

**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

RE: REQUEST TO WAIVE PRE-PROCUREMENT REVIEW FOR REFINANCING OF BANK OF GUAM LOAN )  
GWA DOCKET 15-03 )  
ALJ REPORT )  
\_\_\_\_\_ )

**INTRODUCTION**

This matter comes before the Guam Public Utilities Commission (the “PUC”) pursuant to the April 23, 2015 Request to Waive Pre-Procurement Review for Refinancing of Bank of Guam Loan, filed by the Guam Waterworks Authority (“GWA”). In its request, GWA sought PUC approval to waive the PUC’s pre-procurement review for the refinancing of its \$30 million short-term loan previously approved by the PUC in GWA Docket 10-01.

However, on May 27, 2015, GWA filed an Expedited Petition for Approval of the Extension of the \$22 Million Dollar Loan with the Bank of Guam to Fund Reserves Required under the Bond Indenture and for Other Authorized Purposes (“Expedited Petition”). In the Expedited Petition, GWA now seeks PUC approval to amend the loan agreement in order to extend payment of the remaining principal and interest on the \$30 million loan for another five (5) year term.

**BACKGROUND**

On April 23, 2015, GWA filed its Request to Waive Pre-Procurement Review for Refinancing of the Bank of Guam Loan. The loan referenced in the request concerned the \$30 million short-term loan approved by the PUC in GWA Docket 10-01. In its May 27, 2010 Order, the PUC approved the subject loan, and authorized GWA to

enter into the loan agreement.<sup>1</sup> However, the PUC's approval was for a five-year term with an interest rate of 7.75% per annum.<sup>2</sup> Thereafter, GWA entered into a loan agreement that was comprised of two promissory notes: one for the amount of \$5 million; the other for the amount of \$25 million.<sup>3</sup> According to GWA, the \$5 million note will be fully paid on June 15, 2015.

In its April 23, 2015 request, GWA sought PUC approval to waive the PUC's pre-procurement review, as required under its Contract Review Protocol, for the refinancing of the remaining balance on the loan. GWA indicated that pursuant to the terms of the loan agreement, it will be required to "make a balloon payment of approximately \$15M on or before June 15, 2015" and therefore it faced "serious time constraints" which necessitated the need to issue bids to refinance the balance on the loan "as soon as possible."<sup>4</sup>

However, on May 22, 2015, GWA's legal counsel informed the Administrative Law Judge of the PUC (the "ALJ") that GWA was not seeking procurement for refinancing any longer, but rather was now seeking an extension of the current loan. GWA's legal counsel thereafter provided the ALJ with a draft copy of the CCU resolution authorizing the extension, as well as a copy of the Revision Agreement, which amends the terms of the existing loan agreement.

On May 26, 2015, the Consolidated Commission on Utilities (the "CCU") issued Resolution No. 26-FY2015, which authorized GWA to petition the PUC for

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<sup>1</sup> GWA Docket 10-01, PUC Order, pp. 4-5 (May 25, 2010).

<sup>2</sup> GWA Docket 10-01, PUC Order, p. 5 (May 25, 2010).

<sup>3</sup> Expedited Petition, Exhibit B, Loan Agreement, p. 1 (May 27, 2015).

<sup>4</sup> GWA's Request to Waive Pre-Procurement Review by PUC Relative to Refinancing Outstanding Balance of GWA's \$30M Short-Term Loan with the Bank of Guam, GWA Docket 15-03, p. 1 (Apr. 22, 2015)

approval of extending the life of the loan, as well as to enter into the Revision Agreement upon the PUC's approval.<sup>5</sup> On May 27, 2015, GWA filed its Expedited Petition in GWA Docket 10-01. This petition presumably supersedes the April 23, 2015 petition filed by GWA.

## DISCUSSION

### **A. Contract Review Protocol**

Pursuant to 12 G.C.A. §12004,<sup>6</sup> GWA may not enter into any contractual agreements or obligations which could increase rates and charges without the PUC's express approval. In addition, GWA's Contract Review Protocol mandates that "[a]ll externally funded loan obligations and other financial obligations such as lines of credit, bonds, etc. in the excess of \$1,000,000" shall require "prior PUC approval under 12 G.C.A. §12004 . . . ."<sup>7</sup>

### **B. GWA's Petition for PUC Approval of Extension**

In its petition, GWA submits that with respect to this loan extension, "GWA has obtained an economically favorable 5.25% interest rate"; and that this interest rate "is quite favorable considering the fact that GWA's average coupon rate for its 2013 bonds was 5.44% . . . ."<sup>8</sup> In addition, GWA further submits that without this extension, GWA "would be subject to an immediate balloon payment of the unpaid balance" of about \$15 million.<sup>9</sup> Further, in the event GWA "defaults on making the balloon payment in a timely manner, the default would almost certainly have a negative impact on GWA's credit

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<sup>5</sup> CCU Resolution No. 26-FY2015, pp. 2-3 (May 26, 2015).

<sup>6</sup> Renumbered as 12 G.C.A. § 12105.

<sup>7</sup> GWA's Contract Review Protocol ("GWA CRP"), Administrative Docket 00-04, p. 1 (Oct. 27, 2005).

<sup>8</sup> Expedited Petition, p. 3.

<sup>9</sup> Expedited Petition, p. 3.

rating,” which would trickle down to the ratepayers, according to GWA.<sup>10</sup> Lastly, GWA submits that this extension is “prudent” since it “avoids the cost of issuance that would be associated with refinancing.”<sup>11</sup> GWA explains that cost of issuance is “usually about 2% of the total value of the loan—i.e., Three Hundred Thousand Dollars (\$300,000.00).”<sup>12</sup>

**C. Revision Agreement**

According to GWA, the remaining principal balance on the loan is about \$15 million. Based on the Revision Agreement to the subject loan, which is attached hereto as “Exhibit A,” the interest rate is set at 5.25% per annum; with a monthly payment of \$293,550.00.<sup>13</sup> Finally, the Revision Agreement provides a term of five (5) years for the remaining principal and interest, which shall terminate on June 15, 2020.<sup>14</sup> All other terms and conditions of the loan remain unchanged.<sup>15</sup>

**D. CCU Resolution No. 26**

In Resolution No. 26-FY2015, the CCU approved the terms set forth in the Revision Agreement, so long as the following conditions were met: (1) that the extension did not interfere with GWA’s ability to issue bonds or secure other financing during the term of the extension; (2) that the final maturity of the loan will be no later than June 15, 2020; (3) that the interest rate will be reduced from the current fixed rate of 7.75% to 5.25% per annum, and shall remain fixed for the term of the extension; (4) that the terms and conditions of the extension do not conflict with the original loan, except as stated therein; (5) that the terms and conditions of the loan do not conflict with Guam law; and

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<sup>10</sup> Expedited Petition, p. 3.

<sup>11</sup> Expedited Petition, p. 3.

<sup>12</sup> Expedited Petition, p. 3.

<sup>13</sup> Revision Agreement, p. 1.

<sup>14</sup> Revision Agreement, p. 1.

<sup>15</sup> Revision Agreement, p. 1.

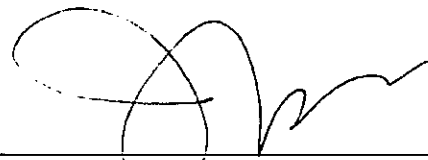
(6) that the PUC approve the terms and conditions of the extension.<sup>16</sup> Accordingly, the CCU authorized GWA to petition the PUC for approval of extending the life of the loan, as well as to enter into the Revision Agreement upon the PUC's approval.<sup>17</sup>

### **CONCLUSION AND RECOMMENDATION**

Based on the record, the ALJ herein finds that GWA's effort to extend its \$25 million loan appears reasonable under the circumstances, which remaining balance is approximately \$15 million. The subject loan, along with the specific purposes for the use of the funds, has previously been approved by the Commission in an Order issued in GWA Docket 10-01. In light of the circumstances indicated on the record, the lower interest rate appears favorable to GWA, and lessens GWA's risk of defaulting on the loan. In addition, GWA avoids the costs associated with refinancing, which it indicates would be about \$300,000.00.

Accordingly, the ALJ recommends that the PUC approve the extension to the subject loan agreement, and authorize GWA to execute the Revision Agreement. A proposed Order is submitted herewith for the Commissioners' consideration.

Dated this 28<sup>th</sup> day of May, 2015.



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**JOEPHET R. ALCANTARA**  
Administrative Law Judge

P153017.JRA

<sup>16</sup> CCU Resolution No. 26-FY2015, p. 2 (May 26, 2015).

<sup>17</sup> CCU Resolution No. 26-FY2015, pp. 2-3 (May 26, 2015).

## REVISION AGREEMENT

**Lender: BANK OF GUAM**

Commercial Banking Group  
P.O. Box BW, Hagatna, Guam 96932

Loan No. 1501-186871

This refers to the loan evidenced by Promissory Note (Note) dated June 16, 2010, executed by Guam Waterworks Authority, upon which the original note amount was \$25,000,000.00 and the current principal balance is \$ \_\_\_\_\_ and which interest is paid to June 15, 2015.

Request is hereby made that you revise the terms of said note and that you accept payment thereof at the time, or times, and in the manner following:

**Interest.** The principal outstanding upon this Note shall bear interest at the rate of five and one-quarter percent (5.25%) per annum.

All interest hereunder shall be computed based upon a year of 365 days and actual number of days elapsed to date of payment.

**Payment.** This Note shall be paid on the 15<sup>th</sup> day of July, 2015 and the 15<sup>th</sup> day of the fifty-eight (58) months thereafter, in payments of principal and interest combined each of \$233,559.00 with a final payment of all principal and interest outstanding on June 15, 2020. All payments shall be applied first to interest accrued to the date payment is received, then to principal, and then charges other than principal and interest.

**Maturity.** All remaining principal and outstanding interest and other charges upon the Note shall be due and payable five (5) years from the date of this Revision Agreement.

**ALL OTHER TERMS AND CONDITIONS SHALL REMAIN UNCHANGED.**

In consideration of your acceptance of such revision, and your forbearance to enforce payment except as herein above revised, the indebtedness evidenced by said note is hereby acknowledged and admitted and the undersigned, jointly, severally, and unconditionally, promise and agree to pay the same with the interest thereon within the time and in the manner provided for in said revision, together with attorney's fees, costs of collection, and any other sums provided for in said note.

Any and all security held by you said note and/or for any other obligation(s) of the undersigned may be enforced by concurrently or independently in such order as you may determine; and with reference to any such security, you may, without consent of or notice to any of the undersigned, exchange, substitute or release such security without affecting the liability of the undersigned, or any of them, and you may release any one or more parties hereto or to the above obligation, or permit the liability of said party or parties to terminate without affecting the liability of any other party or parties liable thereon.

This agreement is a revision only, and not a novation; and except as herein provided, all the terms and conditions of said note and of any deed of trust, security agreement or other document of lien or encumbrance shall remain in full force and effect.

Executed at Hagatna, Guam, this \_\_\_\_ day of \_\_\_\_\_ 2015.

Guam Waterworks Authority

By: \_\_\_\_\_

General Manager

**EXHIBIT A**

The foregoing revision is accepted this \_\_\_\_ day of \_\_\_\_\_ 2015.  
BANK OF GUAM Headquarters, Hagatna

By: \_\_\_\_\_  
Its Authorized Representative

LN-405