



**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

RE: **REQUEST TO WAIVE PRE-PROCUREMENT REVIEW FOR REFINANCING OF BANK OF GUAM LOAN** ) **GWA DOCKET 15-03**  
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) **ORDER**  
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**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.

**DETERMINATIONS**

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 superseded the April 23, 2015 petition filed by GWA. On May 28, 2015, the ALJ filed an ALJ Report regarding the PUC's review of the Expedited Petition. Based on the record provided by GWA, the ALJ found the following.

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>

In its petition, GWA submitted 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 submitted 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 rating," which would trickle down to the ratepayers, according to GWA.<sup>10</sup> Lastly, GWA

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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.

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

submitted that this extension is “prudent” since it “avoids the cost of issuance that would be associated with refinancing.”<sup>11</sup> GWA explained 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>

According to GWA, the remaining principal balance on the loan is about \$15 million. Based on the Revision Agreement to the subject loan the interest rate is set at 5.25% per annum; with a monthly payment of \$285,000.00.<sup>13</sup> Finally, the Revision Agreement provided 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>

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 (6) that the PUC approve the terms and conditions of the extension.<sup>16</sup> Accordingly, the

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<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.

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

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>

Based on the record, the ALJ found that GWA's effort to extend its \$25 million loan appeared 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 appeared favorable to GWA, and lessened GWA's risk of defaulting on the loan. In addition, GWA avoided the costs associated with refinancing, which it indicates would be about \$300,000.00. The ALJ recommended that the PUC approve the extension to the subject loan agreement, and authorize GWA to execute the Revision Agreement.

The Commission hereby adopts the findings made in the May 28, 2015 ALJ Report and, therefore, issues the following:

#### **ORDERING PROVISIONS**

Upon careful consideration of the record herein, and for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby ORDERS the following:

1. That the extension to the loan agreement is hereby APPROVED.
2. That the maturity of the loan from the date of issuance which shall be extended by a period of five years, the interest rate of the loan at 5.25% per annum, the amount of the debt, and repayment structure are hereby APPROVED.

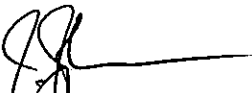
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<sup>17</sup> CCU Resolution No. 26-FY2015, pp. 2-3 (May 26, 2015).

3. That GWA is hereby AUTHORIZED to execute the Revision Agreement.

4. GWA is ordered to pay the PUC's regulatory fees and expenses, including and without limitation, consulting and counsel fees, and the fees and expenses associated with this docket. Assessment of the PUC's regulatory fees and expenses is authorized pursuant to 12 G.C.A. §§ 12002(b) and 12024(b) (renumbered as 12 G.C.A. §§ 12103(b) and 12125(b)), and Rule 40 of the Rules of Practice and Procedure before the PUC.

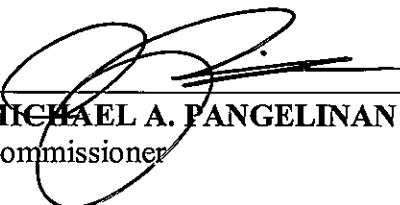
**SO ORDERED** this 28<sup>th</sup> day of May, 2015.

  
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**JEFFREY C. JOHNSON**  
Chairman

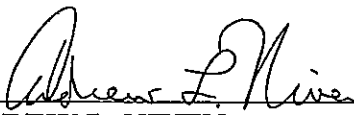
  
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**ROWENA E. PEREZ**  
Commissioner

  
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**JOSEPH M. MCDONALD**  
Commissioner

  
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**FILOMENA M. CANTORIA**  
Commissioner

  
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**MICHAEL A. PANGELINAN**  
Commissioner

  
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**PETER MONTINOLA**  
Commissioner

  
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**ANDREW L. NIVEN**  
Commissioner