

**PUBLIC UTILITIES COMMISSION  
OF GUAM**

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July 9, 2012

David Manning  
GBB - Receiver  
Guam, Solid Waste Authority  
542 N. Marine Corps Drive  
Tamuning, Guam 96913

Re: Guam Solid Waste Authority Rate Request, GSWA Docket 12-01

Dear David:

I have now had the opportunity to review the recent Rate Request filed on June 18, 2012. I have assigned the above referenced docket number to this matter

Initially, there are issues concerning compliance with the Ratepayer Bill of Rights we must discuss. I am enclosing provisions from the law governing the Guam Public Utilities Commission, 12 GCA §12000 et seq. In that law, the Guam Solid Waste Authority has now been defined as a "*Public Utility.*" As such, with regard to the filing of rate requests, the GSWA is required to comply with 12 GCA §12001.1, the Ratepayers' Bill of Rights. Therein, a public utility is required to publish notice of any proposed rate increase in a newspaper of general circulation at least three (3) month *before* submitting it to the Commission. The notice must include the utility's intention to submit a proposed change in its rates in three (3) months' time its current utility rate, the proposed rate, the amount of increase *and* a justification for the increase.

In addition, the Public Utility must mail a notice to each ratepayer *at least* one (1) month *before* submitting a rate change proposal to the Commission. The Notice must state the Utility's intention to submit a proposal to increase its rates in one (1) months' time its current utility rate, the proposed rate, the amount of increase *and* a justification for the increase. Finally, *at least* one (1) month before submitting a rate increase proposal to the Commission, the Public Utility must publish on the World Wide Web all the information provided in the public notices required by the law. The Webpage of the Public Utility must also include a message board, or an electronic mail address, by which the public can submit its opinions, testimony and any reactions to the proposed rate increase or to the information provided on the webpage. See 12 GCA §12001.2.

A second issue is that in the proposed Rate Increase which GWSA filed, there are three possible options presented: i.e., the present rate, (less than full recovery to the government), a rate with full recovery to the government, and a rate for the eventuality of two landfills. The problem is, that under the law, there must have a fixed and definitive proposed rate before public notice can be given to ratepayers. In other words, the "proposed rate" must be specified. What I am suggesting is that GBB and the SDWA (and, perhaps, the government), will need to decide specifically what rate is being sought before the rate request can properly be considered by the Commission. Ordinarily, the Commission does not choose between different rate alternatives, but acts upon a proposal for a specific rate increase from a Public Utility.

I can assist you with preparing any of the appropriate notices. In addition, we should discuss procedures concerning PUC's handling of rate requests; generally the PUC engages a consultant to assist it with rate requests, and the Public Utility bears the fees of the consultant as well as other expenses incurred by the Commission. We can discuss these matters in more detail upon your arrival on Guam. I will be on island between July 16 and 24 and will meet with you at your convenience. In addition, it may be to involve the government of Guam in the meeting, as it may well have a substantial interest in the outcome of the particular rate option sought. Please let me know if you have any questions in this regard, or feel free to give me a call to discuss these matters further.

Sincerely,



Frederick J. Horecky  
PUC Legal Counsel

Enclosures  
Cc: Lou Palomo

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**CHAPTER 12**  
**PUBLIC UTILITIES COMMISSION AND THE**  
**GUAM TELECOMMUNICATIONS ACT OF 2004**

- Article 1. Public Utilities Commission.
- Article 2. Guam Telecommunications Act of 2004.

**ARTICLE 1**  
**PUBLIC UTILITIES COMMISSION**

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- § 12004. General powers and duties.
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- § 12014. May Make Recommendations and Bring Suits.
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- § 12015.2. Water and Sewer Rate Exception. [Repealed]
- § 12015.3. Monetary charges for the beneficial use of water obtained by private water well operators.
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- § 12015.6. Charges Authorized for Private Contractors if their Systems are Integrated with GWA's.
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- § 12020. Penalty.
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**§ 12000. Definitions.**

As used in this Chapter:

(a) *Public Utility* means the Guam Power Authority, the Jose D. Leon Guerrero Commercial Port, the Guam Waterworks Authority, the Guam Solid Waste Authority or any duly licensed private contractors operating:

(1) a facility or subsystem of the community-wide water production and distribution system, or

(2) a facility or subsystem of the community-wide waste water disposal system, or both, or any private golf course management corporation leasing public property providing preferential golf rates and reservations to Guam residents, or

(3) a marine terminal with facilities for loading and unloading commercial cargo or passengers onto and from ocean common carriers.

(b) *Commission* means the Public Utilities Commission.

(c) *General lifeline rate* means a lower than average cost per unit charge for a level of utility service necessary to fulfill the essential needs

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of all residential customers.

**SOURCE:** Added by P.L. 17-74; amended by P.L. 19-34:23:B. Subsection (c) added by P.L. 21-142:2. Subsection (a) amended by P.L. 23-119:6; P.L. 25-05:3; P.L. 24-295:2; P.L. 26-66:1. Subsection (a) repealed and reenacted by P.L. 27-110:8; Amended by P.L. 30-052:3 (July 14, 2009). Amended by P.L. 31-020:11 (Apr. 18, 2011) effective 90 days from date of enactment pursuant to P.L. 31-20:13..

**§ 12001. Public Utilities Commission: Number, Appointment of Commissioners.**

There shall be a public corporation and autonomous instrumentality within the government of Guam, to wit, a Public Utilities Commission composed of seven (7) members to be called Commissioners, who shall be selected as follows:

(a) *I Maga'Lahen Guåhan* [Governor of Guam] shall appoint, with the advice and consent of *I Liheslaturan Guåhan* [Guam Legislature], two (2) members from the business community of Guam; one (1) member who is a certified public accountant; two (2) members, each of whom have training or experience in at least one (1) of the following four (4) areas (power generation, telephone, water/sewer utilities, or marine terminal operations/transportation via ocean common carrier), with the additional requirement that the two (2) members appointed each have training or experience in a different area; and two (2) members who are from the community at large.

*Except* for the initial term, the terms of such members shall be for six (6) years. *No* member shall be a director, deputy director, appointed, unclassified employee, any other unclassified employee of the government of Guam, or a member of any other board or commission. The appointment of any person to the Commission *shall* become void if at any time during that person's term of office, that person shall become a director, deputy director, appointed to any unclassified position in the government of Guam, or accept appointment to any other board or commission.

(b) The Commissioners shall serve staggered terms. One (1) of the initially selected members shall serve a term of one (1) year, three (3) of the initially selected members shall serve a term of three (3) years, and three (3) of the initially selected members shall serve a term of five (5) years.

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(c) Any vacancies occurring in the membership of the Commission during a term shall be filled by the Governor selecting a person from the same category as that from which the person creating the vacancy was appointed. Every person filling a vacancy shall be confirmed by the Legislature. Any person filling a vacancy shall serve only for the unexpired portion of the term.

(d) When there is a change of administration of the government of Guam after a gubernatorial election, no courtesy resignation shall be requested by the new administration of the government of Guam nor offered by any Commissioner.

(e) The members of the Public Utilities Commission shall elect a chairperson.

(f) At the first meeting of the Public Utilities Commission, the members shall draw lots to determine which members shall serve the one (1) year term, the three (3) year terms, and the five (5) year terms.

(g) The Commission may remove or suspend for cause any member of the Commission after due notice and public hearing.

(h) No person owning any bonds of any public utility regulated by the Commission or deriving any remuneration from any public utility regulated by the Commission shall be eligible to serve as a Commissioner or be employed by the Commission. Further, no person who is an officer or director, or who owns a financial interest in a corporation or partnership doing business with a regulated utility shall be eligible to serve as a Commissioner or be employed by the Commission.

(i) No Commissioner shall during the two (2) years immediately following termination of service on the Commission be employed by any public utility which is regulated by the Commission.

(j) No Commissioner may serve on any other board or commission of the government of Guam during his term as Commissioner of the Public Utilities Commission.

**SOURCE:** Added by P.L. 17-74; amended by P.L. 20-66:3. Subsection (a) amended by P.L. 24-47:1. Subsection (a) amended by P.L. 24-143:18; P.L. 25-05:4; P.L. 26-66:2; P.L. 30-052:4 (July 14, 2009).

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**§ 12001.1. Ratepayers' Bill of Rights.**

*I Liheslaturan Guåhan* finds that the services provided by Public Utilities are basic necessities that the residents of Guam must receive in order to function in modern life. *I Liheslaturan Guåhan* also finds that because residents have very little choice in purchasing these basic necessities, they are held captive to the rates and rate increases of the Public Utilities. Any rate increase therefore diminishes the amount of hard-earned wages residents have to spend on other basic necessities, such as food, shelter and clothing, as well as the amount of hard-earned wages they have to set aside for retirement, college, emergencies or a family business.

While *I Liheslaturan Guåhan* recognizes that over a long period of time, an increase in utility rates is inevitable, such rate increases must be made out of absolute necessity, and only after every cost-cutting effort has been made and every other available option has been exhausted. *I Liheslaturan Guåhan* intends to make it clear that it does not want to interfere with the ability of the Public Utilities Commission to regulate and set rates for the Public Utilities, but *I Liheslaturan Guåhan* also intends to make it abundantly clear that no Public Utility shall submit a proposal for a rate increase without first giving the people of Guam more than ample opportunity to exercise their fundamental rights as ratepayers. Those fundamental rights of the ratepayers include:

- (1) the right to receive clear and adequate notice of any proposed rate increase;
- (2) the right to be fully informed about and to fully evaluate any proposed rate increase, as well as the finances of a Public Utility; and
- (3) the right to give input and participate in any proposed rate increase.

It is these basic rights which the Ratepayers' Bill of Rights seeks to uphold.

SOURCE: Added by P.L. 26-023:1 (July 5, 2001).

**§ 12001.2. Proposed Public Utility Rate Increases.**

(a) Sections 12001.1 through 12001.2, which shall be known as the Ratepayers' Bill of Rights, shall in no way restrict the powers of the

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Public Utilities Commission (Commission) granted in this Chapter to regulate or set rates for a Public Utility. The Ratepayers' Bill of Rights sets conditions *only* on the manner in which a Public Utility shall submit a proposed rate increase to the Commission. No Public Utility, as defined in §12000 of this Chapter, with the *exception* of the Guam Memorial Hospital, and the Jose D. Leon Guerrero Commercial Port, may submit a proposed rate increase to the Commission before complying with the mandates of this Section. This Section shall *not* apply to the Guam Memorial Hospital and the Jose D. Leon Guerrero Commercial Port. In the case of the Jose D. Leon Guerrero Commercial Port, notice of any proposed changes in rates shall be made as described in subsection (f) herein.

(b) A Public Utility shall publish notice of any proposed rate increase in a newspaper of general circulation, as defined in §8104 of Chapter 8 of Title 5 of the Guam Code Annotated, *Open Government Law*, at least three (3) months *before* submitting it to the Commission. The published notice shall include the Public Utility's intention to submit a proposed change in its rates in three (3) month's time, its current utility rate, the proposed rate, the amount of increase *and* a justification for the increase.

(c) A Public Utility shall mail a notice to every ratepayer *at least* one (1) month *before* submitting a rate change proposal to the Commission. The notice shall state the Public Utility's intention to submit a proposal to increase its rates in one (1) month's time, its current utility rate, the proposed rate, the amount of increase *and* a justification for the increase.

(d) The Public Utilities Commission ('PUC') shall annually conduct a study comparing the staffing pattern and manpower levels of the Public Utilities under their purview to the staffing patterns and manpower levels of *at least* four (4) other utilities in the United States Mainland which provides similar services to a comparable number of customers.

The first such study mandated herein shall begin *no less than* sixty (60) days after the effective date of this Act. The PUC shall publish the results of such studies in a newspaper of general circulation, as defined in §8104 of Chapter 8 of Title 5 of the Guam Code Annotated, *Open Government Law*. The studies shall be made available to residents



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attending the public hearings on the proposed rate increase. The PUC must, in determining approval of any proposed rate increase, take into account the results of such studies and order reductions or other adjustments in the operations of the Public Utility requesting a rate adjustment, as recommended or suggested by such studies, *prior* to granting approval for a rate increase.

It is the intention of *I Liheslaturan Guåhan* that the PUC mandate reductions in unnecessary levels or areas of expenditure in Public Utilities *prior to*, or in conjunction with, approval of any rate increase. Any Public Utility that has received an order from the PUC to reduce expenditures in any area of operations shall comply with such order, and failure to do so is a grounds for disapproval of a rate increase proposal.

(e) A Public Utility, *at least* one (1) month before submitting a rate increase proposal to the Commission, shall publish on a World Wide Web ('Web') page, available through the Internet, all the information provided in its public notices required by this Section. The Web page shall also include a message board, or an electronic mail address, by which the public can submit its opinions, testimony and any reactions to the proposed rate increase or to the information provided on the Web page.

(f) The Jose D. Leon Guerrero Commercial Port (the Port) *shall not* submit any proposed rate change to the Commission until the following actions have occurred:

(1) The Port *shall* publish notice of any proposed rate change in a newspaper of general circulation, as defined in §8104 of Chapter 8 of Title 5 of the Guam Code Annotated, Open Government Law, at least sixty (60) days prior to submitting the proposed rate change to the Commission. The notice required herein *shall* include the Port's intention to submit its proposed rate change to the Commission, its current rate, the proposed rate, the difference in the current and proposed rates stated in percentage form, a justification for the change, and an electronic mail address and physical location where comments on the proposed rate change may be submitted; and

(2) The Port *shall* publish notice of any proposed rate change on the Port's official website at least sixty (60) days prior to submitting the proposed rate change to the Commission. The notice

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required herein *shall* include the Port's intention to submit its proposed rate change to the Commission, its current rate, the proposed rate, the difference in the current and proposed rates stated in percentage form, a justification for the change, and an electronic mail address and physical location where comments on the propose rate change may be submitted.

**SOURCE:** Added by P.L. 26-023:2 (July 5, 2001). Subsection (a) amended by P.L. 30-052:5 (July 14, 2009). Subsection (f) added by P.L. 30-052:6 (July 14, 2009).

**§ 12002. Operation of Commission.**

(a) The Commission shall retain on an as needed basis those professional services required by the Commission in the performance of its duties. The Commission may employ administrative staff personnel for the conduct of Commission business.

(b) The Commission may also appoint an attorney, who shall serve at the pleasure of the Commission and whose duties, which may include service as the Commission's administrative law judge, shall be fixed by the Commission. The attorney, who must have been admitted to practice before the Supreme Court of Guam, shall advise the Commission on all legal matters to which the Commission is legally interested, and may represent the Commission in connection with legal matters before *I Liheslaturan Guåhan*, the courts of Guam, and boards and other agencies of Guam. The Commission is authorized to establish by rule or order that each public utility regulated under this Chapter shall be assessed the costs incurred by the Commission for professional services rendered by the attorney.

(c) If the agency's determination is reversed by the Commission, then the Commission shall award reasonable attorney's fees to the customer and costs. The remedies contained in this Title are not exclusive, and the customer may, at the customer's sole option, proceed under this Title, under Section 100 of Chapter III-B of Title I of the Guam Code of Civil Procedure, or may pursue any other remedies available.

**SOURCE:** Added by P.L. 17-74; R/R by P.L. 20-94:28. Amended subsection (b) by P.L. 26-18:2.

**§ 12002.1. Operation of Commission-Additional.**