

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:)
GENERAL DISCOVERY PROTOCOL) **GENERAL ORDER NO. 09-01**
_____)

The Administrative Law Judge (“ALJ”) of the Guam Public Utilities Commission (“PUC”) establishes the following “Discovery” protocol pursuant to Rule 28 of the Rules for Practice and Procedure. As used herein “Discovery” means depositions, interrogatories, subpoenas, requests for information, or any other type of information gathering which the Commission or the party in any docket or proceedings before the PUC, wishes to utilize.

1. No Discovery is authorized in a docket or proceeding without the approval of the ALJ.

Rule 28 of the Rules for Practice and Procedure provides as follows:

The ALJ at his discretion, either upon his own motion or for good cause shown by Commission staff or by a party to a proceeding, may issue an order to take a deposition, interrogatory or discovery. The taking and use of such deposition, interrogatory or discovery shall be in the same manner as provided by the rules of the Superior Court of Guam, unless otherwise prescribed by the ALJ. (emphasis added).

- (a) Pursuant to Rule 28, the ALJ may, at his discretion and upon his own motion, authorize the taking of a deposition, interrogatory or other discovery.
- (b) Commission staff or a party in a proceeding may conduct discovery for good cause shown and upon prior written order from the ALJ. Before discovery is authorized, Commission staff or a party must show good cause in a written application. Upon a showing of good cause, the ALJ may issue an order allowing such discovery.
- (c) Pursuant to Rule 5 of the Commission’s Rules for Practice and Procedure, Commission staff includes its employees and consultants.

- (d) A “party” to a proceeding before the Commission is “a person by or against whom a proceeding is commenced, or a person admitted by the Commission to intervene in a proceeding...”
2. Pursuant to a Commission motion duly passed at its meeting on March 30, 2009, the ALJ may authorize PUC Legal Counsel to serve as “Assistant Administrative Law Judge” upon written designation of the ALJ. The ALJ hereby designates PUC Legal Counsel, as “Assistant Administrative Law Judge”, to make decisions regarding discovery and approval thereof under Rule 28. Rule 28 gives discretion to the ALJ regarding discovery and authorizes the ALJ to prescribe the manner of the taking and use of discovery.
- (a) Pursuant to Rule 28, and above mentioned PUC action, the ALJ hereby authorizes and designates the PUC legal counsel to make all initial decisions, or to issue relevant orders, as to whether “Commission staff” or “a party to a proceeding” may take a deposition, interrogatory, or other discovery.
 - (b) Discovery by Commission staff or by a party may be authorized, under appropriate circumstances (“for good cause shown”) and in appropriate proceedings upon written approval of the PUC Legal Counsel.
 - (c) Before Commission staff or any party initiates any discovery, such staff or party who desires to take any discovery shall submit an application to PUC Legal Counsel showing “good cause” for such discovery, its anticipated scope, and a copy of the specific discovery proposed. Such application and supporting materials shall be served upon all parties to the proceeding.
 - (d) Upon a finding of “good cause” by PUC Legal Counsel, the party or PUC staff proposing such discovery may engage in the approved discovery in accordance with the authorized scope.
3. The ALJ may resolve any Discovery Disputes as set forth herein.
- (a) Should any party or Commission staff disagree with the determination of PUC Legal Counsel as to the permissibility of discovery, its scope, or any other matter regarding such discovery, Commission staff or such party may appeal such discovery order to the ALJ within seven (7) days after a

determination by PUC legal counsel. Any determination of PUC legal counsel which is not appealed shall be final. Upon appeal, the ALJ's determination is also final.

4. Where authorized, the Scope of Discovery shall be in accordance with the Guam Rules of Civil Procedure, as amended.
 - (a) In addition to the requirement of Rule 28 that the ALJ approve discovery, the rule also provides that the taking and use of deposition shall be in the same manner as provided by the rules of the Superior Court of Guam. Where discovery is authorized by the ALJ or his designate, PUC legal counsel (Assistant Administrative Law Judge), the procedures in the Guam Rules of Civil Procedure shall be applicable, as amended pursuant to PRM 06-006-05, effective February 12, 2008. The applicable rules for Depositions and Discovery are set forth in Part 5, Rules 26 through 37.

SO ORDERED this ___ day of April, 2009.

DAVID A. MAIR
Administrative Law Judge