

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

PUC COUNSEL REPORT

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Request of the Representative of the Receiver of the Guam Solid Waste Authority, David Manning, to modify the present method by which Host Community Premium Surcharge Funds are distributed to the host villages of Inarajan and Ordot-Chalan Pago.¹
2. Previously, the Protocol adopted by the PUC on July 30, 2012, as well as Public Law 30-165, required that the Host Community Premium Surcharge ["HCPS"] Funds collected by the Receiver for solid waste tipping fees be transferred to the Department of Administration (DOA). On a quarterly basis, GSWA was required to transfer all Host Community Premium Surcharge fees collected to the Department of Administration.² DOA would then transfer the fees to the host communities.
3. On April 11, 2013, Public Law 32-21 was enacted. A true and correct copy thereof is attached hereto as Exhibit "A". Said Law amends 10 GCA §511006 relative to "Host Community Fund Management." While prior law provided that the Department of Administration would administer such fund, amended §511006 provides: "the Host Community Fund *shall* be maintained separate and apart from all other government funds and managed by the Mayor and the Municipal Planning Council. No expenditure shall be made from the fund that is *not* approved by resolution of the respective Municipal Planning Councils of the Host Community." (Emphasis added).
4. This Counsel Report analyzes the changes required by PL 32-21 to the PUC Protocol and proposes a revised Protocol which is consistent with Public Law 32-21.

BACKGROUND

5. In the Request, Mr. Manning has provided the PUC with a copy of Public Law 32-21 and a letter to the Receiver, dated June 13, 2013, from Senator Vicente Pangelinan.

¹ Email from Receiver David L. Manning to PUC Legal Counsel Frederick J. Horecky dated July 14, 2013.

² PUC Order, GSWA Docket 12-02, dated July 30, 2012, at p. 3.

A copy of Senator Pangelinan's letter is attached hereto as Exhibit "B". In his letter, Senator Pangelinan indicates that, as outlined in PL 32-21, fees and payments from the Host Community Benefit Fund are now required to be deposited directly to the Host Community Municipal Planning Council ["MPC"] Fund Accounts, and not to the Department of Administration's Host Community Fund Account. The Mayors of the Host community related to Senator Pangelinan stated that they wish to have the funds deposited directly into the accounts that they had established.³

6. On July 15, 2013, Mr. Manning filed with the PUC a letter to the Commissioners reporting on the quarterly status of the Host Community Benefit Fund and surcharge collections. A copy of Mr. Manning's letter is attached hereto as Exhibit "C". In addition, therein Mr. Manning requested that the PUC change its Protocol to allow for the direct deposit of funds derived from the HCPS fees and payments directly to the Host Community MCP fund and not to the Department of Administration's Host Community Fund Account.⁴
7. In light of the passage of Public Law 32-21, and the Request of the Receiver for GSWA, it is appropriate for the PUC to consider changes to its Protocol for the transfer of the Host Community Premium Surcharge.

ANALYSIS

8. Public Law 32-21 clearly removes the management of the Host Community Fund from the Department of Administration to the Mayors and Municipal Planning Councils of the Host Communities, Inarajan and Ordot-Chalan Pago.⁵ Control and Management of the Host Community Fund is squarely placed with the Mayor and Municipal Planning Councils of the Host Communities.
9. Expenditures cannot be made from the fund without approval by resolution of the respective Municipal Planning Councils of the Host Community. The funds deposited in the Host Community Fund *shall only* be used by the respective Host Community for the purposes of the Host Community Benefit projects as described in §511003 of the Article.⁶

³ Letter from Senator Vicente Pangelinan to David L. Manning, Receiver Representative dated June 13, 2013.

⁴ Letter from David L. Manning, Receiver Representative, to the Members of the Public Utilities Commission, dated July 15, 2013, at p. 2.

⁵ Public Law 32-21, enacted April 11, 2013.

⁶ 10 GCA §511006, as amended by Public Law 32-21.

10. In addition, Section 2 of Public Law 32-21 which amends 10 GCA §511005, Host Community Premiums, establishes that the Host Community Premium “shall be assessed from the opening of the *Inarajan* landfill until the closing of the *Inarajan* landfill.”⁷
11. Public Law 32-21 also clarifies that the Village of Ordot-Chalan Pago shall be eligible for the host community premiums during the “post-closure period,” which includes post-closure care and maintenance of the property after the closing of the landfill for thirty (30) years *or* until such time that it is deemed by the Administrator of the Guam Environmental Protection Agency that there is a significant reduction in the adverse effects to human health and the environment. The Municipal Planning Councils of the Host Communities are given governing authority over these host community premium funds.⁸
12. Additionally, the Receiver has requested that GSWA divide the host community fees received equally into the two MPC Fund Accounts established, one each for the Villages of Inarajan and Ordot-Chalan Pago.⁹
13. As an administrative agency, the Guam Public Utilities Commission must act in accordance with its statutory authority. Its power is dependent upon statutes, so that it must find within the statute warrant for the exercise of authority which it claims. Thomas C. Ada, Senator v. Guam Telephone Authority et al., 1999 Guam 10 (Supreme Court of Guam). The PUC has an obligation to insure that its procedures are in compliance with public law. Therefore, the PUC should amend its current Protocol governing the Host Community Premium Fund to provide for the transfer of such funds to the MPC Funds, and not to the Department of Administration’s Host Community Fund Account.

RECOMMENDATION

14. In order to comply with the requirements of PL 32-21, PUC Legal Counsel recommends that the PUC adopt the Protocol attached hereto as Exhibit “D”.

⁷ Section 2 of Public Law 32-21.

⁸ Public Law 32-21, Section 1, at p. 2.

⁹ Email from Receiver Representative David Manning to PUC Counsel Frederick J. Horecky dated July 15, 2013.

15. A proposed Order is submitted herewith for the consideration of the Commissioners.

Dated this 16th day of July, 2013.

Frederick J. Horecky
PUC Legal Counsel