

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:

ESTABLISHMENT OF HOST  
COMMUNITY PREMIUM FEES  
PURSUANT TO PUBLIC LAW 30-165

GSWA DOCKET 12-02

ALJ REPORT

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission [“PUC”] upon the Petition of the Guam Solid Waste Authority, through its Court Receiver GBB, to establish the “Host Community Premium Fees” in accordance with Public Law 30-165.<sup>1</sup>
2. David Manning, GBB’s Representative, recommends the methodology the PUC should use to assess the community benefit premium and specific amounts for such assessment.<sup>2</sup>

BACKGROUND

3. In Public Law 30-165, enacted into law on July 16, 2010, the Guam Legislature determined that a “Host Community Premium” must be awarded for the villages of Inarajan and Ordot in the annual amount of One Hundred Fifty Thousand Dollars (\$150,000.00) each. The Host Community Benefit is to compensate communities where solid waste management facilities, such as sanitary landfills, are located.<sup>3</sup>
4. The Legislature intended that the Host Community Premiums be funded and assessed in addition to solid waste tipping fees to cover the cost of the Host Community Benefits.<sup>4</sup>
5. The Legislature further mandated that “the Public Utilities Commission (PUC) *shall* equitably determine the *Host Community Premium* for each residential and commercial account.”<sup>5</sup>
6. In the Testimony filed by the Receiver for the Guam Solid Waste Authority on June 18, 2012, the recommendation was made that the PUC should assess the Host Community Benefit Premium in an amount required by law. The Receiver recommended that a fee of \$3.57 per ton be assessed upon Commercial Customers,

<sup>1</sup> GSWA Rate Request, GSWA Docket 12-02, filed June 22, 2012.

<sup>2</sup> Id., Testimony of David Manning at pg. 5 of 15.

<sup>3</sup> Public Law 30-165, enacted into law on July 16, 2010.

<sup>4</sup> Id. at p. 2.

<sup>5</sup> Id. at p. 3.

and the amount of \$0.38 per month upon Residential Customers to fund the Host Community Premium Benefit for the two villages.<sup>6</sup>

7. Since Public Law 30-165 requires that the PUC “equitably” determine the Host Community Premium for each residential and commercial account, the Administrative Law Judge determined that a public hearing should be conducted in this matter.
8. The PUC caused a Notice of Public Hearing to be issued and published in the Pacific Daily News, a newspaper of general circulation, on July 12 and July 19, 2012.<sup>7</sup>
9. On July 23, 2012, at 6:00 p.m., the Administrative Law Judge conducted a public hearing on the establishment of Host Community Premium Fees.

### DISCUSSION

10. At the Public Hearing, Mr. David Manning, Representative of the Receiver for GSWA, presented testimony on the manner by which he had calculated the proposed Host Community Premium Fees. In accordance with the weighing procedures and scales implemented by the Receiver, Mr. Manning has estimated that the total tonnage per year of solid waste handled by GSWA will be 92,184 tons for FY2013. However, 8,222 of the projected tons are excluded; such tonnage is not billed to Guam Mayors and community clean-up activities.
11. The total estimated tonnage of solid waste for FY2013 is 83,962, of which 62,965 is commercial tonnage and 20,996 is residential tonnage.
12. The Receiver determined the respective dollar value share of the Host Community Premium for Commercial customers and Residential customers based upon the tonnage generated by each class is \$224,979.16 and \$75,020.84. He then divided the dollar share for Commercial customers (\$224,979.16) by the number of tons generated by Commercial customers (62,295) to come up with the respective fee for Commercial customers (\$3.57 per ton).
13. To determine the fee for Residential customers, the Receiver divided the dollar share for such class (\$75,020.84) by the estimated number of customers (16,634) to

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<sup>6</sup> GSWA Rate Request, GSWA Docket 12-02, filed June 22, 2012, testimony of David L. Manning, p. 5 of 15.

<sup>7</sup> Notice of Public Hearing, GSWA Docket 12-02.

determine the annual share per Residential customers (\$4.51). The monthly share for each Residential customer is \$.3758, rounded to \$.38 cents, per Residential customer per month.

14. Although rates for Commercial customers are based upon tonnage, and the fee for Residential customers is per month, each class bears responsibility for the Host Community Premium Fee based upon the tonnage generated by each class. Mr. Manning testified that such allocation was fair and equitable to the Commercial and Residential Customers.
15. Donald Weakley, a resident of Inarajan, asked Mr. Manning how GSWA would transfer the proceeds to the villages of Inarajan and Chalan Pago. Mr. Manning stated that the proceeds could be transferred monthly or quarterly.
16. Mayor Franklin Taitague of Inarajan raised a question as to how the provision in P.L. 30-165, requiring that “the Host Community Premium *shall* be assessed from the opening of the landfill until the closing of the landfill” would be addressed by the PUC.
17. Michael Perez, Representative of the Governor’s Office, reserved all rights concerning jurisdictional or other objections in this matter.

### RECOMMENDATION

18. Public Law 30-165 requires PUC to determine a Host Community Premium Fee to benefit the villages of Inarajan and Chalan Pago in the total amount of \$300,000.00 per year. The PUC does not have discretion in this matter and must implement the fee.
19. In addition, the law expressly requires that the PUC “equitably determine” the Host Community Premium for each residential and commercial account.
20. The PUC should adopt the fees proposed by the Receiver for GSWA: \$3.57 per ton for Commercial Customers and \$0.38 per month for Residential Customers. Such allocation is fair and equitable and properly assigns responsibility to each class of customer based upon total tonnage generated.<sup>8</sup>

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<sup>8</sup> Mr. Manning explained at the hearing that the “Commercial” class also includes governmental customers.

21. GSWA, at the request of the Receiver, should have 60 days from the date of issuance of an Order herein by the PUC to implement the program for assessment of Host Community Premium fees.
22. The PUC should adopt a protocol to be followed by GSWA in the assessment of the Host Community Premium Fees which contains the following elements:
  - a. The fees established herein should be identified on Commercial and Residential Customer Bills as the "Host Community Premium Surcharge".
  - b. GWSA should deposit all Host Community Premium Surcharge fees collected from Commercial and Residential Customers in an account separate and apart from all other accounts maintained by GSWA. Said fees should not be used for any purpose by GWSA, other than transfer of said fees to the Department of Administration (DOA).
  - c. On a quarterly basis, GSWA shall transfer all Host Community Premium Surcharge fees collected to the Department of Administration.
  - d. GSWA shall provide a quarterly report to the PUC concerning the Host Community Premium Surcharge, which shall include the total amount of funds transferred to DOA and a breakdown of the amounts collected from Commercial and Residential Customers, and the date(s) when such amounts were transferred.
  - e. In accordance with Public Law 30-165, DOA shall place all funds received from GSWA for the Host Community Premium fees in the "Host Community Fund"; the Host Community Fund shall be a fund of the Government of Guam that is separate and apart from all other funds of the Government of Guam and shall be used for the exclusive benefit of the Host Community.
23. The Public Utilities Commission should review the Host Community Premium at least once every five years, and may adjust said premium to account for factors such as inflation.
24. The ALJ should be authorized to undertake further proceedings, discussions, or coordination with GSWA to refine and implement the protocol in this matter.

25. The ALJ believes that the implementation of a Host Community Premium Surcharge as recommended herein satisfies the requirement that the fee be assessed from the opening of the landfill. The landfill was opened on or about September, 2011. The PUC is now assessing a Host Community Premium for FY2013. If necessary, the PUC can make subsequent adjustments to the surcharge to assure that the assessment covers the period from the opening of the landfill until the closing of the landfill.
26. No request for assessment of the Host Community Premium was brought by any party to the PUC prior to June 18, 2012; under well-established regulatory principles, it would not be appropriate for the PUC to engage in “retroactive rate-making” by attempting to collect retroactive assessments against Commercial and Residential Customers.
27. The customer is entitled to assurance that it will not have to pay an after-the-fact surcharge on products or services already purchased...the rule prevents regulated companies from collecting revenues to compensate from prior over or under recoveries.<sup>9</sup>
28. A proposed Order will be submitted to the Commissioners herein.

Dated this 27<sup>th</sup> day of July, 2012.

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Frederick J. Horecky  
Administrative Law Judge

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<sup>9</sup> James K. McGrew, Federal Energy Regulatory Commission, The Filed Rate Doctrine and the Rule against Retroactive Ratemaking at p. 101 (2009).