

DETERMINATIONS

On May 17, 2010, P.L. 30-145 was enacted into law and amended Public Law 28-71 (“P.L. 28-71”) as follows: “The Guam Legislature, *I Liheslaturan Guåhan*, pursuant to §50103 of Title 12 of the Guam Code Annotated, hereby approves the issuance and sale by the Authority of revenue bonds pursuant to Article 2, Chapter 14, Title 12, Guam Code Annotated (the ‘Act’) in one or more series of issues; provided that the issuance, terms and conditions of the bonds *shall* have been approved by the Guam Public Utilities Commission, and further provided that such bonds *shall* have a principal amount *not to exceed* Two Hundred Twenty [*sic*] Million Dollars (\$240,000,000), *shall* have a final maturity not later than 2055, *shall* bear interest at such rate or rates and *shall* be sold for such price or prices as *shall* result in a net yield to the bondholders *not exceeding* seven and one-half percent (7.5%) per annum, *shall* be issued and sold in the manner, for the purposes and subject to the requirements and limitations provided in Article 2, Chapter 14, Title 12, Guam Code Annotated, and *shall* be issued pursuant to an Indenture in substantially the form as attached to this Act as Exhibit A.” P.L. 30-145§2 (May 17, 2010) (emphases in original).

In the April 11, 2011 ALJ Report, the ALJ found that P.L. 30-145 was ambiguous in certain respects, particularly that P.L. 30-145 did not indicate when GWA is required to repay the \$20 million. Based on this ambiguity, the ALJ construed P.L. 30-145 in an effort to determine the intent of the Guam Legislature and to best effectuate the purpose of the law. The ALJ consequently found that it did not appear plausible or reasonable that the Guam Legislature intended to permit GWA to sell and issue bonds

totaling \$220 million only, and thereby avoid payment of any amount to the Government of Guam.

Accordingly, the ALJ concluded that the Guam Legislature intended GWA to pay the Government of Guam a proportionate amount of the funds received up to a cap of \$20 million on the total bond amount of \$240 million. The ALJ expressed that this interpretation of P.L. 30-145 applied a fair and reasonable construction to an otherwise ambiguous statute. In addition, the ALJ recommended that GWA pay a proportionate share of one twelfth (1/12) of any amount of the bonds issued and sold by GWA.

In the May 4, 2011 Supplemental ALJ Report, the ALJ found that P.L. 28-71, the predecessor to P.L. 30-145 authorized the issuance of bonds for the amount of \$220,000,000; however, P.L. 28-71 did not contain any reference indicating that any amount of the bond funds would be paid to the Government of Guam. Thereafter, a bond was issued and sold on December 7, 2005 in the principal amount of \$101,175,000.

The ALJ further found that P.L. 30-145, which amended P.L. 28-71, authorized the issuance of bonds for the amount of \$240 million, but required that from that amount "\$20,000,000 principal shall be used to pay the balance of the government of Guam Limited Obligation (Section 30) Series 2001A bond and any other portions of Bonds or Loans paid for by General Fund revenues for which the Guam Waterworks Authority has received proceeds." The ALJ additionally found that when the Guam Legislature passed P.L. 30-145, the legislators were aware that GWA was authorized to issue bonds for a remaining principal sum of \$138 million, and from that amount, \$20 million was dedicated to the Government of Guam.

Also indicated in the May 4, 2011 Supplemental ALJ Report, the ALJ found that GWA issued bonds totaling \$220,000,000 (\$101,175,000 plus \$118,825,000), and not merely bonds totaling \$118,825,000, as previously indicated in the ALJ's earlier report. Accordingly, in applying a proportionate share of one twelfth (1/12) of the \$220,000,000 amount of the bonds issued and sold by GWA, the ALJ concluded that GWA should pay the Government of Guam the amount of \$18,333,333, and not \$9,800,000, which was the original amount indicated in the ALJ's earlier report.

Thus, based on his findings, the ALJ recommended that the PUC order GWA to pay a portion of its statutory obligation, in particular one twelfth (1/12) of the bond amounts issued and sold by GWA, as authorized under P.L. 28-71 and P.L. 30-145; and, that based on the ALJ's current calculation, GWA should pay the Government of Guam the amount of \$18,333,333.

The Commission hereby adopts the findings made in the April 11, 2011 ALJ Report, the May 4, 2011 Supplemental ALJ Report, the May 31, 2011 Status Report, and, therefore, issues the following.

ORDERING PROVISIONS


Upon consideration of the record herein, all pleadings filed by GWA in this docket, the April 11, 2011 ALJ Report, the May 4, 2011 Supplemental ALJ Report, the May 31, 2011 Status Report, 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. GWA is hereby ordered to pay the Government of Guam the amount of \$18,333,333.

2. GWA is further 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 conducting the review and hearing process. Assessment of the PUC's regulatory fees and expenses is authorized pursuant to 12 G.C.A. §§ 12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

3. In addition, the PUC authorizes the ALJ to investigate and examine GWA's rates to determine whether GWA's rates may need to be increased as a consequence of the above obligation.


SO ORDERED this 2nd of June, 2011.



JEFFREY C. JOHNSON
Chairman




JOSEPH M. MCDONALD
Commissioner



ROWENA E. PEREZ
Commissioner



FILOMENA M. CANTORIA
Commissioner



MICHAEL A. PANGELINAN
Commissioner