

**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF:	)	
	)	GPA DOCKET12-02
	)	
THE APPLICATION OF THE GUAM POWER AUTHORITY REQUESTING APPROVAL OF THE BUYOUT OF THE LEHMAN BROTHERS INVESTMENT CONTRACT.	)	ORDER
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**INTRODUCTION**

1. This matter comes before the Guam Public Utilities Commission (“GPUC”) upon the Petition of the Guam Power Authority (“GPA”) for Contract Review and Approval of the Buyout of the Lehman Brothers Investment Contract.<sup>1</sup>

**BACKGROUND**

2. GPA proposes a “buyout” of a Bond Reserve Fund Forward Delivery Agreement [the “Lehman Agreement”] which GPA entered into with Lehman Brothers Special Financing, Inc. [“Lehman”] in September 2000. GPA has a nearly identical agreement with Bank of America [“BofA”].<sup>2</sup>
3. Under the terms of Lehman Agreement, GPA, in exchange for an upfront net cash payment of \$6,365,500, gave Lehman the right to control and retain the proceeds from the investment of \$13.7 Million of the Bond Reserve Fund that GPA is required to maintain under its 1999 Supplemental Bond Indenture.
4. Essentially, GPA bargained away the income that could have been earned from the investment (i.e. \$13.7 Million for the life of the 1999 bonds until 2034) in exchange for up-front payment of \$6,365,500.<sup>3</sup>
5. Recently, Lehman, which is currently in bankruptcy, has offered GPA the opportunity to buyout the Lehman Agreement thereby regaining “control” of the \$13.7 Million of the Bond Reserve Fund in exchange for a one-time payment to

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<sup>1</sup> GPA Petition for Contract Review Approval of the Buyout of the Lehman Brothers Investment Contract, GPA Docket 12-02, filed March 9, 2012.

<sup>2</sup> Response of Georgetown Consulting Group, Inc. to Guam Power Authority’s Petition to Approve Buyout of Forward Delivery Agreement with Lehman Brothers, GPA Docket 12-02 filed March 21, 2012.

<sup>3</sup> Id. at p.1.

Lehman of \$4.48 Million.<sup>4</sup> To fund the buyout, GPA proposes to use \$3.1 Million of the 2010 Bond Funds which the PUC had previously earmarked for project cost overruns and \$1.38M in funds from the GPA self- insurance reserve fund.<sup>5</sup>

6. In its Petition, GPA asserts that the existence of the Lehman Agreement and the companion (BofA Agreement) prevented GPA, in 2010, from being able to refinance certain outstanding bonds on terms that would have provided benefits to GPA and its ratepayers.<sup>6</sup> GPA further alleges that the buyout of the Lehman Agreement would give GPA “flexibility” in its needs to consider opportunities that it might have to refinance or restructure its current bond obligations on more favorable terms.<sup>7</sup>
7. GCG was asked to prepare a Report on this matter. GCG filed its report herein on March 21, 2012.

#### DETERMINATIONS

8. The PUC adopts the Analysis and Conclusion in the GCG Report filed March 21, 2012.
9. There is no immediate or direct benefit from the upfront payment by GPA of \$4.48 Million to Lehman. The estimated value that GPA would hope to obtain from the buyout (the estimated value of “control” of interest income from the Bond Reserve Fund through 2034) is between \$4-4.5M.
10. At present, GPA has not demonstrated that the buyout of the Lehman Agreement would even enable it to gain control of the remainder of the Bond Reserve Fund. GPA would still need to deal with BofA Agreement to acquire control of the remainder of the Bond Reserve Fund. The terms or payment that BofA will seek are unknown.<sup>8</sup>

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<sup>4</sup>Id. at pgs.1-2.

<sup>5</sup> Id. at p.2; In its Report, Georgetown points out that, in the pending current base rate case, GPA and GCG have both discussed recommending to the PUC that the same \$3.1 Million be “unrestricted “ and therefore available to be included in the computation of unrestricted days cash available to GPA.

<sup>6</sup> Letter from General Manager of GPA to Administrative Law Judge of PUC, Emergency Petition for Authorization to Terminate the Guam Power Authority Investment Agreement with Lehman Brothers, GPA Docket 12-02, filed March 9, 2012, at p.1

<sup>7</sup> Memorandum from General Manager to CCU Commissioners, re: Termination of Bond Forward Agreement, dated March 5, 2012 at p.2.

<sup>8</sup> Response of Georgetown Consulting Group, Inc. to Guam Power Authority Petition to Approve Buyout of Forward Delivery Agreement with Lehman Brothers, GPA Docket 12-02, filed March 21, 2012 at p. 3.

11. GPA claims that, with a buyout of the Lehman Agreement, it could achieve savings from a refinancing of approximately \$45M of 1999 bonds of "\$200,000 a year" (a total present value savings over the life of the bonds of \$1.2M). Even this small potential benefit is speculative, however, based upon numerous uncertainties concerning future refinancing efforts, including market interest rates, GPA's bond credit rating, and the need for approval of a "meaningful adjustment" (i.e. increase) to base rates.<sup>9</sup>
12. The funding mechanisms proposed by GPA to buyout Lehman with a cash payment of \$4.48M do not appear prudent or reasonable. Presently, the \$3.1M of bond funds which GPA intends to use for the buyout are restricted for bond project cost overruns. GCG and GPA have already discussed a proposal that the PUC "unrestrict" these funds to provide GPA with a potential source of unrestricted cash to meet its desired target for days of unrestricted cash in the pending rate case.
13. PUC believes that applying the \$3.1M in bond funds to assist GPA in achieving its target for days of unrestricted cash is a more beneficial use than buying out the Lehman agreement. Were the funds not applied to the rate case purpose, there would be additional upward pressure on future year revenue requirements by requiring GPA to makeup these cash balances. GPA has not adequately explained how it would makeup these cash balances.
14. The PUC is not comfortable with GPA's intention to issue subordinate taxable bonds in order to repay funds taken from a restricted account. Such a "solution" would be a borrowing to repay borrowing.
15. Replenishment of these funds in the current or future rate cases would likely be a cost of the proposed buyout, and could lead to new proposals by GPA for rate increases. The overall cost of the proposed transaction is likely uneconomic.
16. The use of funds from the self-insurance reserve fund to fund the proposed buyout is also not desirable. The self-insurance reserve fund is not for such purposes, but to protect GPA and its ratepayers from damage caused by typhoons and other natural disasters. The self-insurance fund should not be depleted for such purpose.

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<sup>9</sup> Id. at p. 4.

17. The proposed use of \$4.48M of available funds to buy back control of 50% of the Bond Reserve Fund, where the benefit is both minimal and speculative and subject to other substantial cost, is not prudent.
18. GPA has not met its burden to demonstrate that the benefit of its proposed buy-out justifies the cost and the foreseeable impact of higher rates needed to replenish the \$4.48M of cash (and additional amounts for a BofA buyout).

### ORDERING PROVISIONS

After careful review and consideration of the above determinations, the Petition of GPA, the Report of GCG, and the record herein, for good cause shown and on motion duly made, seconded, and carried by the undersigned Commissioners, the Guam Public Utilities Commission **HEREBY ORDERS** that:

1. The PUC hereby denies GPA's Petition for Approval of the Buyout of the Lehman Brothers Investment Contract.
2. Based upon the report of GCG, the PUC finds that the benefits alleged by GPA for any immediate expenditure of revenues in the amount of \$4.48M are highly speculative and do not justify the cost involved.
3. Bond funds in the amount of \$3.1M (presently a "restricted" fund for bond cost overruns) should not be used for the buyout proposed in GPA's petition. Similarly, the PUC does not believe that the self-insurance fund should be used for purposes other than for which it was created.
4. The "buyout" proposed by GPA would likely result in "an upward pressure in future year revenue requirements" by requiring that GPA makeup these cash balances (i.e. utilization of the \$3.1M from existing bond funds and \$1.38M from the self-insurance reserve fund).
5. PUC does not find any substantial benefit to ratepayers at this time from the proposed transaction and believes that the transaction could adversely impact rates.
6. GPA is ordered to pay the Commission's regulatory fees and expenses, including, without limitation, consulting and counsel fees and the fees and expenses of conducting the hearing proceedings. Assessment of PUC's regulatory fees and

ORDER  
GPA Application for  
Approval of the Buyout of the  
Lehman Brothers Investment Contract  
GPA Docket 12-02  
March 26, 2012

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expenses is authorized pursuant to 12 GCA §§12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

Dated this 26<sup>th</sup> day of March, 2012.

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Jeffrey C. Johnson  
Chairman

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Rowena E. Perez  
Commissioner

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Joseph M. McDonald  
Commissioner

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Michael A. Pangelinan  
Commissioner

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Filomena M. Cantoria  
Commissioner