

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

In Re:)
RATE REQUEST FOR) DPW Docket 10-01
SOLID WASTE SYSTEM)
_____)

PUC LEGAL COUNSEL REPORT

Background

On September 28, 2010, the District Court appointed receiver of the Solid Waste Management Division, Gershman, Brickner & Bratton, Inc. (“GBB”), through its representative David L. Manning, filed a “Rate Request” for the Solid Waste Management Division (“SWMD”).¹ GBB has filed this Request in accordance with an Order of the District Court of Guam dated January 15, 2010, which ordered GBB to submit its proposed rates for the SWMD to the PUC prior to the end of September 2010.²

The District Court of Guam has already set “interim” rates for solid waste collection and “tipping” fees that will remain in effect until the PUC approves permanent rates.³ The interim rates set by the District Court of Guam are set forth in Exhibit “A” attached hereto. Interim Residential Collection Fees increase from \$17.00 per month to \$24.00 per month on January 1, 2011. On July 1, 2011, Residential Collection Rates will increase to \$30.00.⁴ In the Rate Request, GBB asks that residential collection rates be set at \$32.00 for FY 2011 (*excluding* the Military as a customer) and at \$28.00 per month (*including* the Military as a customer).⁵

GBB’s Rate Request indicates “there are a number of factors that will have an effect on rates that are not final at this time”:⁶ who will be the qualified landfill operator and the cost of such operator’s services; the cost of the contract for a commercial transfer station; the extent of the military’s participation as a customer of the Layon landfill; the judicial determination by the courts of Guam of the value of the land taken by condemnation

¹ GBB Rate Request, DPW Docket 10-01, filed September 28, 2010.

² Written Testimony of David L. Manning before the Guam PUC in support of the September 2010 rate request of the SWMD, DPW Docket 10-01, filed September 28, 2010.

³ Id. at p. 4.

⁴ Id. at Exhibit “A” hereto.

⁵ See Schedule B, Summary of Revenue, GBB Rate Request, DPW Docket 10-01, filed September 28, 2010.

⁶ Written Testimony of David L. Manning, Id. at p. 11.

for the Layon landfill; results of the pilot curbside recycling program and its potential expansion to all residential customers; the final cost of the landfill and associated projects; and the timeframe for completion of bridge replacements and rehabilitation, and other road improvements, which effect the operational cost of the new landfill.⁷

Mr. Manning explains that there are “several issues that could significantly affect the proposed rates that are still unknown at this time. Fortunately, since the court has already approved interim rates, the Commission has time to await the final resolution of these issues before acting to set rates.”⁸ Mr. Manning further states that he believes that “*the Commission should take this under advisement while the several issues that we outlined as still pending are resolved...it could take several months for these issues to be resolved. [A]s the interim rates...remain effective until the PUC approves rates, the Commission is not under any time pressure to act before these issues are resolved.*”⁹ Essentially, GBB’s Rate Request asks the Commission to suspend, or temporarily hold in abeyance, consideration of the Rate Request until the above referenced issues are resolved.

The PUC clearly has Jurisdiction over Solid Waste Rates and should assert such Jurisdiction in this Docket.

Previously, in May of 2009, the PUC considered an application by the Government of Guam for the issuance of limited obligation revenue bonds for the solid waste management system. The bonds were requested for the purpose of paying for the costs of the closure of the Ordot dump and the construction of the Layon landfill.¹⁰ The Commission, upon due consideration, approved the issuance of limited obligation bonds.¹¹ In that proceeding, Counsel’s Report stated that “*responsibility for review and approval of the fees and charges for the solid waste services of the Department of Public Works has been squarely placed under the jurisdiction of the Public Utilities Commission by virtue of 10 GCA §51805.*”¹²

10 GCA §51805 authorizes DPW to establish and modify, with prior approval of the Public Utilities Commission, reasonable rates, fees and charges for solid waste services at least adequate to cover the full cost of such services, including the costs of debt

⁷ Id.

⁸ GBB Rate Request, DPW Docket 10-01, filed September 28, 2010 at p. 1.

⁹ Email from David Manning to PUC Counsel dated September 28, 2010.

¹⁰ PUC Legal Counsel Report on the Issuance by the Government of Guam of Limited Obligation Bonds, DPW Docket 09-01, filed May 11, 2009.

¹¹ PUC Order, DPW Docket 09-01, filed May 14, 2009.

¹² PUC Counsel Report, DPW Docket 09-01, filed may 11, 2009 at p. 3.

service for capital improvements of permitted solid waste facilities, and to collect money from all users or customers and to refund charges collected in error.”¹³ Furthermore, 10 GCA §5118(e) authorizes the PUC to establish and amend commercial, government and residential tipping and user fees, including, without limitation a self-drop fee, a variable residential tipping fee and a targeted lifeline rate for residential tipping fee.¹⁴

Thus, Counsel recommends that PUC assert jurisdiction over solid waste fees and the Rate Request of DPW in this Docket.

Recommendations

In accordance with GBB’s Request, the PUC should delay further action on said Request at the present time; it should temporarily abate consideration of such Request. GBB has indicated that it would not be appropriate to PUC to address the Rate Request at the present time, as there are many significant issues of major impact to be resolved; thus, rate setting by the PUC at present would not lead to the establishment of accurate, just or reasonable rates. Before permanent rates are set, the cost issues raised by GBB must be resolved. It is not possible to set such rates until the extent of the military participation is known. Rates will vary considerably depending upon whether the military is included or not. In the meantime, PUC should proceed with its efforts to secure a solid waste consultant, and to monitor the progress on the pending unresolved issues.

In addition, there are still unresolved issues concerning the procedure with which the PUC should address GBB’s Rate Request. At present, the SWMD is not defined as a “public utility” in the law governing PUC duties and responsibilities.¹⁵ In performing its duties relative to establishing and amending tipping and user fees, the PUC “shall have the full authority and powers conferred upon it by its enabling legislation, 12 GCA §12000 *et seq.*” However, this more recent legislation specifying PUC jurisdiction over solid waste also does not clearly define the SWMD as a “public utility.”

The “Ratepayer Bill of Rights requires that “public utilities” file certain “pre-filing” notices before a rate case is filed, and only applies to “the services provided by Public Utilities...”¹⁶ A Public Utility is required to publish notice of any proposed rate

¹³ 10 GCA §51805

¹⁴ 10 GCA §5118(e)

¹⁵ See 12 GCA §12000.

¹⁶ 12 GCA §12001.1

increase in a newspaper of general circulation at least three (3) months before submitting it to the Commission. Also, such Utility must mail a notice to every ratepayer *at least one (1) month before* submitting a rate change proposal to the Commission.¹⁷ Thus, present law does not clearly indicate whether these notice provisions are applicable to proposed rate increases of the SWMD, or whether such other requirements, including an annual PUC audit of staffing and manpower levels of public utilities, are applicable to SWMD.

The Utilities Committee of the Guam Legislature, under the Chairmanship of Senator Tom Ada, is currently considering legislation which would provide for a Solid Waste Development Authority. A proposed amendment to the law would clarify whether the SWMD is a "Public Utility" for purposes of the Ratepayer Bill of Rights.¹⁸ This issue should be resolved before PUC proceeds with rate setting for the SWMD.

Generally, the PUC must act on a utility's application for rate change within 120 days after the *final* filing by the utility of all documentation, including responses to discovery, as may be necessary to support the application; provided, however that the ALJ shall make the determination of when this "final filing" has occurred.¹⁹ At this time, GBB has indicated that its filing is not final because the rates requested will depend upon the resolution of currently unresolved issues. Therefore, the 120 day timeframe for action by PUC should not commence to run until GBB has indicated that the unresolved issues are resolved and the PUC is in a proper position to fully address rate issues.

Counsel recommends that the PUC adopt the Order submitted herewith.

Dated this 15th day of November, 2010.

Frederick J. Horecky
PUC Legal Counsel

¹⁷ 12 GCA §12001.2 (b) and (c).

¹⁸ Telephone discussion between Jimmy Camacho, Analyst to the Utilities Committee, and PUC Legal Counsel on November 10, 2010.

¹⁹ See Rule 24(e) of the PUC's Rules of Practice and Procedure.