expedited Approval of Bond Reprogramming to fund the Water Reservoir Inspection and Minor Repair, Groundwater Chlorination, Sinajana Transmission Line and Old Agat Wastewater Collection System Programs. At present, GWA has no option but to fund the programs in order to attempt to comply with the requirements of the Stipulated Order. Unless these Stipulated Order projects are funded and completed expeditiously, GWA faces the risk of additional fines from US EPA. The projects are required under the Stipulated Order and have already been approved by the PUC.

The Old Agat Wastewater Collection Project appears to be justified and the primary source of funding is a US EPA grant. GWA asserts that the Project is critical to reduce the amount of infiltration and inflow ("I/I") that is overloading the Agat Wastewater Treatment Plant and causing it to be non-compliant with the NPDES permits.

Counsel has submitted a proposed Order for the review and approval of the Commissioners.

Dated this 29th day of November, 2010.


Frederick J. Horecky
PUC Legal Counsel

¹³ PUC Order Re: GWA Petition to Issue General Revenue Bonds and for Related Actions, Docket 05-10, issued October 27, 2005 at p. 1.

¹⁴ See Exhibit B to GWA Petition for Expedited Approval of Bond Reprogramming, Project Sheet for Old Agat Wastewater Collection, GWA Docket 10-04, filed November 19, 2010.

¹⁵ Id.