

PUBLIC UTILITIES COMMISSION
SPECIAL MEETING
FEBRUARY 2, 2006
SUITE 206 GCIC BUILDING
414 W. SOLEDAD AVE. HAGATNA, GUAM



MINUTES

A special meeting of the Guam Public Utilities Commission was convened at 6:00 p.m. on February 2, 2006 pursuant to due and lawful notice. Commissioners McDonald, Perez, Crisostomo and Brooks were in attendance. The following matters were considered at the meeting pursuant to the agenda made *Attachment A*.

1. Approval of minutes.

After review and discussion of the minutes of the October 27, 2005 and the December 20, 2005 special meetings and on motion duly made, seconded and unanimously carried, the Commission *resolved* to approve them.

2. Guam Power Authority.

The Commission reviewed a proposed *Procurement Order* by which it would: a] ratify three GPA procurements, for which GPA failed to request and obtain PUC approval in accordance with the **Contract Review Protocol** [Protocol]; b] establish GPA's FY06 CIP ceiling; c] approve deferred payment agreements between GPA and the private managers of the Cabras baseload plants; and d] amend the Protocol to adopt the common review standard agreed to by the Consolidated Commission on Utilities. After discussion and on motion duly made, seconded and unanimously carried, the Commission *resolved* to adopt the order made *Attachment B*.

3. Guam Waterworks Authority.

ALJ presented his January 31, 2006 report and a proposed **FY06 Rate Order**, which addresses GWA's ongoing development of rates necessary to fund its revenue bond and Consent Decree obligations. After careful review and discussion of the January 25, 2006 stipulation between GWA and Georgetown and the proposed order, including each determination contained therein, on motion duly made, seconded and unanimously carried, the Commission *resolved* to adopt the Rate Order made *Attachment C*.

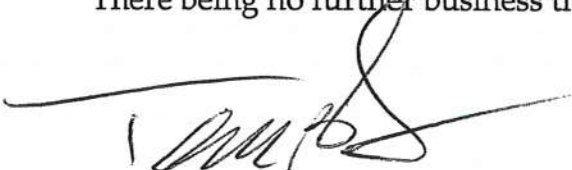
4. Department of Public Works.

In furtherance of ALJ's January 24, 2006 DPW conference report, the Commissioners considered a proposed Administrative Order, which would authorize ALJ: a] to postpone the DPW management audit; and b] to approve the Ordot privatization procurement. The order also directs DPW to use restricted rate revenues to pay for outstanding regulatory fees. After discussion, on motion duly made, seconded and unanimously carried the Commission resolved to adopt the Order made *Attachment D*.

5. Administration.

On motion duly made, seconded and carried by unanimous vote, the Commission resolved that: a] its administrator's contract should be extended for an additional twelve month period; b] the Commission's FY05 report should be approved; and c] its October 27, 2005 Administrative Order [regulatory filings and transparency] should be amended by Order made *Attachment E*.

There being no further business the meeting was adjourned.



Terrence Brooks
Chairman

PUBLIC UTILITIES COMMISSION

**SPECIAL MEETING
SUITE 206 GCIC BUILDING
414 W. SOLEDAD AVE. HAGATNA, GUAM**

6:00 p.m. February 2, 2006

AGENDA

1. Approval of minutes of October 27, 2005 and December 20, 2005 special meetings.
2. Guam Power Authority [procurement]:
 - . 2005 TEMES and Doosan Deferred Payment Agreements [ratification].
 - . 2006 TEMES and Doosan Deferred Payment Agreements [ratification of chairman order].
 - . Hedging procurement [status report]
 - . Diesel engine cylinder lubrication oil contract [ratification].
 - . Property and casualty insurance contract amendment [ratification].
 - . Fuel line of credit extension.
 - . Revised contract review protocol
3. Guam Waterworks Authority [Docket 05-5 - FY06 rate petition]
 - . ALJ report and proposed order
4. Department of Public Works [Docket 05-9 - FY06 rate petition and procurement advisor. Docket 06-2 [DPW management audit].
 - . Status report
 - . Administrative Order
5. Administration:
 - . Administrator contract - extension.
 - . 10/27/05 Administrative Order - amendment.
 - . Proposed administrative order - practice before PUC.
 - . FY05 Annual Report
 - . Commissioner vacancies
6. Other business.

ATTACHMENT A

PUBLIC UTILITIES COMMISSION
SPECIAL MEETING
6:00 p.m. OCTOBER 27, 2005
SUITE 206 GCIC BUILDING
414 W. SOLEDAD AVE. HAGATNA, GUAM



MINUTES

A special meeting of the Guam Public Utilities Commission [PUC] was convened 6:00 p.m. on October 27, 2005 pursuant to due and lawful notice. Commissioners McDonald, Perez, Crisostomo, and Brooks were in attendance. The following matters were considered at the meeting pursuant to the agenda made *Attachment A*.

1. Approval of minutes.

After review and discussion of the minutes of the July 27, 2005 meeting and on motion duly made, seconded and unanimously carried, the Commission *resolved* to approve them.

2. Guam Power Authority.

a. GPA August 15, 2005 LEAC Petition.

In furtherance of its review of the GPA petition and the October 11, 2005 report of its regulatory consultant [Georgetown Consulting Group - GCG], the commissioners considered an order [*Attachment B*], which would adopt GCG recommendations and GPA's position that no change in the existing LEAC factor is necessary for the six month cycle commencing on October 1, 2005 and ending March 31, 2006. After discussion and on motion duly made, seconded and unanimously carried, the commissioners *resolved* to adopt the order.

b. GPA Procurements.

The commissioners next reviewed GCG's October 21, 2005 letter, which recommends approval of a 30% cost overrun in the Cabras water quality monitoring upgrade project. GCG advises that following GPA procurement approval requests are not ready for PUC consideration: 1] TEMES CIP procurement/financing; 2] FY06 CIP ceiling; 3] GPA hedging procurement; and 4] self-insurance fund amendments. After discussion and on motion duly made, seconded and unanimously carried, the commissioners *resolved* to approve the Cabras water quality cost overrun and directed ALJ to oversee the preparation of the other four procurement requests for PUC consideration.

3. Telecommunications Dockets.

a. Docket 05-01 [Rulemaking].

Consideration of affiliate transaction rules and payphone rules revision was tabled until the January 2006 regulatory session.

b. Docket 05-3 [Minimum technical standards].

ALJ presented a proposed order, which recognizes that inconsistent statutory requirements direct regulatory action in establishing minimum technical standards for GTA Telecom. While 12 GCA 12110(a) directs PUC to have these standards in place by January 1, 2006, 12 GCA 12110(c) prohibits PUC for a period of three years [1/1/05 to 12/31/07] from establishing any standards more stringent than those set forth in Schedule 6.10(b) of the *Asset Purchase Agreement* between TeleGuam Holdings LLC and Guam Telephone Authority. After discussion, and on motion duly made, seconded, and unanimously carried, the commissioners *resolved* to adopt the order made *Attachment C* which authorizes ALJ to commence proceedings regarding the standards in January 2007.

c. Docket 05-8 [Wireless Interconnection Agreement].

The commissioners having reviewed TeleGuam Holdings, LLC's August 1, 2005 petition for approval of its interconnection agreement with GTA Wireless LLC, and related correspondence from the Telecom Group dated September 19, 2005, GCG's counsel dated September 20, 2005 and TeleGuam's counsel dated September 29, 2005, in consultation with ALJ and on motion duly made, seconded and unanimously carried, *resolved* to adopt an order approving the Agreement with conditions, in form made *Attachment D*.

d. Docket 05-11 [Pacific Data Services [PDS] - Interconnection Request]

A September 26, 2005 PDS request on GTA Telecom LLC [GTA] for interconnection pursuant to Federal law [47 USC 251 and 252] triggers the need for PUC to consider whether GTA's rural exemption from the duty to interconnect should be terminated under the provisions of 47 USC 251(f)(1)(B). PUC reviewed an October 17, 2005 letter from GTA, in which it requests PUC enter an order terminating its rural exemption. After discussion, on motion duly made, seconded and unanimously carried, *resolved* to adopt an order in form made *Attachment E* which terminates the rural exemption and establishes a framework under which interconnection activities will occur.

4. Guam Waterworks Authority.

a. Docket 05-10 [GWA Revenue Bonds].

By petition dated September 16, 2005, GWA requested regulatory approval of its issuance of up to \$110 million dollars in revenue bonds to finance capital projects necessary to restore and upgrade its water and wastewater systems. By reports dated September 28, 2005 and October 17, 2005, GCG has recommended approval of the bonds and the use of bond proceeds set forth in Attachment C to the bond projects order under review, subject to conditions stated therein. GCG also has expressed concern that GWA has not justified an increase in the authorized limit for defeasing the MSG loan from \$16.5 to \$19.5 million, although it concedes that it will cost what it costs under the loan documentation. After careful consideration of the GCG reports and the record herein, in consultation with ALJ, for good cause shown and on motion duly made, seconded and unanimously carried, the commissioners *resolved* to adopt the orders made *Attachments F and G*.

b. Docket 98-01 [GPA loan and Access to Trust Funds]

The commissioners next reviewed a September 23, 2005 Order, which Chairman Brooks executed pursuant to his authority under PUC's April 11, 2003 *Administrative Resolution*. The Order authorizes GWA to enter into a \$4.7 million dollar bridge loan for essential capital projects, subject to repayment from revenue bond proceeds and further authorizes GWA to identify the Trust Fund established by PUC rate order dated October 14, 2004 as a source of funds to certify procurements related to the Hagatna Wastewater Treatment Facility. After discussion, on motion made, seconded and unanimously carried, the commissioners *resolved* to ratify and approve the Order.

c. Bill 220 - GWA Revenue Bond Act.

A copy of Chairman Brooks' October 21, 2005 testimony on Bill 220 was noted for the record.

5. Department of Public Works.

a. Docket 05-9 [DPW Tipping Fees]

PUC has conducted an October 17, 2005 public workshop, and three public hearings on October 25 and 26, 2005 regarding a DPW-GCG recommendation that DPW's solid waste tipping and service fees be increased on an interim basis

by 25%. After carefully considering GCG's September 2005 report, the DPW-GCG stipulation and the public comments received at the hearings, for good cause shown and on motion duly made, seconded and unanimously carried, the commissioners *resolved* to adopt the order made *Attachment H*. Commissioner McDonald expressed an interest in making the targeted residential lifeline rate, once established in 2006, retroactive to November 1, 2005.

b. Docket 06-2 [DPW Management Audit].

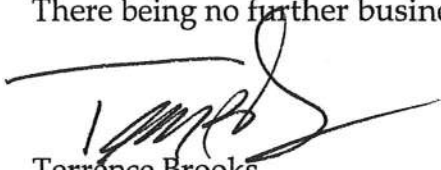
The Commissioners next reviewed a proposed order, by which it would commence a focused management audit of DPW's solid waste operations, as required by P.L. 28-56. The order would implement a process, which has been successful in earlier audits of GPA, GTA and GMHA. After discussion and on motion duly made, seconded and unanimously carried, the commissioners *resolved* to adopt the order made *Attachment I*.

6. Administrative Business.

After discussion and on motion duly made, seconded and unanimously carried, the commissioners resolved that:

- a. PUC's FY06 administrative budget be set at \$160,000 and in form made *Attachment J*. Further, the Assessment Order, which would require regulated utilities to fund this budget, in form made *Attachment K* was adopted.
- b. Upon review of GCG's September 27, 2005 letter, no staffing studies would be conducted of GPA and GWA in FY06.
- c. An Administrative Order to require electronic filings and utility electronic posting of tariffs be adopted in form made *Attachment L*.
- d. Terrence Brooks be reappointed as chairman.
- e. An Administrative Order, in form made *Attachment M*, be adopted which reappoints Chairman Brooks as PUC's certifying officer and Lou Palomo as its disbursing officer.
- f. Sunshine Act compliance guidelines, in form made *Attachment N* be adopted and posted on PUC's website, which will launch during the week of October 31, 2005.

There being no further business, the meeting was adjourned.

A handwritten signature in black ink, appearing to read 'T. Brooks', written over a horizontal line.

Terrence Brooks
Chairman

PUBLIC UTILITIES COMMISSION
SPECIAL MEETING
DECEMBER 20, 2005
SUITE 206 GCIC BUILDING
414 W. SOLEDAD AVE. HAGATNA, GUAM



MINUTES

A special meeting of the Guam Public Utilities Commission was convened at 9:00 a.m. on December 20, 2005 pursuant to due and lawful notice. Commissioners McDonald, Perez, Crisostomo and Brooks were in attendance. ALJ Boertzel participated in the meeting via telephone. The following matters were considered at the meeting pursuant to the agenda made *Attachment A*.

1. Docket 06-01 [Interstate Telecommunications Inc. Certificate of Authority].

Upon the favorable recommendation of its regulatory consultant and a finding that the application of Interstate Telecommunications Inc. for a certificate of authority was duly noticed in accordance with PUC rules, on motion made, seconded and unanimously carried, the commissioners resolved to issue the Certificate of Authority, which is made *Attachment B*.

2. Docket 05-10 [GWA Guaranteed Investment Contracts].

The commissioners reviewed a December 19, 2005 Order, which was executed by Chairman Brooks pursuant to the authority delegated to him by PUC's April 11, 2003 *Administrative Resolution*. The Order authorizes GWA to invest bond proceeds into guaranteed investment contracts and increases the authorized ceilings for costs of issuance and underwriter's discount in Schedule A to Attachment C of PUC's October 27, 2005 Order. After review and discussion of the Order, on motion duly made, seconded and unanimously carried, the commissioners *resolved* to ratify the Order made *Attachment C*.

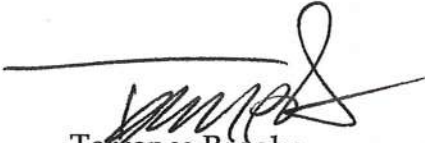
3. Docket 05-09 [DPW Procurement Advisor Contract].

On December 14, 2005, DPW petitioned PUC for expedited authorization to retain consulting services to assist in its procurement of a variety of private management services. After review, Georgetown recommended that the procurement be approved by letter dated December 19, 2005. After review and discussion of a proposed order, on motion duly made, seconded and unanimously carried the commissioners resolved to adopt the order made *Attachment D*.

4. Docket 06-3 [Pacific Data Systems v. GTA Telecom]

The commissioners next reviewed the December 19, 2005 report from its administrative law judge, which summarized and made recommendations regarding a complaint filed by Pacific Data Systems and other telecommunications companies against GTA Telecom, which alleged that GTA has violated PUC orders and Guam law by ceasing to provide metallic circuit provisioned voice grade special access service under section 7 of its tariff. After review and discussion of the ALJ Report and a proposed Decision, for good cause shown and on motion duly made, seconded and unanimously carried, the commissioners *resolved* to adopt the Decision made *Attachment E*.

There being no further business, the meeting was adjourned.



Terrence Brooks
Chairman

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

GUAM POWER AUTHORITY
PROCUREMENT REVIEW

DOCKET 94-04



Procurement Order

This Order reviews a number of Guam Power Authority [GPA] procurements, which under PUC's December 16, 2003 contract review protocol order [Protocol] require regulatory approval before the procurement process begins. This order also amends the Protocol.

1. Ratification of unapproved procurements.

Georgetown Consulting Group's [GCG] recent review of GPA's FY05 procurement activities disclosed three procurements, which were entered into by GPA in violation of the Protocol. PUC finds these multiple violations particularly disturbing given its admonishment of similar activity in its March 31, 2004 Order [*Attachment A*], which recommended that *the Consolidated Commission on Utilities [CCU] institute governing controls to assure that GPA strictly complied with the requirements of the Protocol.*

GCG by letters dated December 29, 2005, January 10, 2006 and January 24, 2006 recommends that PUC ratify the following procurements:

- a. 2005 TEMES Deferred Payment Agreement, involving the financing of \$2.99 million in capital expenditures on the Cabras 1 & 2 plants. [amount exceeds \$1.5 million contract review threshold.] PUC approval is also expressly required by PUC's December 16, 2002 Order in Docket 02-04.
- b. 2005 Diesel Engine Cylinder Lubrication Oil Contract. [approval required under Protocol section 4 (multi-year procurement).
- c. 2005 Amendments to Property & Casualty Insurance Policy. [approval required due to a material amendment (\$6.5 million dollar increase in deductible risk) to multi-year policy with \$7.18 million annual premium].

After review of the GCG letters, on motion duly made, seconded and carried by the undersigned commissioners, PUC **resolves** that the above procurements be and are hereby ratified. PUC reminds GPA and CCU that continued violation of the Protocol is unacceptable and if it reoccurs will require a more pro-active regulatory oversight of GPA procurement activities. As explained in Mr. Blair's December 16, 1998 opinion letter [*Attachment B*], serious legal consequences can result from GPA's failure to obtain PUC approval of regulated contracts.

2. FY06 CIP Ceiling.

The Protocol provides that PUC will annually set a ceiling for GPA internally funded capital improvement expenditures. GCG by its January 24, 2006 letter recommends that the FY06 ceiling be set at \$17.3 million dollars.

After discussion and on motion duly made, seconded and carried by the undersigned commissioners, PUC *resolves* to approve the \$17.3 million dollar ceiling.

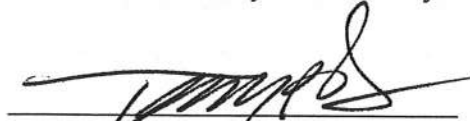
3. 2006 Deferred Payment Agreements.

On December 15, 2005, GPA petitioned PUC for expedited review and approval of 2006 deferred payment agreements with TEMES and Doosan. By its January 10, 2006 letter, GCG has recommended that the agreements be approved. After review, Chairman Brooks determined that adequate grounds existed to warrant his approval of the procurements in advance of PUC's February 2, 2006 business meeting. A copy of his order approving the agreements is made *Attachment C*. After discussion, on motion duly made, seconded and carried by the undersigned commissioners, PUC *resolves* to ratify the chairman's order.

4. Amended Protocol.

By Order dated October 27, 2005, PUC amended the contract review protocol applicable to Guam Waterworks Authority in order to incorporate a common review standard with CCU. This common standard, which was adopted by CCU on October 18, 2005, will facilitate an expedited and coordinated PUC review of regulated procurements. PUC staff has recommended that the GPA protocol be amended to incorporate the common review standard. After discussion and on motion duly made, seconded and carried by the undersigned commissioners, PUC resolves to amend the GPA protocol in form made *Attachment D*.

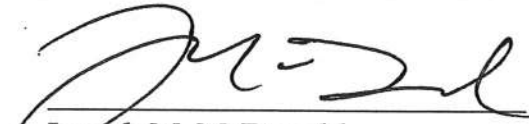
Dated this 2nd day of February 2006.



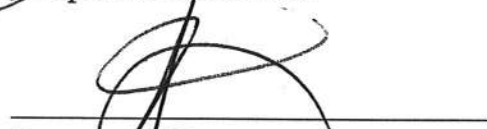
Terrence M. Brooks



Edward C. Crisostomo



Joseph M. McDonald



Rowena E. Perez

BEFORE THE PUBLIC UTILITIES COMMISSION
OF GUAM



GUAM POWER AUTHORITY
REGULATORY DOCKET -
CONTRACT REVIEW

DOCKET 94-04

ORDER

In its November 28, 2003 report on Guam Power Authority's [GPA] informational filings with the Guam Public Utilities Commission [PUC], Georgetown Consulting Group [GCG] expressed concern regarding a disclosure in GPA's FY02 External Audit that in September 2000 bond reserve fund forward delivery agreements [Agreements] were entered into on GPA's behalf by Governor Gutierrez¹. Under the terms of the Agreements, GPA liquidated, at discount, a long-term interest revenue stream on certain bond proceeds for the payment of \$13.5 million dollars. There was no public notice or disclosure of the transaction. In the transaction, GPA incurred termination fees of \$3.35 million and closing costs of \$1.25 million. GCG recommended that PUC examine whether the transaction required PUC approval pursuant to 12 GCA 12004 and PUC's contract review protocol and further the consequences of GPA's failure to have obtained such PUC approval.

On January 5, 2004, PUC's administrative law judge [ALJ], found that the transaction raised substantial regulatory issues. GPA has conceded that it never sought or obtained PUC approval of the Agreements. GCG was directed by ALJ to investigate the transaction and to report to PUC in preparation for the March 2004 regulatory session. A copy of GCG's February 11, 2004 report is made *Attachment A*. The GCG report concludes that:

1. The transaction contained in the Agreements, by which GPA cashed in a long term revenue stream of interest on its bond reserves, constituted a borrowing which required prior PUC review under paragraph 1(d) of PUC's contract review protocol².

¹ Two agreements were entered into by GPA and its co-trustee U.S. Bank Trust National Association on September 28, 2000: one with Lehman Brothers Special Financing Inc. and one with Bank America N.A.

² The PUC contract review protocol in effect at the time of the transaction is contained in PUC Order dated February 25, 2000 in Docket 00-04.

ATTACHMENT A

2. The termination fees of \$3.35 million and closing costs of \$1.25 million, which GPA incurred in the transaction exceed the \$1.5 million review threshold for PUC's contract review. Accordingly, GPA required prior PUC approval before it could lawfully incur these transaction fees.
3. The \$700,790 broker's fee, which was paid to IMAGE in the transaction, is substantially greater than the \$227,800 fee it was paid in an earlier similar transaction and may deserve further investigation as to its reasonableness.
4. This transaction was entered into on GPA's behalf, by the Governor of Guam, under an assertion of organic authority, in the absence of a quorum of the GPA board of directors. There is a substantial question whether the transaction would have sustained regulatory scrutiny. GPA and Governor Gutierrez, with the aid of an ill advised Attorney General's opinion, sidestepped independent public scrutiny that PUC would have brought to bear under its contract review authority.
5. GPA's failure to have obtained prior PUC approval of the transaction in accordance with 12 GCA 12004, makes it voidable³. GCG, nevertheless, recommends that the transaction be ratified for the benefit of third parties.
6. PUC's contract review protocol should be amended to explicitly bring such transactions under PUC's contract review protocol and to put third parties on notice that they deal with regulated utilities at their own peril if required regulatory approval is not obtained.

In comments filed on March 5 and 9, 2004, GPA asserts that the Agreement did not require PUC approval, but nevertheless requests that PUC ratify the Agreement "so that any questions as to the lawfulness of the Agreement are resolved". A copy of the GPA comments are made Attachment C. GPA and GCG have agreed to submit this matter to PUC on the record and without need for public hearing.

³ By opinion dated December 16, 1998 [Attachment B] GCG's counsel opined on the consequences of a regulated utility's failure to comply with the requirements of section 12004.

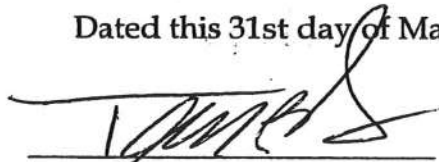
After careful review of the attachments hereto, after consultation with its administrative law judge and for good cause shown, the Guam Public Utilities Commission on motion duly made, seconded and carried by the affirmative vote of the undersigned commissioners hereby **FINDS AND ORDERS THAT:**


1. The transaction and the Agreements required prior PUC review and approval under 12 GCA 12004 and under PUC's contract review protocol. The transaction constituted a borrowing, which required PUC approval under section 1(d) of the protocol. Moreover, the \$4.6 million termination expenses, which GPA incurred required PUC approval under section 1(e) of the protocol. GPA's failure to have obtained this approval makes the transaction and the Agreements voidable. GPA's inability in its recent March 2004 filings with PUC to understand the clear need for regulatory review and approval of the transaction is troubling.
2. PUC shall reserve its decision of whether to ratify the Agreements and the transaction until the July 2004 regulatory session. In the interim, PUC's administrative law judge is directed to obtain further comment from GPA and GCG regarding: a. the potential negative consequences which could flow from PUC's refusal to ratify the Agreements and the transaction; and b. the impact of PUC's ratification of the Agreements and the transaction on potential civil and criminal liability, if any, of persons involved therein.
3. A copy of this Order shall be transmitted to the Attorney General of Guam and to the Public Auditor for such investigation as they may deem appropriate regarding the broker's fee, which was paid to IMAGE in the transaction.
4. A copy of this Order shall be transmitted to the Guam Legislature and to the Governor of Guam for such consideration as they may deem appropriate regarding the organic issues raised by Governor Gutierrez's assertion of executive authority in the absence of a quorum of the GPA board of directors and further regarding the need for statutory guidelines to govern future transactions of this kind by Guam public corporations and by the government of Guam.
5. Paragraph 1(d) of the contract review protocol dated December 16, 2003, which now governs PUC regulation of GPA contracts and obligations is hereby amended to read:

d) All externally funded loan obligations and other financial obligations such as lines of credit, bonds, and bond reserve fund forward delivery agreements [such as discussed in PUC's March 30, 2004 Order in Docket 94-03], in excess of \$1,500,000 and any use of the proceeds of such obligations and transactions;


6. A copy of its Order shall be transmitted to the Consolidated Commission on Utilities with the recommendation that it institute governing controls to assure that both GPA and GWA strictly comply with the requirement of contract regulatory review, as contained in the protocols established by PUC.

Dated this 31st day of March 2004.


Terrence M. Brooks


Edward C. Crisostomo


Gerald M. Woo


Rowena E. Perez


Joseph M. McDonald


Richie T. Lim


Filomena M. Cantoria

LAW OFFICES
KLEMM, BLAIR, STERLING & JOHNSON
A PROFESSIONAL CORPORATION

J. BRADLEY KLEMM
WILLIAM J. BLAIR
THOMAS C. STERLING
RICHARD L. JOHNSON
ELIZABETH ROBERTSON
VINCENT E. LEON GUERRERO
THOMAS C. MOODY
JEHAN 'AD G. MARTINEZ
CAROL R. KERR
JOSEPH W. SCUDERI

SUITE 1008 PACIFIC NEWS BUILDING
238 ARCHBISHOP F.C. FLORES STREET
AGAÑA, GUAM 96910-5205

TELEPHONE: (671) 477-7857
(671) 477-7959
(671) 477-4312

FACSIMILE: (671) 472-4890
(671) 477-2904

EMAIL: kbsj@lts.net

OF COUNSEL
WILLIAM B. CLEARY

December 16, 1998

VIA FACSIMILE
(671) 477-0783

Harry M. Boertzel, Esq.
Administrative Law Judge
GUAM PUBLIC UTILITIES COMMISSION
c/o CHING BOERTZEL CIVILLE
CALVO & TANG
Suite 400 GCC Building
414 West Soledad Avenue
Hagåtña, Guam 96910

**RE: CONSEQUENCES OF FAILURE TO COMPLY
WITH 12 GCA § 12004**

Dear Mr. Boertzel:

You have requested from me an analysis of what might be the legal consequences of the Utilities subject to the jurisdiction of the Guam Public Utilities Commission ("PUC") entering into contracts without first receiving the approval required under 12 GCA § 12004, including the possibility of civil or criminal liability of the responsible Utility employees.

We have only conducted a cursory review of the laws of Guam which may be applicable. We have not attempted to reach any definitive conclusions at this time, as we thought this was beyond the scope of your initial inquiry. Rather, this letter is intended to be more in the vein of an "issue-spotting" exercise. We believe additional research would be necessary in order to come to more definitive conclusions. Nonetheless, our cursory research suggests to us that there is a significant potential for both civil and criminal liability for employees of the Utilities who approve and enter into contracts which do not have the required PUC approval under 12 GCA § 12004 and the contract approval procedures established

ATTACHMENT B

To Harry M. Boertzel, Esq.

Date December 16, 1998 Page 3

The requirement of 12 GCA § 12004 that the PUC must first approve any contracts which "could affect rates," is a critical, indeed absolutely essential, element of the ratemaking process in the context of the Guam regulatory scheme. If the Utilities were free to enter into contracts, without prior review as to their reasonableness or prudence, the PUC's statutory mandate would require it to establish rates sufficient to pay for such contracts irregardless of how imprudent they may have been. In prior dockets, the PUC has rejected the suggestion that its authority in this area is limited for the simple reason that to hold otherwise would eviscerate the regulatory scheme contemplated by Guam law. That is to say, if the Utilities were free to enter into contracts without prior approval or if the PUC was bound to honor such contracts, its regulatory role would be rendered meaningless.

At the same time, the PUC has recognized that, in a metaphysical sense, each and every contract entered into by a Utility "could" affect rates and, thus, implicate the possible need for prior PUC approval. It was recognized that such an interpretation would place unreasonable burdens on the Utilities with no offsetting benefits to the Utilities' ratepayers. For this reason, the PUC's staff consultants have worked with each of the Utilities to establish agreed upon contract approval procedures which would minimize the need for seeking prior PUC approval. Stipulations have been entered into between the PUC staff consultants and each of the Utilities in dockets opened by the PUC specifically for that purpose. These stipulations recommending contract approval procedures have been approved by PUC orders.

In addition, the PUC has imposed requirements to seek prior approval of certain contracts entered into in connection with specified projects which were submitted to it for its approval. In the case of GPA, for example, certain revenue bond funded projects have been approved based on cost estimates submitted to the PUC by GPA which were subject to rigorous scrutiny by the PUC and its consultants. Only after careful cost benefit analyses were performed were certain of these contracts considered to be prudent and, therefore, reasonable. The approvals of the PUC were conditioned on GPA staying within the budget estimates reviewed and approved by the PUC. To the extent GPA determined that the costs of the projects would exceed the approved budgets (which invariably

To Harry M. Boertzel, Esq.

Date December 16, 1998 Page 4

include a contingency allowance), GPA is obligated to seek prior approval before entering into any contract which would exceed the approved limitation.

Other limitations have been imposed by the statutes which have approved the issuance of revenue bonds. For example, the statutes approving issuance of revenue bonds have, in some cases, limited the use of the bond proceeds to certain projects and no others, without the prior approval of both the PUC and the Guam Legislature. See Public Law 22-136, as an example.

THE PROBLEM — FAILURE TO OBTAIN REQUIRED APPROVAL

Despite these clear limitations, employees of the Utilities have regularly and routinely entered into contracts without seeking the required prior approval of the PUC. Such contracts are entered into in violation of 12 GCA § 12004, applicable PUC orders, other Guam statutes, and the Utilities' own commitments made in the form of stipulations reached in the various dockets.

WHAT ARE THE CONSEQUENCES?

1. **Contracts are probably void or voidable.**

18 GCA § 88101 (formerly Guam Civil Code § 1667) defines what is "unlawful" in connection with obligations or contracts. That section provides as follows:

What is unlawful? That is not lawful which is:

1. Contrary to an express provision of law;
2. Contrary to the policy of express law, though not expressly prohibited; or
3. Otherwise contrary to good morals.

As noted, the entering into contracts which "could affect rates" without prior PUC approval is contrary to an express

To Harry M. Boertzel, Esq. Date December 16, 1998 Page 5

provision of law, as well as contrary to the policy of express law. As such, it would seem fairly certain that such contracts by Utilities are "unlawful" contracts and, therefore, likely unenforceable.

To the extent that the contracts might be subject to the strictures of the Guam procurement law, unlawful contracts are, at the least, voidable. 5 GCA § 5451, for example, provides that:

[I]f prior to award it is determined that a ... proposed award of a contract is in violation of law, then the ... proposed award shall be ... cancelled; or ... revised to comply with law.

See, also, GSA Procurement Regulation § 9-202.01. After an unauthorized award is made, if the contractor did not procure the contract through fraud or bad faith, the contract may be ratified and affirmed, or terminated and the person awarded the contract compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to the termination. 5 GCA § 5452; GSA Procurement Regulation § 9-203.01.

Presumably, therefore, the PUC could declare a proposed award of a contract or an already awarded contract to be improper and unlawful and order the Utility to take the steps necessary to cancel or terminate the contract.

2. Personal Liability of contracting officers.

Chapter 14 of Title 4 of the Guam Code Annotated governs certifying and disbursing officers of the Government of Guam. The chapter covers the purchasing activities of autonomous agencies, such as the three government-owned Utilities and their dealings with special or trust funds. 4 GCA §§ 14101(a) and (c). Under § 14101(a), a certifying officer may be held personally accountable for and required to make good to the Government of Guam or, in this case, the Utility, the amount of any illegal, improper or incorrect payment resulting from any false, inaccurate or misleading certificate made by him, as well as for payments prohibited by law which did not represent legal obligations under the appropriation or fund involved. 4 GCA § 14105(a)(3). Certain exceptions to

To Harry M. Boartzel, Esq.

Date December 16, 1998 Page 6

personal liability (such as good faith) are outlined at 4 GCA §§ 14105(b) and (c). Similar personal liability is also imposed upon disbursing officers (as defined in § 14101(b)) under 4 GCA § 14104(1).

Employees of the three government-owned Utilities are delegated responsibilities to act as procurement employees pursuant to the Government of Guam's procurement laws. They have responsibility for ensuring that funds of their agencies (such as the various funds established under bond covenants or reserved funds established by PUC orders) are properly used to pay only lawful obligations. Payments made pursuant to contracts entered into in violation of 12 GCA § 12004, other applicable statutes, or express PUC orders having the force and effect of law would thus potentially trigger personal liability on the part of the certifying or disbursing officers.

Such personal liability would be consistent with the generally recognized rule that makes a public official who controls public funds personally liable to repay improperly expended funds if the official has failed to exercise due care in permitting the expenditure. See, e.g., Stevens v. Geduldig, 27 Cal.Rptr. 405, 410 Cal. 1986: 63C. Am.Jur.2d *Public Officers and Employees* § 346.

3. Possible criminal penalties.

Chapter 14 of Title 4 also imposes criminal sanctions on certifying or disbursing officers for authorizing an expenditure of funds in excess of an appropriation. Under 4 GCA § 14105(a)(5), employees are held accountable for and required to make good to the Government of Guam the amount of the illegal, improper or incorrect payment resulting from a false, inaccurate or misleading certificate by him, as well as for payment prohibited by law which did not represent a legal obligation under the appropriation or fund involved. Such conduct constitutes a misdemeanor punishable by a fine not to exceed \$1,000 and a term of imprisonment of up to one year. 4 GCA § 14105(a)(5); 9 GCA §§ 80.34(a), 80.50.

It is presumed such liability would attach to an employee of a Utility since autonomous agencies are specifically covered by Title 4, Chapter 14.

To Harry M. Boertzel, Esq. Date December 16, 1998 Page 7

4. Administrative sanctions.

The only sanction specifically made available to the PUC is found in 12 GCA § 12020. That section provides that "any public utility violating or neglecting or failing in any particular way to conform to or comply with this Chapter or any lawful order of the Commission shall forfeit to the Public Utilities Commission funds no more than \$500 for every violation, neglect or failure per day." (Emphasis added.) The efficacy of such a fine is questionable, however, inasmuch as it would be the ratepayers of the Utility who would ultimately bear the brunt of any such fine. To the extent a Utility was fined, however, it could, depending on the facts, presumably seek reimbursement from the employee whose conduct led to the imposition of the fine.

SUMMARY

As noted, initially, I have not attempted to reach definitive conclusions as to the legal issues raised here. The objective of this letter is to alert the Utilities to the fact that continued disregard and disdain for the requirement to comply with 12 GCA § 12004 and applicable PUC orders may have severe consequences. On their face the statutes cited herein appear applicable. Moreover, the normal fiduciary obligations of the officers and agents of the Utilities which flow from agency and corporations law principles would also seem relevant.

Very truly yours,

KLEMM, BLAIR, STERLING & JOHNSON
A Professional Corporation


WILLIAM J. BLAIR

cc: Mr. Jamshed K. Madan

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BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

GUAM POWER AUTHORITY
CABRAS DEFERRED PAYMENT
AGREEMENTS

DOCKET 94-04



ORDER

The Guam Public Utilities Commission [PUC] is in receipt of a December 15, 2005 petition from Guam Power Authority [GPA] for approval of deferred payment agreements with Taiwan Electrical and Mechanical Engineering Services, Inc. and Doosan Engine Company, which respectively manage Cabras plants 1&2 and plants 3&4. The performance management contracts, under which these companies manage the Cabras plants, authorize GPA to solicit the companies' participation in long or short term debt financing necessary for capital expenditures on the plants. Under the proposed agreements, the management companies would provide short term financing for scheduled Cabras capital improvements and maintenance. The proposed transactions have been approved by Consolidated Commission on Utilities' Resolutions 2005-39 and 2005-40. By letter dated January 10, 2006, Georgetown Consulting Group [GCG] [PUC's independent regulatory consultant] has recommended approval of the proposed agreements. At the GPA regulatory conference held on January 19, 2006, GPA requested that PUC approval of the agreements be issued in advance of its early February 2006 business meeting to enable the management companies to immediately commence planning and procurement for the necessary capital projects.

Under PUC's April 11, 2003 *Administrative Resolution*, Chairman Terrence Brooks is empowered with delegated authority to act on PUC's behalf, subject to the following conditions:

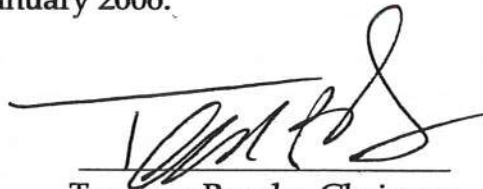
1. The requirement that the chairman certify that regulatory action on the petition cannot await PUC action at the next business meeting, which is scheduled for February 3, 2006. After careful review of the petition and supporting documentation, the undersigned finds good and reasonable cause to issue this certification.
2. The utility, which requests expedited regulatory action, must waive the final determination exception established in 12 GCA 12004. GPA has made this waiver by email dated January 2, 2006.

ATTACHMENT C

3. The utility's petition must be reviewed and supported by PUC's regulatory consultant. By its January 10, 2006 letter GCG has recommended approval of the petition.
4. The requirement that the chairman make a diligent effort to confer with other on-island commissioners and act only if a majority of said commissioners do not oppose the petition. The undersigned certifies that he made this effort and that the petitions were not so opposed.
5. The Resolution prohibits its use to approve a petition for rate relief. The undersigned finds that the petition does not request rate relief.

After review of the petition and the record herein, for good cause shown and in furtherance of the authority delegated by the Administrative Resolution, the undersigned on behalf of the Guam Public Utilities Commission **HEREBY ORDERS THAT** GPA be and is hereby authorized to enter into the proposed deferred payment agreements.

Dated this ^{25th} day of January 2006.



Terrence Brooks, Chairman

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



CONTRACT REVIEW PROTOCOL FOR)
GUAM POWER AUTHORITY)
)
)

ADMINISTRATIVE
DOCKET

ORDER

Pursuant to its authority under 12 GCA Section 12004, the Guam Public Utilities Commission [PUC] establishes the following protocol to identify and review regulated contracts and obligations of Guam Power Authority [GPA]:

1. The following GPA contracts and obligations shall require prior PUC approval under 12 GCA 12004, **which shall be obtained before the procurement process is begun:**
 - a) All capital improvement projects (CIP) in excess of \$1,500,000 whether or not a project extends over a period of one year or several years;
 - b) All capital items by account group, which in any year exceed \$1,500,000;
 - c) All professional service procurements in excess of \$1,500,000;
 - d) All externally funded loan obligations and other financial obligations such as lines of credit, bonds and bond reserve fund forward delivery agreements [such as discussed in PUC's March 30, 2004 Order in Docket 94-04], in the excess of \$1,500,000 and any use of the proceeds of such obligations and transactions;
 - e) Any contract or obligation not specifically referenced above which exceeds \$1,500,000, not including individual contracts within an approved CIP or contract;
 - f) Any internally funded procurement in excess of a CIP expenditure ceiling, which PUC shall establish on or before November 15 of each fiscal year.
 - g) Any agreement to compromise or settle disputed charges for services by GPA, when the amount of the waived charges would exceed \$1,500,000.

2. For contract that involve the receipt by GPA of revenues or reimbursement of costs in excess \$1,500,000, the following procedure will apply:
 - a) GPA is permitted to evaluate the contract without PUC approval;
 - b) Prior to entering into the contract, GPA will provide the following to PUC:
 - i) The Consolidated Commission on Utilities [CCU] resolution authorizing the contract.
 - ii) An affidavit from GPA management stating that the contract does not produce an increased revenue requirement with supporting documentation.
 - iii) A narrative description of the contract.
 - c) The contract will be deemed approved unless rejected by PUC within 30 days after an adequate filing [as determined by the ALJ] has been made by GPA pursuant to subparagraph (b).
3. Emergency procurements, which are made by GPA under 5 GCA section 5215, shall not require PUC approval; provided, however that GPA shall file its section 5215 declaration, the governor's written approval of same, and the procurement details, as set forth in paragraph 5(b) below, within 20 days of the declaration. Any emergency procurement funded by other than bond revenues shall be included in the CIP ceiling established under paragraph 1(f).
4. With regard to multi-year contracts:
 - a) The term of a contract or obligation [*procurement*] will be the term stated therein, including all options for extension or renewal.
 - b) The test to determine whether a procurement exceeds the \$1,500,000 threshold for PUC review and approval [*the review threshold*] is the total estimated cost of the procurement, including cost incurred in any renewal options.
 - c) For a multi-year procurement with fixed terms and fixed annual costs, GPA must obtain PUC approval if the total costs over the entire procurement term exceed the review threshold. No additional PUC review shall be required after the initial review process.

d) For multi-year procurements with fixed terms and variable annual costs, GPA shall seek PUC approval of the procurement if the aggregate cost estimate for the entire term of the procurement exceeds its review threshold. On each anniversary date during the term of the procurement, GPA will file a cost estimate for the coming year of the procurement. GPA shall seek PUC approval in the event a procurement subject to this paragraph should exceed 120% of the aggregate cost initially approved by PUC.

e) Unless for good cause shown, any petition for PUC approval of a multi-year procurement must be made sufficiently in advance of the commencement of the procurement process to provide PUC with reasonable time to conduct its review.

5. On or before September 15 of each year, GPA will use best efforts to file with PUC its construction budget for the coming fiscal year plus estimates for the subsequent two fiscal years. The filing shall contain a description of each CIP contained with the budget and estimates. Project descriptions should be sufficiently detailed to identify the specific location and type of equipment to be purchased, leased or installed. For capital items that are subject to review by account group, GPA shall file information equivalent to that submitted to its governing body for these items.
6. With regard to any contract or obligation [*procurement*], which requires PUC approval under this Order, GPA shall initiate the regulatory review process through a petition, which shall be supported with the following:
 - a) A resolution from CCU, which confirms that after careful review of the documentation described in subparagraph (b) below and upon finding that the proposed procurement is reasonable, prudent and necessary, CCU has authorized GPA to proceed with the procurement, subject to regulatory review and approval.
 - b) The documentation on which CCU based its approval under subparagraph (a) above, which shall include, at a minimum, a report from management or an independent third party, which contains the following:
 - i. A description of the project, including timeframes, time constraints and deadlines, and a justification of its need.

- ii. An analysis from a technical and cost benefit perspective, of all reasonable alternatives for the procurement.
 - iii. A detailed review of the selected alternative, which establishes the basis of selection and that it is economically cost effective over its life.
 - iv. Cost estimates and supported milestones for the selected alternative.
 - v. The projected source of funding for the project with appropriate justification and documentation.
 - vi. A supporting finding that the procurement is necessary within the context of other utility priorities.
7. If during any fiscal year, GPA desires to undertake a contract or obligation covered by paragraph 1, for which approval has not otherwise been received, it may file an application with the PUC for approval of such contract or obligation, which shall contain the information required in paragraph 6 above. GPA shall obtain PUC approval thereof before the procurement process is begun.
8. GPA shall, on or before December 1 of each year, file a report on the contracts and obligations approved by PUC for the prior fiscal year pursuant to this Protocol. This report shall show the amount approved by PUC and the actual expenditures incurred during the preceding fiscal year for each such contract and obligation and other changes from the prior filing in cost estimates, start dates and inservice or completion dates.
9. GPA shall not incur expenses for PUC approved contracts and obligations in excess of 20% over the amount authorized by PUC without prior PUC approval. In the event that GPA estimates that it will exceed the PUC approved level of expenditures by more than 20%, it shall submit to PUC the revised estimate and full explanation of all additional cost.
10. GPA shall file with PUC monthly financial reports within five working days of presentation of monthly financial reports to its governing body.

11. To the extent GPA submits a filing to PUC under this order which PUC staff believes is incomplete or deficient, it shall notify GPA and the PUC with in 15 calendar days thereof with specific indication of the alleged incompleteness or deficiency.
12. PUC staff will use best efforts to be prepared for hearing within 45 days of a complete GPA filing under the terms of paragraph 6 above. PUC's administrative law judge, is authorized, in his judgment, to shorten the above 45 day period, for good cause shown by GPA.
13. Within the context of a rate or management audit proceeding, PUC staff may review the prudence of all procurement or obligations whether or not subject to review herein.
14. PUC's administrative law judge is authorized to interpret the meaning of any provision of this order, in furtherance of the contract review process.

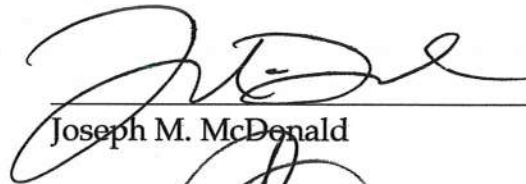
Dated this 2nd day of February, 2006.



Terrence M. Brooks



Edward C. Crisostomo



Joseph M. McDonald



Rowena E. Perez

GEORGETOWN CONSULTING GROUP, INC.

716 DANBURY RD.
RIDGEFIELD, CT. 06877

Jamshed K. Madan
Michael D. Dirmeier



Telephone (203) 431-0231
Facsimile (203) 438-8420
jmadan@snet.net

Edward R. Margerison
Jean Dorrell

January 24, 2006

Harry Boertzel, Esq. ALJ
The Guam Public Utilities Commission
Suite 207, GCIC Building
Hagatna, Guam 96932

Re: GPA Hedging Procurement

Dear Harry:

This letter is being provided to provide a response to the letter dated January 17, 2006 received from GPA on the issue of Fuel Hedging Procurement. The issue was briefly discussed at the January 2006 Regulatory Conference. We have since had a conference with GPA personnel on the issue.

Current Status

Currently GPA has no outstanding hedge contracts. In March 2004 GCG and GPA entered into a stipulation that recommended approval of GPA's request that it be permitted to enter into a no cost collared transaction based upon the advice of its advisor for the fuel hedging program – Morgan Stanley. The CCU had adopted Resolution 2004-04 authorizing the General Manager of GPA to execute a fuel hedging contract should a temporary weakness appear in the fuel markets through December 31, 2004. GPA and GCG agreed that hedging procurements require PUC review and approval. GPA did execute contracts for periods during FY 2004 and FY 2005 with significant ratepayer benefits. Sometime during FY 2005 all existing contracts for fuel hedging expired and GPA has not since entered into any new contracts given the volatile and unpredictable nature of fuel prices since.

In its letter of January 17, 2006 GPA is making a proposal to deviate from the original fuel hedging concept proposed to and approved by the PUC in three areas. However, there are no currently effective CCU Resolutions authorizing GPA to enter into a hedging contract or to seek PUC approval for entering into a contract. The concepts under consideration are:

1. Obtaining, from a single source, a no-cost collar hedge over X percent of total fuel over a period of Y years. Where X is between 0 to 100% and Y, between 0 to three years. GPA believes that it does not need to seek approval from the PUC to enter into this type of arrangement.

2. GPA may obtain at different times as it believes expedient no-cost collar hedges from several sources. GPA would create and establish a business process for hedging and obtain the services of a hedge advisor prior to committing to purchase any hedge products. GPA will approach the Commission for approval of this process.
3. GPA would like to change the hedging program to enable GPA to purchase a call separately as opposed to the previously approved process where a sale of a put option is simultaneously executed at the same price – resulting in a no cost collar. GPA may obtain at different times as it believes expedient various hedge products from several sources. GPA would create and establish a business process for hedging and obtain the services of a hedge advisor prior to committing to purchase any hedge products. GPA will approach the Commission for approval of this process.

Multiple Collared Transactions

GPA is considering entering into a collared agreement in which GPA would lock in the ceiling and floor price for 25% of its fuel supply for a period of 3-30 months. At a later date GPA would lock in another 25% and so on. Previously GPA has always executed its hedging transactions for its entire fuel supply.

To the extent that GPA stays with its current fuel hedging advisor and executes the transactions as it has done in the past but that the quantity is for 25% of its fuel per transaction, we do not believe that this is significantly different from the original program. We do believe that PUC approval would be required.

Additional Hedge Providers

The methodology proposed by GPA to get three hedge providers to bid on each new possible hedging transaction would require PUC approval. In our discussion with GPA there also was agreement that the business aspects of this program would have to be worked out and adopted by GPA management and the CCU before it was presented to the PUC. For example who would assist GPA in evaluating which of the three bids received was most favorable to GPA? How should the risks and benefits be evaluated? Would there be an independent advisor to GPA separate from the three bidders that would have no financial interest in the transaction?¹ Would there be a fee for this service and would it be recovered from the LEAC?

Separation of the Put and Call

In our discussions with GPA it was clear that the details on this program are yet to be developed by GPA. Many of the questions above and additional questions need to be

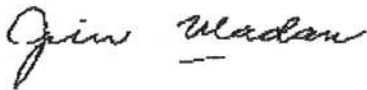
¹ Currently the advisor does have an interest in the transaction and does not charge a specific fee for advisory services. In the context of new hedges, each provider is also expected to provide advice to support their bid.

answered. Will GPA have an independent advisor? How will GPA determine when or if to enter into the put? How can GPA and the PUC assess the risks and potential benefits of the program? GPA agrees that it will need PUC approval for this program and indicates that it is working on the details that will be provided to the PUC at some later date.

Revised contract Review Protocol

It is our understanding that the contract review protocol that was implemented for GWA by order of the PUC on October 27, 2005 after review and discussion with GWA and some members of the CCU, is on the agenda of the PUC Meeting on February 2, 2006 for possible application of portions of the protocol to GPA. Paragraph 6 of the Protocol provides for a specific regulatory review process. We recommend that the amended protocol be applied to GPA and that GPA follow the process in paragraph 6 in its filing for an amended fuel hedging program.

Cordially,



Jamshed K. Madan

Cc: William J. Blair, Esq.
Ed Margerison
Larry Gawlik
Randy Wiegand, GPA
Kin Flores, GPA
John Cruz, GPA

GEORGETOWN CONSULTING GROUP, INC.
716 DANBURY RD.
RIDGEFIELD, CT. 06877

Jamshed K. Madan
Michael D. Dirmeier



Telephone (203) 431-0231
Facsimile (203) 438-8420
jmadan@snet.net

Edward R. Margerison
Jean Dorrell

January 24, 2006

Harry Boertzel, Esq. ALJ
The Guam Public Utilities Commission
Suite 207, GCIC Building
Hagatna, Guam 96932

Re: FY 2006 GPA Contract Review – Docket 94-04

Dear Harry:

This letter is being provided to provide a follow up report on the procurement issues for the Diesel Engine Cylinder Lubrication Oil Contract and the Property and Casualty Insurance Policy Amendment that were discussed during the January 18, 2006 Regulatory Conference.

Diesel Engine Cylinder Lubrication Oil Contract

We had mentioned this contract in our letter to you dated December 29, 2005. Upon review of the minutes of a CCU October 11, 2005 meeting, we noted discussion of the above potential multi-year contract where the cumulative value of the contract could potentially exceed \$1.5 million. During the regulatory session GPA did provide us with a copy of relevant portions of the contract and provided additional background on the bid.

The contract was executed by GPA in October 2005. GPA indicated that they received only a single bid in response to the Invitation to Bid. The contract is structured as a fixed price for one year with three one year extension options. The minimum purchase is 150,000 gallons for a year with the estimated purchase to be approximately 280,000 gallons annually. The price for the first year is \$4.37 per gallon and is \$4.80, \$5.30 and \$6.00 for each of the additional year options if exercised.

The diesel engine cylinder lubrication oil is essential for the operation for Cabras 3 & 4. We recommend retroactive approval by the PUC of this contract. Since the prices for future years are fixed we interpret the contract Review Protocol not to require further submission for approval if the options are exercised.

Property and Casualty Insurance Policy Amendment

This item was also addressed in our letter to you in our letter of December 29, 2005. That letter stated as follows:

The second contract is also a multiple year contract for property and casualty insurance. Information that we have received indicates that GPA has re-negotiated the third year of its contract. We have been provided an analysis indicating the GPA has negotiated a reduction in annual costs. To effect such a reduction usually means a reduction in coverage or increased deductible. The contract review protocol describes the requirement of the insurance contract reporting and while the spreadsheet that we received indicates that the insurance contract has not increase to 120% of the initial projected cost and in fact the total annual premiums appear to be lower than first brought before the PUC.¹ The CIP Protocol is silent on whether a change in a previously approved expenditure (albeit a reduction) that is still over \$1.5 million requires PUC approval. A reduction in premiums may mean that additional risk is being put on ratepayers and the reasons for this should be provided to the PUC. We recommend that the information be provided and the Protocol issue be clarified by the PUC.²

We sent you a letter dated November 15, 2005 in which we expressed our concerns and you forwarded the letter to the GM of GPA for his input. We have received a summary of the provisions of the renegotiated contract but have not performed a detailed comparison to the original policy pending a ruling as to whether this requires regulatory approval.

During the regulatory session GPA did indicate that they agreed that the contract should receive regulatory approval. They also provided additional background to the procurement and provided a letter from their insurance consultant as to the overall prudence of negotiating and entering into the amended contract. We have attached this letter to this document. The attached letter provides details of the contract and has the affirmative recommendation of GPA's insurance consultant that the contract meets all of GPA's required bond covenants. It is our recommendation that this contract also receive retroactive approval.

If there are any further questions please do not hesitate to call.

¹ The PUC approved the insurance at a meeting of September 2003. There is no cost level in the approval, but earlier indications were that the premium would be about \$9 million annually. Information in this filing shows annual premiums in the \$6-7 million.

² It would be our position that a change in key elements of the insurance contract would make this a "new" procurement and would require PUC approval. This is distinguished from having the identical policy with identical provisions but with a price that is determined annually.

Cordially,

Jamshed K. Madan

Jamshed K. Madan

Cc: William J. Blair, Esq.
Larry Gawlik
Randy Wiegand, GPA
Kin Flores, GPA

GEORGETOWN CONSULTING GROUP, INC.
716 DANBURY RD.
RIDGEFIELD, CT. 06877

Jamshed K. Madan
Michael D. Dirmeier



Telephone (203) 431-0231
Facsimile (203) 438-8420
jmadan@snet.net

Edward R. Margerison
Jean Dorrell

January 10, 2006

Harry Boertzel, Esq. ALJ
The Guam Public Utilities Commission
Suite 207, GCIC Building
Hagatna, Guam 96932

Re: FY 2006 GPA Contract Review – Docket 94-04

Dear Harry:

This letter is a follow-up of our previous letter of ~~December 29, 2005~~ regarding contract review and in particular the financing agreements between Guam Power Authority's (GPA) management and its contractors (TEMES and Doosan). To refresh your memory, we recommended PUC approval of the Fiscal 2006 Capital Improvement Budget (CIP) by recommending a "cap" based upon previous recommendations. The recommend cap (engineering projects and general plant) of \$13.5 is somewhat above the budget level for similar items in the Fiscal 2006 budget, but was the cap we recommended for FY2005.

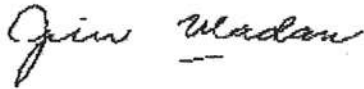
The confusion in our prior reports related to financing agreements with GPA's contractors. Included in the FY2006 CIP budget were principal and interest payments related to financing of maintenance projects at Cabras 1-4. After our first report in October 2006, we requested further information and clarification of these financing agreements. When GPA's responses arrived, they created further confusion. We sent a memo to GPA requesting further explanation and GPA responded. The memo to GPA and its clarifications are attached to this letter.

GPA signed financing agreements with both contractors during Fiscal 2005 and is paying principal and interest on those agreements in Fiscal 2006. It is these "P&I" payments that are in the original GPA request for PUC approval. These agreements did not come before the PUC for its approval before they were signed, although GCG believes that PUC approval is required under the contract review protocol. Subsequently, GPA provided information regarding new financing agreements that it intends to execute very soon for work to be performed in Fiscal 2006, but with P&I payments going beyond the current year. We believe that the provision of information regarding Fiscal 2006 agreements is appropriate, since the contract review protocol requires that GPA seek approval before the procurement process begins.

GCG recommends that the Fiscal 2006 budget (including the financing agreements for Fiscal 2005) be approved by the PUC. Since the financing agreements are in effect transferring procurement for the maintenance of the Cabras units to the contractors or PMCs, these should be included in the CIP ceiling. Therefore ~~we recommend a ceiling of \$17.3 million.~~ This includes loan payments to TEMES and Doosan on the Fiscal 2005 agreements.

These agreements appear to be both multi-year and renewed as required. GCG would recommend that we review the contract review protocol to include these financing agreements. GCG seeks your advice in this matter and will discuss this matter with GPA at the upcoming regulatory session.

Cordially,



Jamshed K. Madan

Cc: William J. Blair, Esq.
Randy Wiegand, GPA
Kin Flores, GPA

Attachment

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MEMORANDUM

TO: KIN FLORES AND RANDY WIEGAND
FROM: ED
SUBJECT: FY2006 CONTRACTS
DATE: DECEMBER 30, 2005
CC: JIM MADAN AND CORA MONTELLANO

Happy New Year. As I indicated in an earlier E-mail, we will prepare a one page clarification letter early next week on the issue of Fiscal 2006 CIPs and the Financing Agreements. I will use the following as the discussion table from which to discuss the ceiling:

Revenue Funded CIP	September Filing	Updated Filing
General Plant	\$ 7,772,000	\$ 7,772,000
Engineering Plant	3,971,000	3,971,000
Sub-Total	\$11,743,000	\$11,743,000
TEMES Financing (Cabras 1 & 2) (1)	4,252,401	4,000,000
Doosan Financing (Cabras 3 & 4) (2)	1,318,500	2,840,000
TOTAL CIP Request (3)	\$17,313,901	\$18,583,000

Please provide comments or corrections so that I can have the best information available.

- (1) The \$4.3 million is the budgeted amount for FY06 Cabras 1&2 CIP's (\$2.059M P&I payment for the 1st financing + \$2.1 million P&I payment for the 2nd financing + \$93,000 small project.) The \$4M in the updated filing is the amount of the second financing with TEMES.
- (2) The \$1.3 million is the budgeted amount for FY 06 Cabras 3&4 CIP's (\$400,000 P&I payment for the \$2.8M financing plus \$900,000 small projects). The \$2.8 million is the amount of the financing with Doosan.
- (3) GPA's request for FY 2006 CIP cap inclusive of Cabras 1&2 and Cabras 3&4 is the September filing of \$17.3 million.

GEORGETOWN CONSULTING GROUP, INC.
716 DANBURY RD.
RIDGEFIELD, CT. 06877

Jamshed K. Madan
Michael D. Dirmeier



Telephone (203) 431-0231
Facsimile (203) 438-8420
jmadan@snet.net

Edward R. Margerison
Jean Dorrell

December 29, 2005

Harry Boertzel, Esq. ALJ
The Guam Public Utilities Commission
Suite 207, GCIC Building
Hagatna, Guam 96932

Re: FY 2006 GPA Contract Review – Docket 94-04

Dear Harry:

This letter is being provided to you in order to update the current status of the contract review protocol for Fiscal 2006 for Guam Power Authority (GPA). This letter also responds to the ~~December 15, 2005 letter to you from GPA~~ management requesting PUC approval of short term financing agreements between Guam Power Authority (GPA) and the Performance Management Contractors (Taiwan Electrical and Mechanical Engineering – “TEMES” and Doosan Engine Company – “Doosan”). GPA management has informally stressed the urgency of this matter and we have indicated that GPA should contact you regarding such urgency as we believe that some PUC/ALJ action in this matter is required.

This letter also responds to some of the items listed in your October 31, 2005 letter to the GM of GPA. In that letter you indicated that the PUC approved the cost overrun of GPA's water quality monitoring upgrade project. You further indicated that the PUC deferred consideration of certain other contract-related matters among which were the TEMES CIP procurement/financing, the FY06 CIP ceiling and proposed fuel hedging program.¹ You also requested that GPA file a request regarding changes to the self-insurance program and that GCG respond to that request. GPA has made a filing and we will respond to that filing in a separate letter.

On September 26, 2005 GPA filed a petition for review and approval of FY06 contracts in excess of \$1.5 million as well as an approved Capital Improvement Program (CIP) ceiling for internally funded projects for Fiscal 2006. On October 21, 2005 we provided a report in which we recommended that the determination of the CIP ceiling be deferred until we receive additional information on the TEMES CIP/Procurement issues for this fiscal year. We also partially reviewed the proposed cash advance from TEMES that was contained in the FY2006 budget and the underlying project(s) for which cash was advanced. At that time we were not provided the terms and conditions of the proposed loan and recommended that GPA file more information on this loan to the Commission.

¹ The letter also leaves open the PUC approvals for the hedging program and self-insurance amendments. This will be addressed in separate cover.

Since the Contract Review Protocol requires that GPA make a December 1 filing showing the cost variances between PUC-approved projects and costs and the actual amounts from the prior fiscal year, we requested that GPA provide further clarifications with the December filing.

TEMES Deferred Payment Agreements

The operating and maintenance contract between TEMES and GPA has been approved by the PUC. For reasons stated in the October 17, 2005 letter from our Counsel, we believe that even though the management contract between GPA and TEMES had been approved by the PUC, separate Commission approval of the TEMES loan is required under the terms and conditions of the December 16, 2003 revised contract review protocol. Specifically, the protocol reads in part:

The following GPA contracts and obligations shall require prior PUC approval under 12 GCG Section 12004, which shall be obtained **before** the procurement process begins:

....All externally funded loan obligations and other financial obligations such as lines of credit, bonds, etc in the excess of \$1,500,000 and any use of said funds;²

In the intervening time between the GCG October 21, 2005 report and this letter, we have determined that GPA had already signed a "Deferred Payment Agreement" between GPA and TEMES in Fiscal 2005 and had not sought PUC approval. This payment agreement was executed on January 5, 2005. The agreement required TEMES to finance PIPs and CIPs in the principal amount of \$2,993,659 or well in excess of the \$1.5 million contract review threshold. The purpose of this agreement was to secure a loan for FY05 projects at Cabras 1 & 2. The largest of the FY05 projects was a Turbine/Generator Overhaul at Cabras #1 (\$1,536,141). The term of the Fiscal 2005 agreement is a term of 16 months at an interest rate of 4.5%. The first monthly payment of \$171,658 was made in April 2005. This financing was never approved by the PUC and upon questioning by GCG GPA management indicated that there was also no specific CCU approval of the fiscal 2005 note. Management believed that since the CCU had approved the O&M contract between TEMES and GPA that there was no further requirement for CCU approval. For reasons stated in our October 17, 2005 letter from Counsel, we believe that this contract should have come before the PUC for review and approval. We recommend retro-active approval by the PUC for the Fiscal 2005 agreement with TEMES.

GPA was not seeking approval of the above Deferred Payment Agreement in its September 2005 filing, but rather for an additional agreement with TEMES to be effective during Fiscal Year 2006. GPA has at our request provided a boilerplate deferred payment agreement that it intends to execute sometime during this Fiscal Year. The note would be for a total of \$4 million with an interest rate of 5% with monthly payments of \$218,497 beginning in March 2006 for a period of nineteen (19) months.

Unlike the year before, on December 13, 2005, the Consolidated Commission on Utilities (CCU) passed two resolutions authorizing GPA management to enter into Short-term Financing Agreements not only with TEMES, but also with Doosan. The TEMES Financing Agreement is for work to be performed at Cabras 1 & 2 with terms and conditions as describe above and the Doosan Financing Agreement is for work to be performed at Cabras 3 & 4. While we have detailed information on the uses and costs of the Financing Agreement with TEMES, we do not have similar information on the

² Contract Review Protocol for Guam Power Authority, Docket 00-04, ¶ 1.d.

Doosan Financing Agreement. The GPA budget for Fiscal 2006 for Cabras 3 & 4 CIPs is \$1.3 million and if the note is for less than \$1.5 million, this agreement may not require approval.

In its petition of December 15, 2005 GPA is requesting expedited approvals of both agreements from the PUC so that these agreements can be executed and work on the Cabras plants may begin early in 2006. We have no particular concern with the TEMES loan and would recommend PUC approval of it. We would strongly caution GPA to make sure it seeks PUC approval of future financing agreements future as required by the PUC approval of the contract between GPA and TEMES. We would also request specific information about the Doosan Agreement when terms and uses are finalized in the event that the loan exceeds \$1.5 million and PUC approval is required.

After a review of the information provided we recommend that a CIP ceiling of \$13.5 million, exclusive of blanket job orders and line extensions be approved for FY 2006.

Contract Review Variance Filing

The contract review protocol requires:

GPA shall on or before December 1 of each year, file a report on the contracts and obligations approved by the PUC for the prior fiscal year pursuant to this stipulation. This report shall show the amount approved by the PUC and the actual expenditures incurred during the preceding year for such contract and obligations and other changes from prior filing in cost estimates, start dates and in-service completion dates.³

During its February 1, 2005 meeting, the PUC approved a CIP cap for Fiscal 2005 of \$13.5 million (excluding line extensions and blanket job orders). The PUC also approved \$4.6 million of vehicle procurement (part of the \$13.5 million) and \$1.94 million San Vitores to Macheche Underground Conversion Project. As an administrative matter you also approved the Bulk Storage Tank Life Extension project.

On December 1, 2005 GPA filed a CIP variance report for the Fiscal 2005 CIPs. As described in more detail in our October 2005 report, the Fiscal 2005 CIP budget underwent significant re-prioritization with vehicles being removed from the budget and costs for plant repair and maintenance replacing those costs. In the December 1, 2005 filing GPA shows that the adjusted FY05 budget was still \$13.5 million (without Line Extension/Blanket) or at the level approved by the PUC. According to the exhibit attached to the December 1, 2005 filing, GPA encumbered \$11.5 million of funds for internally funded CIPs. The total amount spent or encumbered is well below the PUC approved ceiling. GCG believes that GPA should be required to provide an explanation for the under spending and reprioritization of the funds and to confirm that there would be no adverse effects as a result of this decision.

GPA did not provide in its December 1, 2005 filing information concerning the San Vitores and Storage Tank Life Extension project that were approved for Fiscal 2005. GPA provides quarterly reports to the PUC on the progress of various projects. In the last progress report received by GCG (July 14, 2005), we note that Bulk Storage Tank project is among those projects contained in these reports. GPA had committed funds for this project through May 2005 of \$4.4 million. The total project cost is still estimated to be \$6.7 million, which was the level approved by the

³ Contract Review Protocol, paragraph 7.

Commission. We do not see any problem with this project and recommend continuing provision of information to the PUC.

There is no information regarding the underground project that was approved last year and do not see the project in the quarterly filing by GPA. We would request that GPA provide an update on this project.

Fuel Hedging Program

We have no information regarding the status of any new fuel price-hedging program and therefore cannot update you on this matter. We would recommend that GPA provide a status memorandum on this item in time for the January 2006 regulatory session.

Minutes of CCU Meeting

In the minutes of a CCU October 11, 2005 we noted the following contracts that were either consummated or in process. The first contract is for lubricant oil. GPA anticipates this to be a multi-year contract whose costs will easily exceed the \$1.5 million.

The second contract is also a multiple year contract for property and casualty insurance. Information that we have received indicates that GPA has re-negotiated the third year of its contract. We have been provided an analysis indicating the GPA has negotiated a reduction in annual costs. To effect such a reduction usually means a reduction in coverage or increased deductible. The contract review protocol describes the requirement of the insurance contract reporting and while the spreadsheet that we received indicates that the insurance contract has not increase to 120% of the initial projected cost and in fact the total annual premiums appear to be lower than first brought before the PUC.⁴ The CIP Protocol is silent on whether a change in a previously approved expenditure (albeit a reduction) that is still over \$1.5 million requires PUC approval. A reduction in premiums may mean that additional risk is being put on ratepayers and the reasons for this should be provided to the PUC. We recommend that the information be provided and the Protocol issue be clarified by the PUC.⁵

We sent you a letter dated November 15, 2005 in which we expressed our concerns and you forwarded the letter to the GM of GPA for his input. We have received a summary of the provisions of the renegotiated contract but have not performed a detailed comparison to the original policy pending a ruling as to whether this requires regulatory approval.

⁴ The PUC approved the insurance at a meeting of September 2003. There is no cost level in the approval, but earlier indications were that the premium would be about \$9 million annually. Information in this filing shows annual premiums in the \$6-7 million.

⁵ It would be our position that a change in key elements of the insurance contract would make this a "new" procurement and would require PUC approval. This is distinguished from having the identical policy with identical provisions but with a price that is determined annually.

Cordially,

Jamshed K. Madan

Jamshed K. Madan

Cc: William J. Blair, Esq.
Larry Gawlik
Randy Wiegand, GPA
Kin Flores, GPA

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GEORGETOWN CONSULTING GROUP, INC.
716 DANBURY RD.
RIDGEFIELD, CT. 06877

Jamshed K. Madan
Michael D. Dirmeier



Telephone (203) 431-0231
Facsimile (203) 438-8420
emargerison@snet.net

Edward R. Margerison
Jean Dorrell

October 21, 2005

Harry Boertzel, Esq. ALJ
The Guam Public Utilities Commission
Suite 207, GCIC Building
Hagatna, Guam 96932

Re: Outstanding GPA AND GWA Tasks for the October 2005 Regulatory Session

Dear Harry,

This letter responds to requests that you made to GCG to respond to several issues related to Open Items remaining for the October 2005 Regulatory Session. Specifically you identified:

1. GCG position on Cabras water quality monitoring upgrade.
2. GCG position on Temes CIP procurement/financing, which per Bill Blair's 10/17 letter requires PUC approval.
3. GCG position on proposed GPA \$17.3M FY06 CIP cap.
4. GWA order attachment identifying all uses of bond proceeds with cap for each use.

In addition you asked that we confirm your understanding that PUC consideration of the GPA hedging procurement and GPA petition regarding amendments to PUC's 12/30/92 order establishing the self-insurance fund will not be ready for PUC consideration at the October 2005 PUC meeting.

1. Cabras Water Quality Monitoring Upgrade

The Guam Power Authority ("GPA") petitioned the Guam Public Utilities Commission ("Commission") for approval of a 30% budget increase associated with the previously approved Cabras 1 & 2 Water Quality Monitoring Upgrade project (Monitoring Project). The Commission approved budget for the Monitoring Project upgrades that were to be implemented at Cabras 1 & 2 was \$850,000. This petition is brought about as a result of the Commission approved budget being exceeded by GPA. Pursuant to the criteria contained in the CIP review protocol applicable to GPA, any project incurring budget excesses of more than 20 percent requires Commission approval.

GPA identified the need for this project several years ago during an assessment of specific improvement projects that would improve overall Cabras plant performance. It also initiated activities required to implement the Monitoring Project several years ago. Early on activities included retaining consultants to perform feasibility studies, develop specific monitoring strategies, and the preparation of design drawings, engineering specifications, and procurement documents.

GPA's expenditures for front-end planning and engineering services were approximately \$500,250—a high value for these types of services—and leaving only \$349,750 to actually procure and install Monitoring Project hardware. While we do not have the benefit of GPA's detailed budget breakout for this project, it would appear GPA should have foreseen the potential need for a budget revision early in the implementation of the project based upon what appears to be a high value for support services.

To date GPA as part of the Monitoring Project has implemented two major improvements to the feed-water system associated with Unit 1 & 2 operations. It first installed a new chemical feed system to properly treat and insure that feed-water supplied to Units 1 & 2 meets power industry standards for efficient and safe operation of steam generators. These improvements offer GPA redundancy and cross-feed capabilities in the operations of Units 1 & 2. This phase of the Monitoring Project was completed on March 15, 2005. Total cost for this phase was \$232,000.

The second phase of the Monitoring Project included the addition of an automated sample cooling rack and laboratory instrumentation. This automated system allows GPA to remotely monitor the quality of the water in Unit 1 & 2 condensate, feed-water and steam generator systems. This phase of the Monitoring Project was completed on June 08, 2005 and cost \$372,750. With the completion of this phase, the overall Monitoring Project cost exceeded the \$850,000 authorized budget by \$255,000 bringing the total project cost to \$1,105,000.

Based upon the short amount of time we have been given to review this project overrun we have restricted our review to simply the facts presented in the GPA petition and our personal knowledge of facts pertaining to the Monitoring Project. Certainly the Monitoring Project is a critical improvement in GPA's Cabras operations. Over the years, GPA has suffered from countless water chemistry issues impacting unit availability. Given the importance of this improvement, we recommend the Commission approve, belatedly, the \$1,105,000 budget level. However, we believe the Commission should caution GPA concerning the approval of after-the-fact project overruns. In a situation where early in the project cycle it is clear that the approved budget is going to be exceeded, GPA should bring the matter to the attention of the Commission as soon as it has an assessment of the potential impact and not months after completion of the project.

2. TEMES CIP Procurement/Financing

As you stated Bill Blair's letter did state our position that the TEMES CIP procurement and financing does come under the CIP protocol and therefore certain projects and uses of funds require PUC approval. In this case there are projects and uses of funds that do require PUC approval. We recommend that GPA provide this information on projects requiring approval to GCG as soon as possible. This would include all projects over the threshold and any request to enter into a financing arrangement with a description of the terms and conditions. It is our understanding that the amounts to be paid in FY 2006 are primarily for financing payments related to prior activities. Given that any CIP and PIP related to the PMC contract requires PUC approval if it meets the CIP protocol

thresholds, GPA should review these items and confirm that there are no additional items that should be submitted to the PUC for approval.

3. Position on GPA's Request for a FY 2006 \$17.3 Million CIP Cap

Our position on this point will depend on the information that GPA submits related to section 2 above. Given that the majority of the TEMES amounts are related to financing payments for the payments made by TEMES related to the repair after the catastrophic failure of the unit last year and that since that time the unit has performed well resulting in significant savings to consumers, we believe that once the information is received we can arrive at a recommendation in a short period of time. As previously stated, however, GPA should confirm that there are no further FY 2006 CIPs and PIPs related to any other PMC activities.

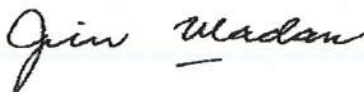
4. Order Attachment for Bond Proceeds

We are still working with GWA on the presentation and reconciliation of the use or bond proceeds. On the related issue of the cost of issuance, Randy Wiegand has requested that the Commission give consideration to permitting 3% as a cap for the costs of issuance and the underwriter's discount. The previous estimate was 2.5%. We recommend that the cap remain at the 2.5% and that if it appears for good reason that the cap needs to be raised that GWA request expedited treatment at that time.

We confirm your understanding that PUC consideration of the GPA hedging procurement and GPA petition regarding amendments to PUC's 12/30/92 order establishing the self-insurance fund will not be ready for PUC consideration at the PUC meeting.

If there are any further questions we will be happy to respond.

Cordially,



Jamshed K. Madan

Cc: Sam Taylor, Esq.
John Benevente, CCU
Dave Craddick, GM GWA
Randy Wiegand, CFO CCU
Kin Flores, GM GPA
Bill Blair, Esq.
Ed Margerison, GCG
Larry Gawlik, GCG
Simon Sanchez, Chairperson CCU
Terry Brooks, chairperson, PUC



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



GUAM WATERWORKS AUTHORITY
PETITION FOR RATE RELIEF

DOCKET 05-5

FY06 RATE ORDER

Background

On December 13, 2005, Guam Waterworks Authority [GWA] petitioned the Guam Public Utilities Commission [PUC] for an 8% rate increase over current revenues effective February 1, 2006 and for approval of the rate elements in its proposed sewer hookup fund rule, which will provide financing to enable persons to connect to its wastewater system.

Under an expedited schedule, Georgetown Consulting Group [GCG] examined the petitions and filed its report on January 13, 2006. In furtherance of prehearing conferences, GWA and GCG resolved differences between GWA's petition and GCG's report and joined in a January 25, 2006 stipulation, which is made *Attachment A*.

On January 25 and 26, 2006, PUC conducted duly noticed public hearings on GWA's petitions. After carefully considering the Stipulation, the record herein and the January 31, 2006 report of its administrative law judge [ALJ], for good cause shown and on motion duly made, seconded and carried by the affirmative vote of the undersigned commissioners, the Guam Public Utilities Commission makes the following determinations:

Determinations

1. By this Rate Order, PUC concludes regulatory activities under the Interim Financial Plan, as approved by PUC's March 31, 2004 [March Order] and October 14, 2004 [October Order] Rate Orders in Docket 04-01.
2. Future GWA rate petitions will be considered within the context of its Final Financial Plan, which under section 30 of the *Stipulated Order*¹ must be finalized and submitted for PUC approval during this fiscal year. GWA must comply with the prefiling notice requirements of 12 GCA 12001.2 before filing its next rate petition with PUC.

¹ Stipulated Order For Preliminary Relief in United States District Court - Territory of Guam No. 02-35 [USA v. Guam Waterworks Authority and Government of Guam].

3. An integral part of the Final Financial Plan will be a restructured user fee system, which under the Stipulated Order must be based on actual water usage, estimated wastewater generation and actual costs of services. Pursuant to the mandate of P.L. 26-124, this user fee system must include a system development charge.
4. Consistent with the principles under which PUC established a Rate Stabilization Plan in the October Order, GWA should be awarded a 3% rate increase on current revenues *[excluding the Navy-GPA Surcharge, Supplemental Annuities Surcharge and lifeline revenues]* effective for services rendered on an after the date of this Rate Order. Revenues produced by this rate increase, except as provided in determination #6 below, should be subject to the requirements and restrictions set forth in the October Order regarding the Rate Stabilization Trust Account *[Account]*.
5. In order to simplify the Account's administration, GWA should commencing March 2006 deposit into the Account 11.3% of its collected water and wastewater revenues *[excluding Supplemental Annuities Surcharge and Navy-GPA Surcharge revenues]* in satisfaction of the requirement that revenues produced by the October Order rate increase and by the 3% rate increase in this Order be deposited into the Account. It is estimated that this will result in annual deposits of about \$3.6 million dollars.
6. GWA should be authorized to utilize not to exceed \$2 million dollars in the Account as a temporary source of working capital to meet operational and maintenance expenses. Any such withdrawal should be replaced before the end of the fiscal year in which it is made. This authorization should be conditioned upon GWA filing an Account reconciliation report for the period October 2004 through December 2005, in form and content approved by ALJ. GWA should not withdraw funds under this determination until it receives ALJ's approval of the reconciliation report. GWA should file quarterly status reports on the Account, including details of any withdrawals, in form and content required by ALJ.
7. Pursuant to section 1(f) of the GWA Contract Review Protocol², the ceiling for GWA's FY06 internally funded capital improvement projects should be set at \$3.6 million dollars.
8. In furtherance of PUC's October 27, 2005 Order in Docket 05-10, GWA should be authorized to utilize not to exceed \$4.751 million dollars from the Contingency Reserve established by the Order to fund distribution line upgrades.

² See PUC Order dated October 27, 2005 in Docket 00-04.

9. As an adjunct to the requirements of Stipulated Order section 31, GWA should file with PUC annual five year projection reports, in form established by ALJ, which detail all amounts projected to be expended by year within the period for construction projects by line item and identified by funding source [bond, grant, internal funding]. The reports should also present comparisons between projected and actual amounts. The reports should be filed with PUC within 60 days of the close of each fiscal year. The FY05 report should be due on or before May 1, 2006.
10. The Supplemental Annuities Surcharge, as established by the March Order, should be amended to increase the surcharge rate from 2.59% to 4.13% on current revenues including the increase approved by this Order, but excluding the Navy-GPA Surcharge and lifeline revenues. This increase will enable GWA to recover, over a 5 year period, GWA's historic \$1.6 million dollar legislatively mandated obligation to pay for its retiree's supplemental retiree benefits, including supplemental annuities and life, dental and health insurance premiums. The increase will also fund GWA's current legislatively mandated obligation for these expenses [*the Mandate*]. This increase should be reviewed by PUC during its summer 2006 regulatory session, within the context of the status of PUC's pursuit of a declaratory ruling on the Mandate's legality. PUC should reserve the right after such review to abolish or reduce the surcharge amount.
11. In the March Order, PUC determined, after review of the February 27, 2004 opinion of Klemm Blair Sterling and Johnson, that there are substantial questions regarding the Mandate's legality. GWA has been unable to comply with the requirement in the March Order that it seek a declaratory ruling on this issue. After further review, PUC determines that it should pursue a declaratory ruling from a court of competent jurisdiction on this issue, which has an impact on GPA and GWA ratepayers in excess of \$1 million dollars per year.
12. Within 90 days of this Rate Order, GWA should: a) file with PUC an opinion from its auditors whether it is required to record an allowance for funds used during construction [AFUDC] and an opinion from bond counsel regarding whether AFUDC impacts the debt service coverage calculation; and b) post its service rules on its website.
13. The rate elements of GWA's wastewater revolving loan fund rule should be approved.
14. GWA should be required under ALJ's oversight to update the debt retirement and receivables collection plans, which were required by the March Order.

Order

After careful review and consideration of the above determinations, the report and recommendations of its ALJ, the stipulation and record herein, for good cause shown, on motion duly made, seconded, and carried by the undersigned commissioners, the Guam Public Utilities Commission **HEREBY ORDERS THAT:**

1. All rulings and orders of the ALJ during the course of this proceeding are confirmed and ratified. All motions not heretofore granted or denied are denied. No other matters currently require discussion.
2. A 3% rate increase on current revenues [excluding the Navy-GPA Surcharge, the Supplemental Annuities Surcharge and lifeline revenues] is hereby awarded for services rendered on and after the date of this Order. Revenue resulting from this increase shall, except as provided in section 4 below, be subject to the requirements and restrictions established in the October Order regarding the Account.
3. In order to simplify the Account's administration, GWA shall commencing March 2006 deposit into the Account 11.3% of its collected water and wastewater revenues [*excluding Supplemental Annuities Surcharge and Navy-GPA Surcharge revenues*] in satisfaction of the requirement that revenues produced by the October Order rate increase and by the 3% rate increase in this Order be deposited into the Account.
4. GWA is authorized, subject to the following condition, to utilize not to exceed \$2 million dollars from the Account as a temporary source of working capital to meet operational and maintenance expenses. Any withdrawal, which is made pursuant to this authorization, shall be replaced before the end of the fiscal year in which the withdrawal is made. This authorization is strictly conditioned upon GWA filing an Account reconciliation report for the period October 2004 through December 2005, in form and content approved by ALJ. GWA shall have no authority to withdraw funds until it receives ALJ's approval of the reconciliation report. GWA shall file quarterly reports on the Account, including details of any withdrawals, in form and content required by ALJ.
5. GWA's FY06 internally funded capital improvement project ceiling is set at \$3.6 million dollars.
6. GWA is authorized to utilize not to exceed \$4.751 million dollars from the Contingency Reserve established in PUC's October 27, 2005 Order in Docket 05-10 to supplement approved bond funding for distribution line upgrades.

7. GWA shall file annual five year projection reports, in form established by ALJ, which detail all amounts projected to be expended by year within the period for construction projects by line item and identified by funding source [bond, grant, internal funding]. The reports shall also present comparisons between projected and actual amounts. The reports shall be filed with PUC within 60 days of the close of each fiscal year. The FY05 report shall be due on or before May 1, 2006.
8. The Supplemental Annuities Surcharge, as established and governed by the March Order, is hereby amended to increase the surcharge rate from 2.59% to 4.13% on current revenues including the increase approved by this Order, but excluding the Navy-GPA Surcharge and lifeline revenues. This increase shall be reviewed by PUC at its summer 2006 regulatory session. PUC reserves the right, after such review, to abolish or reduce the surcharge amount.
9. PUC's chairman is hereby authorized to retain counsel to seek, under ALJ oversight, a declaratory ruling from a court of competent jurisdiction on Mandate's legality and appropriate relief as it applies to GPA and GWA. GPA and GWA shall bear the expense of this effort.
10. Within 90 days of this Rate Order, GWA shall: a] file with PUC an opinion from its auditors whether it is required to record an allowance for funds used during construction [AFUDC] and an opinion from bond counsel regarding whether AFUDC impacts the debt service coverage calculation; and b] post its service rules on its website.
11. The rate elements of GWA's wastewater revolving loan fund rule are approved.
12. GWA shall under ALJ's oversight update the debt retirement and receivables collection plans, which were required by the March Order.
13. GWA shall pay for PUC's expenses, including without limitation, consulting and counsel fees and expenses and the expenses of conducting the hearing process.

Dated this 2nd day of February 2006.



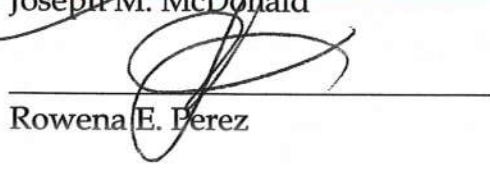
Terrence M. Brooks



Edward C. Crisostomo



Joseph M. McDonald



Rowena E. Perez

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF GUAM**

PETITION OF GUAM WATERWORKS)
AUTHORITY FOR FY06 RATE RELIEF)
AND RELATED MATTERS)

DOCKET 05-05



Stipulation

Guam Waterworks Authority [GWA] and Georgetown Consulting Group, Inc. [GCG], which serves as independent regulatory consultant to the Guam Public Utilities Commission [PUC], hereby enter into this stipulation and request PUC's favorable consideration of the following points:

1. This rate proceeding will conclude regulatory activities under the Interim Financial Plan [IFP], as approved by PUC's March 31, 2004 and October 14, 2004 Rate Orders in Docket 04-01. Future GWA rate proceedings will be considered under the parameters of GWA's Final Financial Plan [FFP], which is expected to undergo regulatory review prior to the next rate proceeding. Both the IFP and the FFP are mandated by the Stipulated Order For Preliminary Relief in United States District Court – Territory of Guam Civil Case No. 02-35 [USA v. Guam Waterworks Authority and Government of Guam] [Stipulated Order].
2. Under Section 30 of the Stipulated Order, GWA is ordered to submit the FFP to PUC for its review and approval. The FFP, which is being prepared for GWA in consultation with the firm Brown and Caldwell, is expected to be ready in draft form on or about April 2006. GWA agrees to file a copy of the draft FFP with PUC and to participate in administrative discussions about the draft in anticipation of GWA's petition for regulatory review of the final FFP.
3. In furtherance of the Rate Stabilization Plan established by PUC's October 14, 2004 Rate Order in Docket 04-01, which is designed gradually to increase rates to a level necessary to enable GWA to meet its anticipated future financial and legal obligations, including GWA's obligations under GWA's 2005 bonds and the Stipulated Order, and consistent with PUC's

commitment to provide needed rate relief to GWA, GWA and GCG recommend that GWA be awarded a 3% rate increase on current water and wastewater revenues, excluding the Navy-GPA surcharge and lifeline revenues, effective for services rendered on and after the date of the order approving this stipulation. The overall increase in revenues shall be collected from all non-lifeline tariff categories. For the water system this will result in a 3.57% increase in all non-life line tariffs. For the wastewater system this will result in a 4.89% increase in all non-lifeline tariffs. Consistent with section 4 of PUC's October 14, 2004 Rate Order, the revenues produced by this rate increase should be deposited into the Rate Stabilization Trust Account ("Account") and should be subject to the regulatory controls imposed on this Account, subject to the changes recommended below. In order to simplify the administration of the Account, GWA and GCG recommend that GWA be required to deposit 11.3% of its collected water and wastewater revenues per month into the Account commencing March 2006. Based on the test year projections in this rate case, this should result in an annual deposit into the Account of \$3,600,000. GWA should be allowed to petition the PUC for the authorization to use funds deposited in the Account either to support certification of the availability of funds to pay for or to pay for capital improvement projects as may be necessary and approved by the CCU. In addition, GCG and GWA recommend that GWA be allowed, without the need to seek prior PUC approval, to access up to \$2,000,000 in the Account as a temporary source of working capital to meet ongoing operational and maintenance expenses, in the event of temporary shortfalls in GWA's regular cash flow. Funds withdrawn from the Account by GWA to meet temporary cash flow shortfalls should be replaced by GWA as soon as cash becomes available. All withdrawals made from the account for working capital will be replaced not later than the end of the fiscal year within which the withdrawal was made. GWA shall not withdraw or make any use of funds in the Account until and unless the quarterly report for the period ending December 31, 2005, as required under Paragraph 4 below, is filed with PUC.

4. GWA should continue to be required to report to PUC on a quarterly basis the status of the Account, and any temporary borrowings from it made pursuant to this limited authorization must be reported within 30 days from the date of withdrawal. GWA will file, not later than February 28, 2006, a quarterly report for the period ending December 31, 2005. This report shall include, in addition to the information already required to be included, the following:

- a. GWA shall provide an explanation of how the amounts deposited in the Account were determined or calculated. If GWA takes the position that the amounts deposited in the Account are consistent with the PUC order or orders establishing the account, GWA should so state. If GWA agrees that there is a deficiency in the amount deposited in the Account, as of December 31, 2005, then GWA should explain the reasons for the deficiency and provide a plan as to how that deficiency will be made up.
 - b. GWA shall provide a report on the status of its ongoing collection efforts and policies.
 - c. GWA shall provide a summary of its outstanding accounts payable and its plan to reduce those accounts payable. The plan should include a report on GWA's efforts to reduce or collect its aged accounts receivable.
5. GWA and GCG recommend that PUC approve an FY06 internally funded capital improvement projects ceiling of \$3.6 million in accordance with Section 1(f) of the GWA Contract Review Protocol [*PUC Order dated October 27, 2005 in Docket 00-04*].
6. GWA shall file a schedule that details all of the amounts projected to be expended for construction projects by line item segregated by bond funded, grant funded and internally funded for the next 5 years within 90 days. Fiscal Year comparisons between projected and actual amounts should be provided to the PUC within 60 days of the close of the fiscal year.
7. Under the terms of PUC's October 27, 2005 Order in Docket 05-10, GWA is required to obtain prior regulatory approval for utilizing bond revenues from the Contingency Reserve established in paragraph 1(e) of the Order. GWA and GCG recommend that GWA be authorized to utilize up to \$4.751 million from the Contingency Reserve to fund distribution line upgrades resulting in a total use from the bond construction fund for this purpose of \$12.951 million.
8. GWA and GCG recommend that the Legislative Surcharge, as established by PUC's March 31, 2004 Order in Docket 04-01, be amended to increase the surcharge rate from 2.59% to 4.13% on current revenues, excluding the Navy-GPA surcharge and lifeline revenues. This increased rate would enable GWA to recover, over a 5 year period, GWA's historic \$1.6 million legislatively-mandated obligation to pay for supplemental retiree benefits,

including the cost of supplemental annuities, and life, dental and health insurance premiums, as well as the current supplemental retiree benefits. With regard to the continued uncertainty as to the lawfulness of the Legislature's imposition of this unfunded mandate on GWA, as discussed in the March 31, 2004 Order, GWA understands that in the event PUC decides to seek a declaratory ruling on the lawfulness of the Legislature's mandate that GWA pay these expenses, GWA may be assessed for the incident regulatory expenses.

9. GWA will request an opinion from its auditors regarding whether it is required to record an allowance for funds used during construction [AFUDC]. GWA will also request an opinion from bond counsel regarding whether AFUDC impacts the debt service coverage calculations. These opinions will be provided to PUC within 90 days.
10. GWA agrees within the next 90 days to post its service rules on its website.
11. GWA and GCG recommend that PUC approve the interest rate provisions of GWA's proposed Wastewater Revolving Loan Fund Rule pursuant to 12 GCA 12004.

Dated this 15th day of January 2006.

**BLAIR STERLING JOHNSON
MOODY MARTINEZ & LEON GUERRERO
A PROFESSIONAL CORPORATION**

By:


WILLIAM J. BLAIR

Attorneys for Georgetown Consulting Group, Inc.

GUAM WATERWORKS AUTHORITY

By:


SAMUEL J. TAYLOR

Attorney for Guam Waterworks Authority

GUAM WATERWORKS AUTHORITY
Impact of Rate Changes

Residential Customer
3/4 Inch Pipe

		<u>Current Rate</u>	<u>Current Bill</u>	<u>Proposed Rate</u>	<u>Proposed Bill</u>	
Water Service Charge/mo.			\$ 7.20		\$ 7.46	
First 5000 GAL per month	5,000 x	2.40	12.00	2.40	12.00	
Over 5000 GAL per month	3,400 x	3.43	11.66	3.55	12.08	
Sewer Service Charge			22.00		22.00	
GPA/Navy Surcharge	9.51%		1.79	9.51%	1.86	
Legislative Surcharge	2.59%		0.49	4.13%	0.81	
TOTAL BILL			\$ 55.14		\$ 56.20	1.91%

Commercial Customer
3/4 Inch Pipe

		<u>Current Rate</u>	<u>Current Bill</u>	<u>Proposed Rate</u>	<u>Proposed Bill</u>	
Water Service Charge/mo.			\$ 7.20		\$ 7.46	
28000 GAL per month	28,000 x	4.27	119.56	4.42	123.82	
Sewer Service Charge	22,400 x	2.19	49.06	2.30	51.46	
GPA/Navy Surcharge	9.51%		16.72	9.51%	17.38	
Legislative Surcharge	2.59%		4.55	4.13%	7.55	
TOTAL BILL			\$ 189.89		\$ 200.20	5.43%

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



GUAM WATERWORKS AUTHORITY
PETITION FOR RATE RELIEF

DOCKET 05-5

Administrative Law Judge Report

On December 13, 2005, Guam Waterworks Authority [GWA] petitioned the Guam Public Utilities Commission [PUC] for an 8% rate increase over current revenues effective February 1, 2006 and for approval of the rate elements in its proposed sewer hookup fund rule, which will provide financing to enable persons to connect to its wastewater system.

Under an expedited schedule, Georgetown Consulting Group [GCG] examined the petitions and filed its report on January 13, 2006. In furtherance of prehearing conferences, GWA and GCG resolved differences between GWA's petition and GCG's report and joined in a January 28, 2006 stipulation.

On January 25 and 26, 2006, PUC conducted duly noticed public hearings on GWA's petitions. Public comments at the hearings expressed concern that GWA was not providing adequate notice of service interruptions and that ratepayers were being required to fund the Mandate discussed in the attached Rate Order. Ratepayers also complained about increased rates in the face of chronic poor service. Concern was expressed that GWA should be carefully monitored to assure that the bond revenues were used only for system improvement. Two written comments were submitted to PUC, which are attached to this report.

The undersigned supports the stipulation as a reasonable way to close regulatory proceedings under the Interim Financial Plan, as established by PUC's March 31, 2004 and October 14, 2004 Rate Orders in Docket 04-01. In order to implement the recommendations made in the stipulation, an FY06 Rate Order is submitted with this Report for the commissioners' review and consideration. The *Determination* section of the proposed Order can be used as an effective tool for reviewing the details of the stipulation.

Dated this 31st day of January 2006.

Harry M. Boertzel
Administrative Law Judge

Lourdes R. Palomo

From: "Jeremias A. Carrera" <jac007@ite.net>
To: <info@guampuc.com>
Sent: Friday, January 06, 2006 6:30 PM
Subject: Guam PUC Contact

Name: Jeremias A. Carrera

Email: jac007@ite.net

Village: Dededo

Comments: Gentlemen and Ladies:

This inquiry is with regards to the previous and proposed rate increases whose main purpose is to recoup the cost of the various improvements, most of which are required by the STIPULATED ORDER to comply with federal mandates. Some of these projects serve large military bases who were parties to an agreement signed by then Governor of Guam, the late Carlos G. Camacho in the 70's for the construction of these facilities-Agana Sewage Treatment Plant and the Northern District Sewage Treatment Plant. Since these projects such as the design and upgrade of the Agana Sewage Treatment Plant, the Agana Outfall and the Northern District Outfall are over \$20 M as indicated in GPUC Docket 05-10 and the Stipulated Order requires extensive scientific and engineering work under the CWA Section 301(h) application which will cost more, I am wondering why these military installations are not sharing the cost of such upgrades. So far, there is no news about what efforts to date that I am aware of to demand the fair share of these military installations. If it is the CCU and PUC policy to exempt the military bases from sharing the cost of improvements inspite of the existing agreement, how fair is that policy when GWA through the PUC requires developers and the civilian community to pay for the impact fee and rate increases. Is GWA sewer charges to the military installation fair and equitable to the civilian community? Are their sewage flows or sewage contribution properly metered?

Another matter that requires serious administrative and legal efforts from the CCU and the management of GWA is the recent mandatory enforcement by the Department of Public Works of their unadjudicated new standards-the mandatory use of "flowable fill" for trench backfill. This new standards will result to very expensive utility construction and much higher rate increases. There are several projects of GWA funded by the \$100M bond that will have inadequate budget. I believe these information need to be brought out to the public so that the real causes of rate increase such as the proliferation and enforcement of unadjudicated standards is known by the public at large.

1/11/2006

Lourdes R. Palomo

From: "Julie T. Perez" <perezj@guam.navy.mil>
To: <info@guampuc.com>
Sent: Wednesday, January 11, 2006 12:50 PM
Subject: Guam PUC Contact

Name: Julie T. Perez

Email: perezj@guam.navy.mil

Village: Toto, Barrigada

Comments: I am submitting my comments regarding my thoughts on the proposed water rate increase. Unfortunately, I am one of those living in an area (260 Machaute St, near Harvest Christian Academy) with minimal water pressure - a problem which we have endured for years, and which I've addressed to several administrations. I gave up seeking help and decided to install a water tank and pump. As we all know, it's a longstanding issue that seems like a challenge because it remains a problem. My water bill has increased threefold with no improvement with the water pressure, which is totally unfair. I am for the rate increase if I can be assured our water system will be upgraded to the point where I will no longer have to depend on the water pump.

1/11/2006

Lourdes R. Palomo

From: "Marilyn Cruz" <rapollachino@hotmail.com>
To: <info@guampuc.com>
Sent: Thursday, January 26, 2006 8:07 AM
Subject: Guam PUC Contact

Name: Marilyn Cruz

Email: rapollachino@hotmail.com

Village: Yona

Comments: I would like to comment on the raise of the water. First of all, the public is getting a lot of raise from gas prices, consumption and now water rate going up. They borrow million of dollars and expect the people to pay it back. With thousands of people paying for water, GWA should have collected millions of dollars, enough to meet their payment of their loans. What are they doing with all the money that we even are paying for their retirement. Do GWA

CF

LAW OFFICES
KLEMM, BLAIR, STERLING & JOHNSON

A PROFESSIONAL CORPORATION

WILLIAM J. BLAIR
THOMAS C. STERLING
RICHARD L. JOHNSON
THOMAS C. MOODY, III
JEHAN'AD G. MARTINEZ
VINCENT E. LEON GUERRERO

SUITE 1008 PACIFIC NEWS BUILDING
238 ARCHBISHOP F.C. FLORES STREET
HAGÁTÑA, GUAM 96910-5205

TELEPHONE: (671) 477-7857; FACSIMILE (671) 472-4290
WRITER'S E-MAIL: wjblair@kbsjlaw.com

JAMES F. BALDWIN
PETER J. SABLAN
OF COUNSEL
J. BRADLEY KLEMM

February 27, 2004

VIA FACSIMILE
(203) 438-8420

Mr. Jamshed K. Madan
GEORGETOWN CONSULTING
GROUP, INC.
716 Danbury Road
Ridgefield, CT 06877

RE: GUAM PUC DOCKET 04-01
LEGALITY OF OBLIGATION IMPOSED ON GWA
BY GUAM PUBLIC LAW 27-29 TO PAY
SUPPLEMENTAL ANNUITIES AND INSURANCE
COSTS OF RETIREES OF PUAG AND GWA

Dear Mr. Madan:

The Guam Waterworks Authority ("GWA") has filed a petition with the Guam Public Utilities Commission ("PUC") for approval of an Interim Financial Plan, as required under Paragraphs 28 and 29 of the Stipulated Order for Preliminary Relief entered in U.S. District Court of Guam Civil Case No. 02-00035, and for rate relief necessitated by that financial plan. As part of the rate relief sought by it, GWA has requested that the PUC approve a 2.5% "legislative surcharge" to cover certain obligations that have been imposed on GWA by the Guam Legislature. You have requested our legal opinion as to the validity of the legislation and the enforceability of these obligations. You will address the broader ratemaking policy issues.

Background.

The Guam Legislature enacted Public Law 27-29, which approved the budget for the Government of Guam for Fiscal Year 2004. Chapter IV, Section 15(c) of PL 27-29 purports

To Mr. Jamshed K. Madan

Date February 27, 2004

Page 2

to impose on the various autonomous agencies of the Government of Guam, including GWA, the obligation to pay to the Government of Guam Retirement Fund an amount equal to the supplemental retirement annuities awarded to retirees of those agencies for FY04. In the case of GWA, this means the retirees from GWA as well as the retirees of its predecessor agency, the Public Utility Agency of Guam.

In addition to the supplemental retirement annuities, PL 27-29 imposes on GWA and the other autonomous agencies the obligation to pay the Government of Guam's share of payments for medical, dental and life insurance for the same retirees. PL 27-29:VI:15.

The supplemental annuities and insurance premium payments are unearned, unvested benefits of GovGuam retirees. They are an annual gift to such retirees that has historically been paid by the taxpayers of Guam from the Government of Guam General Fund. Due, however, to the financial problems of GovGuam, recent Legislatures have sought to shift some of the burden of these annual gifts to the Retirement Fund and to the autonomous agencies.¹ In the case of GWA and the other regulated utilities, the Legislature has essentially attempted to shift the burden onto the ratepayers. This is not an obligation of GWA; it is a voluntary obligation of the Government of Guam.

Analysis and Discussion.

In our opinion, there are significant legal questions as to the lawfulness of the attempt to shift the burden of the supplemental annuities and other retirement benefits from the taxpayers and the General Fund to the ratepayers.

The "legislative surcharge" would be in effect a tax, as opposed to a fee. The revenues generated would not be

¹ Lawsuits have been brought by members of the Retirement Fund challenging the requirement that the Retirement Fund pay such supplemental benefits from its own funds. Trial court decisions have been handed down prohibiting the Retirement Fund from making such payments unless it first receives funds to cover them from the autonomous agencies or the General Fund.

To Mr. Jamshed K. Madan

Date February 27, 2004

Page 3

used to offset the cost of the services being rendered by GWA to its ratepayers, but rather to pay obligations that have historically been funded by the General Fund from tax revenues. That is the classic test of a tax, as opposed to a fee. Neither GWA nor the PUC has the power to tax. If seen as a tax, there would be questions related to the whether the surcharge would comport with the requirements of the equal protection clause of the Fourteenth Amendment to the U.S. Constitution, made applicable to Guam by the Organic Act. See, Guam Power Authority v. Bishop of Guam, 383 F.Supp. 476 (D.Ct. Guam 1974). In the GPA case, it was held that placing on ordinary GPA ratepayers a burden that should be borne by the taxpayers was "arbitrary and capricious discrimination" that violated the Constitution and the Organic Act. I perceive no material difference. The obligations of taxpayers and ratepayers are not interchangeable.

In addition, the Organic Act requires that all taxes be "uniform." 48 U.S.C. §1423a. An across-the-board surcharge may satisfy that requirement, but I have not fully analyzed the issue.

In any event, if, in order to provide a source of revenue to fund the retirement benefits, the Guam Legislature wants to impose a tax on the customers of GWA, based on their use of the services provided by GWA, the Legislature itself must take this action. The Legislature cannot delegate to GWA (or the PUC) the power to tax.

Conclusion.

In my opinion, Georgetown should not recommend to the PUC that it approve GWA's request to impose this surcharge. It would be an unconstitutional imposition on GWA's ratepayers. It is not, however, within the power of the PUC to make such a legal determination. The PUC should not recognize the obligations imposed by that statute as a legitimate revenue requirement, and GWA should be ordered not to use any of its rate revenues to pay the supplemental retirement benefits. If necessary, GWA should initiate an appropriate legal challenge to PL 27-29 or defend any claim made by a retiree. According to the testimony submitted in

To Mr. Jamshed K. Madan

Date February 27, 2004

Page 4

this docket, GWA itself does not believe that the cost should be borne by GWA or its ratepayers, so such an order would be consistent with GWA's own view.

Very truly yours,

KLEMM, BLAIR, STERLING & JOHNSON
A Professional Corporation



WILLIAM J. BLAIR

G22\24931-90
G:\WORD97\OFFICE\WORDDOC\GCG\LTR\239-J MADAN (FAX)
RE GPA DOCKET 94-01 RE GWA ANNUITIES.DOC



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



FOCUSED MANAGEMENT AUDIT
OF DEPARTMENT OF PUBLIC
WORKS' SOLID WASTE MANAGEMENT
DIVISION

DOCKET 06-02

Administrative Order

Findings

By Order dated October 27, 2005 in this docket, the Guam Public Utilities Commission [PUC] authorized and directed its administrative law judge to undertake a management audit of the Solid Waste Division of the Department of Public Works [DPW], as required by Public Law 28-56. By its December 20, 2005 Order in Docket 05-09, PUC authorized DPW to retain a procurement advisor to assist DPW in procurements related to privatizing the management and operations of the Ordot landfill, the new landfill and the collection of residential solid waste. ALJ has recommended that the management audit be postponed until there is a clearer vision of which DPW solid waste management operations will be performed by private companies.

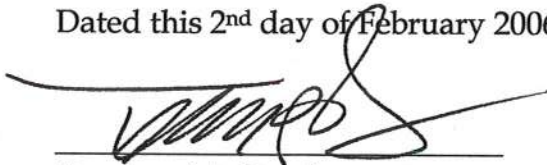
ALJ has also brought to PUC's attention that DPW has failed to pay regulatory fees, which have accrued since June 2005 and the FY06 Administrative Assessment, as required PUC order. PUC finds no excuse for this failure given that the DPW rate award, which it approved by its October 27, 2005 Order in Docket 05-9, has been restricted and cannot be expended without prior PUC approval. PUC concurs with ALJ's assessment that it would be imprudent for PUC to incur significant additional regulatory expenses until DPW brings its regulatory account with PUC current. Given the substantial agenda of important regulatory matters on the horizon [bond issue, bond related rate relief, Ordot and new landfill private management procurements] it is important for DPW to resolve whatever administrative problems with Department of Administration, which have obstructed the timely payment of these regulatory fees.

Order

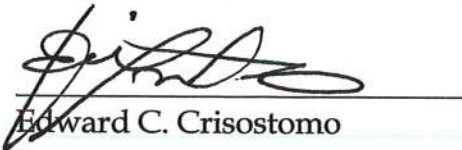
After due consideration of the above findings, for good cause shown and on motion duly made, seconded and carried by the affirmative vote of the undersigned commissioners, the Guam Public Utilities Commission **ORDERS THAT:**

1. ALJ is authorized to postpone the commencement of the DPW management audit pending further instructions from PUC.
2. Given the compressed timeline established by the *Federal Consent Decree* for DPW to procure private management for Ordot dump's operation and closure, PUC hereby delegates to ALJ the authority, upon the favorable recommendation of PUC's regulatory consultant, to authorize DPW to proceed with this procurement; provided, however, that the resulting contract shall require PUC review and approval before it is executed. In all other respects, the *DPW Contract Review Protocol*, as established by PUC Order dated October 27, 2005 shall apply to DPW solid waste procurements and obligations.
3. DPW is authorized to utilize the restricted rate revenues created by PUC's October 27, 2005 Rate Order in Docket 05-09 to pay for outstanding regulatory fees and assessments due PUC.

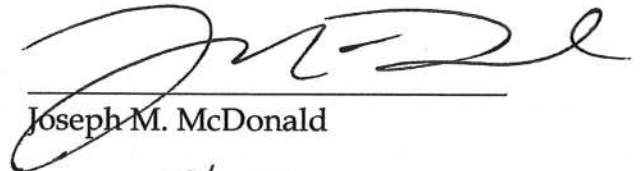
Dated this 2nd day of February 2006.



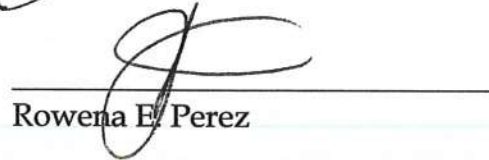
Terrence M. Brooks



Edward C. Crisostomo



Joseph M. McDonald



Rowena E. Perez

**PUBLIC UTILITIES COMMISSION
OF GUAM**

Terrence M. Brooks

Joseph M. McDonald
Edward C. Crisostomo
Rowena E. Perez

Suite 207, GCIC Building
Post Office Box 862
Hagatna, Guam 96932

Telephone: (671) 472-1907
Fax: (671) 472-1917
Email: info@guampuc.com

Harry M. Boertzel
Administrative Law Judge

Lourdes R. Palomo
Administrator

January 24, 2006

VIA ELECTRONIC FILE

Lawrence P. Perez, General Manager
Department of Public Works
542 North Marine Corps Drive
Tamuning, Guam 96913

Jamshed K. Madan, Principal
Georgetown Consulting Group, Inc.
716 Danbury RD.
Ridgefield, CT 06877

RE: January 23, 2006 DPW Regulatory Conference

Gentlemen:

This letter serves to confirm the decisions, which were made at our January 23, 2006 regulatory conference.

1. DPW will promptly file with PUC, with copy to Georgetown [GCG]: a] the BVA contract, when fully executed; b] the updated bond schedule; c] the updated Consent Decree schedule; and d] the revised FY06 solid waste budget.
2. GCG will prepare a financial report format, which DPW will use to file the quarterly reports required by section 6 of PUC's October 27, 2005 Rate Order.
3. DPW has requested that GCG conduct the analysis and prepare the evidentiary record to document and support the next rate increase. This rate case will be driven by costs related to the procurement advisor, the Ordot procurement, the impending bond issue and projection adjustments. GCG will not proceed with this work until: a] DPW gives the green light; and b] DPW has brought its account with PUC current. For

planning purposes, DPW should assume that this regulatory work [GCG analysis, public hearings and PUC rate order] will require 60 to 90 days.

4. Given the compressed time frame for the Ordot procurement, I will recommend to PUC that I be authorized, upon a favorable GCG report, to authorize DPW to proceed with the procurement, subject to PUC review and approval of the contract prior to its execution. We will see if this review protocol should be adopted for the other BVA work products.
5. GCG will be included in the GEDCA bond planning conference calls. This will enable PUC to keep track of developments regarding the issuance. GCG will also collaborate with DPW in preparing the documentation, which is necessary to review and approve the bonds and the use of bond proceeds.
6. As noted in paragraph 3 above, PUC is concerned that its regulatory fees, which date back to June 2005 have not been paid. Section seven of PUC's October 27, 2005 Rate Order restricts the rate increase revenues and prohibits their use without prior PUC approval. At its February 2, 2006 business meeting, PUC will authorize DPW to use these restricted funds to pay the outstanding regulatory fees. GCG will not be authorized to undertake the work assigned to it by this letter until these fees are brought current.
7. Further discussion of the management audit is tabled until the April 2006 regulatory session, given: a) outstanding regulatory fees; and b) the broad BVA scope of work, which will likely narrow the management work scope.

Please let me know if you have any questions.

Cordially,



Harry M. Boertzel

Agreement

This agreement is entered into effective December 11, 2002 between the Guam Public Utilities Commission [Commission], an autonomous corporation of the government of Guam and Lou Palomo [Palomo], whose mailing address is Box 399, Hagatna, Guam 96932.



Whereas, 12 GCA 12002 empowers the Commission to employ administrative staff personnel for the conduct of Commission business;

Whereas, Palomo desires to be employed by the Commission to fill the position of administrator and Commission, after reviewing Palomo's qualifications and experience, desires to employ her for this position;

Now therefore, in consideration of the foregoing and for other good and valuable consideration, the adequacy of which is acknowledged by both parties, they agree as follows:

1. Service.

The Commission hereby retains Palomo as an independent contractor, to serve as its administrator. Under the direction of the Commission, Palomo will operate the Commission's office during its office hours [8:00 a.m. - 5:00 p.m. Monday through Friday, excluding government of Guam holidays] and such additional hours as may be required to attend to Commission business. Palomo's duties, which she will undertake with her best efforts, will include: a) the receipt and filing of documents submitted to the Commission; b) operation and maintenance of the Commission office; c) accounting and book keeping; d) administrative and secretarial service to the Commission, its administrative law judge [ALJ] and its regulatory consultants; e) coordination of Commission meetings and hearings; and f) such other duties as may be assigned to her by the Commission or its ALJ.

2. Term.

The term of this agreement will be for one year and it may be extended upon the mutual agreement of the parties for additional one-year periods. Palomo shall serve at the Commission's pleasure and may be terminated at its will upon 30 days prior written notice; provided, however, that during the first 120 days of this contract, Palomo will serve in a probationary status and may be terminated at will upon seven day prior written notice. In the event Palomo shall breach her duties under this agreement then the Commission may on notice immediately terminate this contract.

PUBLIC UTILITIES COMMISSION
OF GUAM

Vice Speaker
RECEIVED
02/07/06
at 2:47 p.m.

Terrence M. Brooks
Joseph M. McDonald
Edward C. Crisostomo
Rowena E. Perez

Suite 207, GCIC Building
Post Office Box 862
Hagatna, Guam 96932
Telephone: (671) 472-1907
Fax: (671) 472-1917
Email: info@guampuc.com

Harry M. Boertzel
Administrative Law Judge
Lourdes R. Palomo
Administrator

February 2, 2006

VIA HAND DELIVERY

The Honorable Felix P. Camacho
Governor of Guam
Post Office Box 2950
Hagåtña, Guam 96932

The Honorable Mark Forbes
Speaker, 28th Guam Legislature
155 Hesler Place
Hagåtña, Guam 96910

RE: **FY05 Annual Report**

Office of the Speaker

MARK FORBES

Date: 02/07/06
Time: 2:40
Rec'd by: [Signature]
Print Name: [Signature]



Gentlemen:

In accordance with the mandate of 12 GCA 12003, the Guam Public Utilities Commission PUC] respectfully submits its annual report for fiscal year 2005. In November 2005, PUC launched its website [guampuc.com], which is intended to make the regulatory process transparent and to provide the public with access to the regulatory process as it occurs. The site also contains a reference center, which contains PUC orders and business minutes since 2000.

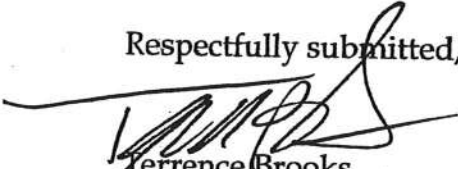
Attachment A summarizes the significant regulatory actions taken by PUC in FY05. Further information about these actions can be obtained from the referenced documents, which are available on PUC's website.

The only legislative matter, which PUC would like to call to your attention, is the government of Guam's appropriation and use of E911 surcharge revenues for purposes other than support of the E911 system. Mr. Blair's October 17, 2005 letter on this subject is enclosed for your information.

PUC currently only has four sitting commissioners and three vacancies [open position categories are CPA; telephone, water or wastewater expertise and community representative]. Commissioner Joe McDonald's term expires on April 18 2006. He

has expressed interest in being reappointed. 12 GCA 12006 provides that PUC cannot act without the affirmative vote of 4 commissioners. Given the important regulatory agenda before PUC this year [*DPW landfill bonding, rate relief and privatization procurement; GWA final financial plan; GPA semi-annual LEAC fuel expense adjustments; and a spectrum of telecommunications issues*] it is essential that additional commissioners be promptly appointed. Governor, I will contact your office to discuss this matter.

Respectfully submitted,



Terrence Brooks
Chairman

Attachment A
Significant Regulatory Actions - FY05

Date	Docket	Action
Guam Waterworks Authority 10/14/04	04-1	Approval of financing for system wide water meter replacement.
10/14/04	04-1	Order: a] approving 6.5% rate increase with revenues restricted in Rate Stabilization Trust Account; and b] increasing Supplemental Annuities surcharge to fund retiree benefits mandated by P.L. 27-106.
9/23/05	98-1	Order authorizing GWA limited access to Rate Stabilization Trust Account and authorizing GWA to borrow \$4.7 million from GPA.
Guam Power Authority 11/5/04	94-4	Order authorizing tax-exempt a commercial paper program in amount not to exceed \$30 million to fund short term cash requirements.
4/22/05	02-4	Order establishing generation performance standards and terms for GPA recovery of deferred fuel expenses.
7/27/05	02-4	Interim LEAC adjustment order increasing fuel charges in response to increased fuel expenses.
Telecommunications 2/1/05	05-3	Order prohibiting TeleGuam from assessing its local exchange customers a charge to recover gross receipts tax liability.
4/22/05	05-3	Declaratory ruling that PUC approval required for certificate of authority transfer.
4/22/05	05-3	Order approving TeleGuam's general exchange tariff.
4/22/05	05-1	Order adopting interim certification and confidentiality rules.
7/25/05	05-3	Order authorizing TeleGuam to transfer its certificate of authority to GTA Telecom.
7/27/05	05-3	Order establishing verification and certification procedures for eligible telecommunications carriers.
7/27/05	05-1	Order adopting rules governing certificates of authority, payphone service, protection of confidential information and regulatory fees.

LAW OFFICES
KLEMM, BLAIR, STERLING & JOHNSON
A PROFESSIONAL CORPORATION

WILLIAM J. BLAIR
THOMAS C. STERLING
RICHARD L. JOHNSON
THOMAS C. MOODY, III
JEHAN'AD G. MARTINEZ
VINCENT E. LEON GUERRERO

SUITE 1008 PACIFIC NEWS BUILDING
238 ARCHBISHOP F.C. FLORES STREET
HAGÁTÑA, GUAM 96910-5205
TELEPHONE: (671) 477-7857; FACSIMILE (671) 472-4290
WRITER'S E-MAIL: wjblair@kbsjlaw.com

JAMES F. BALDWIN
OF COUNSEL
J. BRADLEY KLEMM

October 17, 2005

VIA FACSIMILE\HAND DELIVERY
(671) 472-1917

Harry M. Boertzel, Esq.
Administrative Law Judge
PUBLIC UTILITIES COMMISSION OF GUAM
Suite 207, GCIC Building
414 West Soledad Avenue
Hagåtña, Guam 96932

RE: USE OF E911 SURCHARGE REVENUES

Dear Harry:

This is in response to your request that I provide a legal memorandum regarding certain provisions of the GovGuam FY06 budget bill, Bill 114 as enacted into law as Guam PL 28-28.

The Guam PUC, pursuant to PL 25-55, the PUC was mandated by the Guam Legislature to establish a monthly surcharge to be imposed on local exchange telephone and CMRS customers. The stated purpose of the surcharge is to "fund the just and reasonable expenses of operating and maintaining the '911' system" operated by the Guam Fire Department. PL 25-55:2(d). The PUC subsequently established a monthly surcharge in the amount of \$1.00 per month, the maximum amount permitted by the statute.

Revenues derived from the surcharge are required to be deposited into a special fund that was to be created separate and apart from all other funds of the Government of Guam called the "Enhanced 911 Emergency Reporting System Fund" (the "E911 Fund"). PL 25-55:4.

The revenues from the surcharge imposed on telephone and CMRS customers have been collected by the various collection agents and remitted periodically to the Department of Administration where they have presumably been deposited into the E911 Fund, all as required by PL 25-55 and the implementing PUC orders.



To Harry M. Boertzel, Esq.

Date October 17, 2005

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The GovGuam budget bill was passed into law on September 30, 2005, the last possible date. Certain provisions of that statute, which did not receive, to my knowledge, the benefit of a public hearing, raise questions whether the surcharge revenues are being used as intended.

Specifically, in part II of Chapter II of PL 28-68, the Legislature provided that the September 30, 1994 balance in the E911 Fund (\$1,574,228), together with the balances in several other separate funds, should be transferred to a new fund created by the budget bill called the "Unreserved Fund Balance Fund." PL 28-68:II:II:2:6 and 7. A portion of the funds in the E911 Fund are thus to be commingled with other funds derived from other fees, charges and, perhaps, taxes. (I have not studied the specifics of all the other funds to be transferred to the Unreserved Fund Balance Fund.)

In addition to requiring that the FY04 balance in the E911 Fund be transferred and commingled in the Unreserved Fund Balance Fund, the budget bill appropriates the transferred funds to purposes other than funding the 911 system. \$67,216 is appropriated to the Guam Police Department to support its general operations; \$602,378 is appropriated to support GFD general operations not related to the 911 system; a total of over \$755,000 is appropriated to GFD to support its Advanced Life Support System; \$217,104 is appropriated to GFD for equipment and supplies not related to the 911 system; and \$125,176 is appropriated to the Department of Corrections to support its operations. Additional appropriations are made from the Unreserved Fund Balance Fund for community health centers, DPW operations and to the village mayors for maintenance of sports facilities.

The budget bill also appropriates the sum of \$2,082,787 from the E911 Fund to GFD for personnel and operations for the 911 system. It may be assumed that this amount reflected the FY05 year end balance in the E911 Fund together with projected surcharge revenues for FY06. However, I do not have that information.

The diversion of surcharge revenues to uses other than supporting the operations of the 911 system raises the issue as to whether the surcharge should be viewed as a "fee" or a "tax" and, if it should be viewed as a tax, whether the tax is being uniformly applied. The ratepayers who are required to pay the E911 surcharge are supposedly paying only the just and reasonable costs of operating the 911 system. That makes it look resemble a fee. If the surcharge revenues are being used to subsidize other unrelated government operations, then the surcharge begins to take on the characteristics of a tax, not

To Harry M. Boertzel, Esq.

Date October 17, 2005

Page 3

a fee. As such, the "fundamental constitutional constraints" on the imposition of taxes become implicated, including the uniformity requirement. If the surcharge is a tax, it is a tax imposed only on telephone and CMRS customers, not on other classes of taxpayers.

Previously, I looked the question of how the E911 surcharge should be viewed in the context of whether or not the federal government was exempt from paying it or not. I found a number of reports and decisions issued by the General Accounting Office regarding this issue. The GAO has uniformly found that a 911 surcharge structured like Guam's is a tax, not a fee. See, e.g., GAO decisions, B-288161, dated April 6, 2002, and B-302230, dated December 30, 2003. Both are easily accessible on the GAO's website, www.gao.gov. These cases arose in the District of Columbia. There are a number of other, earlier decisions related to various state charges. See in particular, GAO decision B-301126, dated October 22, 2003, which involved a statute remarkably similar to Guam's. In that matter, the GAO determined that the surcharge was a tax (and the federal government therefore exempt from paying it).

On the other hand, the surcharge has some of the characteristics of a regulatory fee. It is imposed on ratepayers to cover the cost of a service provided to them by GFD. See, e.g., Carrillo v. City of Ocean Shores, 94 P.3d 961 (Wash.App. 2004), applying Washington law.

Local governments have the authority to require payment of fees that are "akin to charges for services rendered." [Citation omitted.] But such payments must be deposited into a segregated fund directly related either to the provision of a service received by the entities paying the fees or to alleviating a burden to which the entities paying the fee contribute. [Citations omitted.] These charges, which Washington courts collectively refer to as "regulatory fees," include a wide assortment of utility customer fees, utility connection fees, garbage collection fees, local storm water facility fees, user fees, permit fees, parking fees, registration fees, filing fees, and license fees. [Citation omitted.] These fees are not taxes and are exempt from fundamental constitutional constraints on governmental taxation authority, including the tax uniformity requirement. [Citation omitted.]

To Harry M. Boertzel, Esq.

Date October 17, 2005


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94 P.3d at 966, emphasis in original.¹

At this point we do not have performed sufficient research upon which to base a firm opinion on the legal issues. There are also some factual uncertainties. However, based solely on the provisions of the budget bill it would appear that there was an unused surplus in the E911 Fund. This raises the question of whether the amount of the surcharge is greater than necessary to fund the operation of the 911 system, i.e. is the level of the surcharge "just and reasonable." Under PL 25-55, the PUC has the authority, at any time, to examine the adequacy of the surcharge. PL 25-55:2(d). It would be appropriate, in my view, for the PUC to initiate such an examination and, depending on the results of that examination, take appropriate action.²

Very truly yours,

KLEMM, BLAIR, STERLING & JOHNSON
A Professional Corporation


WILLIAM J. BLAIR

cc: Mr. Jamshed K. Madan (via fax)

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(FAX-HD) 911 SURCHARGE.DOC

¹ You can contrast the Legislature's imposition of the obligation on GWA and GPA to pay supplemental retirement annuities for certain retirees, which obligation is renewed by PL 28-28. That obligation is passed on to the ratepayers, even though it is in no way related to the cost of service. There can be no argument that, from the ratepayers' perspective, this obligation is a fee, not a tax. The Attorney General's office has issued an unpersuasive opinion that imposing onto GWA and GPA the obligation to pay the supplemental benefits is lawful. That opinion does not even discuss, much less analyze, the legal distinction between a tax and a fee. Instead, the opinion relies entirely on an inapposite U.S. Supreme Court decision dealing with impairment of contract issues. The opinion is unpersuasive.

² It is possible, if not probable, that the "surplus" in the E911 Fund reflected unreimbursed expenses paid from the General Fund, and is, therefore, ephemeral. Based on the limited formation available to it, GCG has concluded that the E911 surcharge are insufficient to fund fully the E911 system.

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



AMENDED ADMINISTRATIVE ORDER

This Order amends and supersedes the Administrative Order adopted by the Guam Public Utilities Commission [PUC] on October 27, 2005, which was adopted in furtherance of PUC's mission of making the regulatory process transparent to utility ratepayers and is now expanded to establish administrative processes, which will facilitate the orderly and expeditious administration of PUC regulatory proceedings.

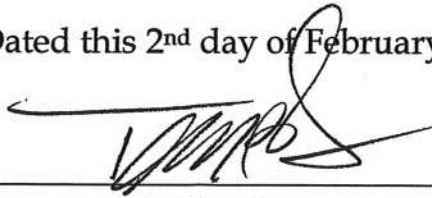
In furtherance of the above purposes, in the discharge of its statutory authority and for good cause shown, on motion duly made, seconded and carried by the undersigned commissioners, the Guam Public Utilities Commission **HEREBY ORDERS THAT:**

1. Commencing on the date of this Order, any document, which is filed for record in a regulatory docket shall be filed in hard copy [via mail, fax or delivery] and in electronic form via email to info@guampuc.com.
2. On or before December 1, 2005, Guam Power Authority, Guam Waterworks Authority and GTA Telecom LLC shall post and maintain on their website their current tariff, in form approved by PUC.
3. Petitions by regulated utilities for regulatory relief shall: a] be in pleading form; b] contain specific requests for relief; c] be signed by either counsel or the corporate official, who is responsible for regulatory matters; and d] be accompanied by evidentiary support, which is consistent with applicable PUC standards, orders and rules.
4. PUC's administrative law judge, under his authority to administer PUC's regulatory proceedings before PUC, is empowered and authorized to issue both interpretative rulings of and substantive rulings under orders and rules, which have been adopted by PUC.

ATTACHMENT E

5. A copy of this Administrative Order shall be posted on PUC's website. The October Order shall be removed from the website.

Dated this 2nd day of February 2006.



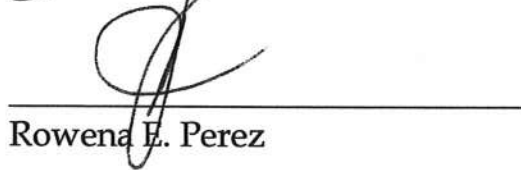
Terrence M. Brooks



Joseph M. McDonald



Edward C. Crisostomo



Rowena E. Perez

**PUBLIC UTILITIES COMMISSION
OF GUAM**

Terrence M. Brooks

Joseph M. McDonald
Edward C. Crisostomo
Rowena E. Perez

Suite 207, GCIC Building
Post Office Box 862
Hagatna, Guam 96932

Telephone: (671) 472-1907
Fax: (671) 472-1917
Email: info@guampuc.com

Harry M. Boertzel
Administrative Law Judge

Lourdes R. Palomo
Administrator

January 31, 2006

VIA FACSIMILE TRANSMISSION

Cesar Cabot, Chairman
Guam Bar Ethics Committee
BankPacific Bulding, 2nd Floor
825 S. Marine Corps Drive
Tamuning, Guam 96913

Alberto E. Tolentino
Ethics Prosecutor
Supreme Court of Guam
Suite 300, Guam Judicial Center
120 West O'Brien Drive

Gentlemen:

It is my understanding that the Guam Bar Ethics Committee currently has under review a proposed Administrative Order, by which the Guam Public Utilities Commission [PUC] would confirm the statutory framework, which governs who may appear and represent another person in PUC's regulatory proceedings. It is my understanding from Bill Blair, who serves as counsel for PUC's regulatory consultant, that Mr. Tolentino is also examining the proposed order. For your information, I am enclosing a revised draft of the order.

In order for PUC to have the benefit of the Committee and Mr. Tolentino's reaction to the proposed order, I am extending the comment period until March 3, 2006. Of particular interest to PUC is the question of whether Guam Rules of Professional Conduct Rule 5.5(c)(1) on multi-jurisdictional practice excuses off-island counsel from the requirement under 7 GCA section 9A215(c)(6) to obtain a *pro hac vice* certificate as a condition for practicing before PUC. Off-island counsel, with expertise in telecommunications law, regularly appear before PUC in regulatory dockets on this subject.

Thank you for your assistance.

Cordially,



Harry M. Boertzel

cc: PUC commissioners
Bill Blair, Esq.
Timothy Farrell, Esq.
Fred Horecky, Esq.

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

PRACTICE IN REGULATORY PROCEEDINGS BEFORE PUC

GENERAL DOCKET

Administrative Order [Proposed]

The Guam Public Utilities Commission [PUC] finds it necessary and appropriate to review the statutory framework, which governs who may appear and represent another person [hereinafter referred to as "practice"] in PUC regulatory proceedings. 7 Guam Code Annotated [GCA] section 9A106 provides that it is unlawful for any person to practice law unless he/she is regularly licensed and authorized to do so in Guam. 7 GCA section 9A215 (b)(3) provides that representing or advising another person as to any action before any agency, board or administrative tribunal constitutes the practice of law. PUC finds that it is an agency, board or administrative tribunal within the meaning of this section and that its regulatory proceedings fall within the meaning of the term "action" in the section.

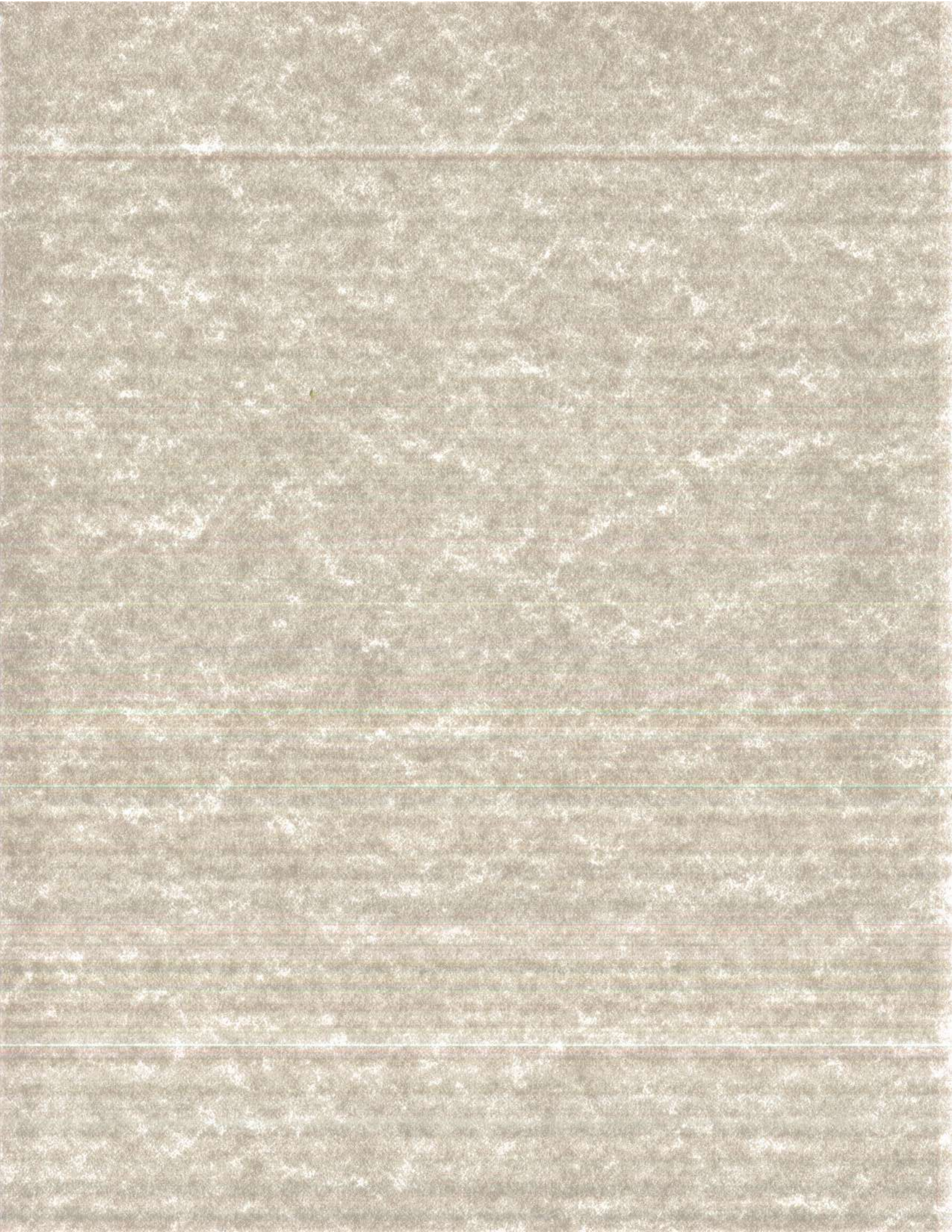
7 GCA section 9A215(c) establishes three relevant exceptions to the rule that only persons who are regularly licensed and authorized to practice law in Guam may practice before PUC: 1] under section 9A215(c)(6), for an attorney who is admitted to practice in another state *and* who is associated with an attorney admitted to practice in Guam *and* who has obtained *pro hac vice* admission from the Superior Court of Guam; 2] under section 9A215(c)(12) for a government employee or official to practice before PUC as part of the person's official duties; and 3] under section 9A215(c)(13/14), for a bona fide full time employee, officer or director of a corporation who represents the corporation before PUC.

PUC finds that practice before it must conform to the above statutory requirements. Accordingly, any person, who is not a licensed Guam attorney shall, upon making an appearance in any regulatory

proceeding before PUC, certify his/her eligibility to practice before PUC under one of the exceptions stated above. This Administrative Order does not affect a person's right to appear before PUC on his/her own behalf.

Dated this __ day of _____ 2006.

Signature blocks



GUAM PUBLIC UTILITIES COMMISSION
SPECIAL MEETING
APRIL 20, 2006
SUITE 206 GCIC BUILDING
414 W. SOLEDAD AVE. HAGATNA, GUAM



MINUTES

A special meeting of the Guam Public Utilities Commission [PUC] was convened at 6:00 p.m. on April 20, 2006 pursuant to due and lawful notice. Commissioners McDonald, Perez, Crisostomo, Johnson [*acting capacity*] and Brooks were in attendance. The following matters were considered at the meeting pursuant to the agenda made *Attachment A*.

1. Approval of minutes.

After review and discussion of the minutes of the February 2, 2006 meeting and on motion duly made, seconded and unanimously carried, PUC *resolved* to approve the minutes.

2. Guam Power Authority.

a. A proposed order was reviewed by which the LEAC factor would be set for the period April 20, 2006 until on or after October 1, 2006 when a new factor is established. By report dated March 28, 2006, Georgetown Consulting Group [GCG] supports GPA's petition that the factor be set at \$0.098589 per kWh. This increase is driven by higher forecasted fuel prices and GPA's right to recover, under earlier PUC orders, booked deferred fuel costs. After review of GPA's petitions, the GCG report, in consultation with its administrative law judge [ALJ], for good cause shown and on motion duly made, seconded and unanimously carried, PUC *resolved* to adopt the order made *Attachment B*.

b. PUC next considered GCG reports dated April 12 and 18, 2006, which recommend PUC approval of three GPA procurements pursuant to the *Contract Review Protocol*: 1] a fuel hedging program; 2] an extension of its property and casualty insurance policy; and 3] an increase in its line of credit ceiling from \$10 million to \$15 million dollars. After review of the GCG reports, for good cause shown, on motion duly made, seconded and unanimously carried, PUC *resolved* to approve the procurements, *provided that*: 1] in the event the cost of the insurance extension exceeds 12% of the existing cost, then GPA shall petition PUC for review and approval of this increased expense; and 2] an

material change in the hedging program, as summarized in GCG's April 12, 2006 letter, shall require prior PUC approval.

3. Department of Public Works

ALJ's April 20, 2006 memo summarized regulatory challenges associated with DPW's pursuit of revenue bonding to fund its compliance with the Federal Consent Decree. After discussion and on motion duly made, seconded and unanimously carried, the commissioners *resolved* to adopt the five recommendations made in ALJ's memo and further authorized ALJ, in consultation with Chairman Brooks, to implement them.

4. Telecommunications.

The commissioners reviewed and discussed the following documents, which were provided for information purposes: a] PUC's FY05 911 annual report; b] GCG and GTA's April 12, 2006 letter, which recommends a protocol for the first audited report required under section 6.10(c) of the Asset Purchase Agreement; and c] ALJ's scheduling order in Docket 05-11 [GTA-PDS arbitration proceeding].

ALJ next submitted a memorandum and proposed order by which PUC would act on five GTA proposed amendments to its general exchange tariff. After discussion, for good cause shown and on motion duly made, seconded and unanimously carried, the commissioners *resolved* to adopt the order made *Attachment C*.

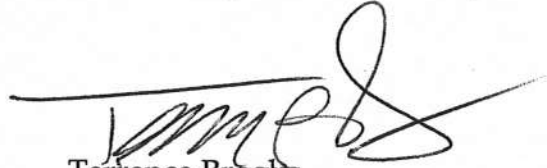
5. Administrative matters.

The commissioners considered an Administrative Order, which establishes the legal framework under which persons are authorized to represent others in PUC regulatory proceedings. The order has previously been noticed for public comment. The Guam Bar Ethics Committee and Supreme Court's prosecuting attorney support the order. After discussion, the commissioners unanimously *resolved* to adopt the order made *Attachment D*.

As the final agenda item, the commissioners reviewed ALJ's April 14, 2006 letter to Chairman Brooks, which confirms his willingness to continue service to PUC for the balance of the chairman's term of office. Georgetown Consulting Group has also expressed a desire to continue to serve PUC for this period. After discussion and on motion duly made, seconded and unanimously carried, the commissioners resolved: a] to amend both ALJ and Georgetown's engagement

contracts to extend their terms until June 27, 2011; and b] to authorize Chairman Brooks to sign the contract amendments on PUC's behalf.

There being no further business the meeting was adjourned.

A handwritten signature in black ink, appearing to read 'T. Brooks', written over a horizontal line.

Terrence Brooks
Chairman

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

**SPECIAL BUSINESS MEETING
SUITE 206 GCIC BUILDING
414 W. SOLEDAD AVE. HAGATNA, GUAM
6:00 P.M. APRIL 20, 2006**

AGENDA (Amended)

1. Approval of the minutes of PUC's February 2, 2006 special meeting.
2. Guam Power Authority:
 - a. LEAC Order
 - b. GPA procurements:
 - Fuel hedging program
 - Insurance contract extension
 - Fuel line of credit
3. Department of Public Works – PUC resolutions regarding revenue Bond financing.
4. Telecommunications:
 - a. PUC FY05 911 Annual Report
 - b. GTA tariff amendments:
 - Dry copper – GTA / GCG stipulation
 - FX tariff amendment
 - DSL tariff
 - Lifeline Link-up tariff
 - c. GTA annual audited report – GTA /GCG 4/12/06 letter.
 - d. Docket 06-4 [PDS/GTA interconnection agreement]. Status report.
5. Administrative matters:
 - a. Administrative order – practice before PUC.
 - b. Staff engagement agreements – extension.
6. Other business.

ATTACHMENT A

PUBLIC UTILITIES COMMISSION
SPECIAL MEETING
FEBRUARY 2, 2006
SUITE 206 GCIC BUILDING
414 W. SOLEDAD AVE. HAGATNA, GUAM



MINUTES

A special meeting of the Guam Public Utilities Commission was convened at 6:00 p.m. on February 2, 2006 pursuant to due and lawful notice. Commissioners McDonald, Perez, Crisostomo and Brooks were in attendance. The following matters were considered at the meeting pursuant to the agenda made *Attachment A*.

1. Approval of minutes.

After review and discussion of the minutes of the October 27, 2005 and the December 20, 2005 special meetings and on motion duly made, seconded and unanimously carried, the Commission *resolved* to approve them.

2. Guam Power Authority.

The Commission reviewed a proposed *Procurement Order* by which it would: a) ratify three GPA procurements, for which GPA failed to request and obtain PUC approval in accordance with the *Contract Review Protocol* [Protocol]; b) establish GPA's FY06 CIP ceiling; c) approve deferred payment agreements between GPA and the private managers of the Cabras baseload plants; and d) amend the Protocol to adopt the common review standard agreed to by the Consolidated Commission on Utilities. After discussion and on motion duly made, seconded and unanimously carried, the Commission *resolved* to adopt the order made *Attachment B*.

3. Guam Waterworks Authority.

ALJ presented his January 31, 2006 report and a proposed *FY06 Rate Order*, which addresses GWA's ongoing development of rates necessary to fund its revenue bond and Consent Decree obligations. After careful review and discussion of the January 25, 2006 stipulation between GWA and Georgetown and the proposed order, including each determination contained therein, on motion duly made, seconded and unanimously carried, the Commission *resolved* to adopt the Rate Order made *Attachment C*.

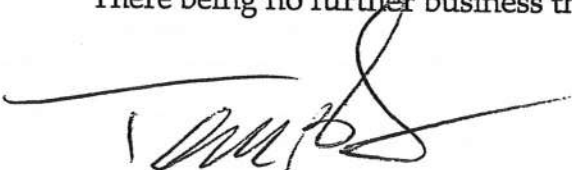
4. Department of Public Works.

In furtherance of ALJ's January 24, 2006 DPW conference report, the Commissioners considered a proposed Administrative Order, which would authorize ALJ: a] to postpone the DPW management audit; and b] to approve the Ordot privatization procurement. The order also directs DPW to use restricted rate revenues to pay for outstanding regulatory fees. After discussion, on motion duly made, seconded and unanimously carried the Commission resolved to adopt the Order made *Attachment D*.

5. Administration.

On motion duly made, seconded and carried by unanimous vote, the Commission resolved that: a] its administrator's contract should be extended for an additional twelve month period; b] the Commission's FY05 report should be approved; and c] its October 27, 2005 Administrative Order [regulatory filings and transparency] should be amended by Order made *Attachment E*.

There being no further business the meeting was adjourned.



Terrence Brooks
Chairman

GEORGETOWN CONSULTING GROUP, INC.

716 DANBURY RD.
RIDGEFIELD, CT. 06877

Jamshed K. Madan
Michael D. Dirmeier



Telephone (203) 431-0231
Facsimile (203) 438-8420
jmadan@snet.net

Edward R. Margerison
Jean Dorrell

March 28, 2006

Harry Boertzel, Esq. ALJ
The Guam Public Utilities Commission
Suite 207, GCIC Building
Hagatna, Guam 96932



Re: GPA LEAC and Deferred Fuel Costs Dockets 02-04

Dear Harry,

This letter is in response to Guam Power Authority's ("GPA" or "Authority") February 15, 2006 filing for fuel cost recovery. In its filing, GPA is requesting that the factor ("fuel cost recovery" or "LEAC" factor) that was approved by the Public Utilities Commission ("PUC" or "Commission") on October 27, 2005 of \$0.08892¹ per kWh for its civilian customers be increased to \$0.098589 per kWh for the six months period ending September 30, 2006. As you will recall, GPA asked for and received a large increase (approximately 8% on total bill) resulting from an expedited request before the Commission in August 2005. GPA requested and the PUC granted that the LEAC factor implemented in August 2005 stay unchanged for the period October 2005 through March 2006. GCG supported GPA's expedited request, since we believed that this increase was warranted under the provisions of the PUC fuel cost recovery protocol which allow GPA to file interim rate requests on an expedited basis should the under-recovery balance exceed \$2 million.

Overall Summary

The requested increase in the LEAC factor would result in an additional overall increase of 6.3% in the total bill of a residential customer using 1,000 kWh per month beginning April 2006. This increase is a result of an increase in the LEAC factor of 10.9%. The requested increase is a function of higher forecasted prices for the next LEAC period ending September 2006 than was forecast for establishing the factor for the current period ending March 2006, and GPA's request for recovery of a portion of the deferred fuel costs ("deferred fuel costs" or "under-recovery") that are on GPA's books.

¹ The GPA rates are to the sixth decimal place. The current charge fuel recovery charge is \$0.088919 per kWh.

Harry M. Boertzel, ALJ
March 28, 2006

On a positive note, the recent results of operations for GPA production have shown a marked increase in the use of the base load units requiring the less expensive Number 6 oil. GPA is forecasting that this high level of unit efficiency will continue through September 2006 and is forecasting that about 99% of the production for the upcoming period comes from the lower cost units. As mentioned before, this is a remarkable turnaround of operations compared with pre CCU operations and provides for considerable fuel savings for GPA's customers.

The following table summarizes GPA's calculation of the requested LEAC factor and the details are attached to this report in **Exhibit A2**, Schedule 1.²

Table 1
GPA Calculation of Fuel Factor

	<u>(\$000)</u>
Cost of Number 6 oil	\$ 74,946
Cost of Number 2 oil	1,823
Other Costs	<u>3,360</u>
TOTAL Costs	\$ 80,128
Civilian Percentage	78.2%
Civilian Costs	\$ 62,690
Deferred Fuel Costs	<u>2,071</u>
Total Cost for Recovery	\$ 64,761
Sales (mWh)	656,874
Fuel Factor (\$/kWh)	\$ 0.098589

Recommendations

As a result of our review of the information provided by GPA, we recommend that:

- The PUC approve an increase in the current fuel cost recovery factor of \$0.088918 per kWh to \$0.098959 through September 30, 2006.
- GPA closely monitor the balance of deferred fuel costs and if the deferred fuel balance is forecasted to be \$2 million more than \$3.2 million (as currently projected for September 30, 2006) GPA should notify the PUC..

² The schedule derives the factor using mWh. The factor applied to customers' bills will be on a kWh basis.

- GPA make transparent all future changes in the cost items that it seeks to recover through the LEAC that are not currently contained in the fuel cost recovery charge and to affirmatively state the amount(s) and reasons that these “new” costs should be included. The PUC should not permit GPA to include interest expenses and commitment fees associated with \$20 million of Taxable Commercial Paper into the cost of fuel (approximately \$900 thousand, total civilian and Navy) which we believe would fall into this category of a change requested that was not disclosed as a “new” cost.
- The PUC should permit recovery of the fuel line testing expense that will be incurred by GPA as a result of its contract with Shell in this LEAC period as well as the minor costs associated with Platt’s Oilgram™ subscription fees, diesel delivery fees, pump rentals and hauling expenses associated with the diesels units.
- GPA files for a revision in its fuel cost recovery factor for the six-month period beginning October 1, 2006 and that this filing be received by the Commission no later than August 15, 2006. This filing should also show the amount of the remaining balance of the stipulated deferred fuel that is subject to the benchmark test for which GPA seeks recovery.
- GPA should file with the PUC on a quarterly basis a summary of the line losses incurred on its system and provide an explanation of the trend of these levels of losses and the target and timeline or completion of its loss reduction program. GPA should segregate where possible the losses into categories, i.e. meter inaccuracies, meter reading problems, unrecorded sales, diversion, etc. GPA should demonstrate that the program is designed to bring losses to their targeted levels in as efficient a manner as possible so as to minimize costs to its customers. In the next LEAC filing GPA should be required to show that the implementation of the line loss program can not be accelerated. If the program can be accelerated GPA should project the anticipated savings from accelerating implementing the line loss program. PUC should evaluate and consider providing an incentive to GPA to accelerate the program and approval of any incentive should be conditioned on the evaluation of the implementation of the program to maximize ratepayer savings. Reducing the level of losses from their current levels to the target identified by GPA would result in \$5 million in annual fuel savings from current levels as well as providing additional base revenues to be applied to costs other than fuel.

We have just received a filing from GPA on the date that we are filing this report. This filing contains information required by the deferred fuel cost recovery stipulation as well as information regarding line losses and a protocol for a fuel hedging program. We have not had the time to review these documents and will prepare a separate response with observations and recommendations.

The following discussion highlights the individual components of the LEAC and our review that results in the above recommendations.

Deferred Fuel and Prior PUC Orders

As you are aware the under-recovery of fuel costs has been an issue raised by GCG on several occasions in the past. The reason for highlighting the under-recovery of fuel in the past was the fact that much of the under-recovery of fuel costs was attributable to malfunctions and outages of the lower cost units requiring the less expensive Number 6 oil, thus requiring heavy reliance on the less cost-effective units that burn the more expensive Number 2 oil. At one point in time, the under-recovery balance was approximately \$13 million in spite of passing through millions of dollars of fuel costs associated with the costs of using more costly oil and less efficient generators. Rather than entering protracted hearings regarding possible mismanagement of GPA maintenance of the more cost-efficient units, we were directed by the ALJ to see if we could come to some agreement that would avoid protracted and expensive prudence hearings.

Through agreement of the parties and with the approval of the PUC, GPA was permitted to recover approximately ½ of that balance (\$6 million) over three years, without further investigation. We are now in the third and final year of this allowance and full recovery of the \$6 million as approved by the PUC will occur by September 30, 2006.

Resolution of recovery of the remaining \$7 million of the deferred fuel balance was the subject of many discussions. Through subsequent stipulation and PUC approval, a method for full recovery of the additional \$7 million of deferred fuel has been established and approved. In simple terms, if GPA meets an efficiency standard in excess of the approved benchmark, it will be able to recover one-half of the cost benefit in excess of the benchmark standard during the six month LEAC period. There was never any guarantee that all of the deferred fuel will be recovered and therefore the amount of deferred fuel costs at risk was \$7 million. The PUC agreed to allow a three-year period beginning April 1, 2005, during which we would apply the benchmark and GPA would be provided the opportunity to recover the deferred fuel balance. Of course, GPA would be entitled to recover the \$7 million in less than three years if it exceeds the benchmark standard significantly. This process has significant ratepayer benefits since it requires GPA to meet or exceed a high level of performance from its most efficient base load generating units and thus lower overall fuel costs.

GPA management requested and the PUC agreed that the benchmark standard be applied for the first time using the actual results of the six-month LEAC period ending September 31, 2005. We now have the actual results for that period. In this filing GPA did not, however, specifically request that a portion of the \$7 million be recovered and did not calculate the amount of the recovery of the "at risk" balance to which it was entitled. Instead, GPA requested that one-fourth of the actual under-recovery as of September 30, 2005 and the estimated under-recovery of an additional \$1 million of fuel that it estimated for the six month period ending March 31, 2006 be included in the derivation of the factor. To be consistent with the stipulation, the \$7 million of unapproved fuel costs should have been subject to the benchmark test to determine how much of this expense would be permitted to flow-through (be recovered) this upcoming LEAC period and not as GPA proposed in this filing. As will be described later, GCG has calculated that efficiencies for the six-month period ending September 2005 resulting from exceeding the benchmark standard resulted in savings of \$11.6

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million and according to the stipulation ½ of this amount (\$5.8 million) would flow through to the ratepayer and \$5.8 million would be used to offset the \$7 million deferred fuel costs not yet by the PUC. This would reduce the unapproved deferred fuel costs to \$1.2 million (\$7 million less \$5.8 million) as of September 30, 2006. We will describe the calculation of the recovery in a later portion of this report and have attached the details to this report as **Exhibit D**.

The following table shows the balance of deferred fuel costs subject to the original stipulation over the period of recovery (thus far) on a pro forma basis:³

Table 2
Under-Recovery Balances
(\$millions)

	Approved	Subject to Benchmark	TOTAL
September-03	6.0	7.0	13.0
September-04	4.0	7.0	11.0
September-05	2.0	7.0	9.0
September-06	-	1.2	1.2

If the PUC approves GPA's request as filed, GPA will end up with an under-recovery balance as of September 30, 2006 of \$3.2 million as shown in their filing.⁴ If the computation of the LEAC factor was done to include the benchmark test for recovery of deferred fuel, the ending balance as of September 30, 2006 would have been \$1.2 million. This means that there are \$2 million in additional deferred fuel costs that GPA could have, but has not requested that it be allowed to recover in the upcoming LEAC period. If GPA had requested to recover all that it was entitled to recover using the benchmark test, then there would have been an even higher increase in the LEAC factor for the next LEAC period (even after deducting the TCP costs which we recommend be disallowed) as shown in Table 3 below.

³ The amounts shown exclude any additional under- or over-recovery amounts.

⁴ See Attachment A2, Schedule 1, Line 29.

Table 3
Alternative Calculation of Fuel Factor

	(\$000)
Cost of Number 6 oil	\$ 74,946
Cost of Number 2 oil	1,823
Other Costs	3,060
TOTAL Costs	\$ 79,828
Civilian Percentage	78.2%
Civilian Costs	\$ 62,455
Deferred Fuel Costs	4,065
Total Cost for Recovery	\$ 66,521
Sales (mWh)	656,874
Fuel Factor	\$ 0.101268

Since the above calculation permits more recovery of fuel costs than GPA is requesting, the above factor (\$0.101268 per kWh) if approved by the PUC would result in an 8.1% increase for a residential ratepayer as opposed to the 6.3% being requested by GPA. We recommend approval of the GPA proposed factor of \$0.98589 per kWh. Any incremental over or under-recovery as of September 30, 2006 should be viewed as "current" and subject to PUC review. The \$1.2 million of remaining deferred fuel costs subject to the stipulation will be reviewed using the parameters of the stipulation and actual data for the six months ending March 2006.

GPA was supposed to have filed certain information in order to comply with the stipulation on deferred fuel expense to enable it to recover some of the unapproved deferred fuel cost of \$7 million. Although GPA has met (and beat) the standard it only recently submitted exhibits with this information. These documents were listed in the stipulation and are as follows:

- Performance indicators for:
 - Availability factor
 - Forced outage rate
- A 3 year rolling history and average for (or as much history as is currently available and to be updated to 3 years when available):
 - Availability factor
 - Forced outage rate
- Maintenance outage schedule for the next twelve-months and summary of efficiency or availability enhancements to be undertaken during this period.
- A summary statement of compliance with Manufacturer's specifications for maintenance through the use of CMMS.

- A semi-annual summary listing of backlog of CMMS activities intentionally deferred or otherwise not accomplished in accordance with the CMMS schedule. These activities should be summarized by major components of each generating unit.
- A statement of compliance with the Quality Management Plan filed with the PUC.
- Listing of plants for which the maintenance is outsourced.

As indicated earlier in this report, a separate review will be performed on the recently submitted data.

Fuel Hedging Contract

As the Commission is aware, GPA used to be a participant in a "no cost collar" fuel price hedging program. That program has successfully saved the GPA ratepayers millions of dollars over the duration of the contract. The contract has expired and no new contract has been put in place. GCG's position in prior reports is that the concept of GPA entering into a fuel price-hedging program is a prudent move by GPA management given its lack of fuel diversity. Considerable volatility exists in world oil markets and absent such a program ratepayers are directly exposed to this volatility. In conversation with GPA management, it appears that a hedging program is still being discussed among management and that no program has been brought to the CCU for its review and approval. Furthermore it is our understanding that GPA is undertaking a new Integrated Resource Plan (IRP) that will review among other items the feasibility of alternative fuels and the most efficient manner to utilize existing units as well as possible future units. Given the lack of fuel diversity and the current high cost of fuel oil, completing a study to determine the economics of alternate fuels takes on significant added importance. We recommend that such a study be completed as soon as possible and the results presented to the PUC. Given the significance of the study in the current environment which lacks fuel diversity we recommend that the PUC set a deadline for the filing of such a study no later than September 2006.

As indicated we have just received information regarding fuel hedging and will provide an additional report as soon as we get the opportunity to review the recent submission by GPA.

Losses and Uses

In past reports have recommended that the Commission follow the progress of GPA in its attempts to reduce line losses. We had noted in previous reports that there was a very discernable increase in the percentage of unaccounted for energy. Losses, plant use and company use represent energy produced by GPA that does not result in revenues to the utility. Some loss of energy is inevitable. However, if GPA can identify sales that were not recorded (faulty meters or theft of service), this would increase GPA's base revenues and would fairly assign responsibility of the recovery of fuel expense to all sales rather than just to customers whose consumption is measured appropriately. If the reduction

comes from improvement in the delivery of energy from production to end use, this could reduce the cost of fuel for the entire system.

We had recommended that GPA file quarterly reports with the PUC so that it can monitor the progress that GPA has made in significantly reducing the level of losses. To our knowledge, GPA has never filed a quarterly report unless requested through discovery. Recent data appears to indicate that GPA is having some success in reducing its line losses as shown in the following table.

Table 4
Summary of Uses/Losses

	FY99	FY00	FY01	FY02	FY03	FY04	FY05	Fcst FY06
Plant Use	5.2%	5.4%	5.3%	7.5%	6.0%	6.4%	6.2%	6.2%
T&D Losses	5.7%	5.5%	5.6%	11.2%	10.0%	10.8%	8.9%	8.9%
Company Use	0.2%	0.2%	0.2%	0.2%	0.2%	0.2%	0.2%	0.2%

GPA has created a task force to study the problem and to institute remedies to bring the T&D losses back to acceptable levels. GPA has provided details of its efforts and there is evidence that there has been some success in the reduction of losses (and recovering additional revenues). While the current percentage of line loss is still high (8.9%) and above the goal set by GPA of 6%, the reduction in losses is a step in the right direction. A reduction from the current loss level of about 9% to 6% could result in fuel savings (or additional fuel revenues) of almost \$5 million annually.⁵ We request that GPA keep the Commission informed in this matter and file the ordered quarterly statements with the PUC. In some jurisdictions if the losses are not brought to efficient levels in a reasonable timeframe the responsibility for the losses is placed on the utility rather than the ratepayer.

We have discussed the possibility of including some unbudgeted costs related to items designed to reduce the losses and permit these costs to be recovered by the LEAC process provided the program is implemented in an efficient manner. GPA has not requested recovery of any item for which it has incurred costs whose function is to reduce the level of T&D losses nor has it indicated when the goal of 6% will be achieved.

GPA has recently filed further information regarding line loss reduction. As with other issues raised by the recent submission by GPA, we will file a separate response to the March 28, 2006 filing.

⁵ Number is approximate \$80 million for six months of fuel times 3% times 2 (annual).

Unit Dispatch

While the price of oil has increased dramatically, GPA has able to meet almost all of the demand with the cost effective units burning Number 6 oil. The following table shows the trend toward economic dispatch using a % of total demand as a measure.

Table 5
Unit Dispatch

	FY99	FY00	FY01	FY02	FY03	FY04	FY05	Fcst FY06
Number 6	81%	80%	83%	90%	88%	93%	95%	99%
Number 2	19%	20%	17%	10%	12%	7%	5%	1%

The PUC should find that GPA (and its management contractors) has reduced the cost of production to the ratepayers and should commend management for its accomplishment in this matter.

Price of Fuel

A significant variable in the derivation of the fuel factor is the forecast of fuel prices. GPA uses Number 6 oil for its steam units and slow speed diesels. It uses Number 2 oil for its diesel units and combustion turbines. All fuel is purchased under contracts that have been approved by the PUC.

The filing contains forecasts of price for Number 6 oil beginning in February 2006 through the end of the LEAC period (September 2006). GPA used the expertise of Morgan Stanley in its forecast of fuel prices to which GPA adds the premium to those forecasts for high and low sulfur fuel (average \$3.19 per barrel). Subsequent to the filing, GPA was asked for an update of the Morgan Stanley information and as you can see from the table below, the more recent price forecast from Morgan Stanley has had a slight upward bias, since GPA originally forecasted. This implies that if all the other forecasts are correct, the cost of fuel for the six months ending September 30, 2006 has been under-estimated. The following table shows the original forecast compared with the updated information for delivered prices for number 6 oil:

Table 6
Projection of Fuel Prices
\$/Barrel

	<u>Filed Del.</u>	<u>Updated</u>
	<u>Price</u>	<u>Price</u>
February-06	52.58	
March-06	53.00	53.61
April-06	52.32	52.32
May-06	52.22	51.76
June-06	52.22	52.09
July-06	52.41	52.89
August-06	52.41	52.89
September-06	52.41	52.89

We have accepted the forecast prices that GPA has used in its filed LEAC with the understanding that GPA has the ability to seek interim rate relief if the anticipated under-recovery of fuel costs is great than \$2 million (other than the unapproved deferred fuel balance described earlier in this report).

Other Costs – Fuel Handling

The items to be included in the LEAC process have been approved by the PUC. In the last filing, GPA included several items that were not originally in the cost of fuel. The PUC order in that proceeding did not specifically approve any of these items and therefore these should not be considered PUC policy for inclusion in the LEAC. Some items may indeed be appropriate in the LEAC protocol, but GPA should not include items that have not been specifically approved by the PUC without some testimony concerning this change in protocol. .

In this filing, GPA has included a line repair item totaling \$291 thousand (See Attachment A1, Schedule 5) as well as the smaller items such as oil-trade subscriptions, rental of minor equipment whose function is strictly fuel-related, etc. GPA provided support for the “new” cost and when further inquiry was made, GPA indicated that this item was a test run by Shell to determine whether one of the fuel lines at the Shell facility was in need of repair. The amount requested by GPA was its share of the costs incurred by Shell and are directly related to the storage contact between GPA and Shell and therefore we have accepted inclusion of this amount into the cost of fuel in addition to the smaller items as described above and recommend approval by the PUC.

GPA has also included a total of \$600 thousand of interest plus \$386 thousand commitment fees into the cost of fuel for the Fiscal year 2006. GPA has included these amounts into the LEAC without identifying or specifically requesting such approval of this amount. We recommend that the PUC not permit GPA to recover these amounts through the LEAC and require that GPA not charge these amounts to fuel in the reconciliation of fuel revenues and expenses for the year ending September 2006.

In the past there has been a small amount of interest expense that was included in the computation of fuel expense and recovered through the LEAC factor. This expense was associated with a line of credit that was dedicated to the purchase of fuel. Informally, GPA has indicated that it is its position that the reason that the TCP is at \$20 million is related to management's decision to fund fuel through TECP (tax exempt at that time). There is no differentiation made by GPA as to the portion of the TCP is used to fund fuel versus the other working capital requirements. It is unclear as to how GPA would be able to determine the portion of working capital requirements without a full review of its need for working capital, which is a review that is performed in a base rate proceeding. It is for this reason that we request the PUC to deny inclusion of these costs into the LEAC. We note that we have permitted inclusion of a small amount of interest expense as this interest is related to a fuel credit facility that GPA has in place and uses to make payments of fuel before it is delivered to Guam.

Details Schedules of GPA's LEAC filing

GPA has filed the requisite schedules and supporting documents that are required for the LEAC filings. GPA used a projection of dispatch and fuel prices for the period ending September 30, 2006 (see **Attachment A2**). Using the forecasts of GPA regarding prices, dispatch and efficiencies, the computed fuel cost recovery factor is larger than GPA is currently charging its customers. As described in **Table 1**, GPA has also included a portion of the deferred fuel expense ("Under-recovery") that it seeks. The recovery of about \$2 million of deferred fuel is not fully explained and it appears that GPA was seeking a factor that would result in an increase that the CCU believed was acceptable. The net result was a request for an increase of 6.3% for a typical residential customer. The following describes the exhibits for the three distinct time periods used in this filing.⁶ As described earlier, the difference between Exhibit A1 and Exhibit A2 relates only to the difference in the recovery of deferred fuel costs subject to the benchmark standards.

⁶ The historic period was obtained through discovery and did not accompany the filing.

**Forecasted Period
Exhibits A1 and A2**

SIX-MONTH PERIOD Ending September 30, 2006

Schedule 1 (summary)

This is the summary schedule for the six months ending September 2006. All of the amounts shown on this schedule are forecasted. We have accepted GPA's forecast of sales and uses in FY2006. GPA estimates that sales for fiscal 2006 will be 1.67 million mWh which is a very slight increase from fiscal 2004. The actual results for fiscal 2004 are presented as Exhibit C and shows that sales totaled 1.59 million mWh. We have also accepted the line loss assumption, plant use and company use assumptions. GPA merely used fiscal year 2005 to forecast these items for fiscal 2006.

Since Navy does not participate in the LEAC process, GPA segregates Navy sales in order to allocate a "civilian" portion of the fuel expenses shown on lines 14 through 19. (GPA recovers the Navy's share of GPA's fuel expenses through the methodology established under the Customer Service Agreement.) Details for these amounts are described in detail below.

The difference between **Exhibit A1** and **Exhibit A2** is that Exhibit A1 shows the inclusion of the benchmark allowance for recovery of most of the deferred fuel expense (\$5.8 million) and results in a net balance as of September 30, 2006 of \$1.2 million as described earlier and shown on line 25 and removes the TCP capital expenses on Schedule 4. With the exception of TCP costs, we have accepted all of the assumptions are GPA's has filed and show these in Exhibit A2 – Schedules 2 through 4.

Schedule 2 (Number 6 units)

In the projected results for the six-month forecasted period, GPA has projected that 99% of the production will come from the most cost efficient units (base load units) and only a very small percentage will come from the diesel and CT units. If this projection turns out to be correct and assuming that the units are achieving acceptable heat rates, the dispatch should result in near optimum system efficiency as described earlier. The efficiencies for the various units are similar to those that were achieved in fiscal 2005 (see **Exhibit C**)

Schedule 3

As implied by the large percentage of generation from the baseload units for the forecasted period, GPA is forecasting little production from these diesel and combustion turbine units (1% of total generation). For pricing, GPA starts with an average January price of \$72.387 per barrel and

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“trends” the price in similar fashion as with Number 2 oil down slightly in second quarter of 2006 and then upward for third quarter. We have accepted this forecast.

Schedule 4 (Other Fuel Related Costs)

In prior LEAC filings, this schedule was previously numbered Schedule 5. We have eliminated Schedule 4 (showing Navy units) and have renumbered the Fuel Handling Costs Schedule 4. Most of the items shown in the forecasted period are the same items that have occurred in prior LEACs. We have accepted all of the “fuel handling” items and amounts. Note the inclusion of \$291 thousand in September 2006 which we have accepted and are related to the Shell contract as described earlier. We have removed the costs associated with TCP in A1 (GCG), Schedule 4.

Interim Period Exhibit B1 and B2

SIX-MONTH PERIOD ENDING March 31, 2006

Schedule 1 (summary)

On Schedule 1 of **Exhibit B1 and B2** we show the summary of results for the six months ending March 2006. Four of these months are actual results and the remaining months (February and March) are forecasts. Presented on this Schedule are the actual sales, fuel costs and credits and the results. Note the projected increase in the forecasted deferred fuel balance from \$4.2 million to \$5.2 million (see lines 27 and 29). This increased deferred fuel balance is the additional million that is described in GPA’s filing and for which it seeks recovery. The only difference between Exhibit B1 and B2 is the removal of TCP capital cost highlighted on Schedule 4.

Schedule 2 (Number 6 or Baseload units)

On Schedule 2 of Exhibit B is a listing of the dispatch of the Number 6 oil-fired units. We would note the outage of Cabras #1 at the end of this period and the beginning of the forecasted period. As can be seen the forecasted and actual availability of these units was 98% to 100% for this period.

Schedule 3 (Number 2 CTs and diesels)

Schedule 3 shows the very small use of the diesel and combustion turbines to meet demand.

Schedule 4 (Other Fuel Related Costs)

Listed on this Schedule are the various charges that the PUC has allowed to be included in the cost of fuel and recovered through the LEAC. I would note the lack of credits for the fuel hedging program and the adjustments made to “interest expense.”

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March 26, 2006

**Historic Period
Exhibit C**

TWELVE-MONTH PERIOD ENDING September 30, 2005

Exhibit C contains a three page summary of the results of operations for Fiscal 2005 and the impact on the LEAC. The first page contains the actual dispatch, efficiency and oil consumption of the various Number 6 units. The second page contains similar information concerning the Number 2 units. For fiscal 2004, GPA met the demand of its customers (despite problems with Cabras #1 and Tanguisson) by dispatching 92.7% of the required energy from the more cost efficient units list on this page. The second page shows the same details for the historic period regarding the Number 2 units.

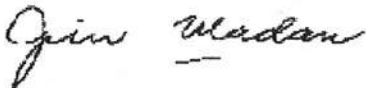
On the third page is a reconciliation of fuel revenues and expenses for the fiscal year. GPA has managed to reduce the deferred fuel expense balance from \$13 million as of September 2003 to a balance of \$4.3 million as of September 2005 on a book basis.

**Benchmark Test
Exhibit D**

The final attachment to this report shows the summary of the calculation of the benchmark standard. The standard requires that GPA meet 90% of demand over a six-month period using the steam and slow speed diesel units. In addition to easily exceeding the benchmark production percentage (98% versus 90%), but also exceeding the efficiency standard (9100 versus 6600 mmBtu).

This concludes our report. If I can be of further assistance to you, please do not hesitate to contact me.

Cordially,



Jamshed K. Madan
Attachment

cc: Bill Blair, Esq.
Randall Wiegand, CFO - GPA
Kin Flores, GM-GPA

BEFORE THE PUBLIC UTILITIES COMMISSION
OF GUAM



GUAM POWER AUTHORITY
LEVELIZED ENERGY ADJUSTMENT
CLAUSE [LEAC]

DOCKET 02-04

ORDER

In accordance with the protocol established by Guam Public Utilities Commission [PUC] Order dated January 29 1996, as amended by Order dated March 14, 2002, Guam Power Authority [GPA] by petitions dated February 15, 2006 and March 28, 2006 requested that the current LEAC factor [\$0.08892] per kWh for its civilian customers be increased to \$0.098589 per kWh for meters read on and after April 20, 2006 and continuing until readjusted by PUC. The GPA request is a function of higher forecasted fuel prices and its right under PUC Orders to recover a portion of its booked deferred fuel costs. The requested LEAC factor would result in an increase of 6.3% in the total bill of a residential customer using 1.000 kWh per month [a 10.9% increase in the current LEAC rate].

On April 10, 2006 PUC conducted a public oversight hearing to consider GPA's petitions and a March 28, 2006 report from regulatory consultant, Georgetown Consulting Group (GCG), which supports GPA's petitions with recommendations.

After carefully reviewing the record in this proceeding and after discussion at a duly noticed public meeting held on April 20, 2006, for good cause shown and on motion duly made, seconded and carried by the affirmative vote of the undersigned commissioners, the Guam Public Utilities Commission hereby **ORDERS THAT:**


1. A LEAC factor of \$0.098589 per kWh shall be used by GPA for all civilian bills, for meters read on and after April 20, 2006 and until readjusted by PUC to recover its forecasted fuel and related expenses and to recover deferred fuel expenses consistent with the analysis presented in GCG's report.
2. GPA is reminded of its duty under PUC Order dated October 14, 2004 to file quarterly reports regarding its efforts to reduce line losses.

3. GPA's petition for the establishment of the next LEAC factor [October 1, 2006 through March 30, 2007] shall be filed with PUC not later than August 15, 2006. This filing shall show the amount of the balance of the stipulated deferred fuel expense that is subject to the benchmark testing and recovery.
4. GPA is authorized to recover fuel line testing expenses, Platt Oilgram subscription fees, diesel delivery fees, pump rentals and diesel plant hauling expenses through the LEAC.

Dated this 20th day of April 2006.



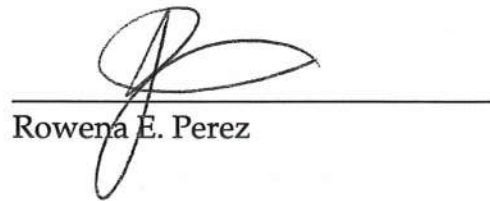
Terrence M. Brooks



Joseph M. McDonald



Edward C. Crisostomo



Rowena E. Perez



Jeffrey C. Johnson

GEORGETOWN CONSULTING GROUP, INC.
716 DANBURY RD.
RIDGEFIELD, CT. 06877

Jamshed K. Madan
Michael D. Dirmeier



Telephone (203) 431-0231
Facsimile (203) 438-8420
jmadan@snet.net

Edward R. Margerison
Jean Dorrell

April 12, 2006

Harry Boertzel, Esq. ALJ
The Guam Public Utilities Commission
Suite 207, GCIC Building
Hagatna, Guam 96932

Re: GPA Hedging Procurement

Dear Harry:

This letter provides a response to GPA's petition dated March 28, 2006 on the issue of Fuel Hedging Procurement. This issue was filed with GPA's application to amend the LEAC for the period April 1, 2006 through September 30, 2006. We have since had several conferences with GPA personnel and their fuel advisor on the issue to gain an understanding of their proposal.

Current Status

Currently GPA has no outstanding hedge contracts on a hedging program in place. In March 2004 GCG and GPA entered into a stipulation that recommended approval of GPA's request that it be permitted to enter into a no cost collared transaction based upon the advice of its advisor for the fuel hedging program – Morgan Stanley. The CCU had adopted Resolution 2004-04 authorizing the General Manager of GPA to execute a fuel hedging contract should a temporary weakness appear in the fuel markets through December 31, 2004. GPA and GCG agreed that hedging procurements require PUC review and approval. GPA did execute contracts for periods during FY 2004 and FY 2005 with significant ratepayer benefits. Sometime during FY 2005 all existing contracts for fuel hedging expired and GPA has not since entered into any new contracts given the volatile and unpredictable nature of fuel prices since.

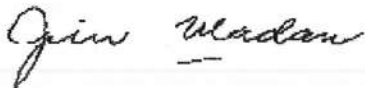
In its filing of March 28, 2006 GPA does outline a new fuel hedging program that it wishes to receive PUC approval for. GPA describes its approach as a disciplined approach based on a view of the fuel markets developed by GPA and its fuel consultants. Based on our discussions we believe that the following are the essential points of the program proposed:

- GPA will develop a market view and determine how much of its fuel supply should be hedged. The market view will be developed with assistance from its fuel consultants.
- With the initial approval from the PUC of this proposed program GPA will place an appropriate hedge for the next 12 months.
- After the initial annual hedge, GPA will, every quarter, place an appropriate hedge for the quarter that is 12 months out. In that fashion GPA will continually be hedged for some percentage of their fuel supply for the oncoming next 12 months.
- Every quarter GPA will seek the advice of their fuel consultant as to the appropriate amount of their fuel supply to hedge for the quarter that is 12 months out. The fuel advisor will assist GPA in developing the appropriate bid forms and GPA has selected three firms from which it will request bids for the hedge that has been specified. Upon receipt of the bids, GPA will select the lowest bid received. GPA did indicate that if the bids were very close there would be a possibility of splitting the award.
- The bids that will be specified by GPA will always be a no cost collar. This is the kind of hedge that GPA had previously implemented. This hedge will have a ceiling and a floor determined by the winning bid(s).
- The fuel advisor will be Banc of America and they will not be one of the three bidders that will be providing quarterly bids.
- GPA expects that it will stay in this initial program for a period of three years.

GPA and the fuel advisor have cautioned that while GPA in the past achieved significant fuel savings from its historical hedge programs, in the current environment the hedge program should not be looked at as a fuel saving device, although fuel savings could accrue. Rather, the disciplined approach will provide for continuous evaluation of the fuel markets and provide for a greater level of fuel predictability and certainty for each rolling 12 month period.

We recommend that the PUC approve GPA to implement the proposed program. GPA indicates that it understands that any change in the program from that described would require further PUC approvals in accordance with the Contract Review Protocol.

Cordially,



Jamshed K. Madan

Cc: William J. Blair, Esq.
 Ed Margerison
 Larry Gawlik
 D. Graham Botha, Esq.
 Randy Wiegand, GPA
 Kin Flores, GPA

GEORGETOWN CONSULTING GROUP, INC.
716 DANBURY RD.
RIDGEFIELD, CT. 06877

Jamshed K. Madan
Michael D. Dirmeier



Telephone (203) 431-0231
Facsimile (203) 438-8420
jmadan@snet.net

Edward R. Margerison
Jean Dorrell

April 12, 2006

Harry Boertzel, Esq. ALJ
The Guam Public Utilities Commission
Suite 207, GCIC Building
Hagatna, Guam 96932

Re: FY 2006 GPA Contract Review – Docket 94-04

Dear Harry:

This letter is being provided to provide a follow up report on the procurement issues for the Property and Casualty Insurance Policy Amendment that were discussed during the January 18, 2006 Regulatory Conference. In that session the PUC approved the insurance amendment requested by GPA. On March 29, 2006 GPA filed a petition to exercise an option to renew the insurance approved for an additional year beginning November 2006 at which time the current insurance is due to expire.

Property and Casualty Insurance Policy Extension

In its filing GPA is requesting that the insurance policy in place and approved by the PUC on February 2, 2006 be approved for a one year extension beginning November 2006. We have reviewed the petition and have held conferences with GPA personnel regarding their request.

GPA has stated that the terms that they seek are identical to the policy that is currently in place and approved by the PUC recently on February 2, 2006. GPA's petition also has a letter from their insurance advisor, Grennan & Associates that recommends that it would be in GPA's best interest to extend the insurance policy by exercising its option to renew for an additional year.

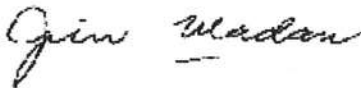
GPA's premium for its current policy is approximately \$7.6 million. The premium for the additional year extension has not currently been determined and GPA personnel indicate that it will be determined close to the renewal date of November 2006. GPA personnel have indicated to us that the current policy indicates that the insurer will attempt, but not guarantee, that the new premium will be within 10% of the current premium. Grennan & Associates have stated in their letter that getting this insurance, if possible, would be the best

course of action for GPA in the current environment of great uncertainty in the insurance markets.

Based on the above, we recommend that the PUC approve GPA's request to obtain additional insurance by exercising its option for an additional year. Given that the price for the insurance has not been fixed at the current time we recommend that a cap of 10% over the current premium be approved. As we understand the current Contract Review Protocol this would mean that if the new premium exceeded 12% over the current premium and if any of the terms had meaningful changes from the current policy, GPA would need to seek additional approval from the PUC.

If there are any further questions please do not hesitate to call.

Cordially,



Jamshed K. Madan

Cc: William J. Blair, Esq.
Larry Gawlik
Ed Margerison
Randy Wiegand, GPA
Kin Flores, GPA
Anthony Camacho, Esq.

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April 18, 2006

Harry Boertzel, Esq. ALJ
The Guam Public Utilities Commission
Suite 207, GCIC Building
Hagatna, Guam 96932

Re: FY 2006 GPA Contract Review – Docket 94-04 (Line of Credit)

Dear Harry:

This letter is provided to you in response to the April 13, 2006 request of GPA to increase the maximum balance of its line of credit from \$10 million to \$15 million. This increase requires legislative approval of GPA's level of short-term debt. GPA states that Bill No. 252 increasing GPA's short-term debt ceiling from \$10 million to \$30 million has passed the legislature and is awaiting signature by the governor. GPA anticipates no problem with obtaining this signature.

The use of this line will be exclusively for the payment of fuel (number 6 primarily). GPA estimated that the cost of Number 6 oil for the six-month period ending September 2006 would be approximately \$75 million with small amount of handling costs associated with Number 6 purchases and deliveries. Thus this line of credit would represent slightly more than one-month's delivery of Number 6 oil. It is our understanding that the Navy is requesting that GPA store approximately 2 months of supply on Island.

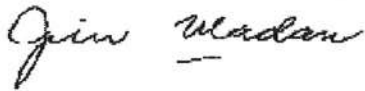
GPA is requesting an expedited procedure for PUC approval. We agree that with the fuel price increases that need for additional leverage is required. It is for this reason and under the assumption that the governor will sign Bill No. 252, we would recommend that the PUC approve GPA's request.

We would request that GPA provide the PUC with the terms and conditions of the new line of credit once these are known. Since this represents a multi-year contract with identical terms (assuming that interest will be tied to "LIBOR"), we would request that a copy of the executed loan agreement for our records. Consistent with the revised contract review protocol we would also request that the CCU resolution on this item be provided to the PUC.

Harry M Boertzel, Esq.
April 17, 2006
Page 2 of 2

If there are any further questions please do not hesitate to call.

Cordially,



Jamshed K. Madan

Cc: William J. Blair, Esq.
Larry Gawlik
Ed Margerison
Randy Wiegand, GPA
Kin Flores, GPA
Anthony Camacho, Esq.

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Memorandum

To: Commissioners
From: ALJ Boertzel
Date: April 20, 2006

RE: Docket 05-9 [Department of Public Works [DPW] – Revenue Bonds]

Overview

Under a schedule driven by the Federal Consent Decree, the government of Guam and its financial consultants are working under a May 2006 deadline to secure \$90 million dollars in revenue bond financing to fund the capital requirements for the Ordot landfill closure, the construction of the new landfill and associated costs.

As the repayment of these bonds will be funded through DPW rates, financial consultants emphasize the importance of a strong PUC commitment to approve such rates increases [estimated at 400% over current rates within the next 26 months] to enable DPW to meet its bond obligations.

PUC customarily issues two orders in support of utility bond financing: a) an order drafted by bond counsel, which provides formal approval of the transaction terms and conditions and a regulatory commitment to provide adequate rates to fund bond commitments; and b) an order which approves and establishes regulatory oversight over the use of bond proceeds.

Challenges

The fact that DPW is a line agency of the Executive Branch creates significant regulatory challenges, which PUC does not encounter in regulating GPA and GWA, which are autonomous public corporations. These challenges have come into sharp focus during this April regulatory session as a result of consultations with DPW's financial advisor and management. DPW does not have the power to contract and its revenues are held under the Department of Administration's [DOA] custody. These challenges are reflected in the following facts:

1. On December 20, 2005 PUC gave its regulatory approval for DPW to employ a procurement advisor to craft the documentation for the privatization of the Ordot closure, the construction and operation of the new landfill and for the privatization of residential trash collection. The contract, which also requires the Attorney General's approval, has sat in

the AG's office since early February. As a result, DPW has no resources to move forward with procurements mandated by the Consent Decree and is incurring fines as a result.

2. On October 27, 2005, PUC awarded DPW a 25% rate increase, effective for services rendered after November 1, 2005. DPW has still not implemented this increase for its residential customers. The rate order is enclosed as *Attachment A*.
3. The October rate order was premised on DPW's assurance that it would improve its collection rate to 95% for commercial customers and 70% for residential customers. DPW has failed to meet this assurance - its current collection rate is at 30%. As a result, there will be a substantial FY06 revenue shortfall.
4. The October rate order mandated that all revenue created by the rate increase shall be deposited into a restricted DOA account, which could not be withdrawn without PUC approval. Georgetown estimates that the current balance in the restricted account [*even excluding the residential rate increase*] should be in the range of \$400,000. DOA has reported that it currently has only \$47,000 on deposit in the restricted account. The government's financial advisor recommends that the bond covenants mandate that a "locked box" be created under the Trustee's custody for all rate revenues. PUC should strongly support this recommendation, with the condition that the Trustee observe PUC orders, which restrict the use of funds and establish reporting requirements. *Attachment B* is a presentation by the advisor [*Municipal Services Group*] regarding the challenges of marketing the DPW revenue bonds.
5. As PUC's rate authority is derived from statute, it is essential that the legislation, which approves this financing include a covenant from the Legislative and Executive branches that they will not take any action, which would impair PUC's independent rate making authority. Similar covenants have been provided in GPA and GWA bond financing legislation.
6. DPW is not in compliance with Guam law, which mandated that 2 of 3 residential collection districts be privatized by October 2002. No residential collection has yet been privatized. As a result, residential customers receive poor service and are unlikely to favorably receive the reality of a 400% rate increase over the next 26 months unless service is dramatically improved. In its December 20, 2005 Order [*Attachment C*], PUC directed DPW to prioritize the privatization of residential trash

collection. As discussed in paragraph 1 above, this effort has been obstructed by DPW's inability to employ a procurement advisor.

Recommendations

PUC has a dual responsibility in regulating DPW's rates: a] the obligation to provide adequate rate revenues to enable DPW to meet its financial obligations; and b] the obligation to assure that DPW's customers pay *just and reasonable* rates for reliable, quality service. Unless the above challenges are resolved, these dual responsibilities will likely put PUC on the proverbial *horns of a dilemma*. I offer the following recommendations to address this dilemma:

1. PUC should make it clear that it will not make bond rate commitments unless DPW is empowered to employ a procurement advisor, which must occur before residential service can be improved through privatization.
2. Bond counsel, who will be crafting the legislation, which authorizes the bond financing, should be requested to include a covenant to protect PUC's independent rate making authority.
3. PUC should support a "locked box" bond covenant.
4. PUC should immediately initiate a focused audit by Georgetown of DPW's billing and collection practices and DOA restricted account management, which would be ready for regulatory review and implementation at the next regulatory session.
5. PUC should support the recommendation made in Guam Environmental Protection Agency's *2006 Integrated Solid Waste Management Plan* that solid waste management be transferred to a public corporation under the oversight of the Consolidated Commission on Utilities.

I recommend that PUC adopt these recommendations by resolution, which authorizes me, in consultation with Chairman Brooks, to implement them.

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

DEPARTMENT OF PUBLIC WORKS
ESTABLISHMENT OF TIPPING AND
USER FEES PURSUANT TO P.L. 28-56

DOCKET 05-09



RATE ORDER

Public Law 28-56 directs the Guam Public Utilities Commission [PUC] to establish commercial, government and residential tipping and user fees to fund the activities of the Department of Public Works' [DPW] Division of Solid Waste Management [DSWM] in discharging its statutory duties and those imposed by Federal District Court of Guam Consent Decree [Consent Decree] in Civil Case No. 02-22.

On September 20, 2005 Georgetown Consulting Group [GCG - PUC's regulatory consultant] issued a Report, which recommends the following interim service fee increases:

Service Fee	Current	Proposed [Interim]
Residential pick-up	\$8 per month	\$10 per month
Tipping fee [compacted]	\$16/cubic yd.	\$20/cy
Tipping fee [uncompacted]	\$4/cy	\$5/cy
Self drop [under 3 cy]	\$2/pickup	\$2.50/pickup
Self drop [over 3 cy]	\$4/cy	\$5/cy

On October 17, 2005, GCG and DPW entered into a stipulation, which recommends that:

1. PUC adopt the above proposed fees as a first step toward volume and cost based rates.
2. The GCG report should be found to satisfy the requirement in 10 GCA 51118[e] that fees be based on an actuarial cost of service analysis.
3. The additional revenues created by the proposed fee increases, which are estimated to be \$1.3 million in FY06 [net of uncollectible allowance], should be restricted and spent only pursuant to PUC order.
4. PUC should await the management audit required under 10 GCA 51118[e] before establishing a variable residential tipping fee.

ATTACHMENT A

5. A targeted residential lifeline tipping fee should be established with other permanent fees during the April 2006 regulatory session.
6. DPW should provide PUC with quarterly reports, commencing with quarter beginning October 2005, on DSWM's revenues and expenses, including income statements and balance sheets. Reports should be filed within 21 days after the close of each quarter [*the first report due January 21, 2006*].
7. PUC should conduct a quarterly review of DPW's compliance with this rate order and of the adequacy of the proposed interim rates.
8. PUC should immediately undertake the focused management audit of DSWM operations as required by 10 GCA 51118[e].
9. Any DPW procurement or obligation relating to DSWM in excess of \$50,000 should require PUC's prior review and approval. The contract review protocol, which PUC established to regulate the procurements of Guam Power Authority and Guam Waterworks Authority should be adopted as the review protocol for these procurements and obligations.

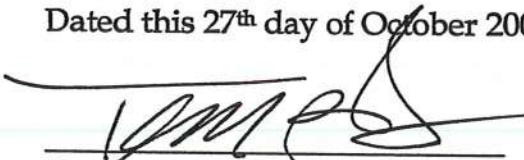
PUC conducted a public workshop at 6:00 p.m. on October 17, 2005 to receive a briefing on the GCG report and the Stipulation. In addition, PUC conducted public rate hearings at 6:00 p.m. October 25, 2005 in Hagatna, at 5:00 p.m. October 26, 2005 in Agat and at 6:30 p.m. October 26, 2005 in Dededo on the proposed interim fee increases.

After due consideration of the record in this docket, including public comments regarding the proposed interim fee increases, for good cause shown and on motion duly made, seconded and carried by the affirmative vote of the undersigned commissioners, the Guam Public Utilities Commission **HEREBY FINDS AND ORDERS THAT:**

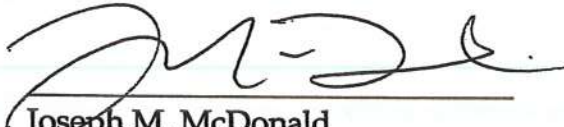
1. DPW, including DSWM, is subject to PUC jurisdiction pursuant to 10 GCA 51118[e].
2. The stipulated recommendations from GCG and DPW, as discussed above, should be and are hereby adopted. DPW is ordered to comply with the recommendations, subject to instructions from PUC's administrative law judge [ALJ].

3. The proposed interim fee increases are hereby approved for services rendered on and after November 1, 2005. PUC recognizes that this is but the first of a series of rate increases, which will be necessary to support the \$93 million borrowing required to enable DPW to comply with the Consent Decree. The GCG Report satisfies the requirement in 10 GCA 51118[e] that fees shall be based on an actuarial cost of service analysis.
4. Under separate order, ALJ will be authorized to oversee the focused management audit of DSWM's existing operations.
5. The contract review protocol, in form attached hereto, shall govern the regulatory review of DSWM procurements and obligations.
6. ALJ is hereby authorized and directed to oversee regulatory proceedings, which will lead to PUC's consideration of a variable residential rate, including a lifeline component, and of the implementation of permanent fees.
7. PUC emphasizes that the revenue created by the interim fee increases shall be restricted funds and shall not be spent without prior PUC authorization.

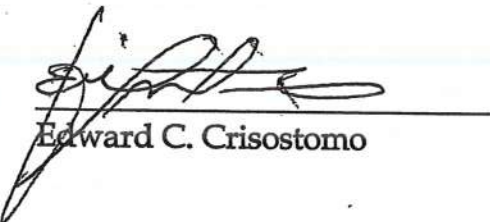
Dated this 27th day of October 2005.



Terrence M. Brooks



Joseph M. McDonald



Edward C. Crisostomo



Rowena H. Perez



Municipal Securities Group

Presentation to Guam PUC



Guam Department of Public Works

April 2006



UBS Investment Bank is a business group of UBS AG.
UBS Securities LLC is a subsidiary of UBS AG.

ATTACHMENT B



Current Situation

- **Need to finance approximately \$90 million* through the capital markets:**
 - Closure costs for Ordot
 - Construction of the new Municipal Solid Waste Landfill
 - Two years of Capitalized Interest
 - Costs of Issuance
 - Debt Service Reserve Fund
- **Driven by EPA consent decree**
- **Funds needed by May to avoid further fines**

* Preliminary, subject to change.



Challenges Faced by DPW for Proposed Financing

- **Landfill financings are challenging credits from investors perspective**
 - The Government's credit situation also impacts market acceptance
- **Tipping-fee backed revenue bond financing appears to be only feasible means of providing bond security in current political environment**
 - No broader excise tax possible
 - No real property lien for security
- **Residential Collection rates have been poor relative to other comparable municipal solid waste enterprises**
- **Tipping fees must be increased dramatically just to cover operating expenses and projected debt service**
- **Continuity and timing of required rate increases are unknown**
- **In addition, bond investors typically require additional coverage to be structured to provide adequate bondholder security (e.g. 1.25x coverage)**



Residential Collection System Goals

- Provide curbside pickup service for those paying for service
- Easily identify those entitled to the service
- Reliably bill and collect from recipients of service
- Create stable and predictable revenue stream



Charlottesville, VA Example

- Charlottesville residents have two options for trash disposal
 - Individual trash stickers
 - Annual trash decals
- Individual trash stickers can be purchased at grocery and convenience stores; annual decals must be purchased at City Hall

Benefits	Risks
<ul style="list-style-type: none">— Increased administrative efficiency— Predictable revenue stream— Equitable— Payment of services prior to service (reliability)	<ul style="list-style-type: none">— Lack of History— Waste Diversion— Counterfeiting



Structure and Security Considerations for Proposed Financing

- Coverage
 - 1.75x PUC target
 - 1.25x rate covenant
- Determine the necessary amount of capitalized interest
- What level of rate increases are necessary to support the proposed debt?
 - How will this vary based on collection improvement?
- Gross Revenue versus Net Revenue pledge
- “Lock Box” structure (revenues as received directed immediately to the trustee)
- Cash flow considerations (as related to 1.75x coverage target)



Cash Flow Observations

- The Department's current financial projections indicate significant rate increases will be necessary to support new debt service and coverage
- Currently only 31% of billed residential charges are collected from customers
- Improving collections will minimize the required rate increases
- Even if relatively low interest rates are achieved, the Department will need large rate increases
- Improving the residential collection rate is very important



Guam Department of Public Works

Cash Flow Scenario #1

6.50% Interest Rate Assumption

Guam Department of Public Works

Preliminary Cashflow Statement (Fiscal Year Ending September 30th)

	FY 2002*	FY 2003*	FY 2004*	FY 2005 (Annual)	FY 2006 (Proj.)	FY 2007 (Proj.)	FY 2008 (Proj.)	FY 2009 (Proj.)	FY 2010 (Proj.)	FY 2011 (Proj.)
Expenses:										
O&M ⁽¹⁾	\$ -	\$ -	\$ -	\$ -	\$ 1,994,252	\$ 2,074,023	\$ 2,156,983	\$ 2,243,263	\$ 2,332,993	\$ 2,426,313
Salary - Residential Collection ⁽¹⁾	-	-	-	-	653,628	679,774	706,965	735,243	764,653	795,239
Salary - Ordot Landfill ⁽¹⁾	-	-	-	-	1,215,651	1,264,277	1,314,848	1,367,442	1,422,140	1,479,025
Salary - Other ⁽¹⁾	-	-	-	-	1,566,880	1,629,555	1,694,737	1,762,527	1,833,028	1,906,349
Other Expenditures ⁽¹⁾⁽²⁾	-	-	-	-	-	-	2,382,764	2,418,506	2,553,487	2,643,287
O&M New MSWLF ⁽³⁾	-	-	-	-	368,000	368,000	368,000	368,000	368,000	368,000
Recycling and PUC Costs ⁽⁴⁾	-	-	-	-	-	-	-	9,127,575	9,130,763	9,129,000
Projected Debt Service @ 6.5% ⁽⁵⁾	-	-	-	-	-	-	-	-	-	-
Total Expenditures	\$ 3,479,551	\$ 3,668,454	\$ 3,970,427	\$ 5,183,888	\$ 5,798,412	\$ 6,015,628	\$ 8,624,298	\$ 18,022,556	\$ 18,405,064	\$ 18,747,214
Revenue Requirement for 1.25x Coverage	\$ 3,479,551	\$ 3,668,454	\$ 3,970,427	\$ 5,183,888	\$ 5,798,412	\$ 6,015,628	\$ 8,624,298	\$ 20,304,450	\$ 20,687,754	\$ 21,029,464
Revenue Requirement for 1.75x Coverage	\$ 3,479,551	\$ 3,668,454	\$ 3,970,427	\$ 5,183,888	\$ 5,798,412	\$ 6,015,628	\$ 8,624,298	\$ 24,868,237	\$ 25,253,136	\$ 25,593,964
Revenues:										
Commercial Collections	\$ 2,425,362	\$ 2,605,554	\$ 2,853,587	\$ 3,181,296	\$ 2,876,640	\$ 2,991,706	\$ 3,111,374	\$ 3,235,829	\$ 3,365,262	\$ 3,499,872
OCH Collections	36,831	39,849	50,469	85,087	55,120	57,325	59,618	62,003	64,483	67,062
Residential Collections	691,575	608,286	477,978	611,242	620,880	645,715	671,544	698,406	726,342	755,395
Other Collections	485,676	648,599	774,069	758,053	693,680	721,427	750,284	780,296	811,507	843,968
Total Available Revenues	\$ 3,659,444	\$ 3,902,288	\$ 4,156,103	\$ 4,635,678	\$ 4,246,320	\$ 4,416,173	\$ 4,592,820	\$ 4,776,533	\$ 4,967,594	\$ 5,166,298
Debt Service Coverage⁽⁶⁾								(0.45x)	(0.47x)	(0.49x)

	FY 2002*	FY 2003*	FY 2004*	FY 2005 (Annual)	FY 2006 (Proj.)	FY 2007 (Proj.)	FY 2008 (Proj.)	FY 2009 (Proj.)	FY 2010 (Proj.)	FY 2011 (Proj.)
HYPOTHECAL REVENUE (w/100% Collections):										
Commercial Collections	\$ 1,915,710	\$ 2,071,950	\$ 2,287,152	\$ 2,621,745	\$ 2,262,240	\$ 2,351,290	\$ 2,481,320	\$ 2,616,695	\$ 2,757,259	\$ 2,903,549
OCH Collections	279,960	249,937	192,456	285,092	285,800	298,660	307,219	316,928	327,785	339,746
Residential Collections	2,795,826	2,361,572	1,776,522	2,058,715	2,058,720	2,133,060	2,251,192	2,369,339	2,489,369	2,609,726
Other Collections	485,676	648,599	774,069	758,053	693,680	721,427	750,284	780,296	811,507	843,968
Total Hypothecal Revenue	\$ 5,477,172	\$ 5,431,058	\$ 5,029,123	\$ 5,523,605	\$ 5,300,440	\$ 5,504,437	\$ 5,790,025	\$ 6,083,258	\$ 6,345,911	\$ 6,657,010

Debt Service Coverage w/100% Collections⁽⁶⁾

Note: Projected revenues are calculated based on 4% escalation annually using the averages from FY 2002-2005.
 (1) Based on Geogelown reports from Exhibit 2-4 dated 8/29/2005 which assume projections increased 4% annually using FY 2005 as base year. Operation figures of new landfill, recycling and PUC admin are estimates from DPW
 (2) Other expenditures include travel, contractual services, supplies/materials, utilities (i.e. power, water & telephone), and capital outlays.
 (3) TG Engineering study dated 6/15/05 public own/private operate scenario.
 (4) Recycling at \$218k, PUC at \$150k estimates per DPW.
 (5) Based on an estimated 30-year level debt service financing (for initial investment) and 15-year level debt service (for cell construction costs) with assumed interest rate of 6.5% and two-years of capitalized interest plus a debt service reserve fund. Bond sizing based on proceeds in HDR report dated 4/20/06 consisting of \$26.8mm in initial investments and first three years of cell construction (\$17.5mm, \$11.9mm and \$12.5mm) totaling \$68.8mm.
 (6) Equals Net Revenues (Revenues less O&M) divided by debt service. When negative (as shown in red) that means Net Revenues are negative.



Guam Department of Public Works

Cash Flow Scenario #2

7.0% Interest Rate Assumption

Guam Department of Public Works

Preliminary Cashflow Statement (Fiscal Year Ending September 30th)

	FY 2002*	FY 2003*	FY 2004*	FY 2005 (Annual)	FY 2006 (Proj.)	FY 2007 (Proj.)	FY 2008 (Proj.)	FY 2009 (Proj.)	FY 2010 (Proj.)	FY 2011 (Proj.)
Expenses:										
O&M ⁽¹⁾	\$ -	\$ -	\$ -	\$ -	\$ 1,994,252	\$ 2,074,023	\$ 2,156,983	\$ 2,243,263	\$ 2,332,993	\$ 2,426,313
Salary - Residential Collection ⁽¹⁾	-	-	-	-	653,628	679,774	706,965	735,243	764,653	795,239
Salary - Ordov Landfill ⁽¹⁾	-	-	-	-	1,215,651	1,264,277	1,314,848	1,367,442	1,422,140	1,479,025
Salary - Other ⁽¹⁾	-	-	-	-	1,566,880	1,629,555	1,694,737	1,762,527	1,833,028	1,906,349
Other Expenditures ⁽¹⁾⁽²⁾	-	-	-	-	-	-	2,382,764	2,418,506	2,553,487	2,643,287
O&M New MSWLP ⁽³⁾	-	-	-	-	368,000	368,000	368,000	368,000	368,000	368,000
Recycling and PUC Costs ⁽⁴⁾	-	-	-	-	-	-	-	9,582,875	9,585,300	9,585,750
Projected Debt Service @ 7.0% ⁽⁵⁾	-	-	-	-	-	-	-	-	-	-
Total Expenditures	\$ 3,479,551	\$ 3,668,454	\$ 3,970,427	\$ 5,183,888	\$ 5,798,412	\$ 6,015,628	\$ 8,624,298	\$ 18,477,856	\$ 18,859,601	\$ 19,203,964
Revenue Requirement for 1.25x Coverage	\$ 3,479,551	\$ 3,668,454	\$ 3,970,427	\$ 5,183,888	\$ 5,798,412	\$ 6,015,628	\$ 8,624,298	\$ 20,873,575	\$ 21,255,926	\$ 21,600,401
Revenue Requirement for 1.75x Coverage	\$ 3,479,551	\$ 3,668,454	\$ 3,970,427	\$ 5,183,888	\$ 5,798,412	\$ 6,015,628	\$ 8,624,298	\$ 25,665,012	\$ 26,048,576	\$ 26,393,276
Revenues:										
Commercial Collections	\$ 2,425,362	\$ 2,605,554	\$ 2,853,587	\$ 3,181,296	\$ 2,876,640	\$ 2,991,706	\$ 3,111,374	\$ 3,235,829	\$ 3,365,262	\$ 3,499,872
OCH Collections	36,831	39,849	50,469	85,087	55,120	57,325	59,618	62,003	64,483	67,062
Residential Collections	691,575	608,286	477,978	611,242	620,880	645,715	671,544	698,406	726,342	755,395
Other Collections	485,676	648,599	774,069	758,053	693,680	721,427	750,284	780,296	811,507	843,968
Total Available Revenues	\$ 3,639,444	\$ 3,902,288	\$ 4,156,103	\$ 4,635,678	\$ 4,246,320	\$ 4,416,173	\$ 4,592,820	\$ 4,776,533	\$ 4,967,594	\$ 5,166,298
Debt Service Coverage⁽⁶⁾								(0.43x)	(0.45x)	(0.46x)

	FY 2002*	FY 2003*	FY 2004*	FY 2005 (Annual)	FY 2006 (Proj.)	FY 2007 (Proj.)	FY 2008 (Proj.)	FY 2009 (Proj.)	FY 2010 (Proj.)	FY 2011 (Proj.)
Total Available Revenues	\$ 3,639,444	\$ 3,902,288	\$ 4,156,103	\$ 4,635,678	\$ 4,246,320	\$ 4,416,173	\$ 4,592,820	\$ 4,776,533	\$ 4,967,594	\$ 5,166,298
Debt Service Coverage w/100% Collections								(0.19x)	(0.20x)	(0.21x)

Debt Service Coverage w/100% Collections

Note: Projected revenues are calculated based on 4% escalation annually using the averages from FY 2002-2005.
 (1) Based on Georgetown reports from Exhibit 2-4 dated 8/29/2005 which assume projections increased 4% annually using FY 2005 as base year. Operation figures of new landfill, recycling and PUC admin are estimates from DPI
 (2) Other expenditures include travel, contractual services, supplies/materials, utilities (i.e. power, water & telephone), and capital outlays.
 (3) TG Engineering study dated 6/15/05 public own/private operate scenario.
 (4) Recycling at \$218k, PUC at \$150k estimates per DPW.
 (5) Based on an estimated 30-year level debt service financing (for initial investment) and 15-year level debt service (for cell construction costs) with assumed interest rate of 7.0% and two-years of capitalized interest plus a debt service reserve fund. Bond sizing based on proceeds in HDR report dated 4/2/06 consisting of \$28.6mm in initial investments and first three years of cell construction (\$17.5mm and \$12.5mm) totaling \$66.6mm.
 (6) Equals Net Revenues (Revenues less O&M) divided by debt service. When negative (as shown in red) that means Net Revenues are negative.



Guam Department of Public Works

Cash Flow Scenario #3 7.5% Interest Rate Assumption

Guam Department of Public Works Preliminary Cashflow Statement (Fiscal Year Ending September 30th)

	FY 2002*	FY 2003*	FY 2004*	FY 2005 (Annual)	FY 2006 (Proj.)	FY 2007 (Proj.)	FY 2008 (Proj.)	FY 2009 (Proj.)	FY 2010 (Proj.)	FY 2011 (Proj.)
Expenses:										
O&M ⁽¹⁾	\$ -	\$ -	\$ -	\$ -	\$ 1,994,252	\$ 2,074,023	\$ 2,156,983	\$ 2,243,263	\$ 2,332,993	\$ 2,426,313
Salary - Residential Collection ⁽¹⁾	-	-	-	-	653,628	679,774	706,965	735,243	764,653	795,239
Salary - Ordot Landfill ⁽¹⁾	-	-	-	-	1,215,651	1,264,277	1,314,848	1,367,442	1,422,140	1,479,025
Salary - Other ⁽¹⁾	-	-	-	-	1,566,880	1,629,555	1,694,737	1,762,527	1,833,028	1,906,349
Other Expenditures ⁽¹⁾⁽²⁾	-	-	-	-	-	-	2,382,764	2,418,506	2,553,487	2,643,287
O&M New MSWLF ⁽³⁾	-	-	-	-	368,000	368,000	368,000	368,000	368,000	368,000
Recycling and PUC Costs ⁽⁴⁾	-	-	-	-	-	-	-	10,066,875	10,068,688	10,066,563
Projected Debt Service @ 7.5% ⁽⁵⁾	-	-	-	-	-	6,015,628	8,624,298	18,961,856	19,342,989	19,684,776
Total Expenditures	\$ 3,479,551	\$ 3,668,454	\$ 3,970,427	\$ 5,183,888	\$ 5,798,412	\$ 6,015,628	\$ 8,624,298	\$ 18,961,856	\$ 19,342,989	\$ 19,684,776
Revenue Requirement for 1.25x Coverage	\$ 3,479,551	\$ 3,668,454	\$ 3,970,427	\$ 5,183,888	\$ 5,798,412	\$ 6,015,628	\$ 8,624,298	\$ 21,478,575	\$ 21,860,161	\$ 22,201,417
Revenue Requirement for 1.75x Coverage	\$ 3,479,551	\$ 3,668,454	\$ 3,970,427	\$ 5,183,888	\$ 5,798,412	\$ 6,015,628	\$ 8,624,298	\$ 26,512,012	\$ 26,894,504	\$ 27,234,698
Revenues:										
Commercial Collections	\$ 2,425,362	\$ 2,605,554	\$ 2,853,587	\$ 3,181,296	\$ 2,876,640	\$ 2,991,706	\$ 3,111,374	\$ 3,235,829	\$ 3,365,262	\$ 3,499,872
OCH Collections	36,831	39,849	50,469	85,087	55,120	57,325	59,618	62,003	64,483	67,062
Residential Collections	691,575	608,286	477,978	611,242	620,880	645,715	671,544	698,406	726,342	755,395
Other Collections	485,676	648,599	774,069	758,053	693,680	721,427	750,284	780,296	811,507	843,968
Total Available Revenues	\$ 3,639,444	\$ 3,902,288	\$ 4,156,103	\$ 4,635,678	\$ 4,246,320	\$ 4,416,173	\$ 4,592,820	\$ 4,776,533	\$ 4,967,594	\$ 5,166,298
Debt Service Coverage⁽⁶⁾								(0.41x)	(0.43x)	(0.44x)
Hypothetical Revenue w/100% Collections	\$ 3,957,740	\$ 4,107,930	\$ 4,308,742	\$ 4,724,775	\$ 4,262,740	\$ 4,371,790	\$ 4,538,744	\$ 4,716,595	\$ 4,905,759	\$ 5,100,549
Commercial Collections	2,425,362	2,605,554	2,853,587	3,181,296	2,876,640	2,991,706	3,111,374	3,235,829	3,365,262	3,499,872
OCH Collections	36,831	39,849	50,469	85,087	55,120	57,325	59,618	62,003	64,483	67,062
Residential Collections	691,575	608,286	477,978	611,242	620,880	645,715	671,544	698,406	726,342	755,395
Other Collections	485,676	648,599	774,069	758,053	693,680	721,427	750,284	780,296	811,507	843,968
Total Hypothetical Revenue w/100% Collections	\$ 3,639,444	\$ 3,902,288	\$ 4,156,103	\$ 4,635,678	\$ 4,246,320	\$ 4,416,173	\$ 4,592,820	\$ 4,776,533	\$ 4,967,594	\$ 5,166,298
Debt Service Coverage w/100% Collections								(0.18x)	(0.19x)	(0.20x)

Note: Projected revenues are calculated based on 4% escalation annually using the averages from FY 2002-2005.
 (1) Based on Georgetown reports from Exhibit 2-4 dated 8/29/2005 which assume projections increased 4% annually using FY 2005 as base year. Operation figures of new landfill, recycling and PUC admin are estimates from DPI
 (2) Other expenditures include travel, contractual services, supplies/materials, utilities (i.e. power, water & telephone), and capital outlays.
 (3) TG Engineering study dated 8/15/05 public own/private operate scenario.
 (4) Recycling at \$218k, PUC at \$150k estimates per DPW.
 (5) Based on an estimated 30-year level debt service financing (for initial investment) and 15-year level debt service (for cell construction costs) with assumed interest rate of 7.5% and two-years of capitalized interest plus a debt service reserve fund. Bond sizing based on proceeds in HDR report dated 4/2006 consisting of \$28.8mm in initial investments and first three years of cell construction (\$17.5mm, \$11.9mm and \$12.5mm) totaling \$66.8mm.
 (6) Equals Net Revenues (Revenues less O&M) divided by debt service. When negative (as shown in red) that means Net Revenues are negative.

Next Steps

- Determine preferred collection system adjustments and take necessary legislative and regulatory steps to institute the changes
- Confirm project costs to be financed
- Evaluate structuring alternatives
 - Follow-on issue in 2011 for future cell construction costs
- Continue discussions with credit rating agencies
- Determine schedule of rate increases and adjust rates as soon as feasible
- Resolve legal issues related to billing in advance

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



DEPARTMENT OF PUBLIC WORKS -
PROCUREMENT ADVISOR
CONTRACT

DOCKET 05-9

ORDER

On December 14, 2005, the Department of Public Works [DPW] petitioned the Guam Public Utilities Commission [PUC] for expedited review of its procurement of a consultant to assist it in broad scope of work required under the February 11, 2004 Federal Consent Decree in Docket 02-22 and under Guam law. The contract scope would include: a] the development of plans and bid documents for the privatization of the operation and closure of the Ordot landfill; the operation of the transfer stations; and the construction and operation of the Layon landfill; b] planning and study necessary to create residential collection districts pursuant to P.L. 26-99; c] consultation regarding other solid waste management activities; and d] optional post-completion activities. As the fees paid under the proposed contract will exceed \$50,000, it requires prior PUC review and approval pursuant to PUC's October 27, 2005 Order in this docket [Contract Review Order].

DPW has requested expedited regulatory review of the proposed contract because it faces near term deadlines, under threat of substantial Consent Decree penalties, to commence procurement activities on the work product, which will be produced by the consultant. On December 19, 2005 PUC's consultant Georgetown Consulting Group [GCG] submitted its report on the proposed procurement, which recommends its approval subject to conditions.

After review of the GCG report, in consultation with its administrative law judge, for good cause shown and on motion duly made, seconded and carried by the affirmative vote of the undersigned commissioners, the Guam Public Utilities Commission **HEREBY ORDERS THAT** the procurement is approved subject to the following conditions:

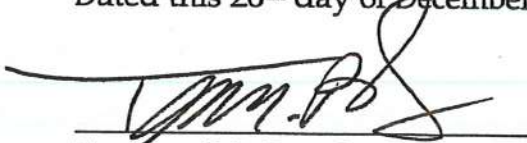
1. DPW shall file with PUC an executed copy of the contract, with all attachments and enclosures.
2. The consultant shall provide PUC with progress reports, in form and frequency established by PUC's administrative law judge, which will enable PUC: a] to monitor the potential impact of its work on DPW rates,

ATTACHMENT C

which are subject to PUC jurisdiction; and b] to enable PUC to conduct a timely review, under the Contract Review Order, of proposed procurements which result from its work and which require regulatory review.


3. The proposed contract shall be amended: a] to require consultant to participate, upon request, in regulatory and legislative proceedings related to its work scope; and b] to include a conflict of interest clause, which will prohibit consultant from participating or having an economic interest in any DPW procurement which results from its contractual services.
4. DPW is in serious default of its statutory duty under P.L. 26-99 to establish three residential collection districts and to privatize collection services in 2 of the 3 districts by October 2002. As a consequence, residential customers have suffered with poor collection service. The proposed contract shall be amended to accelerate the consulting work necessary to create these districts and to privatize collection service as required by P.L. 26-99.
5. ALJ is authorized and directed to oversee the administration and interpretation of this Order.

Dated this 20th day of December 2005.


Terrence M. Brooks


Joseph M. McDonald

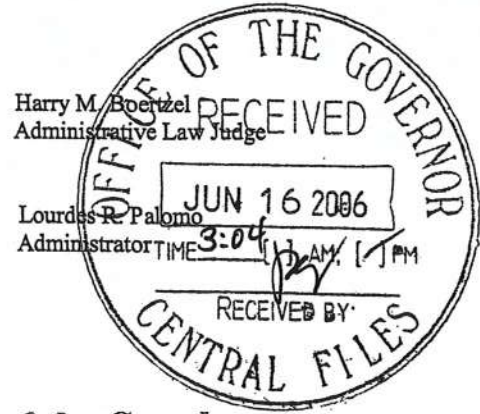

Edward C. Crisostomo


Rowena E. Perez

**PUBLIC UTILITIES COMMISSION
OF GUAM**

Terrence M. Brooks
Joseph M. McDonald
Edward C. Crisostomo
Rowena E. Perez

Suite 207, GCIC Building
Post Office Box 862
Hagatna, Guam 96932
Telephone: (671) 472-1907
Fax: (671) 472-1917
Email: info@guampuc.com



April 17, 2006

VIA HAND DELIVERY

The Honorable Felix P. Camacho
Governor of Guam
Office of the Governor of Guam
Ricardo J. Bordallo Governor's Complex
Adelup, Guam 96910

Office of the Speaker

MARK FORBES

Date: 6/16/06
Time: _____
Rec'd by: _____
Print Name: Janice

The Honorable Doris Flores Brooks, Public Auditor
Office of the Public Auditor
4th Floor, Pacific Daily News Bldg.
238 Archbishop Flores Street
Hagåtña, Guam 96910



The Honorable Mark Forbes
Speaker, Twenty 28th Guam Legislature
155 Hesler Street
Hagåtña, Guam 96910

RE: Guam Public Utilities Commission FY05 Report - 911 Emergency System

Dear Public Officials:

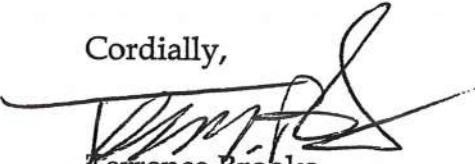
Pursuant to the requirement of Public Law 28-44, the Guam Public Utilities Commission [PUC] respectfully submits its FY05 report regarding the collection and remittance of 911 surcharge revenues by collection agents. The following documents comprise this report:

1. The April 5, 2006 report from PUC's regulatory consultant, Georgetown Consulting Group [GCG] [Attachment A]. In its report GCG finds that the collection agents are not in full compliance with PUC standards and procedures, which govern the collection of the 911 surcharge. At its April 20, 2006 meeting, PUC's staff was directed to undertake administrative proceedings to examine and redress these irregularities.

2. The October 18, 2005 letter from GCG's counsel [William Blair, Esq.] which recounts that 911 surcharge revenues are being appropriated and expended for purposes unrelated to the support of the 911 emergency system [*Attachment B*].
3. In its FY05 review, Georgetown found that the Federal government has refused to pay the 911 surcharge based on the assertion that it is an impermissible tax. As is recounted in the attached correspondence and decisions of the Federal Government Accounting Office [*Attachment C*] amended legislation could resolve this problem and enable the Government of Guam to collect the surcharge from Federal instrumentalities on Guam.

PUC looks forward to working with you in strengthening the funding base, which supports the important public service provided by the 911 emergency system.

Cordially,



Terrence Brooks
Chairman

GEORGETOWN CONSULTING GROUP, INC.

716 DANBURY RD.
RIDGEFIELD, CT. 06877

Jamshed K. Madan
Michael D. Dirmeier



Telephone (203) 431-0231
Facsimile (203) 438-8420
jmadan@snet.net

Edward R. Margerison
Jean Dorrell

April 5, 2006

Harry Boertzel, Esq. ALJ
The Guam Public Utilities Commission
Suite 207, GCIC Building
Hagatna, Guam 96932

Re: E911 Surcharge Summary

Dear Harry,

This letter is being provided to you in response to PL28-44 requiring the provision of a report to the Governor, Legislature and Public Auditor for each fiscal year regarding the E911 surcharge results. The collection agents ("Agents") are required by the Public Utilities Commission ("PUC" or "Commission") to file quarterly reports summarizing the receipts, collections and amounts related to the \$1 per month surcharge designed to contribute toward the enhanced E911 system. We have relied upon this information as filed by the Agents. The information was electronically obtained from the individual Agents (Guam Telephone Landline, GTA cellular, IT&E, I-Connect, Guam Wireless and Guam Cellular Communications). We have compiled the data from these filings for the Fiscal Year ending September 30, 2005 (Fiscal 2005) in this report and present this compilation in summary format to preserve confidentiality of the various agents.

Although the Agents are required by the PUC to file information regarding the billing, collection and disbursements of the funds created by the \$1 per month E911 surcharge on a quarterly basis, we were unable to obtain the information from Guam Cellular Communications for the period described above. GCG and the PUC Executive Director have made several attempts to retrieve this information from Guam Cellular Communications, but to no avail. Therefore, we used the twelve months ending August 31, 2005 as a surrogate for Fiscal 2005 for this Agent.¹ As in the past, we have assumed that the information provided by the Agents is accurate and fairly presented.

¹ We inquired whether Guam Cellular Communications had filed its report for the period ending December 31, 2005 that would include the missing data, but was informed that the PUC had not received this report either.

ATTACHMENT A

The following table shows information regarding E911 funds and related line information as of September 30, 2005:

Table 1
Island-Wide Total

	<u>Sep-05 Balance</u>
Total Lines	183,530
Exempt Lines	12,811
Balance in Fund	\$ 155,955
Uncollected Revenues	\$ 79,475
Uncollectible	\$ 360

We would note that only GTA Landline, IT&E and Guam Cellular show exempt lines. The remaining Agents do not show any lines as exempt. Moreover only GTA Landline and Cellular provide uncollected E911 amounts. The uncollected amounts are the accounts receivable by the Agent for the \$1 per month E911 surcharge. The other agents do not show any receivable from the \$1 surcharge. The only agent showing uncollectible revenues is IT&E. These amounts were intended to provide the PUC with the amount of potential revenues that will not be received as a direct result of a customer's refusal to pay. The Agents are required by law to submit the names of those customers that refuse to pay, but as we indicated only IT&E has provide such a list of customers and lines.² The "Balance in Fund" is the amount of cash held by the Agents awaiting transfer to the DOA.

GTA Landline, GTA Cellular and IT&E are the only Agents that report "Uncollected Revenues." These are charges to the customers related to the surcharge that have not been collected. In our review of results in Fiscal 2005, we noted a very large and growing uncollected revenue balance (account receivable) by GTA Landline and Cellular. In discussing the matter with management we learned that GTA retains a receivable for the E911 surcharge for those accounts that are inactive (disconnected). While GTA accounting policy permits a write-off for uncollected funds for GTA service, management has taken the position that the E911 funds are not the Agent's funds and therefore cannot be "written off." We would request that after GTA has an opportunity to review this report, it segregate those E911 receivables attributable to disconnected lines (terminated service). Furthermore, we would request that GTA review its customer deposit policy and indicate whether there are funds available in the customer deposits from these disconnected accounts that should be assigned to E911 and transferred to the DOA.

² The Federal Government had refused to pay, but the IT&E indicates that the customer no longer receives IT&E service.

The following table summarizes the cash flow for the surcharge funds

Table 2
Annual Funds Flow
FY2005

	<u>Year Ending</u> <u>Sep-05</u>
Revenues Billed	\$1,188,730
Cash Collected	\$1,191,221
Funds Retained/PUC ³	\$ 290,375
Transfers to DOA	\$ 933,827

Table 2 shows the total Island-wide amount of E911 revenues and collections and the amount transferred to the DOA. We would remind some of the agents that the law requires that agents transfer to the DOA the cash collections within forty-five days. I-Connect shows transfers to the DOA in the month of collection, while the remaining agents show transfers made subsequent to the month of collection. There are some agents (GTA, GTA Cellular and Guam Wireless) who have not made a transfer to DOA in every month of the fiscal year, even though collections were made in every month. As a surrogate to measure compliance with this provision of the law, we made the assumption that the fund on hand by any Agent should be no larger than collections for one and one-half months (45 days). This was not the case for GTA Cellular, IT&E and Guam Wireless at the end of Fiscal 2005.

While some of the Agents provide continuous information from the point the E911 surcharge began for each agent, others (GTA, GTA Cellular and I-Connect) have filed only calendar 2005 in their most recent filings. We would remind the Agents that they are required by law to keep records for a period of four years.

As you are aware there has been difficulty enforcing the PUC order requiring that all of the Agents charge prepaid cellular accounts for the E911 charge. As of September 2005, it appears that all cellular carriers are now charging both prepaid and postpaid accounts for E911. Related to this issue, Guam Cellular Communications has also released funds that it had collected from prepaid accounts that were escrowed pending resolution of this problem in August 2005.⁴

We have also reviewed the level of funds retained by the agent for administrative and start-up costs and the amounts are consistent with various PUC orders in this matter. Finally, it is impossible to

³ The PUC regulatory charges were \$22,500 for the year.

⁴ Guam Cellular ceased charging its prepaid customers for E911 in February 2005 and resumed in August 2005.

state with assurance that the agents are complying with Section 2, paragraph (f) of the PUC June 24, 2002 requiring that the agents apply the first dollar to the E911 fund in the instance where the customer makes a partial payment (unless the customer specifically refuses to pay the surcharge).

There were significant occurrences during Fiscal 2005 that have the effect of distorting the cash flow for the year. Most importantly, the prepaid accounts for IT&E and Guam Cellular Communications were not being charged for most of the Fiscal 2005. In addition, the administrative cost for some of the Agents has changed during this period. For instance, GTA Landline was authorized by the PUC to retain nearly \$30 thousand per month for start-up and ongoing costs. Beginning in January 2005 the start-up costs have been fully amortized and the monthly retention for ongoing costs is now slightly in excess of \$7 thousand. There was also a significant accounting adjustment made by GTA Cellular during this period that also distorted the amount of fiscal revenues. We have created a "pro forma" income statement for Fiscal 2006 using the following assumptions:

1. All Accrued Revenues would be collected
2. Revenues for Fiscal 2006 would be forecasted using year-end lines as shown in Table 1 without growth.
3. The administrative costs retained by the Agents are at the level of September 2005 (annualized) and no further upward or downward adjustments will be approved by the PUC.
4. There will be no change in PUC costs
5. The level of funds on hand by the Agent will remain constant and all collected funds (other than in items #3 and #4) would be transferred to DOA.

The following table shows the impact of the above assumptions and provides the data on a pro forma basis:

Table 3
Funds Flow
Pro Forma Basis

	<u>Pro Forma Fiscal 2006</u>
Revenues Billed	\$2,048,628
Cash Collected	\$2,048,628
Funds Retained/PUC ⁵	\$ 256,779
Transfers to DOA	\$1,791,849

It is our understanding that the FY2006 E911 budget is in excess of the \$1.8 million shown in Table 3, implying the GovGuam will have to find a source of funding for E911 in addition to the surcharge

⁵ PUC charges assumed to remain constant (\$22,500) for the year.

Harry M. Boertzel, ALJ
April 5, 2006
Page 5 of 5

collections for the current Fiscal Year. We have not investigated the details of the budget nor whether the total E911 budget is reasonable.

If we can be of further assistance, please do not hesitate to call.

Respectfully submitted by:

Georgetown Consulting Group, Inc.

C: Bill Blair, Esq.

C:\Guam\Guam E911\Fiscal 2006\06 04 05 Letter to HMB regarding E911 matrix.doc

LAW OFFICES
KLEMM, BLAIR, STERLING & JOHNSON
A PROFESSIONAL CORPORATION

WILLIAM J. BLAIR
THOMAS C. STERLING
RICHARD L. JOHNSON
THOMAS C. MOODY, III
JEHAN'AD G. MARTINEZ
VINCENT E. LEON GUERRERO

SUITE 1008 PACIFIC NEWS BUILDING
238 ARCHBISHOP F.C. FLORES STREET
HAGÁTÑA, GUAM 96910-5205
TELEPHONE: (671) 477-7857; FACSIMILE (671) 472-4290
WRITER'S E-MAIL: wjblair@kbsjlaw.com

JAMES F. BALDWIN
OF COUNSEL
J. BRADLEY KLEMM

October 17, 2005

VIA FACSIMILE\HAND DELIVERY
(671) 472-1917

Harry M. Boertzel, Esq.
Administrative Law Judge
PUBLIC UTILITIES COMMISSION OF GUAM
Suite 207, GCIC Building
414 West Soledad Avenue
Hagátña, Guam 96932

RE: USE OF E911 SURCHARGE REVENUES

Dear Harry:

This is in response to your request that I provide a legal memorandum regarding certain provisions of the GovGuam FY06 budget bill, Bill 114 as enacted into law as Guam PL 28-28.

The Guam PUC, pursuant to PL 25-55, the PUC was mandated by the Guam Legislature to establish a monthly surcharge to be imposed on local exchange telephone and CMRS customers. The stated purpose of the surcharge is to "fund the just and reasonable expenses of operating and maintaining the '911' system" operated by the Guam Fire Department. PL 25-55:2(d). The PUC subsequently established a monthly surcharge in the amount of \$1.00 per month, the maximum amount permitted by the statute.

Revenues derived from the surcharge are required to be deposited into a special fund that was to be created separate and apart from all other funds of the Government of Guam called the "Enhanced 911 Emergency Reporting System Fund" (the "E911 Fund"). PL 25-55:4.

The revenues from the surcharge imposed on telephone and CMRS customers have been collected by the various collection agents and remitted periodically remitted to the Department of Administration where they have presumably been deposited into the E911 Fund, all as required by PL 25-55 and the implementing PUC orders.



ATTACHMENT B

To Harry M. Boertzel, Esq.

Date October 17, 2005

Page 2

The GovGuam budget bill was passed into law on September 30, 2005, the last possible date. Certain provisions of that statute, which did not receive, to my knowledge, the benefit of a public hearing, raise questions whether the surcharge revenues are being used as intended.

Specifically, in part II of Chapter II of PL 28-68, the Legislature provided that the September 30, 1994 balance in the E911 Fund (\$1,574,228), together with the balances in several other separate funds, should be transferred to a new fund created by the budget bill called the "Unreserved Fund Balance Fund." PL 28-68:II:II:2:6 and 7. A portion of the funds in the E911 Fund are thus to be commingled with other funds derived from other fees, charges and, perhaps, taxes. (I have not studied the specifics of all the other funds to be transferred to the Unreserved Fund Balance Fund.)

In addition to requiring that the FY04 balance in the E911 Fund be transferred and commingled in the Unreserved Fund Balance Fund, the budget bill appropriates the transferred funds to purposes other than funding the 911 system. \$67,216 is appropriated to the Guam Police Department to support its general operations; \$602,378 is appropriated to support GFD general operations not related to the 911 system; a total of over \$755,000 is appropriated to GFD to support its Advanced Life Support System; \$217,104 is appropriated to GFD for equipment and supplies not related to the 911 system; and \$125,176 is appropriated to the Department of Corrections to support its operations. Additional appropriations are made from the Unreserved Fund Balance Fund for community health centers, DPW operations and to the village mayors for maintenance of sports facilities.

The budget bill also appropriates the sum of \$2,082,787 from the E911 Fund to GFD for personnel and operations for the 911 system. It may be assumed that this amount reflected the FY05 year end balance in the E911 Fund together with projected surcharge revenues for FY06. However, I do not have that information.

The diversion of surcharge revenues to uses other than supporting the operations of the 911 system raises the issue as to whether the surcharge should be viewed as a "fee" or a "tax" and, if it should be viewed as a tax, whether the tax is being uniformly applied. The ratepayers who are required to pay the E911 surcharge are supposedly paying only the just and reasonable costs of operating the 911 system. That makes it look resemble a fee. If the surcharge revenues are being used to subsidize other unrelated government operations, then the surcharge begins to take on the characteristics of a tax, not

To Harry M. Boertzel, Esq.

Date October 17, 2005

Page 3

a fee. As such, the "fundamental constitutional constraints" on the imposition of taxes become implicated, including the uniformity requirement. If the surcharge is a tax, it is a tax imposed only on telephone and CMRS customers, not on other classes of taxpayers.

Previously, I looked the question of how the E911 surcharge should be viewed in the context of whether or not the federal government was exempt from paying it or not. I found a number of reports and decisions issued by the General Accounting Office regarding this issue. The GAO has uniformly found that a 911 surcharge structured like Guam's is a tax, not a fee. See, e.g., GAO decisions, B-288161, dated April 6, 2002, and B-302230, dated December 30, 2003. Both are easily accessible on the GAO's website, www.gao.gov. These cases arose in the District of Columbia. There are a number of other, earlier decisions related to various state charges. See in particular, GAO decision B-301126, dated October 22, 2003, which involved a statute remarkably similar to Guam's. In that matter, the GAO determined that the surcharge was a tax (and the federal government therefore exempt from paying it).

On the other hand, the surcharge has some of the characteristics of a regulatory fee. It is imposed on ratepayers to cover the cost of a service provided to them by GFD. See, e.g., Carrillo v. City of Ocean Shores, 94 P.3d 961 (Wash.App. 2004), applying Washington law.

Local governments have the authority to require payment of fees that are "akin to charges for services rendered." [Citation omitted.] But such payments must be deposited into a segregated fund directly related either to the provision of a service received by the entities paying the fees or to alleviating a burden to which the entities paying the fee contribute. [Citations omitted.] These charges, which Washington courts collectively refer to as "regulatory fees," include a wide assortment of utility customer fees, utility connection fees, garbage collection fees, local storm water facility fees, user fees, permit fees, parking fees, registration fees, filing fees, and license fees. [Citation omitted.] These fees are not taxes and are exempt from fundamental constitutional constraints on governmental taxation authority, including the tax uniformity requirement. [Citation omitted.]

To Harry M. Boertzel, Esq.

Date October 17, 2005


Page 4

94 P.3d at 966, emphasis in original.¹

At this point we do not have performed sufficient research upon which to base a firm opinion on the legal issues. There are also some factual uncertainties. However, based solely on the provisions of the budget bill it would appear that there was an unused surplus in the E911 Fund. This raises the question of whether the amount of the surcharge is greater than necessary to fund the operation of the 911 system, i.e. is the level of the surcharge "just and reasonable." Under PL 25-55, the PUC has the authority, at any time, to examine the adequacy of the surcharge. PL 25-55:2(d). It would be appropriate, in my view, for the PUC to initiate such an examination and, depending on the results of that examination, take appropriate action.²

Very truly yours,

KLEMM, BLAIR, STERLING & JOHNSON
A Professional Corporation


WILLIAM J. BLAIR

cc: Mr. Jamshed K. Madan (via fax)

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¹ You can contrast the Legislature's imposition of the obligation on GWA and GPA to pay supplemental retirement annuities for certain retirees, which obligation is renewed by PL 28-28. That obligation is passed on to the ratepayers, even though it is in no way related to the cost of service. There can be no argument that, from the ratepayers' perspective, this obligation is a fee, not a tax. The Attorney General's office has issued an unpersuasive opinion that imposing onto GWA and GPA the obligation to pay the supplemental benefits is lawful. That opinion does not even discuss, much less analyze, the legal distinction between a tax and a fee. Instead, the opinion relies entirely on an inapposite U.S. Supreme Court decision dealing with impairment of contract issues. The opinion is unpersuasive.

² It is possible, if not probable, that the "surplus" in the E911 Fund reflected unreimbursed expenses paid from the General Fund, and is, therefore, ephemeral. Based on the limited formation available to it, GCG has concluded that the E911 surcharge are insufficient to fund fully the E911 system.

TITLE: Reconsideration of District of Columbia 9-1-1 Emergency Telephone System Sur
BNUMBER: B-302230
DATE: December 30, 2003

Reconsideration of District of Columbia 9-1-1 Emergency Telephone System
Surcharge and Effect of New Amendments, B-302230, December 30, 2003

B-302230

December 30, 2003
Mr. Robert J. Spagnoletti
Corporation Counsel
Government of the District of Columbia

Subject: Reconsideration of District of Columbia 9-1-1 Emergency Telephone
System Surcharge and Effect of New Amendments
Dear Mr. Spagnoletti:

This responds to two requests of your office with regard to the District of Columbia 9-1-1 Emergency Telephone System considered in B‑288161, Apr. 8, 2002, to James M. Eagen III, Chief Administrative Officer of the House of Representatives. You asked us to reconsider our decision that the U.S. House of Representatives is not required to pay the District 9-1-1 emergency telephone system surcharge as originally enacted in 2000. You also asked whether recent amendments to District law that made fundamental changes to the nature and applicability of the surcharge cured the problem identified in our 2002 decision that made the surcharge an impermissible tax on the federal government.

For the reasons given below, we find no basis to change our previous determination that the House of Representatives was not required to pay the District's 9-1-1 emergency telephone system surcharges, as originally enacted. However, the recent amendments to the District 9-1-1 emergency telephone system surcharge changed the nature of the tax. As now imposed, the legal incidence of the tax is not on the federal government, but on the provider of services. Therefore, federal agencies may pay service provider bills that include itemization of the amended District 9-1-1 surcharge.

BACKGROUND

Your office disagrees with our conclusion in B-288161 that the District 9-1-1 emergency telephone system surcharge, as originally enacted, was an impermissible tax on the federal government. In our 2002 decision, we considered whether the United States and its instrumentalities must pay the District 9-1-1 surcharge, or whether the surcharge amounted to a tax impermissibly imposed on the federal government. Citing *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819), our decision noted that the United States and its instrumentalities are constitutionally immune from direct taxation by state and local governments. We concluded that, despite its use of the term "user fee," the District's 9-1-1 emergency telephone system surcharge constituted a tax, the legal incidence of which fell directly upon the federal government as user of telephone services in the District of Columbia. Accordingly, we held that the federal government, including the House of Representatives, was constitutionally immune from, and need not pay, the District's 9-1-1 emergency telephone system surcharge. B-288161, *supra*. [2]

After we issued B-288161, your office requested that we reconsider our

ATTACHMENT C

conclusion. You said that your research had not revealed any case in which a court had invoked the tax immunity doctrine to set aside a district tax levied upon the United States or one of its instrumentalities. You believe that the constitutional considerations underpinning the McCulloch tax immunity doctrine do not apply to the District, given its unique status as a federal district and a ****partially independent*** governmental unit.* You also believe that the District's power to impose a tax or fee on federal government entities is controlled exclusively by federal statute, and you said that you can find no federal statute prohibiting the District from imposing the surcharge on the federal government. Moreover, you argue that, if Congress wishes to preclude the District from taxing other federal entities, it may easily do so by disapproving or amending the relevant District acts through established processes and statutory provisions. Letter from Interim Corporation Counsel Arabella Teal to GAO General Counsel Anthony Gamboa, Oct. 31, 2002.

Recently, the District amended the statute creating its 9-1-1 surcharge. See Budget Support Congressional Review Emergency Act of 2003, D.C. Law 15-149, S:S: 501, 502 (Sept. 22, 2003).[3] The 2003 amendments eliminated provisions of the original law characterizing the surcharge as a ***user fee*** and explicitly imposed it upon telephone subscribers. The amendments also repealed the provisions stating that the surcharge was not to be considered revenue of the telephone companies, as well as those allowing the telephone companies to retain up to 2 percent of the surcharge to cover their administrative costs in collecting the surcharge for the District. See D.C. Law 15-149, S: 502, to be codified at D.C. Code S:S: 34-1801-1804.

Now, as amended, the District 9-1-1 surcharge is described in District law as a ***tax,*** and it is ***imposed on all local exchange carriers . . . calculated [as a flat rate] on the basis of each individual telephone line sold or leased in the District of Columbia.*** Emergency and Non-Emergency Number Telephone Calling Systems Fund Emergency Amendment Act of 2003, D.C. Law 15-149, tit. V, S: 502, to be codified at D.C. Code S: 34-1803. Telephone service providers are required to ***submit the tax . . . to the Mayor on a quarterly basis.*** Id. The amendments took effect on October 1, 2003. D.C. Law 15-149, S: 504.

DISCUSSION

First, we will address your request that we reconsider our 2002 decision holding that the federal government is immune from paying the District 9-1-1 surcharge, as originally enacted. Second, we will consider whether, under the 2003 amendments, the federal government may pay the District 9-1-1 surcharge.

1. The District 9-1-1 Surcharge, as Originally Enacted, is an Impermissible Tax

Our 2002 decision was predicated upon federal supremacy and sovereignty, as upheld in *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819). You argue that *McCulloch* has no application to a tax enacted by the District of Columbia because the District is part of the federal government and the rule in *McCulloch* is limited to protecting the federal government from taxation by the states. We disagree. We see *McCulloch* as protecting the supremacy and sovereignty of the federal government from interference by any subordinate jurisdiction, including the government of the District of Columbia.

The Supremacy Clause Bars Interference by Any Subordinate Government
McCulloch concerned an attempt by the state of Maryland to impose a tax upon the Bank of the United States, a federal instrumentality. To resolve the resulting controversy, the Supreme Court turned to the Supremacy Clause of the United States Constitution, which provides that ***[t]his**

Constitution, and the Laws of the United States which are made in Pursuance thereof . . . shall be the supreme Law of the Land.* U.S. Const., Art. VI, cl. 2. The Supreme Court found that the Supremacy Clause rendered the federal government and its instrumentalities immune from state taxes like the one imposed by Maryland. *McCulloch*, 17 U.S. at 436. *McCulloch* is often cited for the proposition *that States may not impose taxes directly on the Federal Government, nor may they impose taxes the legal incidence of which falls on the Federal Government.* *United States v. County of Fresno*, 429 U.S. 452, 459 (1977). Quoting *United States v. New Mexico*, 455 U.S. 720, 735 (1982) (itself quoting *McCulloch* at 430), you argue that *the principal purpose of the [*McCulloch*] immunity doctrine [is] that of forestalling *clashing sovereignty* . . . by preventing the States from laying demands directly on the Federal Government.* Letter from Interim Corporation Counsel Arabella Teal to GAO General Counsel Anthony Gamboa, Oct. 10, 2002. It is true that most of the court cases that have applied *McCulloch* involved attempts by units of state and local government to tax the federal government, but the language of Chief Justice Marshall*s opinion in *McCulloch* shows that the Court had more in mind.

While *McCulloch* factually concerns the propriety of a state tax, it is apparent from Chief Justice Marshall*s opinion that, for the Court, larger issues were at stake, including protecting and preserving the sovereignty and supremacy of the federal government. His opinion emphasizes that the elevation of the federal government*s authority over the rest of the nation *so entirely pervades the constitution, is so intermixed with the materials which compose it, so interwoven with its web, so blended with its texture, as to be incapable of being separated from it, without rending it into shreds.* *McCulloch*, 17 U.S. at 426. Chief Justice Marshall stated that

no principle, not declared [in the Constitution], can be admissible, which would defeat the legitimate operations of a supreme government. It is of the very essence of supremacy, to remove all obstacles to its action within its own sphere, and so to modify every power vested in subordinate governments, as to exempt its own operations from their own influence. This effect need not be stated in terms. It is so involved in the declaration of supremacy, so necessarily implied in it, that the expression of it could not make it more certain.

Id. at 427 (emphasis added). Because the Court understood that *the power to tax involves the power to . . . control,* *id.* at 431, the Court found the federal government exempt from the influence and power of *subordinate governments,* as a necessary and essential implication of the Supremacy Clause.[4] Chief Justice Marshall sought to establish a rule that allowed subordinate governments within the American federal system sovereignty over the private persons and property situated within their borders, but not sovereignty over the federal government and its instrumentalities.[5] It was intended to serve as a rule under which *[w]e are relieved, as we ought to be, from clashing sovereignty; from interfering powers.*[6] *Id.* at 430 (emphasis added).

As we already observed, the rule in *McCulloch* has been applied mostly to attempts by states and their local governments to tax the federal government, even though its language clearly evinces a broader purpose.

Attempts by territories and possessions of the United States to tax the federal government have faced a similar rule. Federal cases have uniformly held that territories and possessions of the United States may not tax the federal government or its instrumentalities without the consent of Congress. Often cited for this proposition is *Domenech v. National City Bank of New York*, 294 U.S. 199 (1935). Congress statutorily granted Puerto Rico a general power of taxation. Puerto Rico attempted to use that authority to tax a branch of a bank organized under the laws of the United States. *Id.* at 200-202. *Domenech* held that a territory or

island possession is *an agency of the federal government.* Id. at 204. As such, territories and possessions have no independent sovereignty comparable to that of a state; all of their authority, including their authority to impose taxes, must be derived from the federal government. Cf. id. at 204-205. *[L]ike a state, though for a different reason, such an agency may not tax a federal instrumentality.* Id. at 205. The Court explained:

A state, though a sovereign, is precluded from [taxing the federal government] because the Constitution requires that there be no interference by a state with the powers granted to the federal government. A territory or a possession may not do so because the dependency may not tax its sovereign. Id. at 205 (footnote omitted).[7]

We recognize that, just as it is not a state, the District is also not a territory or a possession. The District is *a unique entity.* E.g., *Firemen's Ins. Co. v. Washington*, 483 F.2d 1323, 1328 (D.C. Cir. 1973). However, it is clear to us that the rule in *McCulloch* has a broader purpose than your office argues. These precedents demonstrate that the Constitution does not contemplate, and the Supreme Court will not allow, *subordinate governments* of any stripe within the American federal system to tax the federal government without the consent of Congress. The Federal Government Must Clearly Consent to be Taxed or Regulated. The Supremacy Clause does not bar all efforts by subordinate governments to regulate or tax the federal government but rather only those efforts to which the federal government has not clearly and expressly consented. The decision in *Hancock v. Train*, 426 U.S. 167, 178-79 (1976), illustrates and emphasizes this point. In *Hancock*, the Supreme Court rejected an attempt by the state of Kentucky to compel federal installations to obtain state permits before operating facilities that might contaminate the air. The Court quoted *McCulloch* and the Supremacy Clause. 426 U.S. at 178. Then, the Court added:

*Taken with the *old and well-known rule that statutes which in general terms divest pre-existing rights or privileges will not be applied to the sovereign* *without a clear expression or implication to that effect,* this immunity [i.e., *McCulloch*] means that where *Congress does not affirmatively declare its instrumentalities or property subject to regulation,* *the federal function must be left free* of regulation. Particular deference should be accorded that *old and well-known rule* where, as here, the rights and privileges of the Federal Government at stake not only find their origin in the Constitution, but are to be divested in favor of and subjected to regulation by a subordinate sovereign.*

Id. at 179 (footnotes omitted and emphasis added). This passage from *Hancock* is often cited by the federal courts.[8]

In a relatively recent case, this requirement for express federal consent to regulation or taxation was applied to a law enacted by the District of Columbia. In *District of Columbia Financial Responsibility and Management Authority v. Concerned Senior Citizens of the Roosevelt Tenant Ass'n*, 129 F. Supp. 2d 13 (D.D.C. 2000), a tenant association claimed that a District law gave it *the right of first refusal* to buy a building before the District sold it to the District of Columbia Financial Responsibility and Management Assistance Authority (commonly referred to as the "Control Board"). 129 F. Supp. 2d at 14-15. Congress created the Control Board in a federal law and specified a very short list of those District laws that would apply to the Control Board. Id. at 16. The court had no doubt whatsoever that a District law not on that list could have no application to the Control Board. The list (only three laws) represented the sole extent to which Congress had consented to District regulation of the Control Board. Id. at 16-18.

The requirement for express consent has also been applied to attempts by

territories and possessions of the United States to tax the federal government or its instrumentalities. For example, in *Domenech* (discussed in greater detail above), the Court said, "[T]he Congress may consent to such taxation; but the grant to [a territory or possession] of a general power to tax should not be construed as a consent. Nothing less than an act of Congress clearly and explicitly conferring the privilege will suffice." 294 U.S. at 205 (footnote omitted). [9]

The District of Columbia is Subordinate to the Federal Government
The District of Columbia is clearly subordinate to the federal government. The Constitution itself makes this clear when it describes it as "such District . . . as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States," over which Congress shall "exercise exclusive Legislation in all Cases whatsoever." U.S. Const., Art. I, S: 8, cl. 17. Your office notes that the power Congress exercises over the District has been described by the Supreme Court as "plenary," *Palmore v. United States*, 411 U.S. 389, 397-98 (1973), and that, although Congress has delegated to the District some of that authority, that delegation is "neither complete nor irrevocable." *Clarke v. United States*, 886 F.2d 404, 407 (D.C. Cir. 1989), vacated as moot, 915 F.2d 699 (1990) (en banc). Within the District of Columbia, your office argues, there can be no opportunity for "clashing sovereignty" because the District of Columbia is but a part of the federal government. Letter from Interim Corporation Counsel Arabella Teal to GAO General Counsel Anthony Gamboa, Oct. 10, 2002. Consequently, within the District of Columbia there is only one sovereign, the Congress of the United States. See *Metropolitan Railroad Co. v. District of Columbia*, 132 U.S. 1, 9 (1889); *United States v. Cohen*, 733 F.2d 128, 132 n.10 (D.C. Cir. 1984). Thus, you argue *McCulloch* has no application to District taxes because the District is a "unique entity" that is neither a state nor the municipality of a state [and is not] sufficiently independent* from the Federal government to "warrant application of the tax immunity doctrine." Letter from Interim Corporation Counsel Arabella Teal to GAO General Counsel Anthony Gamboa, Oct. 10, 2002, quoting *Firemen's Ins. Co. v. Washington*, 483 F.2d 1323, 1328 (D.C. Cir. 1973). This argument overlooks the larger issues of *McCulloch*. The issue is not whether the District is a state, or a part of the federal government, or even some unique other thing, but whether the District, as a subordinate government, is exercising or attempting to exercise some degree of sovereignty that has the effect of interfering in the operations of the federal government without the consent of Congress. Whatever it is and however unique it may be, the District is constitutionally subordinate to the federal government. Before it may tax the federal government, the District must be able to demonstrate that the federal government has explicitly consented to be taxed by it. Cf., e.g., *Hancock*, 426 U.S. at 179; *Domenech*, 294 U.S. at 204-205; *Roosevelt Tenant*, 129 F. Supp. 2d at 17.

Your office supports its position, in part, by pointing out that no federal court has ever struck down a District tax on the basis of the *McCulloch* immunity. Our research suggests this is true. Equally true, however, is the fact that no federal court has ever upheld a District tax in the face of a challenge under *McCulloch*. For the most part, in those cases where a District tax has faced a challenge based on application of the tax to a federal instrumentality, the tax survived because Congress*not the District*enacted it, or because the court avoided the question when it noticed that the tax explicitly precluded its application to the federal government. [10]

Congress Has Not Consented to Taxation by the District

The District Home Rule Act explicitly shields the federal government from taxation by the District. The United States Constitution vests in Congress exclusive legislative authority for the District. U.S. Const.,

art. I, S: 8, cl. 17. As your office noted in its submissions to us, congressional authority over the District is *plenary.* *Palmore v. United States*, 411 U.S. 389, 397-98 (1973). Since Congress has exclusive legislative authority over the District, all legislative authority that the District government may legitimately assert, including the authority to lay and collect taxes must have been given to it by Congress. [11] Thus, the proper analysis is not, as you suggest, to determine whether any federal law precludes the District from taxing other elements of the federal government, but rather whether any federal law authorizes it to do so.

In 1973, Congress granted the District a measure of *home rule* by delegating to the District government *certain legislative powers* and other specified authorities**subject to the retention by Congress of the ultimate legislative authority* over the District. District of Columbia Self-Government and Governmental Reorganization Act (known also as the *Home Rule Act*), Pub. L. No. 93-198, S: 102(a), 87 Stat. 774, 777 (1973) (*Statement of Purposes*), codified at D.C. Code S: 1-201.02. See also, e.g., Home Rule Act, S:S: 1-206.01 (congressional *Retention of Constitutional Authority* as District legislature); 1-206.02 (*Limitations on the Council*). It was clearly a limited grant of authority. *District of Columbia v. Greater Washington Central Labor Council*, 442 A.2d 110, 113 (D.C. 1982), cert. denied, 460 U.S. 1016 (1983).

The Home Rule Act*s grants of taxing authority vis-`a-vis the federal government are specifically limited in scope. For example, for each kind of tax that might conceivably be applied against the federal government, Congress also enacted a specific exemption for the federal government. Your office noted several of those taxes and exemptions, including the District property, sales, and cigarette taxes. D.C. Code S:S: 1-206.02(a)(1), 47‑2005(1), 47-2403. Your office infers from these exemptions that Congress must have understood the District to have general authority to tax the federal government; otherwise, it would not have felt the need to create these exemptions.

There are two problems with this inference. First, if Congress intended to exempt the federal government from District taxation in only a few specific situations, one would expect to find at least a few instances where Congress did not exclude the federal government from the District*s authority to levy a tax that might reasonably have application to the federal government. Your office has not cited such a tax, however, and we have identified none. Second, as we noted above, the federal government must explicitly give its consent clearly and unambiguously before a subordinate government may impose taxes upon it; the drawing of such an inference or an implication is not sufficient. E.g., *Hancock*, 426 U.S. at 179. As the Supreme Court said in *Domenech*, 294 U.S. at 205, with respect to the authority of other subordinate governments, the grant by Congress of the general power to tax is not sufficient. There must be clear and explicit statutory authority.

The Home Rule Act did not give the District authority to tax the federal government. In fact, two provisions of the Home Rule Act clearly limit the District in this area. First, section 602(a)(3) specifies that the District may not *enact any act . . . which concerns the functions or property of the United States.* Second, section 602(b) specifies, *Nothing in this Act shall be construed as vesting in the District government any greater authority . . . except as otherwise specifically provided in this Act, over any Federal agency, than was vested in the Commissioner.*[12] Home Rule Act, 87 Stat. at 813-14, codified respectively in D.C. Code S:S: 1-206.02(a)(3), 1‑206.02(b) (formerly codified in S: 1-233). Taken together, these provisions preclude the District from imposing any direct taxes or other forms of interference upon the federal government.

The Court of Appeals for the District of Columbia considered these two

provisions in *District of Columbia v. Greater Washington Central Labor Council*, 442 A.2d 110 (D.C. 1982), cert. denied, 460 U.S. 1016 (1983). Although the factual situation in that case was different from the one with which we are presently concerned, the court's conclusions speak directly to the purposes Congress had in mind when it created these limitations. Specifically, the court found these provisions were intended to

safeguard the operations of the federal government on the national level. 442 A.2d at 116. The Act's legislative history showed *[t]he functions reserved to the federal level would be those related to federal operations in the District and to property held and used by the Federal Government for conduct of its administrative, judicial, and legislative operations.* 442 A.2d at 116, quoting House Comm. on the District of Columbia, 93d Cong., 2d Sess., District Executive Branch Proposal for Home Rule Organic Act 182 (Comm. Print 1973). *What Congress sought to protect [in sections 602(a)(3) and 602(b)] was the integrity of the federal domain as it relates to administration of federal legislation having national implications.* 442 A.2d at 116.[13]

The limitations of sections 602(a)(3) and 602(b) take on additional meaning when they are considered in the context of applying a District tax to other federal entities. Inasmuch as *the power to tax involves . . . a power to control,* *McCulloch*, 17 U.S. at 431, any attempt by the District to tax another federal entity without the benefit of express authority from Congress necessarily places the District in the position of attempting to exercise *greater authority over*[14] a federal agency, intruding upon the *conduct of [federal] administrative, judicial, and legislative operations,*[15] and compromising *the integrity of the federal domain*[16] by violation of sections 602(a)(3) and 602(b).

The Absence of Congressional Disapproval Does Not Constitute

Consent

Before it may tax the federal government, the District must have explicit authorization. E.g., *Hancock*, 426 U.S. at 179. The submission of your office implies that Congress must have consented: In failing to disapprove the District law creating the original surcharge, your office suggests, Congress has effectively approved it and consented to its provisions. Letter from Interim Corporation Counsel Arabella Teal to GAO General Counsel Anthony Gamboa, Oct. 31, 2002. We disagree with this position.

As we already noted, Congress delegated to the District only certain specific powers, expressly conditioning their exercise upon compliance with certain specific limitations and restrictions, and expressly retaining to itself the *ultimate legislative power* for the District. In attempting to tax the federal government, the District exceeded its authority under the Home Rule Act. It is well accepted in the law that ultra vires behavior is, ab initio, legally ineffective.[17] For example, in *McConnell v. United States*, 537 A.2d 211, 215 (D.C. 1988), the court considered a District of Columbia voter initiative that would have required different sentencing and treatment guidelines for addicts convicted in the District, as compared with those prescribed by federal law for the nation. The court found the initiative violated the Home Rule Act provision prohibiting the District from attempting to amend or repeal any act of Congress having national application (as opposed to congressional laws with purely local impact). *Id.* See District Code S: 1‑206.02(3). *It follows, therefore,* the Court concluded, *that the amendments [which were the subject of the voter initiative] could not*and did not*work an effective repeal of any of the provisions of [the federal law].* 537 A.2d at 215. There was no requirement for Congress to disapprove the initiative; it simply had no effect.

A similar holding can be seen in *McMillan Park Committee v. National Capital Planning Commission*, 759 F. Supp. 908 (D.D.C. 1991), rev'd on

other grounds, 968 F.2d 1283 (D.C. Cir. 1992). In *McMillan*, the District government had enacted an amendment to the comprehensive land use plan covering the District of Columbia. The amendment changed the permitted land uses for *McMillan Park* from parks, open space and recreation to mixed use, allowing for medium density residential and moderate density commercial development. The enacted amendment was submitted to Congress under the Home Rule Act. Congress did not disapprove it. Subsequently, private activists brought suit, complaining that applicable federal procedural requirements had not been followed. *Id.* at 911-13. The court agreed that the applicable procedures had not been followed. In response, the District argued that the court was without power to order relief: Since Congress had not disapproved the District law, it had the force of a congressional enactment. *Id.* at 916. The court held the District's position lacks merit entirely. Clearly Congress could not have intended that its silence could permit an invalid law to withstand legal challenge. *Id.* at 917. Congressional approval under the Home Rule Act is based on the assumption that the District law was validly enacted, the court said. [H]ad Congress been aware that the [amendment enacted by the District] was the product of regulatory violations, . . . it would have exercised its veto authority. *Id.* Having determined that the amendment was improperly approved, the court found the District act was therefore invalid. *Id.* When the District levies a tax on the federal government without explicit statutory authority from Congress, the District exceeds its authority and the tax is invalid and has no legal effect. There is no requirement for Congress to disapprove the District act. Here, the District attempted to impose a tax on the federal government, contrary to the restrictions and limitations of federal sovereignty and the Home Rule Act. Thus, to the extent that it appeared to apply to the federal government, the original District 9-1-1 surcharge was invalid and had no legal effect.

2. The District 9-1-1 Surcharge, as Amended, Qualifies as a Permissible Vendor Tax

You also asked whether the 2003 amendments to the law creating the District 9-1-1 surcharge cured the problems identified in B-288161, Apr. 8, 2002. We conclude that the legal incidence of the tax imposed by the 2003 law falls on providers of telephone services, not the federal government as a user of telephone services. Consequently, the federal government may pay bills that include itemizations of the amended District 9-1-1 surcharge.

The United States and its instrumentalities are immune from direct taxation (sometimes referred to as a vendee tax). However, when the legal incidence of a tax falls directly on a vendor supplying the federal government as a customer with goods or services, a vendor tax results and the immunity does not apply. E.g., 61 Comp. Gen. 257 (1982). See also 63 Comp. Gen. 49 (1983). Determining where the legal incidence of any particular tax falls can be extremely complex. E.g., *Valero Terrestrial Corp. v. Caffrey*, 205 F.3d 130, 134 (4th Cir. 2000). Here, the nature of the amended District 9-1-1 surcharge seems clear to us.

Under the 2003 amendments, the District explicitly imposes a tax upon telephone service vendors, rather than telephone service customers. The tax is calculated as a flat rate per line charge specified in the District law and telephone service providers are required by the amended law to submit the tax . . . to the Mayor on a quarterly basis. The amendments allow telephone companies to itemize the surcharge on customer phone bills. The itemization appears to serve only the purpose of informing the customer of the charge now incurred by the vendor as a cost of doing business in the District of Columbia. The 2003 amendments repealed the provisions stating that the surcharge was not to be considered revenue of the telephone companies, as well as those which allowed the telephone

companies to retain up to 2 percent of the surcharge to cover their administrative costs in collecting the surcharge. See D.C. Law 15-149, S: 502, to be codified at D.C. S:S: 34-1801*34‑1804. Nothing in the District law as amended makes telephone customers liable to the District if the customer does not pay the surcharge.

We have examined 9-1-1 charges imposed by nearly two dozen states, most of which we found were impermissible *vendee* taxes. See, e.g., B‑301126, Oct. 22, 2003. However, in B-238410, Sept. 7, 1990, we considered Arizona*s 9-1-1 surcharge and concluded that it constituted a *vendor* tax that could be reimbursed by the federal government. The Arizona statute differed in significant ways from those of the other states. Most importantly, Arizona explicitly imposed its *tax* on telephone vendors (rather than directly on telephone subscribers, as in the other states) and allowed the telephone companies to pass the Arizona tax on to their customers as part of their costs of doing business. Because the companies were allowed to pass the tax on to their customers, it was clear that the economic burden of the Arizona tax would fall on the shoulders of the telephone companies* customers, but this did not alter the outcome.[18] If the tax went unpaid, it was the telephone company, not the customers, to whom the state would look for payment. In other words, the legal incidence of Arizona*s tax fell not on the government as a telephone subscriber, but on the telephone service vendors. In our view, the amended District surcharge resembles more closely the Arizona vendor tax considered in B‑238410 than the impermissible vendee taxes of the other states that we have previously considered.[19] The 2003 amendments clearly and fundamentally changed the nature of the surcharge, as originally enacted, and cured the problems noted in our previous decision. Now, the legal incidence of the tax falls on the telephone service vendors, not on the federal government.

Conclusions

As discussed above, we find no basis to change our previous determination that the House of Representatives was not required to pay the District*s 9-1-1 emergency telephone system surcharges, as originally enacted. In the absence of an express statutory consent by the federal government, the Supremacy Clause of the United States Constitution precludes the District from taxing the federal government or its instrumentalities. The District Home Rule Act, rather than providing the requisite consent, clearly evidences a congressional desire to insulate the federal government from District taxes and other forms of interference. For this reason, the District*s original 9-1-1 statute exceeded the District*s authority under the Home Rule Act, and rendered the original 9-1-1 surcharge invalid and legally ineffective.

On the other hand, we are satisfied that the recent amendments to the District 9-1-1 emergency telephone system surcharge have cured the defects noted in our previous decision. As amended, the District 9-1-1 surcharge is clearly a tax on the providers of telephone services in the District of Columbia. Accordingly, federal agencies may pay bills that itemize an appropriate portion of the amended District 9-1-1 surcharge because the tax is, for the telephone companies, a cost of doing business within the District of Columbia.

Should you have any questions regarding this decision, please feel free to contact Ms. Susan A. Poling of my staff at 202-512-5644.

Sincerely yours,

/signed/

Anthony H. Gamboa
General Counsel

cc: Mr. James M. Eagen III
 Chief Administrative Officer
 Office of the Chief Administrative Officer
 House of Representatives

B-302230

Digests

1. GAO finds no basis to change its previous determination in B‑288161, Apr. 8, 2002, that the House of Representatives was not required to pay the District of Columbia's 9-1-1 emergency telephone system surcharges as originally enacted by the District in 2000. In the absence of an express statutory consent by the federal government, the Supremacy Clause of the United States Constitution precludes *subordinate governments,* including the District, from taxing the federal government or its instrumentalities. See, e.g., *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819); *Hancock v. Train*, 426 U.S. 167, 178-79 (1976).
2. The Home Rule Act, Pub. L. No. 93-198, 87 Stat. 774 (1973), does not authorize the District of Columbia to tax the federal government. That act clearly evinces a congressional desire to preclude the District from taxing or otherwise interfering with the federal government by enacting express exemptions to each kind of District tax authorized by Congress that might conceivably be applied against the federal government, by barring the District from enacting any law *which concerns functions or property of the United States,* and by disavowing any intent to vest in the District *any greater authority [not] specifically provided in this Act, over any Federal agency* than was previously vested in the District. See D.C. Code S:S: 1‑206.02(a)(1), 1‑206.02(a)(3), 1‑206.02(b), 47‑2005(1), 47-2403.
3. When the District of Columbia levies a tax on the federal government without explicit statutory authority from Congress, the District exceeds its authority and the tax is invalid and has no legal effect. There is no requirement for Congress to disapprove the District act.
4. Amendments enacted by the District of Columbia in 2003 to its 9-1-1 emergency telephone system surcharge have cured the defects noted in B‑288161, Apr. 8, 2002. As amended, the District 9-1-1 surcharge is clearly a tax on the providers of telephone services in the District of Columbia, and federal agencies may pay bills that itemize an appropriate portion of the amended District 9-1-1 surcharge because the tax is, for the telephone companies, a cost of doing business in the District of Columbia.

[1] Letter from Interim Corporation Counsel Arabella Teal to GAO General Counsel Anthony Gamboa, Oct. 10, 2002, and Letter from Corporation Counsel Robert J. Spagnoletti to GAO General Counsel Anthony Gamboa, Oct. 27, 2003.

[2] In the same decision, we held that the House of Representatives could pay another District fee: The right‑of‑way surcharge authorized by the Fiscal Year 1997 Budget Support Act of 1996 (D.C. Law 11‑198, April 9, 1997). D.C. Code S: 10‑1141.01-10-1141-.06 (2001). That surcharge is imposed on telecommunications and other utility companies for their use of public space below the surface of District streets and sidewalks. We found it to be a rental fee, the legal incidence of which fell on the telecommunications and utility companies, not on the federal government as an end user. B-288161, supra.

[3] Because this was an *emergency act,* an identical *permanent law* has also been enacted: D.C. Law 15-106. Your letter states that the law took effect Nov. 11, 2003. Letter from Corporation Counsel, Robert J. Spagnoletti to GAO General Counsel, Anthony Gamboa, Oct. 10, 2003.

[4] Cf. James A. Poore, III, *The Constitution of the United States Applies to Indian Tribes: A Reply to Professor Jensen*, 60 Mont. L. Rev. 17, 19, 23 (1999) (regarding the proposition that *the power of Indian tribal government is limited by the Constitution of the United States,* *in McCulloch v. Maryland, the Chief Justice made it clear that the Constitution applied to all subordinate governments*).

[5] *McCulloch*, 17 U.S. at 430 (*a principle which leaves the power of taxing the people and property of a state unimpaired; which leaves to a state the command of all its resources, and which places beyond its reach, all those powers [of] the government of the Union*).

[6] See also, e.g., *Hancock v. Train*, 426 U.S. 167, 179 (1976) (*this immunity means that . . . *the federal function must be left free* of regulation . . . where, as here, the rights and privileges of the Federal Government at stake not only find their origin in the Constitution, but are to be divested in favor of and subjected to regulation by a subordinate sovereign*) (footnotes omitted and emphasis added).

[7] See also *United States v. Wheeler*, 435 U.S. 313, 321 (1978); *Gumataotao v. Director of Department of Revenue and Taxation*, 236 F.3d 1077, 1081-82 (9th Cir. 2001) (Guam would not be allowed to exercise congressional delegation of general taxing authority to tax federal bonds); *District of Columbia National Bank v. District of Columbia*, 348 F.2d 808, 812 (D.C. Cir. 1965) (*a territory or possession may not tax the instrumentality of its sovereign without the latter's consent*); *Yerian v. Territory of Hawaii*, 130 F.2d 786, 789 (9th Cir. 1942) (*[a] Territory cannot, any more than a State can, tax an instrumentality of the United States without the consent of Congress*).

[8] See, e.g., *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 180, 187-88 (1988) (both the majority and the dissent); *United States v. City of St. Paul*, 258 F.3d 750, 752 (8th Cir. 2001), *Blackburn v. United States*, 100 F.3d 1426, 1435 (9th Cir. 1996); *State of Minnesota v. Hoffman*, 543 F.2d 1198, 1206 (8th Cir. 1976).

[9] See also 53 Comp. Gen. 173, 176 (1973) (*[i]t is clear that a United States territory may not impose a tax upon its sovereign in the absence of express statutory permission*). For additional examples, see the cases cited in note 7, *supra*.

[10] Cf., e.g., *United States v. District of Columbia*, 669 F.2d 738, 740 n.1 (D.C. Cir. 1981) (District sales tax, enacted by federal statute, did not fall directly on federal government; but *even if the *legal incidence* of the tax fell on the United States, constitutionally grounded federal tax immunity from state taxation [i.e., *McCulloch*] would not bar the tax in question [because the District] sales tax was enacted by Congress, not by [District or] a state*); *United States v. District of Columbia*, 558 F. Supp. 213, 217-18 (D. D.C. 1982) (United States Capitol Historical Society, a federal instrumentality, was exempt from District sales tax requirements, because the federal statute *limits the District of Columbia's taxing power to the same extent that the states are limited by the federal constitution*), vacated as moot, *United States v. District of Columbia*, 70 F.2d 1521 (D.C. Cir. 1983) (during the appeal, Congress enacted an express exemption for the Society); *ITEL Corp. v. District of Columbia*, 448 A.2d 261, 263 (D.C. 1982) (tax at issue *was enacted not by an independent sovereign, or even a partially-independent governmental unit such as the District of Columbia government, but by the Congress itself*).

[11] Cf. *Domenech*, 294 U.S. at 204-05 (*Puerto Rico, an island possession, like a territory, is an agency of the federal government, having no independent sovereignty comparable to that of a state in virtue of which

taxes may be levied. Authority to tax must be derived from the United States.*).

[12] You have not cited and we are not aware of any statute or any precedent holding that the Commissioner of the District was legally authorized to tax the federal government.

[13] See also Techworld Development Corp. v. D.C. Preservation League, 648 F. Supp. 106, 115 (D. D.C. 1986) (*the limitation of [section 602(a)(3)] is included to ensure that the local government does not encroach on matters of national concern*).

[14] D.C. Code S: 1-206.02(b).

[15] 442 A.2d at 116.

[16] Id.

[17] Cf., e.g., 15 C.J.S. Commerce S: 8 (2003) citing, e.g., Target Sportswear, Inc. v. United States, 875 F. Supp. 835, 841 (Ct. Int'l Trade 1995) (exercise of congressionally delegated authority must be within scope of authority granted and comply with any procedures prescribed by Congress; regulatory action taken by the President, ostensibly pursuant to statutory delegation, but actually beyond the scope of the delegated authority, or not in compliance with prescribed procedures, is ultra vires and void); 56 Am. Jur. 2d Municipal Corporations and Other Subdivisions S: 180 (2003) (*[a]ll the powers of a municipal corporation are derived from law and its charter . . . [a]cts beyond the scope of the powers conferred on a municipality are "ultra vires" and are void*).

[18] The courts have unanimously rejected the notion that legal incidence necessarily follows the economic burden of the tax. E.g., United States v. New Mexico, 455 U.S. 720, 734 (1982); Gurley v. Rhoden, 421 U.S. 200 (1975); United States v. Maryland, 471 F. Supp. 1030, 1037 (D. MD. 1979); United States v. City of Leavenworth, 443 F. Supp. 274, 281 (D. Kan.1977). Thus, the legal incidence of a vendor tax does not shift to the vendee when the vendor passes the tax on to his customers as a cost of doing business. Cf. B-238410, supra (*the legal incidence of a vendor tax does not shift to the vendee when the vendor passes the tax on to his customers as a cost of doing business*).

[19] There is one difference that concerned your office: The Arizona tax was calculated based on the providers' gross sales receipts, while the amended District surcharge uses a flat rate assessment. In a number of previous 9-1-1 decisions, we have contrasted so-called *fees,* calculated at flat, per customer rates, with *taxes,* calculated as percentages of the vendor's gross receipts. Those were all cases in which the terminology and form of the statutory surcharge at issue cast doubt upon whether the surcharge was more in the nature of a tax imposed on the customers or a fee for services imposed on the vendor. Because a flat rate charge usually bears little if any relationship to the cost or value of services provided, we found in those cases that the state's resort to a flat rate assessment was generally more indicative of a vendee tax than a vendor tax. See, e.g., 66 Comp. Gen. 385, 387 (1987); B-301126, supra. There is no rule that vendor taxes may not be calculated on a flat, per customer rate and the distinction made in those cases is inapposite to the District surcharge since there is no question of whether the District surcharge charge constitutes a *tax* or a *fee,* nor where its legal incidence falls.



624 North Marine Corps Drive
Tamuning, Guam 96913

202-256-6377
dmetzger@gta.net

Richard J. Metzger
Vice President-Regulatory

April 12, 2006

Dear Judge Boertzel:

Pursuant to your email request received February 20, 2006, Staff and GTA Telecom have discussed how best to generate a record that would support GTA's issuance of a first "annual audited report" to the Commission related to "compliance with the service standards and rate commitments made" in the APA (section 6.10(c)).

Staff and GTA agree that GTA's provisioning of data to the Commission need not be limited to section 6.10(c) of the APA, if it proves feasible to also coordinate other data production efforts. These might include, but not necessarily be limited to: (1) the matters covered in subsections (d) and (e) of section 6.10 (concerning GTA's obligation not to increase frozen rates, and to make certain infrastructure enhancements, respectively); (2) Conditions 6 and 7 of the Commission's Order transferring a certificate of local authority to GTA (Docket 05-01, issued July 25, 2005)(relating to the provisioning of audited financial statements and consolidated tax returns, and cooperation with PUC data requests, respectively); and (3) Prior Orders of the PUC requiring GTA to provide information regarding Quality of Service ("QOA") standards and audit verification of input procedures.¹

In seeking to explore a broader data production process, neither GTA nor Staff intend to express any substantive views concerning the information involved. Rather, we simply wish to determine whether various efficiencies could be captured, such as by avoiding production of duplicate data, or by agreeing to data display formats early on in the process, or by adopting common assumptions about data reliability, for example. If it does appear that certain data production projects

¹ In Section 6.10 (b) GTA warrants that it will use commercially reasonable efforts to provide service, within 365 days following the Closing Date of the APA which meets or exceeds the quality of service and time commitments set forth in Schedule 6.10(b) of the APA. It is anticipated that GTA will report on this item when reporting on the service standard issue.

could be accomplished appreciably sooner than others, we do not intend that this broader process inject any delay into those situations and the data agreed upon would be provided promptly.

Turning to the specifics of section 6.10(c), GTA and Staff agree that GTA's demonstration of compliance with its rate commitments seems to be straightforward: certification that the tariff rates for those services listed on Schedule 6.10(d) have complied with the requirement that those rates be frozen for a period of five years,² and attestation that no complaints have been received alleging otherwise. Concerning compliance with the APA service standards, GTA and Staff propose that GTA's employees and outside experts inform Staff about the current status (and status during 2005) of measurement of Quality of Service Standards and time commitments shown on Schedule 6.10 (b), methodologies being pursued or in place to generate service standard data, and the schedule for the production of such data. To the extent that Staff has preferences concerning this process, GTA proposes to accommodate those preferences where that is feasible, recognizing that each party will remain free to draw its own legal and policy conclusions about the ultimate implications of that data.

As mentioned earlier GTA will provide audited financial statements and the consolidated tax return for 2005 no later than April 15, 2006, or within seven days of the issuance of audited financial results for 2005.³

GTA shall also provide a report on its efforts to implement the infrastructure enhancements contained in Schedule 6.10(e) no later than April 15, 2006.

If this approach is acceptable to you, it would make sense to start as soon as possible, and to provide you with bi-weekly status reports. When it appears that no further progress can be made, or either party believes the process is no longer productive, that would be brought to your attention along with a schedule of remaining differences, and a proposed timetable for their resolution.

² GTA will attest to compliance with the PUC Order regarding the Gross Receipts Tax on frozen services.

³ GTA is receptive to receiving and responding to enquiries from Staff regarding details of these documents.



624 North Marine Corps Drive
Tamuning, Guam 96913

Respectfully,

A handwritten signature in cursive script, appearing to read "Richard Metzger", written over a horizontal line.

Richard Metzger, VP GTA

A handwritten signature in cursive script, appearing to read "Jamshed K. Madan", written over a horizontal line.

Jamshed Madan, GCG

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

ARBITRATION PROCEEDING
INTERCONNECTION AGREEMENT
BETWEEN GTA TELECOM LLC AND
PACIFIC DATA SYSTEMS

DOCKET 05-11



SCHEDULING ORDER

The following schedule will guide further proceedings in this docket:

<i>Date</i>	<i>Action</i>
4/14/06	PDS and GTA comments on adoption issues.
4/19/06	Georgetown memo on TELRIC issues. GTA memo on information service traffic.
4/21/06	PDS brief on GTA's collocation duties under Federal law. PDS and GTA will file: a] revised agreement with attachments on which there is agreement in principle subject to regulatory review; and b] a list of outstanding issues. [Collocation attachment will not be filed until 5/4].
4/24/06	PDS inspection of collocation sites.
4/28/06	GTA reply brief on collocation duties. PDS reply memo on information service traffic. GTA and PDS reply comments on TELRIC issues.
5/1/06	ALJ ruling on TELRIC issues.
5/4/06	PDS and GTA will file revised Collocation Attachment with issues list.
5/5/06	PDS will complete its regulatory review and supplement its issues list, as necessary. PDS and GTA will file revised Pricing Attachment with issues list.

- 5/12/06 Parties will file final offer with support and analysis for each listed issue.
- 5/17-19/06 Honolulu settlement conference [*provisional*].
- 6/2/06 ALJ arbitration report [*if necessary*]
- 6/12/06 PDS and GTA objections to ALJ report.
- 6/26/06 PUC decision

Questions or concerns about this schedule should be referred to the undersigned.

Dated this 14th day of April 2005.



Harry M. Boertzel
Administrative Law Judge

Memorandum

To: PUC Commissioners
From: ALJ Boertzel
Date: April 17, 2006

RE: GTA Telecom tariff filings

This memorandum briefs you regarding several recent tariff filings, which have been made by GTA Telecom LLC [GTA].

1. Telephone Assistance Tariff Amendments.

By order dated July 27, 2005 [Docket 05-7], PUC directed GTA to file tariff amendments, which would bring its telephone assistance program into conformance with Federal requirements. On March 28, 2006 GTA filed proposed tariff amendments pursuant to this order. PUC published public notice of the filing and invited public comment on or before April 18, 2006. No comments were filed. On April 12, 2006 PUC's regulatory consultant [Georgetown] filed a report, which recommended further changes in the proposed tariff amendments. On April 14, 2006, GTA filed further revisions to the tariff, which addressed Georgetown's concerns. Georgetown has since informed me that it is comfortable with these revisions. Relevant documents are enclosed under *Attachment A*.

2. Foreign Exchange [FX] Tariff.

On March 28, 2006 GTA filed amended notice of its intention to reinsert FX tariff provisions, which had been deleted pursuant to PUC's April 22, 2005 Order [Docket 05-3]. PUC published public notice of the filing and invited public comment on or before April 18, 2006. On March 27, 2006 Pacific Data Systems filed comments regarding the petition. By letter dated April 12, 2006, Georgetown supports the approval of the tariff, in form attached to its letter [*Attachment B*].

3. Digital Subscriber Line [DSL] Tariff.

On March 7, 2006 GTA filed notice of its intent to discontinue locally tariffed DSL service. Its rationale is that: a) it currently has no customers for this service under its local tariff; and b) local regulation of DSL service has been preempted by FCC. Those customers who receive DSL service from GTA are serviced under GTA's NECA Tariff FCC No. 5. By letter dated March 27, 2006, GTA certified that it had no locally tariffed DSL customers. GTA's request is consistent with section 7 of

the April 13, 2005 stipulation between GTA and Georgetown in Docket 05-3, in which Georgetown agreed that it would be appropriate for GTA to delete from its tariff any provisions for which it did not have customers.

On March 28, 2006, I extended the period for regulatory review until April 22, 2006. PUC published public notice of the proposed tariff amendment and invited public comment on or before April 18, 2006. Email comments from Pacific Data Systems dated March 29, 2006 and GTA's April 5, 2006 email response are enclosed under *Attachment C*.

4. Amendments to correct typographical errors.

On March 7, 2006 GTA filed notice of its intent to amend its general exchange tariff to correct several typographical errors, which are identified in the filing. By letter dated March 27, 2006 Georgetown took no exception to the proposed changes. In response to public notice, Pacific Data Systems commented on the *petition*. *Relevant documents are enclosed under Attachment D*.

5. Amendment to Voice Grade Special Access Service.

By order dated December 20, 2005, PUC directed GTA to continue to provide continuous metallic circuit provisioning of voice grade special access service until otherwise authorized pursuant to 12 GCA 12106. By amended petition filed on March 21, 2006, GTA petitioned PUC for authority to discontinue the service. PUC published public notice of the petition and invited public comments not later than April 13, 2006. Only Seventh Day Adventist Clinic filed comments, which are attached. GTA and Georgetown's email response will be provided when received. After investigation and administrative conferences, Georgetown and GTA stipulated to terms under which they jointly recommend that GTA be permitted to move toward discontinuation of the service. Referenced documents are enclosed under *Attachment E*.

ALJ Recommendation.

I recommend that the Commission adopt the order enclosed as *Attachment F* in response to GTA's petitions.

Harry M. Boertzel, ALJ
April 11, 2006
Page 1 of 1

GEORGETOWN CONSULTING GROUP, INC.
716 DANBURY RD.
RIDGEFIELD, CT. 06877

Jamshed K. Madan
Michael D. Dirmeier



Telephone (203) 431-0231
Facsimile (203) 438-8420
jmadan@snet.net

Edward R. Margerison
Jean Dorrell

April 12, 2006

Harry Boertzel, Esq. ALJ
The Guam Public Utilities Commission
Suite 207, GCIC Building
Hagatña, Guam 96932

Re: GTA Petition for Tariff Changes Related to Lifeline and Link-up – Docket 05-07

Dear Harry:

As you requested, this is our response to GTA's petition to change the terms and conditions of its General Exchange Tariff #1 as related to the Lifeline and Link-up programs on Guam.

This letter contains our overall conclusion with the appropriate policy and analytic arguments.

SUMMARY OF OUR POSITION

Our position can be summarized as follows:

1. GTA proposed these revisions¹ to bring the Tariff into alignment with FCC Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 03-109, FCC 04-87 (Lifeline Order).
2. The FCC rules on Lifeline Service
 - add a new eligibility criterion based on income;
 - expand the list of federal means-tested programs to those previously used to establish eligibility;
 - require Eligible Telecommunications Carriers (ETC) in all states to implement certification and verification procedures that at a minimum meet federal requirements;

¹ GTA Tariff Transmittal No. 4, dated March 28, 2006

- establish new guidelines for outreach programs.
3. GCG raised several concerns regarding GTA's compliance with the FCC order and transmitted a list of questions to GTA. A meeting was held between GTA and GCG on Monday, April 10, 2006 and all questions were satisfactorily answered by GTA. As a result of this meeting, GTA revised its proposed tariff offering and transmitted it to us. We have attached it to this transmittal. However, on review, we find that the wording of several paragraphs is still unclear. For example, the FCC intended the income eligibility test based on Federal Poverty Guidelines to be an alternative to eligibility as a result of participation in means-tested programs. The Tariff gives the impression prospective customers must meet both eligibility tests. Accordingly, it must be revised before the Tariff is satisfactory. A list of suggested wording changes is attached.
 4. The FCC requires an appeals process for individuals determined by the company to be ineligible for the Lifeline program. They recognized that some states already have an appeals process in place that could apply to Lifeline customers. The PUC is expected to determine if such a process meets the federal guidelines. However, in those jurisdictions where an appeals process has not been established, the FCC requires at least 60 days for the appeal and written notice, mailed separately from the monthly telephone bill. The Tariff submitted by GTA does not contain any provisions dealing with the Lifeline appeals process and should be modified as a condition of approval.

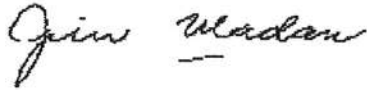
RECOMMENDATIONS FOR THIS PHASE OF THE PROCEEDING

1. GTA should be granted approval for the proposed tariff revision only after it is revised to make it clear that the income eligibility test is an alternative to the program participation test. In addition, approval should be conditioned on the addition of language covering appeals of eligibility decisions.
2. Current Lifeline customers should be given notice of the increase in the amount of discount. In addition, they should be advised of the eligibility verification procedures.
3. Information on the new Lifeline discount level along with details of both income and program eligibility criteria should be advertised in local media and distributed by GTA through an outreach program.

Harry M. Boertzel, ALJ
April 11, 2006
Page 3 of 3

If you wish to discuss any and all of the above, please do not hesitate to call.

Cordially,

A handwritten signature in cursive script that reads "Jamshed K. Madan". The signature is written in dark ink and is positioned above the printed name.

Jamshed K. Madan

Cc: William J. Blair, Esq.
Glenn Deuchler
John Ingram Esq.
Richard Metzger, GTA
Paul Gagnier, Esq.
Harry Malone, Esq.

Suggested Wording Changes for Section XII of GTA Tariff

1. Paragraph A.1 should read "GTA's Telephone Assistance Programs are Federally and Locally funded programs established to ..."
2. Paragraph C.2.a.2 should read "The subscriber must be a current recipient of any of the low income assistance programs identified in sub-paragraph C.2.b.1 following or meet the income test based on Federal Poverty Guidelines as described in sub-paragraph C.2.b.2 following."
3. The words "Toll Blocking" in paragraphs C.2.a.5 and C.2.a.9 should be replaced by the words "Toll Limitation" to be consistent with the Federal designation for this service.
4. The introductory paragraph C.2.b.1 should read "To be eligible for a Lifeline credit, a customer must be a current recipient of any of the low income assistance programs identified below or meet the income test based on Federal Poverty Guidelines as described in sub-paragraph C.2.b.2 following."
5. The last sentence of paragraph C.2.c.1 should read "Alternatively, if the customer seeks Lifeline Service under the FPG income test, adequate documentation of annual income must be provided and the customer must also self-certify his eligibility."
6. The introductory paragraph D.2.b.1 should read "To be eligible for a Link-up credit, a customer must be a current recipient of any of the low income assistance programs identified below or meet the income test based on Federal Poverty Guidelines as described in sub-paragraph D.2.b.2 following."
7. The last sentence of paragraph D.2.c.1 should read "Alternatively, if the customer seeks Link-up Service under the FPG income test, adequate documentation of annual income must be provided and the customer must also self-certify his eligibility."

Harry N. Malone
Direct Phone: (202) 373-6705
Direct Fax: (202) 424-7647
harry.malone@bingham.com
Our File No.: 4256370001

Bingham McCutchen LLP
Suite 300
3000 K Street NW
Washington, DC
20007-5116

202.424.7500
202.424.7647 fax

bingham.com

Boston
Hartford
London
Los Angeles
New York
Orange County
San Francisco
Silicon Valley
Tokyo
Walnut Creek
Washington

April 14, 2006

VIA HAND DELIVERY AND ELECTRONIC MAIL

Public Utilities Commission of Guam
GCIC Building, Suite 207
Hagatna, Guam 96932

**Re: Revised Tariff Transmittal No. 4
GTA General Exchange Tariff No. 1**

GTA Telecom LLC d/b/a GTA ("GTA"), through its undersigned counsel, and in response to the Georgetown Consulting Group's ("GCG") letter to ALJ Boertzel dated April 11, 2006, files the enclosed revised Tariff Transmittal.

Specifically, this submittal contains the following revised pages:

- Section 5, First Revised Page No. 2
- Section 5, First Revised Page Nos. 50 - 55
- Section 5, Original Page Nos. 55.1 - 55.9

These revisions incorporate, verbatim, the suggested language attached to GCG's letter. In addition, we have added provisions to Subsection C.2.c.3 that describe the process for appealing eligibility decisions. Please note that this language closely tracks that of the FCC in paragraph 22 of its *Lifeline/Linkup Order*.¹

If these revisions are satisfactory, GTA requests that the Commission approve this filing to be effective no later than April 27, 2006, as originally requested. An original and one (1) copy of the tariff revisions are enclosed. Kindly date-stamp and return the extra copies.

¹ *Lifeline and Link-Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, FCC 04-87 (rel. Apr. 29, 2004).

Public Utilities Commission of Guam
April 14, 2006
Page 2

Respectfully submitted,

/s/

Paul O. Gagnier
Harry N. Malone

Bingham McCutchen LLP
bingham.com

Counsel to GTA Telecom LLC

Enclosures

cc: ALJ Harry M. Boertzel, Guam PUC
Jamshed Madan, Guam PUC
Bob Taylor, GTA
Rob Smith, GTA
Dick Metzger, GTA

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By: Tariff Administrator
Title:
Issued:

Effective:

MISCELLANEOUS SERVICES (cont'd)

XII. TELEPHONE ASSISTANCE PROGRAMS

A General

1. GTA's Telephone Assistance Programs are federally and locally funded programs established to provide discounted services to low income households, eligible schools and libraries and rural health care providers.
2. Assistance to low income households is in the form of:
 - a) discounted service ordering charges; and
 - b) discounted monthly single line residential rates for the subscriber's primary access line.

B. Definitions

Health care providers: Post-secondary educational institutions offering health care instruction, teaching hospitals and medical schools, community health centers, local health departments or agencies, community mental health centers, non-profit hospitals, rural health clinics and consortia of these providers. Rural home care providers are not included.

Libraries.: Individual branch libraries, library facilities, library systems and consortia. Libraries include a public library, a public elementary or secondary school library, an academic library and any other institution defined as a library by the Library Services and Technology Act of 1996.

Rural: All of Guam except within the municipal boundaries of Hagatna.

School: Individual primary or secondary schools, school districts and consortia of schools and/or school districts, excluding colleges and universities. Elementary and secondary schools must meet the definitions in the Elementary and Secondary Education Act of 1965.

Urban: Within the municipal boundaries of Hagatna.

By: Tariff Administrator
Title:
Issued:

Effective:

MISCELLANEOUS SERVICES (cont'd)

XII. TELEPHONE ASSISTANCE PROGRAMS (cont'd)

C. Lifeline Service

1. Description of Service

- a. The Lifeline program is designed to increase the availability of telecommunications services to low income subscribers by providing a credit to monthly recurring local service to qualifying low income residential subscribers.
- b. Lifeline is supported by the federal universal service support mechanism.
- c. The total Lifeline credit available to an eligible customer on Guam is \$13.50. The amount of credit will not exceed the charge for local service.

2. Regulations

a. General

- 1) Customers eligible under the Lifeline program are also eligible for connection assistance under the Link-Up program.
- 2) One low income credit is available per household and is applicable to the primary residential connection only. The subscriber must be a current recipient of any of the low income assistance programs identified in sub-paragraph C.2.b.1 following or meet the income test based on Federal Poverty Guidelines as described in Subsection C.2.b.2 following..
- 3) A Lifeline customer may subscribe to any local service offering available to other residence customers. Since the Lifeline credit is applicable to the primary residential connection only, it may not be applied to a multiple line package local service offering.

By: Tariff Administrator
Title:
Issued:

Effective:

MISCELLANEOUS SERVICES (cont'd)

XII. TELEPHONE ASSISTANCE PROGRAMS (cont'd)

C. Lifeline Service (cont'd)

2. Regulations (cont'd)

a. General (cont'd)

- 4) Toll limitation service will be provided at no charge to the Lifeline subscriber.
- 5) The deposit requirement is not applicable to a Lifeline customer who subscribes to toll limitation service. If a Lifeline customer removes toll limitation service prior to establishing an acceptable credit history, a deposit may be required. When applicable, advance payments will not exceed the connection and local service charges for one month.
- 6) A Lifeline customer is exempt from the any Installment Billing Service Fee.
- 7) The Federal Universal Service Charge will not be billed to Lifeline customers.
- 8) A Lifeline subscriber's basic local service will not be disconnected for non-payment of regulated toll charges or ancillary services, but may be disconnected for non-payment of basic local service charges, taxes and fees. Access to toll service may be denied for non-payment of regulated toll service. Access to ancillary services may be denied for non-payment of basic or non-basic local charges. A Lifeline subscriber's request for reconnection of basic local service will not be denied if the service was previously denied for non-payment of toll or ancillary charges. Partial payments will first be applied to basic local service.

By: Tariff Administrator
Title:
Issued:

Effective:

MISCELLANEOUS SERVICES (cont'd)

XII. TELEPHONE ASSISTANCE PROGRAMS (cont'd)

C. Lifeline Service (cont'd)

2. Regulations (cont'd)

a. General (cont'd)

- 9) Lifeline eligible customers who have previously been disconnected for nonpayment of local charges may obtain local service equipped with toll limitation service upon payment of outstanding debt for regulated non-toll charges, taxes and fees. Toll limitation service shall not be removed prior to receipt of full payment of all outstanding toll charges.
- 10) Payment for other outstanding debt will be pursued in the same manner as for non-Lifeline customers.
- 11) The non-discounted federal Lifeline credit amount will be passed along to resellers ordering local service at the prescribed resale discount from this Tariff, for their eligible end users. Any additional credit to the end user will be the responsibility of the reseller. Eligible carriers, as defined by the FCC, are required to establish their own Lifeline programs.

By: Tariff Administrator
Title:
Issued:

Effective:

MISCELLANEOUS SERVICES (cont'd)

XII. TELEPHONE ASSISTANCE PROGRAMS (cont'd)

C. Lifeline Service (cont'd)

2. Regulations (cont'd)

b. Eligibility

- 1) To be eligible for a Lifeline credit, a customer must be a current recipient of any of the low income assistance programs identified below or meet the income test based on Federal Poverty Guidelines ("FPG") as described in Subsection C.2.b.2 following.
 - a) Temporary Assistance to Needy Families (TANF), previously known as AFDC
 - b) Supplemental Security Income (SSI)
 - c) Food Stamps
 - d) Medicaid
 - e) Federal public housing/Section 8
 - f) Low Income Home Energy Assistance Plan (LIHEAP)
 - g) National School Lunch's free lunch program (NSL)
- 2) Additionally, customers not receiving benefits under one of the preceding programs, and whose total gross annual income does not exceed **One hundred and Thirty-five percent (135%)** of the federal poverty guidelines established for the lower 48 states meet the requirements of a Territory-established means test and may apply to the Company for eligibility certification.
- 3) All applications for service are subject to verification with the state agency responsible for administration of the qualifying program.

By: Tariff Administrator
Title:
Issued:

Effective:

MISCELLANEOUS SERVICES (cont'd)

XII. TELEPHONE ASSISTANCE PROGRAMS (cont'd)

C. Lifeline Service (cont'd)

2. Regulations (cont'd)

c. Certification

- 1) Proof of eligibility in any of the qualifying low income assistance programs should be provided to the Company at the time of application for service; or eligible Lifeline subscribers may enroll in the Lifeline program by signing a document certifying under penalty of perjury that the customer participates in one of the Guam Lifeline eligible programs and identifying the qualifying program. The Lifeline credit will not be established until the Company has received such signed document. If the customer requests installation prior to the Company's receipt of such signed document the requested service will be provided without the Lifeline credit. When eligibility documentation is provided subsequent to installation, the Lifeline credit will be provided on a going forward basis. Alternatively, if the customer seeks Lifeline Service under the FPG income test, adequate documentation of annual income must be provided and the customer must also self-certify his eligibility.
- 2) The Company, working in conjunction with the appropriate territorial agencies, will verify subscriber eligibility twice over a period of one year. Information obtained during such verification audit will be treated as confidential information to the extent required under territorial and federal laws. The use or disclosure of information concerning enrollees will be limited to purposes directly connected with the administration of the Lifeline plan.

By: Tariff Administrator
Title:
Issued:

Effective:

MISCELLANEOUS SERVICES (cont'd)

XII. TELEPHONE ASSISTANCE PROGRAMS (cont'd)

C. Lifeline Service (cont'd)

2. Regulations (cont'd)

c. Certification (cont'd)

- 3) When a customer is determined to be ineligible as a result of verification, the Company will contact the customer. If the customer cannot provide eligibility documentation, the Lifeline credit will be discontinued. The Company will notify consumers of their impending termination of Lifeline benefits by sending a termination of Lifeline benefits notice in a letter separate from the customer's monthly bill. The customer will have up to 60 days from the date of the termination letter in which to demonstrate his or her continued eligibility before Lifeline support is discontinued. A customer who appeals must present proof of continued eligibility to the Company consistent with the eligibility requirements of Subsections C.2.b. and C.2.c.1 preceding.
- 4) Resellers providing Lifeline service from this tariff are responsible for determining proof of eligibility prior to requesting the service. As set forth in 47 C.F.R. § 417(a) and (b), a reseller must provide a certification, upon request, to the Company that it is complying with all FCC and applicable territorial requirements governing Lifeline/Link-Up programs, including certification and verification procedures. Resellers are required to retain the required documentation for three (3) years and be able to produce the documentation to the Commission or its Administrator to demonstrate that they are providing discounted services only to qualified low-income customers as outlined in Subsections C.2.b.1 and C.2.b.2 preceding. Disclosure requirements described in Subsection C.2.b.2 preceding are applicable to resellers of Lifeline service.

By: Tariff Administrator
Title:
Issued:

Effective:

MISCELLANEOUS SERVICES (cont'd)

XII. TELEPHONE ASSISTANCE PROGRAMS (cont'd)

C. Lifeline Service (cont'd)

3. Rates and Charges

- a. Lifeline is provided as a monthly credit on the eligible residential subscriber's bill for local service.
- b. Service Charges in Section 3.II.A preceding are applicable for installing or changing Lifeline service.
- c. Link-Up connection assistance in Subsection D. following may be available for installing or relocating Lifeline service.
- d. The Secondary Service Charge in Section 3.II.A preceding is not applicable when existing service is converted intact to Lifeline service.

By: Tariff Administrator
Title:
Issued:

Effective:

MISCELLANEOUS SERVICES (cont'd)

XII. TELEPHONE ASSISTANCE PROGRAMS (cont'd)

D. Link-Up Service

1. General

- a. Link-Up is a program designed to increase the availability of telecommunications services to low income subscribers by providing a credit to the non-recurring installation and service charges to qualifying low income residential subscribers. Specific terms and conditions are as prescribed by the Guam Public Utilities Commission and are as set forth in this tariff.
- b. Link-Up is supported by the federal universal service support mechanism.

2. Regulations

a. General

- 1) A federal credit amount of fifty percent (50%) of the non-recurring charges for connection of service, up to a maximum of *thirty dollars* (\$30.00), is available to be passed through to the subscriber.
- 2) Customers eligible under Link-Up are also eligible for monthly recurring assistance under the Lifeline program
- 3) Link-Up connection assistance is available per household and is applicable to the primary residential connection only.
- 4) The Link-Up credit is available each time the customer installs or relocates the primary residential service.
- 5) To receive the credit, the named subscriber to the service must provide proof of eligibility prior to installation of service.

By: Tariff Administrator
Title:
Issued:

Effective:

MISCELLANEOUS SERVICES (cont'd)

XII. TELEPHONE ASSISTANCE PROGRAMS (cont'd)

D. Link-Up Service (cont'd)

2. Regulations (cont'd)

a. General (cont'd)

- 6) The total tariffed charges for connecting service, including service and other installation charges, are considered in the credit calculation.
- 7) The non-discounted federal credit amount will be passed along to resellers ordering local service at the prescribed resale discount from this Tariff, for their eligible end users. Eligible carriers, as defined by the FCC, are required to establish their own Link-Up programs.

b. Eligibility

- 1) To be eligible for a Link-up credit, a customer must be a current recipient of any of the low income assistance programs identified below or meet the income test based on Federal Poverty Guidelines as described in Subsection D.2.b.2 following:
 - a) Temporary Assistance to Needy Families (TANF), previously known as AFDC
 - b) Supplemental Security Income (SSI)
 - c) Food Stamps
 - d) Medicaid
 - e) Federal public housing/Section 8
 - f) Low Income Home Energy Assistance Plan (LIHEAP)
 - g) National School Lunch's free lunch program (NSL)
- 2) Additionally, customers not receiving benefits under one of the preceding programs, and whose total gross annual income does not exceed one hundred and thirty-five percent (135%) of the federal poverty guidelines for the lower 48 states meet the requirements of a territory-established means test and may apply directly to the Company for eligibility certification.

By: Tariff Administrator
Title:
Issued:

Effective:

MISCELLANEOUS SERVICES (cont'd)

XII. TELEPHONE ASSISTANCE PROGRAMS (cont'd)

D. Link-Up Service (cont'd)

2. Regulations (cont'd)

b. Eligibility (cont'd)

- 3) All applications for service are subject to verification with the state agency responsible for administration of the qualifying program.

c. Certification

- 1) Proof of eligibility in any of the qualifying low income assistance programs should be provided to the Company at the time of application for service. Link-Up eligible subscribers may receive the Link-Up credit by signing a document certifying, under penalty of perjury, that the customer participates in any of the qualifying low income assistance programs. The Link-Up credit will not be established until the Company has received such signed document. If the customer requests installation prior to the Company's receipt of such signed document, the requested service will be provided without the Link-Up credit. Alternatively, if the customer seeks Link-up Service under the FPG income test, adequate documentation of annual income must be provided and the customer must also self-certify his eligibility.
- 2) The use or disclosure of information concerning enrollees will be limited to purposes directly connected with the administration of the Link-Up plan.

By: Tariff Administrator
Title:
Issued:

Effective:

MISCELLANEOUS SERVICES (cont'd)

XII. TELEPHONE ASSISTANCE PROGRAMS (cont'd)

D. Link-Up Service (cont'd)

2. Regulations (cont'd)

c. Certification (cont'd)

- 3) Resellers providing Link-Up service from this Tariff are responsible for determining proof of eligibility prior to requesting the service. As set forth in 47 C.F.R. § 417(a) and (b), a reseller must provide a certification, upon request, to the Company that it is complying with all FCC and applicable territory requirements governing Lifeline/Link-Up programs, including certification and verification procedures. Resellers are required to retain the required documentation for three (3) years and be able to produce the documentation to the Commission or its Administrator to demonstrate that they are providing discounted services only to qualified low-income customers as outlined in Subsections D.2.b.1 and D.2.b.2 preceding. Disclosure requirements described in Subsection D.2. preceding are applicable to resellers of Link-Up service.

3. Rates and Charges

- a. The federal credit available for a Link-Up connection is thirty dollars (\$30.00) maximum or fifty percent (50%) of the installation and service charges from this Tariff, whichever is less.

By: Tariff Administrator
Title:
Issued:

Effective:

MISCELLANEOUS SERVICES (cont'd)

XII. TELEPHONE ASSISTANCE PROGRAMS (cont'd)

E. Discounts to Schools, Libraries and Rural Healthcare Providers

1. Eligibility Requirements

- a. Applicants seeking discounted services to schools and libraries must meet the following eligibility criteria:
 - 1) Applicant must be a school or library as defined above.
 - 2) Applicant must not be a for-profit business.
 - 3) Applicant must not have an endowment fund greater than \$50 million.
- b. Applicants seeking discounted services to rural health care providers must meet the following eligibility criteria:
 - 1) Applicant must be a public or non-profit health care provider.
 - 2) Applicant must be located outside the municipal boundaries of Hagatna.

2. Regulations

- a. Applicants seeking discounted services for schools and libraries should contact the Schools and Libraries Corporation, an entity established by the FCC to function as administrator of the federal funds, for application procedures. Applicants seeking discounted service to rural health care providers should contact the Rural Health Care Corporation, another FCC established entity, for application procedures.
- b. There is no difference in the quality of services provided to customers eligible for discounted service and regular customers.

By: Tariff Administrator
Title:
Issued:

Effective:

MISCELLANEOUS SERVICES (cont'd)

XII. TELEPHONE ASSISTANCE PROGRAMS (cont'd)

E. Discounts to Schools, Libraries and Rural Healthcare Providers

2. Regulations (cont'd)

c. Recipients of discounted service are subject to all conditions in Section 5.XII of this tariff, including the rights and obligations of local telephone service subscribers, except as follows:

- 1) Applicant may not sell, resell or otherwise transfer discounted services, facilities or network capacity made available under the provisions of this tariff.
- 2) Services, facilities or capacity provided to schools and libraries must be used solely for educational purposes.
- 3) Facilities provided under the discount program for rural health care providers must be used to support health care services. Facilities used for non-health related services are not eligible for discount.

3. Amount of Support

a. The amount of discount varies with the designation of the community in which the school or library is located as rural or urban and also varies with the percentage of students eligible for the federal school lunch program.. The discounts are shown below:

Percent of students Eligible for School Lunch	Urban Discount %	Rural Discount %
< 1	20	25
1-19	40	50
20-34	50	60
35-49	60	70
50-74	80	80
75-100	90	90

b. Library eligibility is determined by the school district in which the library is physically located.

c. The discount for schools and libraries applies to all telecommunications services and to inside wire installation and maintenance charges.

By: Tariff Administrator
Title:
Issued:

Effective:

MISCELLANEOUS SERVICES (cont'd)

XII. TELEPHONE ASSISTANCE PROGRAMS (cont'd)

E. Discounts to Schools, Libraries and Rural Healthcare Providers

3. Amount of Support (cont'd)

- d. Support to rural health care providers is limited to waiver of channel mileage facilities charges on local special access circuits outside Hagatna. These special access circuits may not exceed a bandwidth of 1.544 Mbps.

By: Tariff Administrator
Title:
Issued:

Effective:

Harry M. Boertzel, ALJ
April 11, 2006
Page 1 of 1

GEORGETOWN CONSULTING GROUP, INC.
716 DANBURY RD.
RIDGEFIELD, CT. 06877

Jamshed K. Madan
Michael D. Dirmeier



Telephone (203) 431-0231
Facsimile (203) 438-8420
jmadan@snet.net

Edward R. Margerison
Jean Dorrell

April 12, 2006

Harry Boertzel, Esq. ALJ
The Guam Public Utilities Commission
Suite 207, GCIC Building
Hagatña, Guam 96932

Re: GTA Petition (Tariff Transmittal No. 6) for a Tariff Revision to Reflect the Offering of Foreign Exchange (FX) Service

Dear Harry:

As you requested this is our revised response to GTA's petition for a tariff revision to reflect the offering of Foreign Exchange (FX) service. This letter contains our overall conclusion with the appropriate policy and analytic arguments.

SUMMARY OF OUR POSITION

Our position can be summarized as follows:

1. GTA's original transmittal letter indicates that Public Law 27-110 prohibits GTA and all other telecommunications companies from providing or reselling any telecommunications services unless appropriate tariffs have been filed, and the notice period has expired (§12106 (c)).
2. Guam General Exchange Tariff No. 1 currently contains no provisions for FX service.
3. The general description of foreign exchange service, with the stated limitations of service availability and the obligations of GTA are reasonable compared with FX tariff descriptions in other jurisdictions.
4. With seventy-two (72) exchanges currently listed in the General Exchange Tariff No. 1 (Local Exchange Service, Section 2 (I)), there appear to be opportunities for customers to desire service configurations utilizing foreign exchange services.
5. GTA is currently providing FX service to several customers without an appropriate tariff.

Harry M. Boertzel, ALJ
April 11, 2006
Page 2 of 2

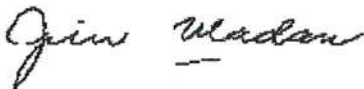
6. All questions regarding this petition were satisfactorily answered by GTA in a conference call on Monday, April 10, 2006. As a result of this meeting, GTA revised its proposed tariff offering and transmitted it to us. We have attached it to this transmittal.

RECOMMENDATIONS FOR THIS PHASE OF THE PROCEEDING

1. GTA should be granted approval for the proposed tariff revision, as cited in their current petition (attached to this transmittal).
2. The proposed tariff revision as presented by GTA defines and describes the foreign exchange service to be offered, and provides for the rate at which it will be offered. The proposed rate at which the service is to be offered is a combination of the current local rate from the appropriate current special access tariff in Section VII of the tariff with additional mileage and Installation Charges specified in Section 5 XV B4.
3. The current customers should be given notice of the formal implementation of the FX tariff and the basis of the determination of the appropriate monthly charge.

If you wish to discuss any and all of the above, please do not hesitate to call.

Cordially,



Jamshed K. Madan

Cc: William J. Blair, Esq.
Glenn Deuchler
John Ingram Esq.
Richard Metzger, GTA
Paul Gagnier, GTA

XV. FOREIGN EXCHANGE SERVICE

A. General

Foreign Exchange Service is local telephone service furnished to a customer located in one exchange area from a central office in another exchange area which does not normally serve the area in which the customer's service is situated. It is not solicited by GTA and is not offered as a normal or customary form of telephone service. However, when required facilities are available, applications for this type of service will be filled subject to the following terms and conditions:

1. Foreign Exchange Service is necessarily limited to one-party line telephones and Private Branch Exchange Trunks.

2. Foreign Exchange Service to Non-GTA Exchanges:

- a. GTA requires the voluntary cooperation of other telephone companies when the requested FX service involves exchange areas not served by GTA. The other participating telephone company must agree to provide and maintain the required lines and apparatus that falls within its territory.
- b. All rates and charges imposed by the other participating company will be in addition to those imposed by GTA. All such charges will, however, be paid by GTA and incorporated in the statement issued to the customer; so that only one monthly bill will be used for the overall facilities.

By:
Title: Tariff Administrator
Issued:

Effective:

B. Rates

1. The minimum service period for Foreign Exchange Service is one month. If the application for Foreign Exchange Service is cancelled prior to the termination of the minimum service period, for any reason imputable to the customer, the customer will pay to GTA the equivalent of the monthly service charges applicable to the Foreign Exchange Service. For this purpose, installation is considered to have been started when GTA incurs any expense in connection or in preparation thereof which would not otherwise have been incurred, provided:
 - i. The customer has advised GTA to proceed with the installation and;
 - ii. GTA has accepted the order.
2. At its option GTA might require that all installation charges be paid in advance by the customer.
3. If a customer's requirements cannot be met with the regularly offered service arrangements, GTA will provide, where technically feasible, Special Service Arrangements pursuant to Section IV of this tariff, provided that these arrangements do not interfere with any other services furnished under GTA's Tariffs.
4. In addition to the applicable local exchange access rate as listed in Section 2, for the number served by the distant central office, airline mileage and special charges for conditioning the line will apply based on cost for additional equipment and additional maintenance as specified in Section 7. Rates for Foreign Exchange Service also consist of a non-recurring Installation Charge and a monthly mileage charge per number based on the distance between the customer premises and the office from which Foreign Exchange Service is provided. These rates are as follows:

Installation Charge, per number	\$60.00
Monthly charge, per number	\$9.00/per mile

By:
Title: Tariff Administrator
Issued:

Effective:



624 North Marine Corps Drive
Tamuning, Guam 96913

March 27, 2006

VIA ELECTRONIC MAIL

Public Utilities Commission of Guam
GCIC Building, Suite 207
Hagatna, Guam 96932

**Re: Docket 05-03; Tariff Transmittal No. 1
Discontinuance of Locally Tariffed DSL**

Confirming the statement made in the conference call of March 23, 2006 (US EST), please be advised that TeleGuam Holdings, LLC d/b/a GTA currently has no customers taking DSL services pursuant to its local tariff GTA No. 1. All DSL services provided by GTA are provided pursuant to NECA Tariff F.C.C. No. 5, in which GTA is a concurring carrier. Consequently, no currently provisioned DSL customer will be experience a service disruption or be otherwise affected by the discontinuance contemplated in Tariff Transmittal No. 1.

Respectfully submitted,

A handwritten signature in black ink that reads "Robert C. Taylor".

Robert C. Taylor
CEO/President

cc: Hon. Harry M. Boertzel
Jamshed Madan
John Ingram
Rob Smith
Dick Metzger



hboertzel@hotmail.com

Printed: Sunday, April 16, 2006 3:25 AM

From : Gagnier, Paul O. <Paul.Gagnier@bingham.com>
Sent : Wednesday, April 5, 2006 1:37 PM
To : "Harry Boertzel" <hboertzel@hotmail.com>
CC : john@pdsguam.com, jingram@mckennalong.com, DMetzger@gta.net, btaylor@gta.net, "Malone, Harry N." <Harry.Malone@bingham.com>
Subject : Comments on GTA Tariff Changes - PUC Docket 5-03 - DSL Service

Dear Judge Boertzel --

Dick Metzger is en route to Guam and asked that I respond to your email regarding GTA's DSL service as well as the statements of GCG and PDS regarding the provision of DSL service to the Government of Guam.

To clarify GTA's position, GTA has never stated that it does not provide DSL service to GovGuam. GTA does, in fact, provide DSL service to agencies and employees of GovGuam. However, as previously advised, all of GTA's DSL services are provided and billed pursuant to NECA Tariff F.C.C. No. 5. That includes DSL services provided to GovGuam. GTA repeats that it does not provide DSL service pursuant to General Exchange Tariff No. 1 to any person, including GovGuam, and does not bill any customers for DSL service pursuant to its local tariff.

GTA is confident that this response will eliminate any remaining doubts as to the jurisdictional nature of GTA's DSL service.

Please let me know if you have any questions.

Best regards,
Paul

Paul O. Gagnier
Bingham McCutchen LLP
+1-202-373-6592
paul.gagnier@bingham.com

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-----Original Message-----

From: Harry Boertzel [mailto:hboertzel@hotmail.com]
Sent: Wednesday, March 29, 2006 3:42 PM
To: john@pdsguam.com
Cc: Gagnier, Paul O.; Malone, Harry N.; DMetzger@gta.net; jingram@mckennalong.com
Subject: RE: Comments on GTA Tariff Changes - PUC Docket 5-03

Mr. Metzger:

Both PDS [Day 3/29 email] and Georgetown [GCG] [GCG first requests for information] have asserted that GTA provides **DSL service** to the Government of Guam for its Guam Wide Area Data Network [GGWAN]. In contrast, GTA has certified that it provides no such service to the Government.

In order to resolve this issue, I would appreciate GTA's response, not later than April 12, 2006, to

the following questions:

Does GTA currently provide service to GGWAN? If not, when was the service discontinued? If, as PDS asserts, GTA is providing service to GGWAN, under what part of its tariff is the service being provided? Why isn't it DSL service as asserted by PDS and GCG? What, if any, impact does this service have on GTA's assertion that under the Federal *de minimus* standard, PUC has no jurisdiction over DSL rates?

GTA's response to the above questions would be helpful in PUC's consideration of the proposed tariff revision.

Please let me know if you have any questions.

Harry Boertzel

=====
Bingham McCutchen LLP Circular 230 Notice: To ensure compliance with IRS requirements, we inform you that any U.S. federal tax advice contained in this communication is not intended or written to be used, and cannot be used by any taxpayer, for the purpose of avoiding any federal tax penalties. Any legal advice expressed in this message is being delivered to you solely for your use in connection with the matters addressed herein and may not be relied upon by any other person or entity or used for any other purpose without our prior written consent.
=====



hboertzel@hotmail.com

Printed: Sunday, April 16, 2006 3:23 AM

From : John Day <john@pdsguam.com>
Sent : Wednesday, March 29, 2006 7:47 AM
To : "Harry Boertzel" <hboertzel@hotmail.com>
CC : <Paul.Gagnier@bingham.com>, <Harry.Malone@bingham.com>, <DMetzger@gta.net>, <jingram@mckennalong.com>
Subject : RE: Comments on GTA Tariff Changes - PUC Docket 5-03

Dear Judge Boertzel,

Thank you for your feedback on our comments filed on this docket. Now that the other documents are available on the web site we will review these and file our comments accordingly. We appreciate the extra time provided for this review.

I have to take issue with GTA's statement that GTA does not have any DSL customers that use its DSL service for local service only. Most of the Agencies in the Government of Guam rely on this service to access the central Government Servers located at the Department of Administration. This network is called the Government of Guam Wide Area Data Network (GGWAN) and has been in service for more than 5 years. GGWAN represents a significant amount of traffic on the GTA broadband network and may affect the applicability of the FCC rules noted in your response.

Regards,

John Day

From: Harry Boertzel [mailto:hboertzel@hotmail.com]
Sent: Tuesday, March 28, 2006 3:29 AM
To: john@pdsguam.com
Cc: Paul.Gagnier@bingham.com; Harry.Malone@bingham.com; DMetzger@gta.net; jingram@mckennalong.com
Subject: RE: Comments on GTA Tariff Changes - PUC Docket 5-03

Mr. Day:

I am in receipt of your March 27 comments regarding the proposed tariff revisions, which were filed by GTA letters dated March 6.

As a result of reviewing your comments, I note that PUC failed to post on its website the amended tariff pages, which were filed by GTA with its March 6 letters. This is being corrected by PUC today. In addition, there have been subsequent GTA filings in this docket, which are also being posted by PUC today. I encourage you to review these additional materials.

You are correct that the tariff filings should have been made by GTA Telecom LLC, which is the current certificate holder rather than by the parent company. By copy of this email, I am requesting GTA to correct this technical error by amending its filing.

In light of your comments, I have decided to extend the timeframe for public comment and PUC review of the three proposed tariff amendments per PUC's authority in 12 GCA 12106[e] *[and consequently temporarily suspend the effectiveness of the proposed tariff revisions]* until April 22, 2006. PUC will publish an amended notice, which informs the public of this extended review period and which invites further comments until April 18, 2006.

With regard to GTA's intention to delete DSL service from its local tariff, it has filed with PUC a 3/27/06 certificate that there are currently no customers for this service. Accordingly, its intent to remove the service from its tariff falls within the scope of section 7 of the 4/13/05 stipulation. Moreover, GTA asserts that local regulation of DSL service has been preempted by FCC *[see Bingham McCutchen's 3/20/06 letter, which is being posted on PUC's website]*.

Thank you for your interest in these proceedings.

Harry M. Boertzel

SPECIAL ACCESS SERVICE

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Effective:

SPECIAL ACCESS SERVICE

X. --- DELETED ---

By: Tariff Administrator
Title:
Issued:

Effective:

Harry M. Boertzel, ALJ
March 27, 2006
Page 1 of 1

GEORGETOWN CONSULTING GROUP, INC.
716 DANBURY RD.
RIDGEFIELD, CT. 06877

Jamshed K. Madan
Michael D. Dirmeier



Telephone (203) 431-0231
Facsimile (203) 438-8420
jmadan@snet.net

Edward R. Margerison
Jean Dorrell

March 27, 2006

Harry Boertzel, Esq. ALJ
The Guam Public Utilities Commission
Suite 207, GCIC Building
Hagatna, Guam 96932

Re: GTA Petition Revise General Exchange Tariff No.1 for Typographical Errors

Dear Harry:

We have reviewed the proposed changes in the General Exchange Tariff No. 1 and take no exception to the proposed changes.

If you wish to discuss any and all of the above, please do not hesitate to call.

Cordially,

Jamshed K. Madan

Cc: William J. Blair, Esq.
Glenn Deuchler
John Ingram Esq.
Richard Metzger, GTA
Paul Gagnier, GTA

Harry N. Malone
Direct Phone: (202) 373-6705
Direct Fax: (202) 424-7647
harry.malone@bingham.com
Our File No.: 4256370001

March 7, 2006

Bingham McCutchen LLP
Suite 300
3000 K Street NW
Washington, DC
20007-5116
202.424.7500
202.424.7647 fax

VIA HAND DELIVERY AND ELECTRONIC MAIL

Public Utilities Commission of Guam
GCIC Building, Suite 207
Hagatna, Guam 96932

Re: GTA General Exchange Tariff No. 1

bingham.com

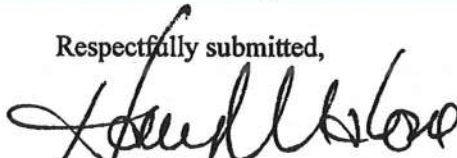
Boston
Hartford
London
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New York
Orange County
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Silicon Valley
Tokyo
Walnut Creek
Washington

TeleGuam Holdings, LLC d/b/a GTA ("GTA"), through its undersigned counsel, files the enclosed corrected General Exchange Tariff No. 1. This filing merely corrects certain typographical errors and contains no substantive changes of any kind. Specifically, this submittal contains the following corrections:

- Corrects page numbering errors in Section 5 Table of Contents; Page 46 is corrected to page 47 and all succeeding lines are incremented accordingly.
- Corrects spelling of "Synchronous" in Section 7, Page 3.
- Corrects pagination error by which Page 37 of Section 7 was skipped; succeeding pages are repaginated and the page numbers in the Table of Contents are corrected.

An original and one (1) copy of the corrected tariff are enclosed. Kindly date-stamp and return the extra copies.

Respectfully submitted,



Paul O. Gagnier
Harry N. Malone

Counsel to TeleGuam Holdings, LLC

Enclosures

cc: ALJ Harry M. Boertzel, Guam PUC
Jamshed Madan, Guam PUC
Bob Taylor, GTA
Rob Smith, GTA
Dick Metzger, GTA



hboertzel@hotmail.com

Printed: Monday, April 17, 2006 3:49 AM

From : John Day <john@pdsguam.com>
Sent : Monday, March 27, 2006 6:33 AM
To : "Lou Palomo" <lpalomo@guampuc.com>
CC : "Harry Boertzel" <hboertzel@hotmail.com>
Subject : Comments on GTA Tariff Changes - PUC Docket 5-03

Dear Guam PUC:

The following comments are submitted on behalf of PDS regarding the Tariff filing made by GTA on March 7th, 2006.

1. GTA is seeking to remove DSL service from its local tariff. These services are included in Section 7 of the Tariff which is covered by an existing stipulation between GTA and Georgetown Consulting Group (GCG) signed on April 13, 2005. Item 9 of this stipulation states that the existing services covered by Section 7 (and the old GTA GET Tariff, Section 9) "shall continue in effect until such time that GTA submits a separate special access tariff or comparable document for review and approval by the Commission". GTA has never made the required filing with the PUC, thus no changes to any part of Section 7 should be allowed by the PUC.
2. If the commission allows GTA to remove its DSL service from the GTA Tariff, GTA will no longer be able to provide DSL as a local Intra-State service. This is by default a discontinuation of an existing service, requiring GTA to follow the PUC rules and procedures related to this situation, which it has not.
3. GTA is seeking to reinsert language for Foreign Exchange Service in its tariff. We feel the proposed tariff language is insufficient to adequately describe the services and charges to be associated with this proposed new service. At a minimum we believe additional definitions should be added to the proposed tariff changes that specifically define the service and any and all applicable service options. More details and examples should also be provided on the configuration of the service and applicable charges.
4. The Public Notice of the tariff change noted that GTA's intent was to correct several typographical errors on the existing Tariff, however, no summary of these changes were provided in the filing. The PUC should require GTA to provide a summary of all changes for prior public review so that we have the opportunity to review and offer comments as applicable.
5. The Public Notice of the proposed Tariff changes that was published on March 10, 2006 was

defective in that it included the wrong term when referring to DSL (the notice used "DLS") and there was no definition of the abbreviation included in the text of the notice that might have been used to clarify the meaning. We feel that the notice as printed may have misled the Public regarding GTA's proposed changes. We believe the PUC should correct the wording of the notice and have it republished with a new public comment period.

6. The Tariff documents filed with the PUC continue to reflect GTA Teleguam Holdings LLC as the company that is providing services under the Tariff. We understand that GTA Teleguam Holdings was authorization by the PUC to transfer its Certificate of Authority to GTA Telecom and that GTA Telecom is now providing these services under this authority. If this is the case, why do the Tariff documents continue to reflect GTA Teleguam Holdings?

For the above stated reasons, we believe that the PUC should reject the proposed changes made by GTA Telecom in this filing. Please keep us advised of the PUC's schedule to discuss and consider these changes as we would like to be aware of any discussions on this matter.

Sincerely,

John Day

Pacific Data Systems

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF GUAM**



PETITION OF GTA TELECOM LLC }
TO DISCONTINUE A }
TELECOMMUNICATIONS SERVICE }

Docket 06-04

STIPULATION

GTA Telecom LLC (“GTA Telecom”) and Georgetown Consulting Group, Inc. (“GCG”), in its role as staff to the Public Utilities Commission of Guam (the “Commission”), through their authorized representatives, hereby stipulate and agree as follows in connection with the above-referenced proceeding:

1.

By order dated April 22, 2005 in Docket 05-03, the Commission approved GTA Telecom’s General Exchange Tariff No. 1 (the “GET”), as amended by the Stipulation between GTA Telecom and GCG in such docket (the “Tariff Stipulation”). GTA Telecom provides Voice Grade Special Access Services (“VGSAS”) pursuant to Section 7.III of the GET.

2.

Prior to January 1, 2005, customers of the Guam Telephone Authority could order VGSAS provisioned by means of an unconditioned, continuous metallic circuit under the terms and conditions of the Guam Telephone Authority’s General Exchange Tariff. By decision of the Commission dated December 20, 2005, the Commission ordered GTA Telecom to continue to fill customer applications for metallic circuit provisioned VGSAS under Section 7.III of the GET until otherwise authorized pursuant to 12 GCA 12106.

3.

On February 2, 2006, GTA Telecom filed a petition to discontinue continuous metallic circuit provisioning of VGSAS in accordance with 12 GCA 12103(h). On March 27, 2006, GTA Telecom amended its petition to seek corresponding changes in Section 7.III of the GET pursuant to 12 GCA 12106 to eliminate a customer’s option to select unconditioned, continuous metallic circuit provisioning of VGSAS. Such changes in Section 7.III of the GET are referred to herein as the “VGSAS Tariff Amendments.” The Commission provided public notice of the petition on March 25, 2006.

4.

VGSAS is described in the GET as a channel that provides voice frequency transmission capability in the nominal frequency range of 300 to 3000 Hz. In addition, Sections 1.IV.A.6 and 1.IV.A.7 of the GET currently provide, in pertinent part, as follows:

6. Unauthorized Attachments or Connections - No equipment, accessory, apparatus, circuit or device shall be attached to or connected with GTA's facilities except as provided in this tariff. In case of any such unauthorized attachment or connection is made, GTA shall have the right to remove or disconnect the same, to suspend service during the continuance of said attachment or connection, or to disconnect service. ...

7. Except as otherwise provided in this tariff, nothing herein shall be constructed to permit the use of a device to interconnect any GTA-owned line or channel with any other communications line or channel of GTA or of any other person.

5.

The federal Telecommunications Act of 1996, as amended (the "Federal Act"), provides a mechanism by which a requesting telecommunications carrier may obtain access to unbundled network elements ("UNEs"), including unbundled copper loop facilities, from an incumbent local exchange carrier. GTA Telecom covenants and agrees that it is an incumbent local exchange carrier subject to the obligations contained in 47 USC § 251(c). To the extent telecommunications carriers are ordering metallic circuit provisioned VGSAS from GTA Telecom merely to obtain the copper loop facility, GTA Telecom and GCG agree that such orders should be transitioned from metallic circuit provisioned VGSAS to orders for unbundled loops in accordance with the terms and conditions of the Federal Act. Pursuant to 47 USC § 252(b), GTA Telecom or a requesting telecommunications carrier may petition the Commission to arbitrate any open issues in connection with a request for UNEs during the period from the 135th day to the 160th day (inclusive) after the date on which GTA Telecom receives a request for negotiation from the requesting telecommunications carrier under the Federal Act. Accordingly, GTA Telecom and GCG agree that 180 days is a reasonable period of time for transitioning orders from metallic circuit provisioned VGSAS to unbundled loops under the Federal Act.

6.

GTA Telecom is a carrier of last resort within the meaning of 12 GCA 12103(h). GTA Telecom and GCG agree that the discontinuation of metallic circuit provisioning of VGSAS "will not deprive customers of any necessary or essential telecommunications service or access thereto" within the meaning of 12 GCA 12103(h) if GTA Telecom's customers can continue to order VGSAS in accordance with the GET (as revised by the VGSAS Tariff Amendments) and either (a) have the right to order an unbundled loop in accordance with the terms and conditions of the Federal Act as a substitute for continuous metallic circuit provisioned VGSAS or (b) can obtain a replacement service under other sections of the GET to the extent such customers attach their own electronics to GTA Telecom's metallic circuits in order to generate broadband spectrum in excess of voice grade transmissions (*i.e.*, 300 Hz to 3000 Hz).

7.

GTA Telecom and GCG agree that the VGSAS Tariff Amendments are suspended, and shall not be effective, until the Transition Date as defined herein below.

8.


GTA Telecom will continue to provide, and will continue to fill orders for, unconditioned, continuous metallic circuit provisioned VGSAS until 180 days from the effective date of the Commission order approving this stipulation (the "Transition Date"); provided, however, GTA Telecom may condition the provisioning of orders placed on or after the date of this Stipulation upon certification from the requesting customer that it will utilize such service in accordance with the GET, including Sections 1.IV.A.6 and 1.IV.A.7 of the GET, and identification of the customer's alarm company, and its location. Upon the Transition Date, (a) the VGSAS Tariff Amendments will become effective for orders placed after the Transition Date, (b) GTA Telecom will have no further obligation to fill orders for continuous metallic circuit provisioned VGSAS placed after the Transition Date, except for customers with legitimate uses such as alarm circuits which use shall be certified by the customer and the certification would identify the alarm company, and (c) GTA Telecom may discontinue continuous metallic circuit provisioned VGSAS for any existing customer who fails to certify, within thirty (30) days after notice from GTA Telecom, that such customer is utilizing the service in accordance with the GET, including Sections 1.IV.A.6 and 1.IV.A.7 of the GET. The certification will identify the alarm company used by the requesting customer, and its location. Nothing herein shall restrict GTA Telecom's authority under Section 1.IV.A.6 of the GET prior to the Transition Date.

9.

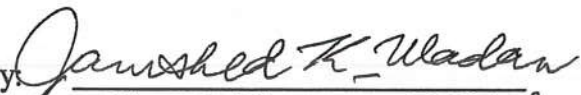
Paragraph 9 of the Tariff Stipulation is hereby amended by this Stipulation.

The parties hereto have caused this Stipulation to be executed by their duly appointed officers as of the ___ day of April, 2006.

GTA Telecom LLC

By: 
Name: Richard J. Metzger
Title: VP-Regulatory

Georgetown Consulting Group, Inc.

By: 
Name: JAMSHED K MADAN
Title: PRINCIPAL



388 Ypao Road, Tamuning Guam 96913
Phone 671-646-8881
Fax 671-648-2547

April 13, 2006

Guam Public Utilities Commission
Terrance Brooks, Chairman
Suite 207 GCIC Building
414 West Soledad Avenue
Hagatna, Guam 96910

Dear Mr. Brooks,

I am writing on the behalf of the Guam Seventh-day Adventist Clinic to express our concern about GTA's proposal (Docket 06-4) to stop providing dry copper service. This was recently brought to my attention by a colleague. Apparently notice was given in the newspaper, but I had missed it.

We have been relying on the use of this technology for over 3 years to provide the networking infrastructure to maintain a connection between the main facility and our off-site Wellness center that is located at the Guam Surgery Center. Losing this service would force us to look for alternate connection technologies and would result in a huge increase in cost to keep our network together.

Currently, we have implemented an HDSL 3-Mbit data connection over our dry copper. We rely on it constantly for our data network and were soon planning to use it to finally tie our PBX phone system together using voice over IP. This service is core to our network design and future implementation plans.

I don't know how long this change has been in the plans, but it seems changes have already been made to our circuit in the last few weeks. We started having sporadic connection problems with our copper pair Monday, March 27, somewhere just after noon. Since that time, the quality of our HDSL signal has been significantly lowered and has been dropping out. We have had almost daily service calls in with GTA and still currently have technicians looking at it, but even up until today, they have not been able to restore the connection quality we previously had.

Please consider our situation as well as others in a similar situation as you make your decision regarding GTA's proposal.

Thanks,

Matthew Holm, BBA CIS, MCSE, CCA
Information Systems Manager
Guam SDA Clinic

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



GTA TELECOM LLC PETITIONS
FOR TARIFF AMENDMENTS

COMBINED DOCKETS 05-3, 06-4

ORDER

This Order considers five petitions from GTA Telecom LLC [GTA] to amend its general exchange tariff, as approved by the Guam Public Utilities Commission [PUC] order dated April 22, 2005. The petitions propose the following tariff amendments:

1. By March 28, 2006 petition, GTA proposed amendments to its telephone assistance tariff, which are necessary to bring it into compliance with Federal standards. The amended tariff, in form made *Attachment A*, has been reviewed and supported by PUC's regulatory consultant [Georgetown]. No public comments were received in response to PUC's public notice of the proposed tariff amendment.
2. By March 28, 2006 amended petition, GTA proposed to reinsert foreign exchange tariff provisions, which GTA earlier deleted under the erroneous assumption that there were no customers for the service. By April 12, 2006 letter, Georgetown supports the tariff amendment, in form made *Attachment B*. On March 27, 2006 Pacific Data Systems [PDS] filed comments regarding the petition, which have been considered by PUC.
3. By March 7, 2006 petition, GTA noticed its intention to discontinue locally tariffed digital subscriber line [DSL] service. GTA certifies that it currently has no customers for the locally tariffed service. GTA customers currently receive this service under its FCC NECA Tariff No. 5. Public comment from PDS was received in response to PUC's public notice of the petition and has been duly considered. Pursuant to 12 GCA 12103[h] discontinuance of this service is dependent upon PUC finding that it will not deprive customers of any necessary or essential telecommunications service. Amended tariff pages, which would reflect this discontinuation, are made *Attachment C*.
4. By March 7, 2006 petition, GTA noticed its intention to amend its general exchange tariff to correct typographical errors identified in the petition. By March 27, 2006 letter Georgetown supported the petition. One public

comment from PDS was received in response to PUC's public notice of the petition, which has been duly considered.

5. By March 21, 2006 amended petition, GTA noticed its intention to discontinue continuous metallic circuit provisioning of voice grade special access service. One public comment from Seventh Day Adventist Clinic was received in response to PUC's public notice of the petition and has been duly considered. By stipulation dated April 12, 2006 [Attachment D], GTA and Georgetown have agreed to terms under which they recommend that the service be discontinued. Pursuant to 12 GCA 12103[h] discontinuance of this service is dependent upon PUC finding that it will not deprive customers of any necessary or essential telecommunications service.

Having carefully reviewed the record in this combined docket proceeding, including its administrative law judge's April 17, 2006 report, for good cause shown and upon motion duly made, seconded and carried by the affirmative vote of the undersigned commissioners, **IT IS HEREBY ORDERED THAT:**

1. GTA's tariff amendments to its telephone assistance tariff and its foreign exchange tariff [in form attached] and amendments to correct the typographical errors identified in its March 7, 2006 petition are hereby approved. GTA has attached to its March 7 petition its complete general exchange tariff, which it has requested PUC stamp approved. This tariff filing should be reviewed by Georgetown for correctness and should be amended to reflect that GTA Telecom LLC and not TeleGuam Holdings LLC is the licensed telephone company.
2. GTA's tariff amendment to discontinue locally tariffed DSL service is approved in form attached hereto. PUC finds that as there are currently no customers for this locally tariffed service and that the same service is available through GTA's NECA tariff. Accordingly, PUC finds under 12 GCA 12103[h] that the discontinuation will not derive any customers of any necessary or essential telecommunications service.
3. GTA's petition to discontinue dry copper provisioned voice grade special access service, as modified and conditioned by the terms of the stipulation made Attachment D hereto, is approved; provided however, as the stipulation requires that GTA will continue to provide this service for a period of 180 days, PUC will withhold a finding under section 12103[h] at this time and further reserves continuing jurisdiction and authority over the stipulation and the activities anticipated therein. ALJ is directed to establish a process by which PUC can monitor compliance activities under

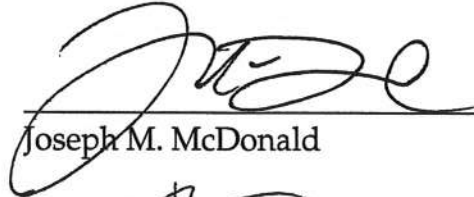


the stipulation and customer concerns, which may arise under the stipulated process.

Dated this 20th day of April 2006.



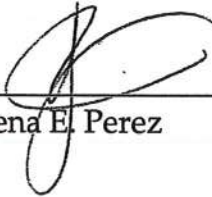
Terrence M. Brooks



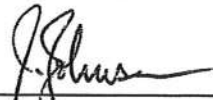
Joseph M. McDonald



Edward C. Crisostomo



Rowena E. Perez



Jeffrey C. Johnson

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By: Tariff Administrator
Title:
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ATTACHMENT A

Effective:

MISCELLANEOUS SERVICES (cont'd)

XII. TELEPHONE ASSISTANCE PROGRAMS

A General

1. GTA's Telephone Assistance Programs are federally and locally funded programs established to provide discounted services to low income households, eligible schools and libraries and rural health care providers.
2. Assistance to low income households is in the form of:
 - a) discounted service ordering charges; and
 - b) discounted monthly single line residential rates for the subscriber's primary access line.

B. Definitions

Health care providers: Post-secondary educational institutions offering health care instruction, teaching hospitals and medical schools, community health centers, local health departments or agencies, community mental health centers, non-profit hospitals, rural health clinics and consortia of these providers. Rural home care providers are not included.

Libraries,: Individual branch libraries, library facilities, library systems and consortia. Libraries include a public library, a public elementary or secondary school library, an academic library and any other institution defined as a library by the Library Services and Technology Act of 1996.

Rural: All of Guam except within the municipal boundaries of Hagatna.

School: Individual primary or secondary schools, school districts and consortia of schools and/or school districts, excluding colleges and universities. Elementary and secondary schools must meet the definitions in the Elementary and Secondary Education Act of 1965.

Urban: Within the municipal boundaries of Hagatna.

By: Tariff Administrator
Title:
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Effective:

MISCELLANEOUS SERVICES (cont'd)

XII. TELEPHONE ASSISTANCE PROGRAMS (cont'd)

C. Lifeline Service

1. Description of Service

- a. The Lifeline program is designed to increase the availability of telecommunications services to low income subscribers by providing a credit to monthly recurring local service to qualifying low income residential subscribers.
- b. Lifeline is supported by the federal universal service support mechanism.
- c. The total Lifeline credit available to an eligible customer on Guam is \$13.50. The amount of credit will not exceed the charge for local service.

2. Regulations

a. General

- 1) Customers eligible under the Lifeline program are also eligible for connection assistance under the Link-Up program.
- 2) One low income credit is available per household and is applicable to the primary residential connection only. The subscriber must be a current recipient of any of the low income assistance programs identified in sub-paragraph C.2.b.1 following or meet the income test based on Federal Poverty Guidelines as described in Subsection C.2.b.2 following..
- 3) A Lifeline customer may subscribe to any local service offering available to other residence customers. Since the Lifeline credit is applicable to the primary residential connection only, it may not be applied to a multiple line package local service offering.

By: Tariff Administrator
Title:
Issued:

Effective:

MISCELLANEOUS SERVICES (cont'd)

XII. TELEPHONE ASSISTANCE PROGRAMS (cont'd)

C. Lifeline Service (cont'd)

2. Regulations (cont'd)

a. General (cont'd)

- 4) Toll limitation service will be provided at no charge to the Lifeline subscriber.
- 5) The deposit requirement is not applicable to a Lifeline customer who subscribes to toll limitation service. If a Lifeline customer removes toll limitation service prior to establishing an acceptable credit history, a deposit may be required. When applicable, advance payments will not exceed the connection and local service charges for one month.
- 6) A Lifeline customer is exempt from the any Installment Billing Service Fee.
- 7) The Federal Universal Service Charge will not be billed to Lifeline customers.
- 8) A Lifeline subscriber's basic local service will not be disconnected for non-payment of regulated toll charges or ancillary services, but may be disconnected for non-payment of basic local service charges, taxes and fees. Access to toll service may be denied for non-payment of regulated toll service. Access to ancillary services may be denied for non-payment of basic or non-basic local charges. A Lifeline subscriber's request for reconnection of basic local service will not be denied if the service was previously denied for non-payment of toll or ancillary charges. Partial payments will first be applied to basic local service.

By: Tariff Administrator
Title:
Issued:

Effective:

MISCELLANEOUS SERVICES (cont'd)

XII. TELEPHONE ASSISTANCE PROGRAMS (cont'd)

C. Lifeline Service (cont'd)

2. Regulations (cont'd)

a. General (cont'd)

- 9) Lifeline eligible customers who have previously been disconnected for nonpayment of local charges may obtain local service equipped with toll limitation service upon payment of outstanding debt for regulated non-toll charges, taxes and fees. Toll limitation service shall not be removed prior to receipt of full payment of all outstanding toll charges.
- 10) Payment for other outstanding debt will be pursued in the same manner as for non-Lifeline customers.
- 11) The non-discounted federal Lifeline credit amount will be passed along to resellers ordering local service at the prescribed resale discount from this Tariff, for their eligible end users. Any additional credit to the end user will be the responsibility of the reseller. Eligible carriers, as defined by the FCC, are required to establish their own Lifeline programs.

By: Tariff Administrator
Title:
Issued:

Effective:

MISCELLANEOUS SERVICES (cont'd)

XII. TELEPHONE ASSISTANCE PROGRAMS (cont'd)

C. Lifeline Service (cont'd)

2. Regulations (cont'd)

b. Eligibility

- 1) To be eligible for a Lifeline credit, a customer must be a current recipient of any of the low income assistance programs identified below or meet the income test based on Federal Poverty Guidelines ("FPG") as described in Subsection C.2.b.2 following..
 - a) Temporary Assistance to Needy Families (TANF), previously known as AFDC
 - b) Supplemental Security Income (SSI)
 - c) Food Stamps
 - d) Medicaid
 - e) Federal public housing/Section 8
 - f) Low Income Home Energy Assistance Plan (LIHEAP)
 - g) National School Lunch's free lunch program (NSL)
- 2) Additionally, customers not receiving benefits under one of the preceding programs, and whose total gross annual income does not exceed **One hundred and Thirty-five percent (135%)** of the federal poverty guidelines established for the lower 48 states meet the requirements of a Territory-established means test and may apply to the Company for eligibility certification.
- 3) All applications for service are subject to verification with the state agency responsible for administration of the qualifying program.

By: Tariff Administrator
Title:
Issued:

Effective:

MISCELLANEOUS SERVICES (cont'd)

XII. TELEPHONE ASSISTANCE PROGRAMS (cont'd)

C. Lifeline Service (cont'd)

2. Regulations (cont'd)

c. Certification

- 1) Proof of eligibility in any of the qualifying low income assistance programs should be provided to the Company at the time of application for service; or eligible Lifeline subscribers may enroll in the Lifeline program by signing a document certifying under penalty of perjury that the customer participates in one of the Guam Lifeline eligible programs and identifying the qualifying program. The Lifeline credit will not be established until the Company has received such signed document. If the customer requests installation prior to the Company's receipt of such signed document the requested service will be provided without the Lifeline credit. When eligibility documentation is provided subsequent to installation, the Lifeline credit will be provided on a going forward basis. Alternatively, if the customer seeks Lifeline Service under the FPG income test, adequate documentation of annual income must be provided and the customer must also self-certify his eligibility.
- 2) The Company, working in conjunction with the appropriate territorial agencies, will verify subscriber eligibility twice over a period of one year. Information obtained during such verification audit will be treated as confidential information to the extent required under territorial and federal laws. The use or disclosure of information concerning enrollees will be limited to purposes directly connected with the administration of the Lifeline plan.

By: Tariff Administrator
Title:
Issued:

Effective:

MISCELLANEOUS SERVICES (cont'd)

XII. TELEPHONE ASSISTANCE PROGRAMS (cont'd)

C. Lifeline Service (cont'd)

2. Regulations (cont'd)

c. Certification (cont'd)

- 3) When a customer is determined to be ineligible as a result of verification, the Company will contact the customer. If the customer cannot provide eligibility documentation, the Lifeline credit will be discontinued. The Company will notify consumers of their impending termination of Lifeline benefits by sending a termination of Lifeline benefits notice in a letter separate from the customer's monthly bill. The customer will have up to 60 days from the date of the termination letter in which to demonstrate his or her continued eligibility before Lifeline support is discontinued. A customer who appeals must present proof of continued eligibility to the Company consistent with the eligibility requirements of Subsections C.2.b. and C.2.c.1 preceding.
- 4) Resellers providing Lifeline service from this tariff are responsible for determining proof of eligibility prior to requesting the service. As set forth in 47 C.F.R. § 417(a) and (b), a reseller must provide a certification, upon request, to the Company that it is complying with all FCC and applicable territorial requirements governing Lifeline/Link-Up programs, including certification and verification procedures. Resellers are required to retain the required documentation for three (3) years and be able to produce the documentation to the Commission or its Administrator to demonstrate that they are providing discounted services only to qualified low-income customers as outlined in Subsections C.2.b.1 and C.2.b.2 preceding. Disclosure requirements described in Subsection C.2.b.2 preceding are applicable to resellers of Lifeline service.

By: Tariff Administrator
Title:
Issued:

Effective:

MISCELLANEOUS SERVICES (cont'd)

XII. TELEPHONE ASSISTANCE PROGRAMS (cont'd)

C. Lifeline Service (cont'd)

3. Rates and Charges

- a. Lifeline is provided as a monthly credit on the eligible residential subscriber's bill for local service.
- b. Service Charges in Section 3.II.A preceding are applicable for installing or changing Lifeline service.
- c. Link-Up connection assistance in Subsection D. following may be available for installing or relocating Lifeline service.
- d. The Secondary Service Charge in Section 3.II.A preceding is not applicable when existing service is converted intact to Lifeline service.

By: Tariff Administrator
Title:
Issued:

Effective:

MISCELLANEOUS SERVICES (cont'd)

XII. TELEPHONE ASSISTANCE PROGRAMS (cont'd)

D. Link-Up Service

1. General

- a. Link-Up is a program designed to increase the availability of telecommunications services to low income subscribers by providing a credit to the non-recurring installation and service charges to qualifying low income residential subscribers. Specific terms and conditions are as prescribed by the Guam Public Utilities Commission and are as set forth in this tariff.
- b. Link-Up is supported by the federal universal service support mechanism.

2. Regulations

a. General

- 1) A federal credit amount of fifty percent (50%) of the non-recurring charges for connection of service, up to a maximum of *thirty dollars* (\$30.00), is available to be passed through to the subscriber.
- 2) Customers eligible under Link-Up are also eligible for monthly recurring assistance under the Lifeline program
- 3) Link-Up connection assistance is available per household and is applicable to the primary residential connection only.
- 4) The Link-Up credit is available each time the customer installs or relocates the primary residential service.
- 5) To receive the credit, the named subscriber to the service must provide proof of eligibility prior to installation of service.

By: Tariff Administrator
Title:
Issued:

Effective:

MISCELLANEOUS SERVICES (cont'd)

XII. TELEPHONE ASSISTANCE PROGRAMS (cont'd)

D. Link-Up Service (cont'd)

2. Regulations (cont'd)

a. General (cont'd)

- 6) The total tariffed charges for connecting service, including service and other installation charges, are considered in the credit calculation.
- 7) The non-discounted federal credit amount will be passed along to resellers ordering local service at the prescribed resale discount from this Tariff, for their eligible end users. Eligible carriers, as defined by the FCC, are required to establish their own Link-Up programs.

b. Eligibility

- 1) To be eligible for a Link-up credit, a customer must be a current recipient of any of the low income assistance programs identified below or meet the income test based on Federal Poverty Guidelines as described in Subsection D.2.b.2 following:
 - a) Temporary Assistance to Needy Families (TANF), previously known as AFDC
 - b) Supplemental Security Income (SSI)
 - c) Food Stamps
 - d) Medicaid
 - e) Federal public housing/Section 8
 - f) Low Income Home Energy Assistance Plan (LIHEAP)
 - g) National School Lunch's free lunch program (NSL)
- 2) Additionally, customers not receiving benefits under one of the preceding programs, and whose total gross annual income does not exceed one hundred and thirty-five percent (135%) of the federal poverty guidelines for the lower 48 states meet the requirements of a territory-established means test and may apply directly to the Company for eligibility certification.

By: Tariff Administrator
Title:
Issued:

Effective:

MISCELLANEOUS SERVICES (cont'd)

XII. TELEPHONE ASSISTANCE PROGRAMS (cont'd)

D. Link-Up Service (cont'd)

2. Regulations (cont'd)

b. Eligibility (cont'd)

3) All applications for service are subject to verification with the state agency responsible for administration of the qualifying program.

c. Certification

1) Proof of eligibility in any of the qualifying low income assistance programs should be provided to the Company at the time of application for service. Link-Up eligible subscribers may receive the Link-Up credit by signing a document certifying, under penalty of perjury, that the customer participates in any of the qualifying low income assistance programs. The Link-Up credit will not be established until the Company has received such signed document. If the customer requests installation prior to the Company's receipt of such signed document, the requested service will be provided without the Link-Up credit. Alternatively, if the customer seeks Link-up Service under the FPG income test, adequate documentation of annual income must be provided and the customer must also self-certify his eligibility.

2) The use or disclosure of information concerning enrollees will be limited to purposes directly connected with the administration of the Link-Up plan.

By: Tariff Administrator
Title:
Issued:

Effective:

MISCELLANEOUS SERVICES (cont'd)

XII. TELEPHONE ASSISTANCE PROGRAMS (cont'd)

D. Link-Up Service (cont'd)

2. Regulations (cont'd)

c. Certification (cont'd)

- 3) Resellers providing Link-Up service from this Tariff are responsible for determining proof of eligibility prior to requesting the service. As set forth in 47 C.F.R. § 417(a) and (b), a reseller must provide a certification, upon request, to the Company that it is complying with all FCC and applicable territory requirements governing Lifeline/Link-Up programs, including certification and verification procedures. Resellers are required to retain the required documentation for three (3) years and be able to produce the documentation to the Commission or its Administrator to demonstrate that they are providing discounted services only to qualified low-income customers as outlined in Subsections D.2.b.1 and D.2.b.2 preceding. Disclosure requirements described in Subsection D.2. preceding are applicable to resellers of Link-Up service.

3. Rates and Charges

- a. The federal credit available for a Link-Up connection is thirty dollars (\$30.00) maximum or fifty percent (50%) of the installation and service charges from this Tariff, whichever is less.

By: Tariff Administrator
Title:
Issued:

Effective:

MISCELLANEOUS SERVICES (cont'd)

XII. TELEPHONE ASSISTANCE PROGRAMS (cont'd)

E. Discounts to Schools, Libraries and Rural Healthcare Providers

1. Eligibility Requirements

a. Applicants seeking discounted services to schools and libraries must meet the following eligibility criteria:

- 1) Applicant must be a school or library as defined above.
- 2) Applicant must not be a for-profit business.
- 3) Applicant must not have an endowment fund greater than \$50 million.

b. Applicants seeking discounted services to rural health care providers must meet the following eligibility criteria:

- 1) Applicant must be a public or non-profit health care provider.
- 2) Applicant must be located outside the municipal boundaries of Hagatna.

2. Regulations

a. Applicants seeking discounted services for schools and libraries should contact the Schools and Libraries Corporation, an entity established by the FCC to function as administrator of the federal funds, for application procedures. Applicants seeking discounted service to rural health care providers should contact the Rural Health Care Corporation, another FCC established entity, for application procedures.

b. There is no difference in the quality of services provided to customers eligible for discounted service and regular customers.

By: Tariff Administrator
Title:
Issued:

Effective:

MISCELLANEOUS SERVICES (cont'd)

XII. TELEPHONE ASSISTANCE PROGRAMS (cont'd)

E. Discounts to Schools, Libraries and Rural Healthcare Providers

2. Regulations (cont'd)

c. Recipients of discounted service are subject to all conditions in Section 5.XII of this tariff, including the rights and obligations of local telephone service subscribers, except as follows:

- 1) Applicant may not sell, resell or otherwise transfer discounted services, facilities or network capacity made available under the provisions of this tariff.
- 2) Services, facilities or capacity provided to schools and libraries must be used solely for educational purposes.
- 3) Facilities provided under the discount program for rural health care providers must be used to support health care services. Facilities used for non-health related services are not eligible for discount.

3. Amount of Support

a. The amount of discount varies with the designation of the community in which the school or library is located as rural or urban and also varies with the percentage of students eligible for the federal school lunch program.. The discounts are shown below:

Percent of students Eligible for School Lunch	Urban Discount %	Rural Discount %
< 1	20	25
1-19	40	50
20-34	50	60
35-49	60	70
50-74	80	80
75-100	90	90

b. Library eligibility is determined by the school district in which the library is physically located.

c. The discount for schools and libraries applies to all telecommunications services and to inside wire installation and maintenance charges.

By: Tariff Administrator
Title:
Issued:

Effective:

MISCELLANEOUS SERVICES (cont'd)

XII. TELEPHONE ASSISTANCE PROGRAMS (cont'd)

E. Discounts to Schools, Libraries and Rural Healthcare Providers

3. Amount of Support (cont'd)

- d. Support to rural health care providers is limited to waiver of channel mileage facilities charges on local special access circuits outside Hagatna. These special access circuits may not exceed a bandwidth of 1.544 Mbps.

By: Tariff Administrator
Title:
Issued:

Effective:

XV. FOREIGN EXCHANGE SERVICE

A. General

Foreign Exchange Service is local telephone service furnished to a customer located in one exchange area from a central office in another exchange area which does not normally serve the area in which the customer's service is situated. It is not solicited by GTA and is not offered as a normal or customary form of telephone service. However, when required facilities are available, applications for this type of service will be filled subject to the following terms and conditions:

1. Foreign Exchange Service is necessarily limited to one-party line telephones and Private Branch Exchange Trunks.
2. Foreign Exchange Service to Non-GTA Exchanges:
 - a. GTA requires the voluntary cooperation of other telephone companies when the requested FX service involves exchange areas not served by GTA. The other participating telephone company must agree to provide and maintain the required lines and apparatus that falls within its territory.
 - b. All rates and charges imposed by the other participating company will be in addition to those imposed by GTA. All such charges will, however, be paid by GTA and incorporated in the statement issued to the customer; so that only one monthly bill will be used for the overall facilities.

By:
Title: Tariff Administrator
Issued:

ATTACHMENT B

Effective:

B. Rates

1. The minimum service period for Foreign Exchange Service is one month. If the application for Foreign Exchange Service is cancelled prior to the termination of the minimum service period, for any reason imputable to the customer, the customer will pay to GTA the equivalent of the monthly service charges applicable to the Foreign Exchange Service. For this purpose, installation is considered to have been started when GTA incurs any expense in connection or in preparation thereof which would not otherwise have been incurred, provided:
 - i. The customer has advised GTA to proceed with the installation and;
 - ii. GTA has accepted the order.
2. At its option GTA might require that all installation charges be paid in advance by the customer.
3. If a customer's requirements cannot be met with the regularly offered service arrangements, GTA will provide, where technically feasible, Special Service Arrangements pursuant to Section IV of this tariff, provided that these arrangements do not interfere with any other services furnished under GTA's Tariffs.
4. In addition to the applicable local exchange access rate as listed in Section 2, for the number served by the distant central office, airline mileage and special charges for conditioning the line will apply based on cost for additional equipment and additional maintenance as specified in Section 7. Rates for Foreign Exchange Service also consist of a non-recurring Installation Charge and a monthly mileage charge per number based on the distance between the customer premises and the office from which Foreign Exchange Service is provided. These rates are as follows:

Installation Charge, per number	\$60.00
Monthly charge, per number	\$9.00/per mile

By:
Title: Tariff Administrator
Issued:

Effective:

SPECIAL ACCESS SERVICE

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X. --- DELETED ---	58

By: Tariff Administrator
Title:
Issued:

ATTACHMENT C

Effective:

SPECIAL ACCESS SERVICE

X. --- DELETED ---

By: Tariff Administrator
Title:
Issued:

Effective:

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF GUAM**



PETITION OF GTA TELECOM LLC }
TO DISCONTINUE A }
TELECOMMUNICATIONS SERVICE }

Docket 06-04

STIPULATION

GTA Telecom LLC ("GTA Telecom") and Georgetown Consulting Group, Inc. ("GCG"), in its role as staff to the Public Utilities Commission of Guam (the "Commission"), through their authorized representatives, hereby stipulate and agree as follows in connection with the above-referenced proceeding:

1.

By order dated April 22, 2005 in Docket 05-03, the Commission approved GTA Telecom's General Exchange Tariff No. 1 (the "GET"), as amended by the Stipulation between GTA Telecom and GCG in such docket (the "Tariff Stipulation"). GTA Telecom provides Voice Grade Special Access Services ("VGSAS") pursuant to Section 7.III of the GET.

2.

Prior to January 1, 2005, customers of the Guam Telephone Authority could order VGSAS provisioned by means of an unconditioned, continuous metallic circuit under the terms and conditions of the Guam Telephone Authority's General Exchange Tariff. By decision of the Commission dated December 20, 2005, the Commission ordered GTA Telecom to continue to fill customer applications for metallic circuit provisioned VGSAS under Section 7.III of the GET until otherwise authorized pursuant to 12 GCA 12106.

3.

On February 2, 2006, GTA Telecom filed a petition to discontinue continuous metallic circuit provisioning of VGSAS in accordance with 12 GCA 12103(h). On March 27, 2006, GTA Telecom amended its petition to seek corresponding changes in Section 7.III of the GET pursuant to 12 GCA 12106 to eliminate a customer's option to select unconditioned, continuous metallic circuit provisioning of VGSAS. Such changes in Section 7.III of the GET are referred to herein as the "VGSAS Tariff Amendments." The Commission provided public notice of the petition on March 25, 2006.

4.

VGSAS is described in the GET as a channel that provides voice frequency transmission capability in the nominal frequency range of 300 to 3000 Hz. In addition, Sections 1.IV.A.6 and 1.IV.A.7 of the GET currently provide, in pertinent part, as follows:

6. Unauthorized Attachments or Connections - No equipment, accessory, apparatus, circuit or device shall be attached to or connected with GTA's facilities except as provided in this tariff. In case of any such unauthorized attachment or connection is made, GTA shall have the right to remove or disconnect the same, to suspend service during the continuance of said attachment or connection, or to disconnect service. ...

7. Except as otherwise provided in this tariff, nothing herein shall be constructed to permit the use of a device to interconnect any GTA-owned line or channel with any other communications line or channel of GTA or of any other person.

5.

The federal Telecommunications Act of 1996, as amended (the "Federal Act"), provides a mechanism by which a requesting telecommunications carrier may obtain access to unbundled network elements ("UNEs"), including unbundled copper loop facilities, from an incumbent local exchange carrier. GTA Telecom covenants and agrees that it is an incumbent local exchange carrier subject to the obligations contained in 47 USC § 251(c). To the extent telecommunications carriers are ordering metallic circuit provisioned VGSAS from GTA Telecom merely to obtain the copper loop facility, GTA Telecom and GCG agree that such orders should be transitioned from metallic circuit provisioned VGSAS to orders for unbundled loops in accordance with the terms and conditions of the Federal Act. Pursuant to 47 USC § 252(b), GTA Telecom or a requesting telecommunications carrier may petition the Commission to arbitrate any open issues in connection with a request for UNEs during the period from the 135th day to the 160th day (inclusive) after the date on which GTA Telecom receives a request for negotiation from the requesting telecommunications carrier under the Federal Act. Accordingly, GTA Telecom and GCG agree that 180 days is a reasonable period of time for transitioning orders from metallic circuit provisioned VGSAS to unbundled loops under the Federal Act.

6.

GTA Telecom is a carrier of last resort within the meaning of 12 GCA 12103(h). GTA Telecom and GCG agree that the discontinuation of metallic circuit provisioning of VGSAS "will not deprive customers of any necessary or essential telecommunications service or access thereto" within the meaning of 12 GCA 12103(h) if GTA Telecom's customers can continue to order VGSAS in accordance with the GET (as revised by the VGSAS Tariff Amendments) and either (a) have the right to order an unbundled loop in accordance with the terms and conditions of the Federal Act as a substitute for continuous metallic circuit provisioned VGSAS or (b) can obtain a replacement service under other sections of the GET to the extent such customers attach their own electronics to GTA Telecom's metallic circuits in order to generate broadband spectrum in excess of voice grade transmissions (*i.e.*, 300 Hz to 3000 Hz).

7.

GTA Telecom and GCG agree that the VGSAS Tariff Amendments are suspended, and shall not be effective, until the Transition Date as defined herein below.

8.

GTA Telecom will continue to provide, and will continue to fill orders for, unconditioned, continuous metallic circuit provisioned VGSAS until 180 days from the effective date of the Commission order approving this stipulation (the "Transition Date"); provided, however, GTA Telecom may condition the provisioning of orders placed on or after the date of this Stipulation upon certification from the requesting customer that it will utilize such service in accordance with the GET, including Sections 1.IV.A.6 and 1.IV.A.7 of the GET, and identification of the customer's alarm company, and its location. Upon the Transition Date, (a) the VGSAS Tariff Amendments will become effective for orders placed after the Transition Date, (b) GTA Telecom will have no further obligation to fill orders for continuous metallic circuit provisioned VGSAS placed after the Transition Date, except for customers with legitimate uses such as alarm circuits which use shall be certified by the customer and the certification would identify the alarm company, and (c) GTA Telecom may discontinue continuous metallic circuit provisioned VGSAS for any existing customer who fails to certify, within thirty (30) days after notice from GTA Telecom, that such customer is utilizing the service in accordance with the GET, including Sections 1.IV.A.6 and 1.IV.A.7 of the GET. The certification will identify the alarm company used by the requesting customer, and its location. Nothing herein shall restrict GTA Telecom's authority under Section 1.IV.A.6 of the GET prior to the Transition Date.

9.

Paragraph 9 of the Tariff Stipulation is hereby amended by this Stipulation.

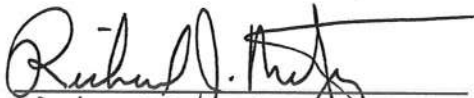
The parties hereto have caused this Stipulation to be executed by their duly appointed officers as of the ___ day of April, 2006.

GTA Telecom LLC

By:

Name:

Title:



Richard J. Metzger

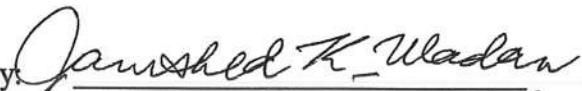
VP-Regulatory

Georgetown Consulting Group, Inc.

By:

Name:

Title:



JAMSHED K MADAN

PRINCIPAL



388 Ypao Road, Tamuning Guam 96913
Phone 671-646-8881
Fax 671-648-2547

April 13, 2006

Guam Public Utilities Commission
Terrance Brooks, Chairman
Suite 207 GCIC Building
414 West Soledad Avenue
Hagatna, Guam 96910

Dear Mr. Brooks,

I am writing on the behalf of the Guam Seventh-day Adventist Clinic to express our concern about GTA's proposal (Docket 06-4) to stop providing dry copper service. This was recently brought to my attention by a colleague. Apparently notice was given in the newspaper, but I had missed it.

We have been relying on the use of this technology for over 3 years to provide the networking infrastructure to maintain a connection between the main facility and our off-site Wellness center that is located at the Guam Surgery Center. Losing this service would force us to look for alternate connection technologies and would result in a huge increase in cost to keep our network together.

Currently, we have implemented an HDSL 3-Mbit data connection over our dry copper. We rely on it constantly for our data network and were soon planning to use it to finally tie our PBX phone system together using voice over IP. This service is core to our network design and future implementation plans.

I don't know how long this change has been in the plans, but it seems changes have already been made to our circuit in the last few weeks. We started having sporadic connection problems with our copper pair Monday, March 27, somewhere just after noon. Since that time, the quality of our HDSL signal has been significantly lowered and has been dropping out. We have had almost daily service calls in with GTA and still currently have technicians looking at it, but even up until today, they have not been able to restore the connection quality we previously had.

Please consider our situation as well as others in a similar situation as you make your decision regarding GTA's proposal.

Thanks,

Matthew Holm, BBA CIS, MCSE, CCA
Information Systems Manager
Guam SDA Clinic

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



PRACTICE IN REGULATORY
PROCEEDINGS BEFORE PUC

GENERAL DOCKET

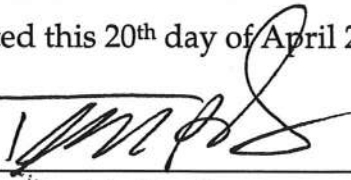
Administrative Order

The Guam Public Utilities Commission [PUC] finds it necessary and appropriate to review the statutory framework, which governs who may appear and represent another person [hereinafter referred to as "practice"] in PUC regulatory proceedings. 7 Guam Code Annotated [GCA] section 9A106 provides that it is unlawful for any person to practice law unless he/she is regularly licensed and authorized to do so in Guam. 7 GCA section 9A215 (b)(3) provides that representing or advising another person as to any action before any agency, board or administrative tribunal constitutes the practice of law. PUC finds that it is an agency, board or administrative tribunal within the meaning of this section and that its regulatory proceedings fall within the meaning of the term "action" in the section.

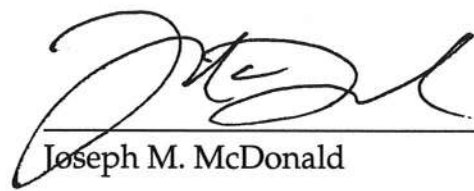
7 GCA section 9A215(c) establishes three relevant exceptions to the rule that only persons who are regularly licensed and authorized to practice law in Guam may practice before PUC: 1] under section 9A215(c)(6), for an attorney who is admitted to practice in another state *and* who is associated with an attorney admitted to practice in Guam *and* who has obtained *pro hac vice* admission from the Superior Court of Guam; 2] under section 9A215(c)(12) for a government employee or official to practice before PUC as part of the person's official duties; and 3] under section 9A215(c)(13/14), for a bona fide full time employee, officer or director of a corporation who represents the corporation before PUC.

PUC finds that practice before it must conform to the above statutory requirements. Accordingly, any person, who is not a licensed Guam attorney shall, upon making an appearance in any regulatory proceeding before PUC, certify his/her eligibility to practice before PUC under one of the exceptions stated above. This Administrative Order does not affect a person's right to appear before PUC on his/her own behalf.

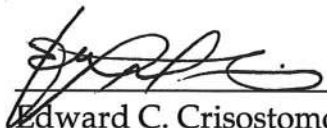
Dated this 20th day of April 2006.



Terrence M. Brooks



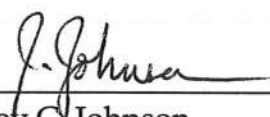
Joseph M. McDonald



Edward C. Crisostomo



Rowena E. Perez



Jeffrey C. Johnson



OFFICE OF THE PROSECUTING COUNSEL
SUPREME COURT OF GUAM
KOTTEN MÅS TAKHELÓ GUÅHAN

March 2, 2006

VIA FACSIMILE (671) 472-1917

Harry M. Boertzel, Esq.
Administrative Law Judge
Guam Public Utilities Commission
Post Office Box 862
Hagåtña, Guam 96932

Re: Comment on proposed order related to *pro hac vice* admission before the Public Utilities Commission

Dear Mr. Boertzel:

By way of introduction, I am the Prosecuting Counsel of the Guam Bar Ethics Committee ("Committee"). On behalf of the Committee, kindly accept the following commentary on the Public Utilities Commission's Proposed Administrative Order regarding the rules and procedure for the admission of attorneys *pro hac vice* in matters before it.

Be advised that the Committee concurs with the Public Utilities Commission's proposed rule in that it will require compliance with the *pro hac vice* rules in order to practice before it.

Additionally, with regard to your inquiry about Guam Rules of Professional Conduct 5.5, the Committee notes that the Supreme Court of Guam Rules Governing Admission to the Practice of Law, Part F, section 2 (2003) addresses what an off-island attorney may do consistent with the particular Rule of Professional Conduct.

If you should have any questions or if I might be of any assistance, please do not hesitate to contact me. Thank you.

Sincerely,

ALBERTO E. TOLENTINO
Prosecuting Counsel

cc: GBEC

**PUBLIC UTILITIES COMMISSION
OF GUAM**

Terrence M. Brooks
Joseph M. McDonald
Edward C. Crisostomo
Rowena E. Perez

Suite 207, GCIC Building
Post Office Box 862
Hagatna, Guam 96932
Telephone: (671) 472-1907
Fax: (671) 472-1917
Email: info@guampuc.com

Harry M. Boertzel
Administrative Law Judge

Lourdes R. Palomo
Administrator

April 14, 2006

Terrence M. Brooks
PUC Chairman
GCIC Building, Suite 207
414 W. Soledad Avenue
Hagatna, Guam 96910

Dear Chairman Brooks:

You have asked me to consider whether I would continue to serve as the Commission's administrative law judge [ALJ] for the balance of your term of office [June 2011].

I have served as the Commission's ALJ for over eighteen years. I have found the position to be the most challenging and rewarding of my thirty-seven year legal career. After careful consideration, I have decided that, with the Commission's blessing, I am prepared to continue my serve as ALJ for the five year balance of your term of office, upon which I intend to retire from the practice of law.

It would be my recommendation that on or about June 2010, the Commission commence a search for a new administrative law judge, who when selected would work with me until June 2011 so that I am able to pass on my experience and knowledge. I would also recommend that the new ALJ attend *The National Judicial College's* training session for Administrative Law Judges and NAURC's regulatory training session during this orientation period. This approach is entirely consistent with the Commission's record of quality service based on a continuity of professional staff.

I am enclosing a contract amendment by which the Commission could extent my term of service until June 2011. My current term of service as ALJ is scheduled to expire on October 2006. Accordingly, I recommend that this matter be considered by the Commission at its April business meeting.

At your request, I have also asked Georgetown Consulting Group whether it would be interested in extending its term of service to the Commission until June 2011. Mr. Madan has informed me that Georgetown would be honored to be of continued service to the Commission. A proposed extension of its contract is also enclosed for your review.

Please let me know if you have any questions.

Cordially,

A handwritten signature in black ink, appearing to read "H. Boertzel", with a long horizontal flourish extending to the right.

Harry M. Boertzel

Sixth Amendment to Engagement Agreement

This amendment is entered into effective April 20, 2006 by and between the Public Utilities Commission of Guam ["Commission"] and Harry M. Boertzel a licensed attorney authorized to serve as the Commission's Administrative Law Judge [ALJ];

WHEREAS, on June 17, 1988, the Commission retained Boertzel, through agreement with law firms of which he was a member, to serve as its ALJ, which Agreement has since been amended on March 18, 1992, November 13, 1993, February 2, 1996, January 1, 1999 and March 15, 2002 [The "Agreement"];

WHEREAS, by the amendment dated January 1, 1999, the Agreement was assigned with Commission approval, by Boertzel's then law firm to Boertzel in his individual capacity;

WHEREAS, the parties desire to further amend the Agreement so as to extend the term of Boertzel's service as the Commission's ALJ;

Now, therefore, in consideration of the above recitals and for other good and valuable consideration, it is agreed that;

1. **Term.** The Agreement shall remain in full force and effect for a term, which will expire on June 27, 2011.
2. **Full Force.** The Agreement, as amended herein, shall remain in full force and effect.

Public Utilities Commission of Guam

By: _____

Terrence M. Brooks
PUC Chairman

By: _____

Harry M. Boertzel



Sixth Amendment to Consultant's Agreement

This amendment is entered into effective April 20, 2006 by and between Georgetown Consulting Group, Inc., a Connecticut corporation, licensed to do business in the Territory of Guam ["Georgetown"] and the Public Utilities Commission of Guam ["Commission"].

WHEREAS, the parties entered into a consultant agreement on October 10, 1988 as amended on August 15, 1991, March 3, 1994, February 2, 1996, January 1, 1999 and on March 15, 2002.

WHEREAS, the parties desire to further amend the Agreement for the purpose of extending its term until June 27, 2011.

Now, therefore, in consideration of the above recitals and for other good and valuable consideration, it is agreed that;

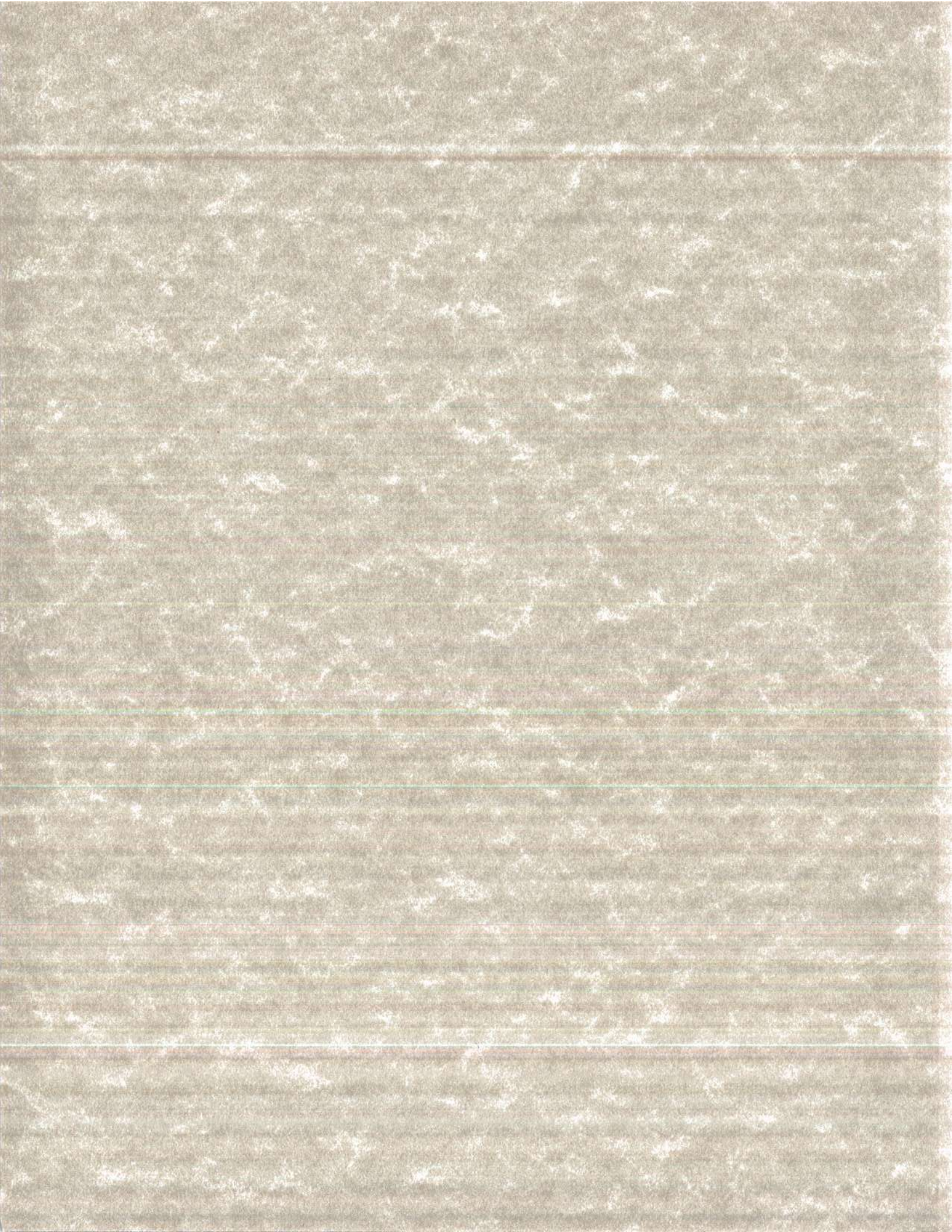
1. The term set forth in paragraph 3 [a] of the Agreement is amended to read:
 - a. This Agreement shall commence on October 10, 1988 and shall expire June 27, 2011, unless earlier terminated pursuant to subparagraph [b] or [c] below.
2. The Agreement, as amended herein, shall remain in full force and effect.

Public Utilities Commission of Guam

Georgetown Consulting Group, Inc.

By: _____
Terrence M. Brooks
PUC Chairman

By: _____
Jamshed K. Madan
Principal



GUAM PUBLIC UTILITIES COMMISSION
SPECIAL MEETING
June 15 and 22, 2006
SUITE 206 GCIC BUILDING
414 W. SOLEDAD AVE. HAGATNA, GUAM



MINUTES

A special meeting of the Guam Public Utilities Commission [PUC] was convened at noon on June 15, 2006 pursuant to due and lawful notice. Commissioners McDonald, Perez, Crisostomo, Johnson and Brooks were in attendance. ALJ Boertzel participated in the meeting via conference call. The following matters were considered at the meeting pursuant to the agenda made *Attachment A*.

At about 1:30 p.m. on June 15, 2006 the meeting was adjourned until a date and time then uncertain in the following week. Due to uncertainties regarding the requirements of the Open Government Act, regarding adjourned and reconvened meetings, PUC provided public notice of the continued meeting; posted notice at the meeting location once the date was determined; and further adopted a *Certificate of Emergency*, which is made *Attachment B*. The meeting was reconvened at 11:30 a.m. on June 22, 2006 in the same location.

ALJ Boertzel advised PUC that it would be inappropriate for Commissioner Crisostomo, who would be off-island for the reconvened meeting to participate and vote via conference call. 12 GCA 12006 provides that commissioners must be present at PUC meetings in order to vote. ALJ advised that other jurisdictions, which had considered this issue had concluded that participation via conference call would not satisfy the "physical presence" requirement.

1. Approval of minutes.

After review and discussion of the minutes of the April 20, 2006 meeting and on motion duly made, seconded and unanimously carried, PUC *resolved* to approve the minutes.

2. Guam Power Authority - Residual fuel oil procurement.

PUC reviewed Georgetown's [GCG] May 5, 2006 report, which examined GPA's petition and recommended its approval, provided that GPA agree to withdraw from the petition and separately file the concepts that the fuel supplier: a) finance an extra shipment of fuel oil and b) maintain the fuel farms. By letter dated May 19, 2006, GPA agreed to these conditions. After discussion and on motion duly

made, seconded and unanimously carried, PUC resolved to approve the procurement, subject to the conditions recommended by GCG.

3. Guam Waterworks Authority - wastewater performance management contract.

ALJ informed PUC that GWA filed a petition for approval of the subject procurement on May 15, 2006. The petition is currently under review by regulatory staff.

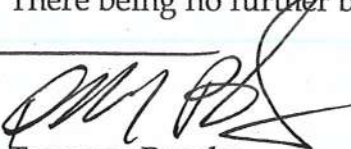
4. Docket 05-11 - GTA/PDS interconnection agreement.

The primary purpose of the meeting was to receive an ALJ briefing on his June 8, 2006 report, which reviewed administrative proceedings by which GTA and PDS attempted to negotiate the terms and to resolve disputes regarding an interconnection agreement [ICA] between them pursuant to the requirements of Federal law.

ALJ Boertzel, with assistance from GCG consultant Walt Schweikert, reviewed: a] the Federal law under which PUC is required to consider the ICA; b] the negotiated portion of the ICA; and c] the open issues, which PUC is required to arbitrate under its September 21, 1999 *Procedural Framework Order*. Significant time was spent reviewing GCG's June 1, 2006 report on the open issues subject to arbitration and GCG's May 31, 2006 report on collocation issues. ALJ noted that GCG had been given until June 16, 2006 respond to GTA's June 13, 2006 position regarding interim rates for unbundled network elements. ALJ then reviewed the ten determinations, which PUC must resolve, in rendering an arbitration decision on the open issues identified therein. The meeting was adjourned at about 1:30 p.m.

At 11:30 a.m. on June 22, 2006, the meeting was reconvened. After further review and discussion of the ALJ report, GCG's June 15, 2006 response to GTA's June 13, 2006 filing regarding UNE interim prices and the proposed PUC decision, including each of the proposed determinations contained therein [*Attachment H to the ALJ report*], on motion duly made, seconded and unanimously carried, PUC resolved to adopt the order in form made *Attachment C* to these minutes.

There being no further business the meeting was adjourned.



Terrence Brooks
Chairman

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

CERTIFICATE OF EMERGENCY

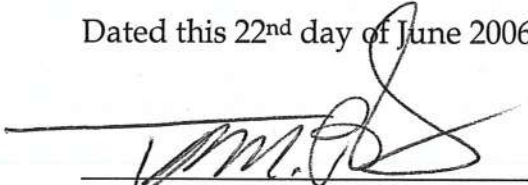


The Guam Public Utilities Commission [PUC] for good cause shown finds that:


1. On June 15, 2006 PUC convened a duly noticed special meeting at which the principal agenda item was consideration of its administrative law judge's June 8 2006 report in Docket 05-11. In this docket, PUC is exercising federal authority pursuant to section 252 of the Communications Act of 1934, as amended in arbitrating interconnection disputes between GTA Telecom LLC and Pacific Data Systems, in establishing rates for interconnection, services and network elements in accordance with the Act and in establishing a schedule for implementation of interconnection arrangements between GTA and PDS.
2. Due to the complexity and size of ALJ's report, the commissioners decided to devote their June 15 meeting to an ALJ briefing about the report. It was further decided that the June 15 meeting would be adjourned and continued until a date and time during the week of June 19, 2006 at which PUC would deliberate and render a decision in the docket. However, as only four commissioners would be on-island for the continued meeting, as the attendance of all four commissioners is required under 12 GCA 12006 to constitute a quorum and as all four commissioners are busy professionals and needed to review their schedules before committing to a date for the continued meeting, no date was agreed to at the June 15 meeting.
3. The commissioners have since agreed to reconvene their June 15, 2006 meeting at 11:30 a.m. on Thursday, June 22 2006. On or about June 19, 2006, PUC posted notice of the date of the continued meeting on the door to Suite 207 GCIC Building and has twice notified the media of the recontinued meeting date and time.
4. Given uncertainty whether by the above actions PUC has met the notice requirements of 5 GCA 8109; given the fact that Federal law requires PUC to issue a decision in Docket 05-11 not later than June 26, 2006; given the fact that June 22, 2006 is the only convenient date for the commissioners to meet and act prior to the federal deadline; and given the fact that there was insufficient time for PUC to renote its June 22, 2006 meeting in accordance with 5 GCA 8107(b), PUC finds that it is necessary, reasonable and appropriate to certify an emergency under 5 GCA 8108 in order to conduct the meeting.

After due consideration of the above findings, and after motion duly made, seconded and carried by the affirmative vote of the undersigned commissioners, the Guam Public Utilities Commission hereby certifies the existence of an emergency, which justifies the reconvening of its June 15, 2006 meeting at 11:30 a.m. on June 22, 2006 to consider the agenda of its June 15 meeting.

Dated this 22nd day of June 2006.




Terrence M. Brooks

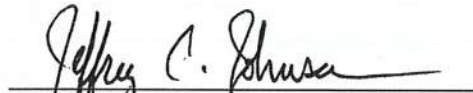


Joseph M. McDonald

Edward C. Crisostomo



Rowena E. Perez



Jeffrey C. Johnson

GUAM PUBLIC UTILITIES COMMISSION

**SPECIAL MEETING
SUITE 207 GCIC BUILDING
414 W. SOLEDAD AVE. HAGATNA, GUAM**

Noon, June 15, 2006

AGENDA

1. Approval of minutes of April 20, 2006 meeting.
2. Docket 05-11 - Interconnection Agreement - Pacific Data System
v. GTA Telecom LLC.
3. Docket 94-4 - GPA residual fuel oil procurement.
4. Docket 06-6 - GWA wastewater private management contract.
. Status report
5. Other business.

GUAM PUBLIC UTILITIES COMMISSION
SPECIAL MEETING
APRIL 20, 2006
SUITE 206 GCIC BUILDING
414 W. SOLEDAD AVE. HAGATNA, GUAM



MINUTES

A special meeting of the Guam Public Utilities Commission [PUC] was convened at 6:00 p.m. on April 20, 2006 pursuant to due and lawful notice. Commissioners McDonald, Perez, Crisostomo, Johnson [*acting capacity*] and Brooks were in attendance. The following matters were considered at the meeting pursuant to the agenda made *Attachment A*.

1. Approval of minutes.

After review and discussion of the minutes of the February 2, 2006 meeting and on motion duly made, seconded and unanimously carried, PUC *resolved* to approve the minutes.

2. Guam Power Authority.

a. A proposed order was reviewed by which the LEAC factor would be set for the period April 20, 2006 until on or after October 1, 2006 when a new factor is established. By report dated March 28, 2006, Georgetown Consulting Group [GCG] supports GPA's petition that the factor be set at \$0.098589 per kWh. This increase is driven by higher forecasted fuel prices and GPA's right to recover, under earlier PUC orders, booked deferred fuel costs. After review of GPA's petitions, the GCG report, in consultation with its administrative law judge [ALJ], for good cause shown and on motion duly made, seconded and unanimously carried, PUC *resolved* to adopt the order made *Attachment B*.

b. PUC next considered GCG reports dated April 12 and 18, 2006, which recommend PUC approval of three GPA procurements pursuant to the *Contract Review Protocol*: 1] a fuel hedging program; 2] an extension of its property and casualty insurance policy; and 3] an increase in its line of credit ceiling from \$10 million to \$15 million dollars. After review of the GCG reports, for good cause shown, on motion duly made, seconded and unanimously carried, PUC *resolved* to approve the procurements, *provided that*: 1] in the event the cost of the insurance extension exceeds 12% of the existing cost, then GPA shall petition PUC for review and approval of this increased expense; and 2] an

material change in the hedging program, as summarized in GCG's April 12, 2006 letter, shall require prior PUC approval.

3. Department of Public Works

ALJ's April 20, 2006 memo summarized regulatory challenges associated with DPW's pursuit of revenue bonding to fund its compliance with the Federal Consent Decree. After discussion and on motion duly made, seconded and unanimously carried, the commissioners *resolved* to adopt the five recommendations made in ALJ's memo and further authorized ALJ, in consultation with Chairman Brooks, to implement them.

4. Telecommunications.

The commissioners reviewed and discussed the following documents, which were provided for information purposes: a] PUC's FY05 911 annual report; b] GCG and GTA's April 12, 2006 letter, which recommends a protocol for the first audited report required under section 6.10(c) of the Asset Purchase Agreement; and c] ALJ's scheduling order in Docket 05-11 [GTA-PDS arbitration proceeding].

ALJ next submitted a memorandum and proposed order by which PUC would act on five GTA proposed amendments to its general exchange tariff. After discussion, for good cause shown and on motion duly made, seconded and unanimously carried, the commissioners *resolved* to adopt the order made *Attachment C*.

5. Administrative matters.

The commissioners considered an Administrative Order, which establishes the legal framework under which persons are authorized to represent others in PUC regulatory proceedings. The order has previously been noticed for public comment. The Guam Bar Ethics Committee and Supreme Court's prosecuting attorney support the order. After discussion, the commissioners unanimously *resolved* to adopt the order made *Attachment D*.

As the final agenda item, the commissioners reviewed ALJ's April 14, 2006 letter to Chairman Brooks, which confirms his willingness to continue service to PUC for the balance of the chairman's term of office. Georgetown Consulting Group has also expressed a desire to continue to serve PUC for this period. After discussion and on motion duly made, seconded and unanimously carried, the commissioners resolved: a] to amend both ALJ and Georgetown's engagement

contracts to extend their terms until June 27, 2011; and b] to authorize Chairman Brooks to sign the contract amendments on PUC's behalf.

There being no further business the meeting was adjourned.

A handwritten signature in black ink, appearing to read 'T. Brooks', written over a horizontal line.

Terrence Brooks
Chairman

**DOCUMENTS
PERTAINING TO DOCKET 05-11
WERE PREVIOUSLY ISSUED
FOR YOUR REVIEW**

***VOLUME I & VOLUME II
PER ALJ INSTRUCTIONS***

ALJ REPORT ATTACHED ONLY

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

PACIFIC DATA SYSTEMS

Petitioner

vs.

DOCKET 05-11

GTA TELECOM, LLC

Respondent

Administrative Law Judge Report

Introduction

This report [*Report*] reviews regulatory proceedings, which have occurred pursuant to the Guam Public Utilities Commission's [*PUC*] October 27, 2005 order [*Attachment A*]. The order directed GTA Telecom LLC [*GTA*] and Pacific Data Systems [*PDS*] [*collectively the "parties"*] to negotiate the terms under which GTA would provide PDS with interconnection arrangements pursuant to federal law. PUC is authorized under federal law to review and approve these arrangements and, if necessary, to arbitrate disputes [*open issues*] between GTA and PDS regarding them.

On September 26, 2005, PDS served on GTA a formal request for interconnection pursuant to Federal law [47 USC 251 and 252]. During the period from October 2005 to March 2006 the parties attempted, with little success, to negotiate the terms of these arrangements. On March 4, 2006, PDS filed a timely petition [*Attachment B, without exhibits*], which requested PUC to arbitrate all aspects of an interconnection arrangement between the parties. GTA's March 29, 2006 response to the petition is made *Attachment C*.

Under PUC's Procedural Framework Order [*Framework Order*]¹, the undersigned [*ALJ*] is authorized and directed to preside over the arbitration proceedings toward the goal of PUC rendering a decision on open issues by the statutory deadline of June 26, 2006. *Attachment D* summarizes these proceedings, which included: a) a five day negotiating session on Guam, during which a consensus was reached on a core interconnection agreement, a copy being enclosed as Volume II of this Report [*Core Agreement*]; b) a series of ALJ rulings which defined and sharpened the scope of open issues requiring arbitration; c) a three day site inspection of GTA facilities by PUC's independent regulatory consultant Georgetown Consulting Group [*GCG*] to examine factual disputes concerning collocation; d) filings by the parties, which contain argument, analysis and final

¹ See Attachment A.



positions on each open issue, which requires arbitration in order to establish an interconnection agreement between them; and e] the independent report and recommendations of GCG on each open issue.

The balance of this Report will: a] review the standards of review, which PUC should apply in arbitrating each open issue and in ultimately deciding whether to approve the interconnection agreement between the parties; b] review and make recommendations regarding these matters; and c] propose a timeline for the parties' execution and implementation of the interconnection agreement, as approved by PUC.

Pursuant to the Framework Order, the parties have the right to file objections to this Report on or before June 13, 2006. These comments will be provided to the commissioners in advance of the scheduled June 15, 2006 PUC meeting.

Standards of Review

It is the intent of the Guam Telecommunications Act of 2004 to create a new regulatory and competitive telecommunications framework consistent with federal policies and practices in telecommunications, including the policies and practices found in the Communications Act of 1934, as amended by the Telecommunications Act of 1996.²

Federal law encourages the voluntary negotiation of interconnection arrangements but provides for the arbitration of disputes before PUC, including the open issues identified by PDS and GTA. PUC's arbitration of these open issues is guided by the Framework Order, standards established in Guam law and, where applicable, by federal standards. The Framework Order provides that unless PUC finds it unreasonable or contrary to the public interest, open issues should be resolved by selecting the position of one of the parties on that issue. In deciding which position to select, and where there is no applicable federal standard, PUC should, in the exercise of its discretion in doing substantial justice³, be guided by generally accepted regulatory practices in other United States jurisdictions⁴. PUC may consider the recommendations of ALJ and GCG in this process.

² 12 GCA 12101[a][5].

³ 12 GCA 12013 provides that PUC shall not be bound by the strict rules of the common law relating to the admission or rejection of evidence, but may exercise its own discretion in these matters with a view of doing substantial justice.

⁴ 12 GCA 12104[d].

47 USC 252 [c] provides that in arbitrating open issues and in imposing conditions upon the parties to an interconnection agreement, a state commission [PUC] shall:

1. Ensure that such resolution and conditions meet the requirements of section 251, including regulations implementing the section;
2. Establish any rates for interconnection, services or network elements in accordance with pricing standards established in section [d]; and
3. Provide a schedule for implementation of the terms and conditions by the parties.

In addition to resolving disputes through arbitration, PUC must approve or reject the final interconnection agreement submitted by the parties. With regard to the portion of the agreement voluntarily negotiated by the parties, federal law provides that PUC must approve it unless PUC finds that it either discriminates against a telecommunications carrier not a party to the agreement or that its implementation is inconsistent with the public interest, convenience and necessity. The parties and GCG support PUC's approval of the negotiated portions of the agreement as reflected in the Core Agreement.

The Core Agreement must be amended and supplemented by additional provisions incorporating PUC's resolution of the open issues in the arbitration. With respect to these portions of the final interconnection agreement adopted by arbitration, federal law provides that PUC must approve it unless PUC finds that it does not meet the requirements of 47 USC 251, including the FCC regulations prescribed thereunder, or the pricing standards set forth in 47 USC 252[d].

Open Issues

The undersigned recommends that PUC carefully review and adopt GCG's May 31, 2006 Collocation Report [*Attachment E*] and its June 1, 2006 Arbitration Report [*Attachment F*] as a fair and balanced summary and analysis of each open issue, the parties' positions regarding the open issues and the standard of review which is applicable to each open issue. *Attachment G* includes the parties' June 5, 2006 comments on these GCG reports. Two open issues deserve comment:

1. Initial collocation sites.

The Collocation Attachment to the Core Agreement establishes a comprehensive process by which PDS' initial collocation site requests will be approved [section

47 USC 252 [c] provides that in arbitrating open issues and in imposing conditions upon the parties to an interconnection agreement, a state commission [PUC] shall:

1. Ensure that such resolution and conditions meet the requirements of section 251, including regulations implementing the section;
2. Establish any rates for interconnection, services or network elements in accordance with pricing standards established in section [d]; and
3. Provide a schedule for implementation of the terms and conditions by the parties.

In addition to resolving disputes through arbitration, PUC must approve or reject the final interconnection agreement submitted by the parties. With regard to the portion of the agreement voluntarily negotiated by the parties, federal law provides that PUC must approve it unless PUC finds that it either discriminates against a telecommunications carrier not a party to the agreement or that its implementation is inconsistent with the public interest, convenience and necessity. The parties and GCG support PUC's approval of the negotiated portions of the agreement as reflected in the Core Agreement.

The Core Agreement must be amended and supplemented by additional provisions incorporating PUC's resolution of the open issues in the arbitration. With respect to these portions of the final interconnection agreement adopted by arbitration, federal law provides that PUC must approve it unless PUC finds that it does not meet the requirements of 47 USC 251, including the FCC regulations prescribed thereunder, or the pricing standards set forth in 47 USC 252[d].

Open Issues

The undersigned recommends that PUC carefully review and adopt GCG's May 31, 2006 Collocation Report [*Attachment E*] and its June 1, 2006 Arbitration Report [*Attachment F*] as a fair and balanced summary and analysis of each open issue, the parties' positions regarding the open issues and the standard of review which is applicable to each open issue. *Attachment G* includes the parties' June 5, 2006 comments on these GCG reports. Two open issues deserve comment:

1. Initial collocation sites.

The Collocation Attachment to the Core Agreement establishes a comprehensive process by which PDS' initial collocation site requests will be approved [*section*

6.1.1] and built-out [section 6.5], including timelines, joint planning meetings, construction and acceptance walk-through. PUC should decline PDS' June 5, 2006 request that it proactively override this mutually agreed upon collocation process. However, it is recommended that PUC find that: a] based upon GCG's Collocation Report, physical collocation is technically feasible at each of the 19 initial collocation sites proposed by PDS, except the Tiyan site where virtual collocation is technically feasible; and b] GTA should be ordered to use best efforts to obtain authorization for PDS to collocate at the four physical collocation sites, which are located on third party property⁵.

2. Pricing for Unbundled Network Elements and Other Services [Pricing].

The Pricing open issue is the only one, which GCG in its Arbitration Report recommends that PUC reject both parties' final positions. GCG's rationale for this recommendation speaks for itself. As a result of the parties' failure to engage in meaningful negotiations regarding Pricing, they now face the expense of conducting an expensive cost study, which is necessary to construct permanent prices. The parties are reminded of the opportunity to avoid this expense by negotiating permanent prices. Neither party will be exposed to material economic injury by the interim prices proposed by GCG because of its recommendation that there be a true-up as part of the process of establishing permanent rates.

Determinations

In resolving the open issues necessary to reach a decision in this proceeding, ALJ recommends that based upon this Report, PUC should adopt the following determinations:

1. The substantial rights of the parties have been carefully preserved in this proceeding.
2. By order dated October 27, 2005 herein, PUC found that on September 26, 2005, PDS served a *bona fide* request for interconnection on GTA, which is the incumbent local exchange carrier on Guam. The order directed the parties to enter into negotiations in the manner prescribed in sections 251 and 252 of the Communications Act of 1934, as amended [47 USC 251, 252].

⁵ The AAFB, Orote, UOG and GIAA sites.

3. On or about March 4, 2006 PDS filed a timely petition for PUC to arbitrate open issues between it and GTA pursuant to section 252 regarding interconnection arrangements between them. On or about March 29, 2006 GTA filed a timely response to the petition. As a result of the proceedings summarized in the Report, the open issues reviewed in determination 7 below, were focused and defined and are appropriate for consideration and resolution by PUC under section 252[b][4][A].
4. Under the Framework Order, ALJ presided over the arbitration process, made procedural rulings and requested GCG to investigate and comment on the open issues. ALJ's rulings and orders in this proceeding should be ratified and confirmed. All motions not heretofore granted or denied should be denied.
5. The parties have negotiated the Core Agreement. Except for the open issues identified in this Report to be arbitrated by PUC, both parties have agreed that the Core Agreement is acceptable and will be submitted to PUC for approval pursuant to section 252[e].
6. By its June 5, 2006 filing, GTA accepted PDS' position that a 15% resale discount should be adopted in the Core Agreement. The parties have agreed that this negotiated discount will be reflected in the negotiated agreement submitted to PUC for approval.
7. The parties have identified and presented final positions on the following open issues, which require arbitration. Pursuant to section 252[b][4], PUC must limit its consideration to the open issues identified by the parties and must resolve each issue by imposing appropriate conditions as required to implement the standards for arbitration set forth in the federal act. In addition, under the Framework Order, PUC should limit its decision on each open issue to selecting the position of one of the parties, unless the result would be clearly unreasonable or contrary to the public interest. Except for the resale discount discussed in determination 6 above, PUC should adopt GCG's May 31, 2006 Collocation Report and GCG's June 1, 2006 Arbitration Report as a fair and accurate summary and analysis of each open issue, the parties' position on each issue and applicable standards of review. After due consideration of the Report, including GCG's recommendations, the parties' June 5, 2006 responsive filings, for good cause shown and in the interest of substantial justice, PUC should find, in resolving the open issues, that:

- a. Core Agreement section 5 [*assignment*] should be amended to incorporate GTA's proposed modifications [*see Report Attachment H.1*], which establishes mutual assignment rights.
- b. Core Agreement section 9 [*assurance of payment*] should be amended to incorporate GTA's proposed modifications [*see Report Attachment H.2*], which generally require PDS to provide two months of assurance and further letter of credit assurance in the event PDS becomes unable to meet its financial obligations.
- c. Core Agreement section 41 [*gross receipts taxes*] should be amended to incorporate GTA's proposed modifications [*see Report Attachment H.3*] which clarify that GTA may recover GRT from PDS, consistent with Guam law, for all services except those covered by a statutory resale exemption; provided that GRT should not be included as an input in the cost study to establish permanent interconnection rates under the agreement.
- d. Core Agreement section 42 [*technology updates*] should be amended to incorporate GTA's proposed modifications [*see Report Attachment H.4*], which generally provide that PDS should be solely responsible for the cost and activities associated with accommodating changes to its own network.
- e. Additional Services Attachment section 8.3, reflects PDS's position regarding service quality standards and should remain as written.
- f. Interconnection Attachment section 2.1, regarding points of interconnection, reflects PDS' position and should remain as written. With regard to the dispute over Interconnection Attachment section 3 [*alternative interconnection arrangements*], it should be amended to incorporate GTA's proposed text, as contained on page 11 of GCG's Arbitration Report.
- g. 911 Attachment reflects PDS' position and should remain as written.
- h. Four disputed Collocation Attachment provisions should be resolved as follows: 1] Collocation Attachment section 3.2 should be amended to adopt GTA's position by deleting the following sentence: "PDS, at its option, may procure and install all subject racks within the GTA facility." 2] Collocation Attachment section 5.8 should remain as written to reflect PDS' position. 3] Collocation

Attachment section 6.1.1 should be amended to adopt GTA's position by deleting the following sentence: "GTA agrees that PDS will not be subject to any engineering or design fees associated with the build out of these facilities". 4] Collocation Attachment section 6.5 should be amended to adopt GTA's position by deleting the following sentence: "Charges for installation of racks under a physical cageless collocation arrangement are limited to a one time per rack charge of two hundred-fifty (\$250.00) dollars per rack, provided that PDS is supplying the rack and performing the rack installation."

- i. The parties' positions on pricing should be found to be unreasonable and contrary to the public interest and the pricing standards of section 252[d] and of the FCC. The interim rates proposed by GCG in its Arbitration Report should be adopted, subject to true-up with interest [the amount of which should be established by PUC in adopting permanent rates], pending GTA's preparation and submission of a cost study and PUC's approval of permanent rates pursuant to FCC requirements under the implementation schedule set forth in determination 8 below. PUC should determine how the expense for this study should be allocated between the parties. The parties should be encouraged to negotiate permanent prices to avoid the need and expense of this study.
- j. GCG's Collocation Report presents GCG's findings on available floor space and entrance facilities at 19 collocation sites for purposes of PDS' initial physical collocation requests. PUC should adopt GCG's findings. Each of the 19 collocation sites reviewed in GCG's Collocation Report, except the Tiyan site, should be available for physical collocation by PDS as identified in GCG's Collocation Report, subject to the condition that the owners of the Orote, UOG, GIAA and AAFB sites permit physical collocation by PDS at such sites. GTA should be ordered to use best efforts, under the implementation schedule, to negotiate with owners to allow PDS physical collocation for these sites. In the event any owner denies access following such best efforts, GTA should promptly advise PUC of such denial and PUC may consider further actions to implement the requirements of the FCC [including, possibly, requiring GTA to provide virtual collocation or to re-locate any central office from such site]. The Tiyan site is available for virtual collocation. Physical and virtual collocation at all 19 sites should be implemented in accordance with the Collocation Attachment

negotiated by the parties and may be reflected in Exhibit A to the Collocation Attachment upon submission of the agreement to PUC for approval as described in the implementation schedule. The parties should be reminded of their obligation to continue to negotiate in good faith pursuant to section 252[b][5], taking into account PUC's adoption of GCG's findings.

- k. GCG's Collocation Report presents GCG's findings on fiber availability at each collocation site. PUC should adopt such findings regarding fiber availability. Dark fiber should be ordered and implemented in accordance with the terms of the agreement negotiated by the parties taking into account PUC's adoption of the findings regarding fiber availability in GCG's Collocation Report. The parties should be reminded of their obligations to continue to negotiate in good faith pursuant to section 252[b][5], taking into account PUC's adoption of GCG's findings regarding fiber availability.
 - l. The resolution of each open issue pursuant to these determinations meets the requirements of section 251, the FCC regulations prescribed pursuant to section 251 and [subject to the establishment of permanent rates pursuant to the implementation schedule] the pricing standards of section 252[d].
8. In accordance section 252[c], the following implementation schedule should be established to implement these determinations and PUC's decision under ALJ's oversight:
- a. Within 14 days of PUC's order resolving the open issues in this proceeding, the parties should file with PUC a complete, final copy of the interconnection agreement, which contains the provisions negotiated by the parties and which incorporates PUC's resolution of the open issues submitted for arbitration in this proceeding. In such filings, the parties should also file with PUC a redline showing any changes made to the provisions contained in Volume II of this Report. In their preparation of the final agreement, the parties should address the clarification discussed in footnote 41 of GCG's Arbitration Report.
 - b. No later than 30 days of the parties' submission of the final copy of the interconnection agreement, PUC should review it and issue a final order approving or rejecting it pursuant to section 252[e][4] [Final Order]. In order to expedite the issuance of the Final Order,

PUC should delegate to its chairman the authority, upon ALJ's favorable recommendation, to issue the Final Order.

- c. The parties should file a complete, executed copy of the interconnection agreement not later than 10 days after its approval by PUC.
 - d. Immediately following the Final Order, GTA should use best efforts to negotiate permission from the land owners on which the Orote, AAFB, UOG and GIAA sites are located for physical collocation by PDS at such sites. Not later than 30 days following the Final Order, GTA should advise PUC of GTA's efforts and whether permission has been granted or denied at each location.
 - e. Within 30 days of the Final Order, PUC should determine who should bear the expense of the cost study required under subparagraph [f] below.
 - f. Unless the parties negotiate permanent interconnection rates, GTA should prepare and submit to PUC within 120 days of the Final Order, a cost study that satisfies the methodology set forth in FCC's regulations for the purpose of establishing permanent interconnection rates.
 - g. Any other party, including PDS, should be permitted to file responsive cost studies or comments within 45 days after the filling of GTA's cost study for the purpose of establishing permanent interconnection rates.
 - h. PUC should establish permanent interconnection rates, with appropriate true-up and interest, within 240 days after the date of the Final Order.
9. Except as otherwise provided herein, the parties should equally share PUC's expenses in conducting this arbitration proceeding.
 10. PUC should reserve the jurisdiction and authority to enforce the implementation schedule set forth above, to issue appropriate orders with regard thereto and to hear and resolve complaints with respect to the interconnection agreement pursuant to PUC's existing authority.

Summary

The undersigned provides as *Attachment I* a proposed decision by which PUC may adopt the recommendations in this Report.

Respectfully submitted this 8th day of June 2006.

Handwritten signature of Harry M. Boertzel in cursive script, including a stylized flourish at the end.

Harry M. Boertzel
Administrative Law Judge

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



PACIFIC DATA SYSTEMS
Petitioner

vs.

DOCKET 05-11

GTA TELECOM, LLC
Respondent

Decision

On March 4, 2006 Pacific Data Systems [*PDS*] petitioned the Guam Public Utilities Commission [*PUC*] to arbitrate open issues between it and Guam Telecom LLC [*GTA*] regarding the terms and conditions under which GTA would provide PDS with interconnection arrangements pursuant to federal law. Pursuant to PUC's September 21, 1999 Procedural Framework Order [*Framework Order*], PUC's administrative law judge [*ALJ*] has conducted arbitration proceedings in furtherance of PDS' petition, which are reviewed in ALJ's June 8, 2006 Report [*Report*].

After careful review of the Report, including the determinations which have been recommended for adoption therein, after careful review of the parties' objections to the Report, for good cause shown and in the interest of substantial justice, the Guam Public Utilities Commission at a duly noticed and convened public meeting, on motion made, seconded and carried by the affirmative vote of the undersigned commissioners **HEREBY FINDS AND ORDERS THAT:**

1. The substantial rights of the parties have been carefully preserved in this proceeding.
2. By order dated October 27, 2005 herein, PUC found that on September 26, 2005, PDS served a *bona fide* request for interconnection on GTA, which is the incumbent local exchange carrier on Guam. The order directed the parties to enter into negotiations in the manner prescribed in sections 251 and 252 of the Communications Act of 1934, as amended [*47 USC 251, 252*].
3. On or about March 4, 2006 PDS filed a timely petition for PUC to arbitrate open issues between it and GTA pursuant to section 252 regarding interconnection arrangements between them. On or about March 29, 2006 GTA filed a timely response to the petition. As a result of the proceedings summarized in the Report, the open issues discussed in paragraph 7

below, were focused and defined and are appropriate for consideration and resolution by PUC under section 252[b][4][A].

4. Under the Framework Order, ALJ presided over the arbitration process, made procedural rulings and requested PUC's independent regulatory consultant Georgetown Consulting Group [GCG] to investigate and comment on the open issues. ALJ's rulings and orders in this proceeding are ratified and confirmed. All motions not heretofore granted or denied are denied.
5. The parties have negotiated a core interconnection agreement [*Core Agreement*], in form made Volume II to the Report. Except for the open issues identified in this Order to be arbitrated by PUC, both parties have agreed that the Core Agreement is acceptable and will be submitted to PUC for approval pursuant to section 252[e].
6. By its June 5, 2006 filing, GTA accepted PDS' position that a 15% resale discount should be adopted in the Core Agreement. The parties have agreed that this negotiated discount will be reflected in the negotiated agreement submitted to PUC for approval.
7. The parties have identified and presented final positions on the following open issues, which require arbitration. Pursuant to section 252[b][4], PUC must limit its consideration to the open issues identified by the parties and must resolve each issue by imposing appropriate conditions as required to implement the standards for arbitration set forth in the federal act. In addition, under the Framework Order, PUC will limit its decision on each open issue to selecting the position of one of the parties, unless the result would be clearly unreasonable or contrary to the public interest. Except for the resale discount discussed in paragraph 6 above, PUC adopts GCG's May 31, 2006 Collocation Report and GCG's June 1, 2006 Arbitration Report as a fair and accurate summary and analysis of each open issue, the parties' position on each issue and applicable standards of review. After due consideration of the Report, including GCG's recommendations as attached to the Report and in its June 15, 2006 letter on pricing and including the parties' June 5, 2006 responsive filings and the parties' objections to the Report, for good cause shown and in the interest of substantial justice, PUC orders, in resolving the open issues, that:
 - a. Core Agreement section 5 [*assignment*] shall be amended to incorporate GTA's proposed modifications [*see Report AttachmentH.1*], which establish mutual assignment rights.

- b. Core Agreement section 9 [*assurance of payment*] shall be amended to incorporate GTA's proposed modifications [*see Report Attachment H.2*], which generally require PDS to provide two months of assurance and further letter of credit assurance in the event PDS becomes unable to meet its financial obligations.
- c. Core Agreement section 41 [*gross receipts taxes*] shall be amended to incorporate GTA's proposed modifications [*see Report Attachment H.3*] which clarify that GTA may recover GRT from PDS, consistent with Guam law, for all services except those covered by a statutory resale exemption; provided that GRT shall not be included as an input in the cost study to establish permanent interconnection rates under the agreement.
- d. Core Agreement section 42 [*technology updates*] shall be amended to incorporate GTA's proposed modifications [*see Report Attachment H.4*], which generally provide that PDS should be solely responsible for the cost and activities associated with accommodating changes to its own network.
- e. Additional Services Attachment section 8.3, reflects PDS's position regarding service quality standards and shall remain as written.
- f. Interconnection Attachment section 2.1, regarding points of interconnection, reflects PDS' position and shall remain as written. With regard to the dispute over Interconnection Attachment section 3 [*alternative interconnection arrangements*], it shall be amended to incorporate GTA's proposed text, as contained on page 11 of GCG's Arbitration Report.
- g. 911 Attachment reflects PDS' position and shall remain as written.
- h. Four disputed Collocation Attachment provisions shall be resolved as follows: 1] Collocation Attachment section 3.2 shall be amended to adopt GTA's position by deleting the following sentence: "PDS, at its option, may procure and install all subject racks within the GTA facility." 2] Collocation Attachment section 5.8 shall remain as written to reflect PDS' position. 3] Collocation Attachment section 6.1.1 shall be amended to adopt GTA's position by deleting the following sentence: "GTA agrees that PDS will not be subject to any engineering or design fees associated with the build out of these facilities". 4] Collocation Attachment section 6.5 shall be amended to adopt GTA's position by deleting the following sentence:

“Charges for installation of racks under a physical cageless collocation arrangement are limited to a one time per rack charge of two hundred-fifty (\$250.00) dollars per rack, provided that PDS is supplying the rack and performing the rack installation.”

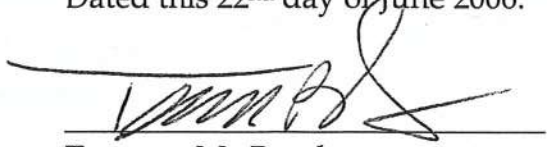
- i. The parties’ positions on pricing are found to be unreasonable and contrary to the public interest and the pricing standards of section 252[d] and of the FCC. The interim rates proposed by GCG in its Arbitration Report are hereby be adopted, subject to true-up with interest [the amount of which shall be established by PUC in adopting permanent rates], pending GTA’s preparation and submission of a cost study and PUC’s approval of permanent rates pursuant to FCC requirements under the implementation schedule set forth in paragraph 8 below. PUC shall determine how the expense for this study should be allocated between the parties. The parties are encouraged to negotiate permanent prices to avoid the need and expense of this study.

- j. GCG’s Collocation Report presents GCG’s findings on available floor space and entrance facilities at 19 collocation sites for purposes of PDS’ initial physical collocation requests. PUC hereby adopts GCG’s findings. Each of the 19 collocation sites reviewed in GCG’s Collocation Report, except the Tiyán site, shall be available for physical collocation by PDS as identified in GCG’s Collocation Report, subject to the condition that the owners of the Orote, University of Guam, Guam International Airport Authority and Anderson Air Force Base sites permit physical collocation by PDS at such sites. GTA is ordered and directed to use best efforts, under the implementation schedule, to negotiate with owners to allow PDS physical collocation for these sites. In the event any owner denies access following such best efforts, GTA is ordered and directed to promptly advise PUC of such denial and PUC may consider further actions to implement the requirements of the FCC [including, possibly, requiring GTA to provide virtual collocation or to re-locate any central office from such site]. The Tiyán site is available for virtual collocation. Physical and virtual collocation at all 19 sites shall be implemented in accordance with the Collocation Attachment negotiated by the parties and may be reflected in Exhibit A to the Collocation Attachment upon submission of the agreement to PUC for approval as described in the implementation schedule. The parties are reminded of their obligation to continue to negotiate in good faith pursuant to section 252[b][5], taking into account PUC’s adoption of GCG’s findings.

- k. GCG's Collocation Report presents GCG's findings on fiber availability at each collocation site. PUC hereby adopts such findings regarding fiber availability. Dark fiber shall be ordered and implemented in accordance with the terms of the agreement negotiated by the parties taking into account PUC's adoption of the findings regarding fiber availability in GCG's Collocation Report. The parties are reminded of their obligations to continue to negotiate in good faith pursuant to section 252[b][5], taking into account PUC's adoption of GCG's findings regarding fiber availability.
 - l. The resolution of each open issue by this order meets the requirements of section 251, the FCC regulations prescribed pursuant to section 251 and [subject to the establishment of permanent rates pursuant to the implementation schedule] the pricing standards of section 252[d].
8. In accordance section 252[c], the following implementation schedule is hereby established to implement the findings and orders in this decision under ALJ's oversight:
- a. Within 14 days of this order, the parties shall file with PUC a complete, final copy of the interconnection agreement, which contains the provisions negotiated by the parties and which incorporates PUC's resolution of the open issues submitted for arbitration in this proceeding. In such filings, the parties shall also file with PUC a redline showing any changes made to the provisions contained in Volume II of the Report. In their preparation of the final agreement, the parties shall address the clarification discussed in footnote 41 of GCG's Arbitration Report.
 - b. No later than 30 days of the parties' submission of the final copy of the interconnection agreement, PUC will review it and issue a final order approving or rejecting it pursuant to section 252[e][4] [*Final Order*]. In order to expedite the issuance of the Final Order, PUC hereby delegates to its chairman the authority, upon ALJ's favorable recommendation, to issue the Final Order.
 - c. The parties shall file a complete, executed copy of the interconnection agreement not later than 10 days after its approval by PUC.

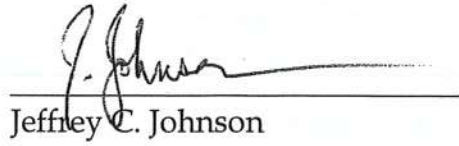
- d. Immediately following the Final Order, GTA is ordered and directed to use best efforts to negotiate permission from the land owners on which the Orote, Anderson Air Force Base, University of Guam and Guam International Airport Authority sites are located for physical collocation by PDS at such sites. Not later than 30 days following the Final Order, GTA shall advise PUC of GTA's efforts and whether permission has been granted or denied at each location.
 - e. Within 30 days of the Final Order, PUC will determine who should bear the expense of the cost study required under subparagraph [f] below.
 - f. Unless the parties negotiate permanent interconnection rates, GTA is ordered and directed to prepare and submit to PUC within 120 days of the Final Order, a cost study that satisfies the methodology set forth in FCC's regulations for the purpose of establishing permanent interconnection rates.
 - g. Any other party, including PDS, shall be permitted to file responsive cost studies or comments within 45 days after the filing of GTA's cost study for the purpose of establishing permanent interconnection rates.
 - h. PUC will establish permanent interconnection rates, with appropriate true-up and interest, within 240 days after the date of the Final Order.
9. Except as otherwise provided herein, the parties shall equally share PUC's expenses in conducting this arbitration proceeding.
 10. PUC reserves the jurisdiction and authority to enforce the interconnection agreement set forth above, to issue appropriate orders with regard thereto and to hear and resolve complaints with respect to the interconnection agreement pursuant to PUC's existing authority.

Dated this 22nd day of June 2006.



Terrence M. Brooks

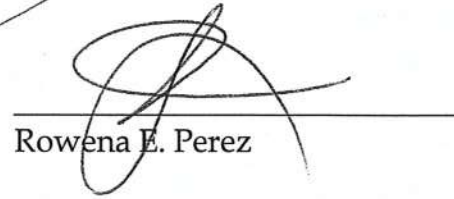
Edward C. Crisostomo



Jeffrey C. Johnson



Joseph M. McDonald



Rowena E. Perez

GEORGETOWN CONSULTING GROUP, INC.
716 DANBURY RD.
RIDGEFIELD, CT. 06877

Jamshed K. Madan
Michael D. Dirmeier



Telephone (203) 431-0231
Facsimile (203) 438-8420
jmadan@snet.net

Edward R. Margerison
Jean Dorrell

May 5, 2006

Harry Boertzel, Esq. ALJ
The Guam Public Utilities Commission
Suite 207, GCIC Building
Hagatna, Guam 96932

Re: FY 2006 GPA Contract Review – Docket 94-04 (Fuel IFB and Line of Credit)

Dear Harry:

This letter is in response to Guam Power Authority's ("GPA") recent submissions to the Public Utilities Commission ("PUC") under the provisions of the contract review protocol. These submissions seek PUC approval of two contracts that will exceed the threshold of the contract review for GPA of \$1.5 million.

IFB 028-06 Contract For Three-year Supply of Residual Fuel Oil (Number 6)

GPA has submitted a proposed Invitation For Bid (IFB) by which it seeks a three year contract for the provision of Number 6 oil from the successful bidder. GPA's current fuel contract with British Petroleum ("BP") will expire on July 31, 2006. In its transmittal memorandum dated May 1, 2006, GPA's Chief Financial Officer indicates that the IFB seeks a contract that will be largely identical in form and substance as the current fuel contract for all major elements. Our initial review indicates that there are a couple of major changes that appear to be substantial and require further inquiry.

Georgetown Consulting Group ("GCG") has reviewed the proposed IFB and accompanying draft contract and believes that for securing future fuel supplies the proposed contract is substantially identical in terms and conditions of the current contract. As mentioned above, however, there are additional elements of the IFB discussed below that, if implemented, would be significantly different from the current contract.

GPA indicates that prior to going out for this IFB it sought the option to extend the current contract with BP under the terms and conditions of the current fuel contract. In response to GPA's request to extend the contract for another year, BP replied that it would be willing to extend the contract, but the premium above the Singapore spot market price would be altered

from the current contract to \$4.16 per barrel for high sulfur oil and \$8.98 per barrel for low sulfur oil. These premiums are about twice the current premiums for Number 6 oil (\$2.43 per barrel and \$3.95 per barrel for low and high sulfur, respectively).

As we mentioned above there have been a couple of additions to the IFB that would materially alter the existing contractual arrangement with the supplier. ¹These additions cause us serious concern. These are discussed below. (We have appended to this report a Word™ comparison document of the previous IFB and contract and the new IFB and proposed contract).

IFB Section I.13.3 refers to an optional financing proposal for an additional shipment of oil that “will not be a criteria in the selection of the most responsive and responsible bidder”. Since the contract can only be awarded to the lowest responsible bidder we are not certain why this provision is contained in the IFB. Even if the most responsive bidder has made an optional bid for this provision, GPA would not be able to take advantage of it since there would be no competition for the financing proposal for an additional shipment of oil. We believe that this concept is flawed.

In Section I.B of the Bid Submittal Documents, GPA seems to be offering to make its storage facilities available to the bidder for “free” subject to the obligation of the bidder to manage and operate the fuel farm and pay all related expenses, and such “other terms as may be mutually agreed”. It is not at all clear as to what the economic consequences of such a deal would be. It appears that the bidder would continue to own the entire inventory in the tanks until it is delivered to GPA. It is not clear how the additional costs associated with this concept would be transferred to GPA, i.e. additional carrying costs for the fuel inventory, insurance, maintenance and other costs. Under this scenario GPA may not require the Letter of Credit facility that it has applied to the PUC to extend from \$10 million to \$15 million. Moreover GPA could achieve savings on the operational side and transfer some undetermined and unapproved costs through to ratepayers through the LEAC. This could represent a rate increase without notice or review. We are further confused as to how GPA would evaluate bids comparable to the situation in effect currently (where there is no inventory, financing and maintenance required) to a bid that accepts all of these responsibilities. Since the bid is “optional”, how would the price be compared on an apples to apples basis if one bidder made an optional bid and another did not? Under the Contract Review Protocol concept, the PUC approves the procurement documents and then relies on the market and competition to ensure that ratepayers are protected. Under the optional bid the PUC would of necessity have to get involved again to evaluate a GPA determination that an optional bid was cost effective.

GPA should also be required to show that this process fits under the IFB mode of procurement as prescribed by the procurement laws. GPA is combining an invitation for bids, the statutorily preferred mode of procurement (and the one most appropriate for a

¹ The contract itself does not address the options at all. The IFB and Bid Form contemplate that other agreements would be signed if GPA were to elect to accept the options. We have not been presented the terms that would govern such agreements. They would have to be negotiated. How GPA feels the PUC might be involved is not at all clear.

fungible commodity like fuel oil) with a request for proposals (or two requests for proposals). Requests for proposals are not longer authorized by Guam's procurement law except for "professional services."

GCG understands the necessity of issuing the IFB as soon as possible and that the fuel supply is a necessity in operating the utility. As a result, we recommend that the PUC approve the IFB for the fuel procurement portion of the IFB while requiring that any action related to the financing of an extra shipment of fuel oil and the issue of the carrying of inventory and the maintenance of the fuel farms be separately resubmitted to the PUC for approval, including analyses required under the contract review protocol.

Increase in the Line of Credit (Fuel Facility)

On April 13, 2006 GPA petitioned the PUC to approve an increase in the maximum amount for its Line of Credit ("LOC") from Australia and New Zealand Bank ("ANZ"). GPA has had this line of credit for several years. The purpose of this line is the pay for fuel shipments before they leave Singapore. This payment before delivery to Guam is a requirement under the terms and conditions of GPA's fuel contract. The current maximum amount on the LOC is \$10 million and GPA seeks to increase the maximum to \$15 million. GPA needs approval from the Legislature for this increase and has proposed a bill (Number 252) that would permit GPA to incur this additional amount of debt. In its presentation to the Legislature GPA opined that the increase in the LOC to fund delivery of oil would not have any incremental cost. GPA claimed the additional amount of interest expense resulting from the increased LOC would be offset by interest income from internal funds that are currently being used to pay for fuel over the \$10 million current limit of the LOC. On April 18, 2006, we recommended that the PUC approve the increase in the LOC assuming that the Legislature would approve and that the Governor would sign Bill 252. We requested that a final contract be provided to the PUC and GCG as well as a copy of the CCU approval of this increase.

On April 20, 2006, GPA again petitioned the PUC for approval of the extension of the LOC and provided a copy of the CCU resolution regarding his matter and a copy of the current contract with ANZ. In that second submission, GPA indicated that the increase in the LOC would cost the ratepayers an additional \$300,000 for fees and interest in the first year in subsequent years over the current fees for the \$10 million LOC. Given GPA's representation in its presentation to the Legislature that there would be no incremental cost for the extension of the facility we would recommend that these additional costs not be passed on to ratepayers for FY 2006. In future proceedings GPA should justify what, if any, financing costs are appropriate to go through the LEAC.² In the April regulatory session it was agreed that GPA and GCG should discuss whether any of the financing costs related to the Commercial Paper borrowings should be permitted as an appropriate LEAC cost pass through.

² We do note that the financing charges associated with the initial \$10 million LOC is currently being charged to ratepayers through the LEAC.

Cordially,

Jamshed K. Madan

Jamshed K. Madan

Cc: William J. Blair, Esq.
Larry Gawlik
Ed Margerison
Randy Wiegand, GPA
Kin Flores, GPA
Anthony Camacho, Esq.

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BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

GUAM WATERWORKS AUTHORITY
PROCUREMENT OF PRIVATE
MANAGEMENT FOR WASTEWATER
SYSTEM

DOCKET 06-6



ORDER

On May 15, 2006, Guam Waterworks Authority [GWA] petitioned the Guam Public Utilities Commission [PUC] for regulatory approval of a procurement to solicit and retain a performance management contractor to manage and operation its wastewater system. In violation of PUC's contract review protocol, GWA commenced this important procurement process before first obtaining PUC approval.

By report dated July 11, 2006, PUC's regulatory consultant [GCG], while expressing strong concern about GWA's violation of the contract review protocol, has recommended that the procurement be approved subject to two conditions. By letter dated July 14, 2006, GWA has accepted these conditions. PUC has long supported the policy of retaining private management expertise to manage and operate key public utility systems and resources.

Under PUC's April 11, 2003 *Administrative Resolution*, Chairman Terrence Brooks is empowered with delegated authority to act on PUC's behalf, subject to the following conditions:

1. The requirement that the chairman certify that regulatory action on the petition cannot await PUC action at the next business meeting. The delay, which would be required to notice and convene a meeting at which all four sitting commissioners, who are needed for a quorum, would be available, would cause material disruption to the procurement process. Accordingly, after careful review of the petition and supporting documentation, the undersigned finds good and reasonable cause to issue this certification.
2. The utility, which requests expedited regulatory action, must waive the final determination exception established in 12 GCA 12004. GWA has made this waiver by email dated July 14, 2006.
3. The utility's petition must be reviewed and supported by PUC's regulatory consultant. By its July 11, 2006 report, GCG has recommended

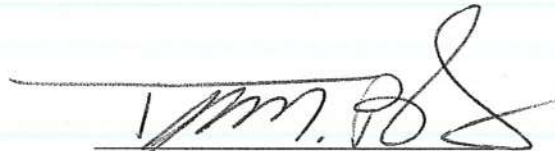
approval of the petition, subject to conditions that have been accepted by GWA.

4. The requirement that the chairman make a diligent effort to confer with other on-island commissioners and act only if a majority of said commissioners do not oppose the petition. The undersigned certifies that he made this effort and the petition was not so opposed.
5. The Resolution prohibits its use to approve a petition for rate relief. The undersigned finds that the petition does not request rate relief.

After review of the petition and the record, herein, for good cause shown and in furtherance of the authority delegated by the Administrative Resolution, the undersigned on behalf of the Guam Public Utilities Commission **HEREBY ORDERS THAT** GWA be and is hereby authorized to enter into the proposed procurement, subject to the amendment of the procurement documents to incorporate bidder recommendations 2 and 3, as discussed in GCG's July 11, 2006 report.

The undersigned will recommend that the full commission, at its next business meeting, consider and take appropriate action with regard to GWA's failure to comply with the contract review protocol - a subject on which PUC recently expressed concern to the Consolidated Commission on Utilities in PUC's February 2, 2006 order in Docket 94-4.

Dated this 20 day of July 2006.

A handwritten signature in black ink, appearing to read 'T. Brooks', written over a horizontal line.

Terrence Brooks, Chairman

1 ANTHONY R. CAMACHO, ESQ.
2 STAFF ATTORNEY FOR THE CCU, GPA, AND GWA
3 P.O. BOX 2977
4 Agana, Guam, 96932-2977
5 (671)648-3149



6 **BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

7 IN THE MATTER OF:

8 The Application of the Guam Waterworks
9 Authority to solicit for and procure a
10 Performance Management Contractor for
11 Waste-Water Treatment Plants, Collection
12 System, and Lift Stations
13

14 *Dle-Lp*
15 DOCKET NO. ~~94-04~~ *110*

16 **PETITION FOR CONTRACT REVIEW**

17 **COMES NOW**, the GUAM WATERWORKS AUTHORITY (GWA), by and through its
18 counsel of record, ANTHONY R. CAMACHO, ESQ., and hereby files GWA's Petition for the Public
19 Utilities Commission of Guam (PUC) to review and approve GWA's Solicitation and Procurement of a
20 Performance Management Contractor, which is as follows:

21 **BACKGROUND**

22 Since the Consolidated Commission on Utilities (CCU) took office on January 1, 2003, GWA
23 has made great strides in resolving the serious operational deficiencies in its waste-water operations that
24 have existed for over a decade. However, GWA's Management still faces many challenges in completing
25 the Capitol Improvement Projects Required by the Stipulated Order in *U.S.E.P.A. vs. Guam Waterworks*
26 *Authority*, CV02-00035 (U.S. District Court of Guam), and these challenges have been magnified with
27 the expected build-up of U.S. military forces on Guam, which will take place from 2008 to 2012. To
28 assist GWA's Management in meeting its current wastewater operations, maintenance, and CIP
requirements while preparing for rapid expansion of the waste-water system to accommodate the

ORIGINAL

1 expected increase in Guam's population, GWA is seeking a private contractor to manage GWA's waste-
2 water Treatment Plants, Collection System, and Lift Stations.

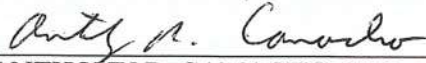
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4 **DISCUSSION**

5 GWA hereby petitions the PUC, to review and approve, in expedited manner, the solicitation and
6 procurement of a Performance Management Contractor (PMC) to operate, maintain, and improve GWA's
7 waste-water Treatment Plants, Collection System, and Lift Stations. In support of this Petition, GWA
8 hereby provides the PUC with CCU Resolution No. 12-FY2006, which authorizes GWA to proceed with
9 the solicitation and procurement of a PMC. Said resolution is attached herein as Exhibit A. A report is
10 attached herein as Exhibit B, which contains: (1) A description of the PMC Contract; (2) An analysis of
11 all reasonable alternatives; (3) A detailed review of the PMC Solicitation and Contract; (4) Cost
12 estimates; (5) Projected source of project funding. Also enclosed is a supported finding that obtaining a
13 PMC is necessary and within the context of GWA's priorities, and said finding is attached herein as
14 Exhibit C. Finally, a copy of the PMC bid documents is enclosed herein as Exhibit D. Said documents
15 and exhibits are incorporated by reference herein as if fully set forth.

16
17 **CONCLUSION**

18 The PUC should approve GWA's solicitation and procurement of a PMC to operate, maintain,
19 and improve GWA's Wastewater Treatment Plants, Collection System, and Lift Stations because it is
20 reasonable, prudent, and necessary.

21 **RESPECTFULLY SUBMITTED** this 12th day of May, 2006

22
23
24
25 
26 ANTHONY R. CAMACHO, ESQ.
27 Staff Attorney for CCU, GPA, and GWA
28

1
2 **GUAM CONSOLIDATED COMMISSION ON UTILITIES**
3 **RESOLUTION NO. 12 - FY2006**
4

5 **RELATIVE TO APPROVING THE PERFORMANCE MANAGEMENT**
6 **CONTRACT BID DOCUMENTS FOR THE GUAM WATERWORKS**
7 **AUTHORITY'S WASTEWATER TREATMENT PLANTS, WASTEWATER LIFT**
8 **STATIONS AND WASTEWATER COLLECTION SYSTEM**
9

10
11 **WHEREAS**, since 2003 the employees and management of the Guam Waterworks
12 Authority ("GWA") have made significant improvements in the performance and service of the
13 Authority to better serve GWA's ratepayers; and
14

15 **WHEREAS**, in order to meet the increasing wastewater service needs of a fast growing
16 community, significant work remains to be accomplished to achieve the level of services
17 required to effectively meet the demands; and
18

19 **WHEREAS**, the Guam Legislature has recognized the value and importance of either
20 requiring or authorizing GWA to contract management, operational, engineering and
21 construction expertise from a public-private arrangement via numerous public laws. Those
22 laws include, but are not limited to the following: P.L.24-37, P.L.24-294 and P.L.26-14
23 (allowing GWA to build capital projects via a build, operate and transfer arrangement); P.L.24-
24 294 (providing a tax exemption for companies operating the GWA water or wastewater
25 system); P.L.26-144 (an act requiring GWA to outsource the operation and maintenance of its
26 wells, booster pumps, meters and other matters); P.L.26-78 (Legislature approving terms of a
27 prior Consent Order); and P.L.26-15 (to restore financial accountability to GWA); and
28

29 **WHEREAS**, a Performance Management Contract ("PMC") is a short-term contract
30 which makes available to GWA the technical expertise needed to train the employees of the
31 GWA Wastewater Division to operate the system with increased effectiveness, provide
32 technical management expertise to operate and maintain the system with greater efficiency,
and access to supplies and materials needed to maintain the GWA wastewater system; and

1 **WHEREAS**, a PMC is another tool for employees and management to continue to
2 improve services provided by GWA and will remain in place for a sufficient amount of time
3 deemed necessary to achieve the levels of effectiveness needed to enable GWA to provide
4 wastewater services more effectively; and

5
6 **WHEREAS**, based upon the success that Guam Power Authority has had with the
7 PMC model, the Consolidated Commission on Utilities has previously determined that the
8 Guam Waterworks Authority should obtain a bid for a PMC with respect to the GWA
9 wastewater system; and

10
11 **WHEREAS**, a PMC allows GWA employees to keep their civil service protections and
12 other benefits afforded to all employees of the Government of Guam; and

13
14 **WHEREAS**, the employees of the Guam Waterworks Authority have been briefed on
15 PMC and what the PMC can offer to GWA and all employees understand that no GWA
16 employees will be laid off as a result of the Guam Waterworks Authority entering into a PMC;
17 and

18
19 **WHEREAS**, on May 1, 2006, the Guam Waterworks Authority submitted five (5)
20 volumes of bid documents regarding a PMC to the Consolidated Commission on Utilities for
21 their approval relative to the Guam Waterworks Authority's wastewater system.

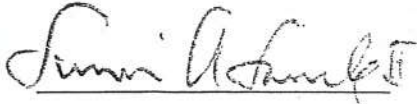
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23 **NOW THEREFORE, BE IT RESOLVED BY THE CONSOLIDATED**
24 **COMMISSION ON UTILITIES AS FOLLOWS:**

25
26 Based upon the forgoing, the Consolidated Commission on Utilities does hereby
27 approve the aforementioned five volumes transmitted by the Guam Waterworks Authority to
28 the Consolidated Commission on Utilities on May 1, 2006, that comprise the bid solicitation
29 for a Performance Management Contractor for the operation, maintenance and repair of the
30 GWA wastewater treatment plants, wastewater lift stations and wastewater collection system.

31
32 **RESOLVED**, that the Chairman certifies and the Secretary attests to the adoption of
this Resolution.

1
2 **DULY AND REGULARLY ADOPTED AND APPROVED THIS** 2nd day of May,
3 2006.
4

5 Certified by:

6 

7
8 **SIMON A. SANCHEZ, II**
9 Chairperson

5 Attested by:

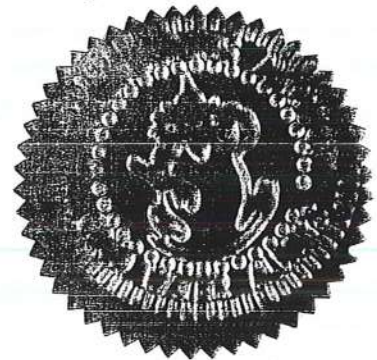
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7
8 **GLORIA B. NELSON**
9 Secretary

10
11 I, Gloria B. Nelson, Secretary for the Consolidated Commission on Utilities do hereby
12 certify as follows:

13 The foregoing is a full, true and accurate copy of the resolution duly adopted at a regular
14 meeting by the members of the Guam Consolidated Commission on Utilities, duly and
15 legally held at a place properly noticed at which meeting a quorum was present and the
16 members who were present voted as follows:

17 AYES: 4
18 NAYS: 0
19 ABSTENTIONS: 0
20 ABSENT: 0
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Performance Management Contract for the Guam Waterworks Authority Wastewater Treatment Plants, Wastewater Collection System, and Wastewater Lift Stations

I. DESCRIPTION:

Contract Description:

The Performance Management Contract (PMC) of the GWA Wastewater Treatment Plans, Wastewater Collection System, and Wastewater Lift Stations is modeled after the current PMC contracts in place at the Guam Power Authority. The contract requires the use of GWA employees and retains asset ownership, however, it provides GWA an opportunity to seek additional management expertise in the area of wastewater to address issues and concerns of the GWA Wastewater Division, such as:

- Development of Training Programs for required Certification (including Apprenticeship Program)
- Development of SOP's and Maintenance Programs (including CMMS)
- Development and Tracking of Performance Benchmarks
- Recommendation, Evaluation, & Project Management of CIP Projects
- Inventory Development and Stocking Requirements
- Maintaining Compliance with Environmental and other Regulatory Agencies (including permits, Stipulated Order, etc.)

In addition to these tasks the PMC shall perform personnel management, procurement, and provide financing options (as required and negotiated).

Like the GPA contracts, the GWA PMC contract is equipped with incentives and penalties to provide bonuses for reduction of O&M expenses and power consumption but ensure that operational requirements are met.

Contract Terms:

The contract is intended to be a three (3) year base contract with an option to extend for an additional three (3) years.

Justification:

The Guam Waterworks Authority has progressed much through the past few years, most especially after a study recommended a concession model in 2004 to address major issues including major infrastructure repairs/improvements and funding capability as well as the EPA stipulated order and its deadlines. Under the direction of the CCU, the General

Manager for Consolidated Utilities Services reviewed the operations and performance of GWA and provided a recommendation for public-private partnership as an alternative for concession. This partnership, in the form of a PMC, would address concerns regarding retention of employees, retaining the utilities assets as well as obtaining the necessary utility experience and best practices methodologies that will address the major issues the utility faces in a most effective and efficient manner.

II. ALTERNATIVES:

Alternative 1: Concession

This was an initial proposal revealed by the Impact Report in 2004, however it was not executed due to its controversy and complexity. A later study recommended GWA to explore Public-Public/Private Partnerships (QualServe Peer Review - 2005).

Alternative 2: No PMC Contract

Although pump stations have improved in their availability, timelines for implementation of programs for training and Computerized Maintenance Management System as well as deadlines for development of Standard Operating Procedures and Operation and Maintenance Manuals and Inventory do not have definite timelines for EPA approval and overall completion.

III. REVIEW OF SELECTED ALTERNATIVE:

It was determined that although a fixed management fee would be an additional cost on top of the annual O&M budget for the wastewater division, the additional expertise would assist GWA in the development of personnel to required certification levels as well as develop succession plans for critical position replacement; development of a maintenance program to ensure continued uninterrupted operations of wastewater facilities; completion, updating, and training of operation and maintenance manuals and SOP's; and recommendation, procurement, and implementation of system improvements (including efficiency and reliability projects). The contract will also serve as a mechanism to ensure that the anticipated growth and development of Guam, most especially of the Military, will be accommodated by proper planning and financing options.

The execution of a Wastewater system PMC contract will also allow GWA Management and Engineering staff to focus on Water Production and Master Plan projects for water production.

IV. COST ESTIMATES:

The following is a breakdown of the anticipated cost for the PMC, excluding CIP/PIP and financing which are to be negotiated approved based on funding availability:

Fixed Management Fee*: \$ 1.5 M
Reimbursable O&M**: \$ 1.3 M
Total: \$ 2.8 M

***Fixed Management Fee Estimates:**

No.	Description	No. of Personnel	Subtotal
1	General Manager	1	\$ 312,000.00
2	System Manager	1	\$ 208,000.00
3	Engineering Support / Technical Support	3	\$ 468,000.00
4	Administrative Support (Procurement/Secretary)	2	\$ 104,000.00
5	Additional Costs (Fees, Office Costs, Etc)		\$ 500,000.00
TOTAL			\$1,592,000.00

** Reimbursable O&M amount shown above is based on the 7-yr Average Historical O&M costs (excluding power costs). This amount will reflect the proposed O&M budget from the awarded vendor which is part of the Priced Proposal in the Bid process.

V. PROJECTED SOURCE OF FUNDING:

The contract requires funding from O&M and CIP or Bond funds as follows:

<u>Contract Payment</u>	<u>Funding Source</u>
Fixed Management Fee	O&M
Reimbursable O&M	O&M
CIP Projects	CIP
Bond Projects	Bond Funds
Performance Improvement Projects*	O&M

* For contract purposes a Performance Improvement Project is an O&M expense that is non-routine and of substantial cost that can be excluded from the projected annual O&M approved budget, i.e. such as collection system condition assessments with CCTV monitoring. This is to be determined on a case-by-case basis and reduces "uncertainty"/risk on the vendor.



CONSOLIDATED COMMISSION ON UTILITIES

Guam Power Authority • Guam Waterworks Authority
P.O. BOX 2977 • Agana, Guam 96932

May 12, 2006

MEMORANDUM

TO: Consolidated Commission on Utilities

FROM: General Manager, Consolidated Utility Services

SUBJECT: Finding that the Performance Management Contractor (PMC) Is Necessary and Within the Context of GWA's Priorities

Dear Commissioners,

Since the Consolidated Commission on Utilities (CCU) took office on January 1, 2003, GWA has made great strides in resolving the serious operational deficiencies in its waste-water operations that have existed for over a decade. However, GWA's Management still faces many challenges in completing the Capitol Improvement Projects Required by the Stipulated Order in *U.S.E.P.A. vs. Guam Waterworks Authority*, CV02-00035 (U.S. District Court of Guam), and these challenges have been magnified with the expected build-up of U.S. military forces on Guam, which will take place from 2008 to 2012. To assist GWA's Management in meeting its current wastewater operations, maintenance, and CIP requirements while preparing for rapid expansion of the waste-water system to accommodate the expected increase in Guam's population, GWA must seek a private contractor to manage GWA's waste-water Treatment Plants, Collection System, and Lift Stations.

The PMC will result in better overall operation and maintenance of the Treatment Plants, Collection System and Lift Stations, and it will enable GWA to complete its waste-water system CIP projects at a faster pace. GWA's Management estimates that the PMC will cost approximately \$2,800,000.

Based on the foregoing, I find the GWA PMC is necessary and within the context of GWA's priorities.

Sincerely,



JOHN M. BENAVENTE, P.E.
General Manager, Consolidated Utility Services

EXHIBIT C



GUAM WATERWORKS AUTHORITY

"Good Water Always"

Post Office Box 3010, Hagatna, Guam 96932

Phone: (671) 647-2603 Fax: (671) 646-2335

July 14, 2006

Harry Boertzel, Esq. ALJ
The Guam Public Utilities Commission
Suite 207, GCIC Building
Hagatna, Guam, 96910

RE: GPA Response to Georgetown Consulting Group, Inc's Review of Guam Waterworks Authority (GWA) Bid No. GWA-2006-15 for a Performance Management Contract in Docket 94-04

Dear Mr. Boertzel,

On behalf of my client, GWA, I am submitting GWA's responses to the issues raised in Georgetown Consulting Group, Inc's (GCG) letter dated July 11, 2006 regarding the above referenced procurement. Said response is as follows:

1. GCG Recommendation that GWA incorporate Parsons' Recommendation No. 2 into the IFB: GWA concurs with this recommendation and it shall be incorporated into the IFB via a modified scoring mechanism described in Item #7, Bid Amendment #4, attached herein as Exhibit A. Please note that the bid amendment differs from the original Parsons' Recommendation in the following respects:

a. GWA did not amend Volume II, Paragraph 8.1.3 as requested by Parsons.

b. GWA did not adopt the PMC Checklist as set forth in Parsons' Enclosure 2-1. Instead, GWA incorporated a bidder's project management and CIP Management experience as part of the weighted scoring mechanism that GWA will use to evaluate a bidder's technical proposal.

2. GCG's Recommendation that GWA incorporate Parsons' Recommendation No. 3 into the IFB: GWA concurs with this recommendation and it shall be incorporated into the IFB via an amendment to Appendix G of the Invitation for Bid (IFB) documents as set forth in Item #1 of Bid Amendment #4 (See Exhibit A attached herein). Please note that the bid amendment differs from the original Parsons' Recommendation in the following respects:

a. GWA did not adopt Parsons' proposed Appendix G verbatim. Instead, GWA provides penalty relief by imposing a one (1) year moratorium on fines for the first year of the

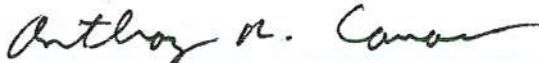
contract period. Further, GWA clarified the IFB's language concerning fines in Bid Amendment #3, response to question #20 by stating that increases in penalties for non-compliance are based on justifiable need and that the PMC will have an ample cure period prior to the imposition of any penalty.

3. GCG's Recommendation to revise GWA Response to Question #9, Bid Amendment No. 4, be revised: GWA asserts that no revision is required because GWA has provided the bidders with all of the information that GWA will use in making its Net Present Value (NPV) calculation.

As GWA desires to complete its procurement of a PMC for its wastewater operations at the earliest possible date, GWA, pursuant to 12 G.C.A. §12004, hereby waives a final determination of this contract review made by all the members of Guam's Public Utilities Commission (PUC), and GWA shall accept and treat a decision on this matter by PUC Chairman Terry Brooks as the PUC's final determination of this matter.

As GWA has substantially incorporated the recommendations made by GCG into GWA IFB No. GWA-2006-15, GWA requests that the PUC approve GWA's procurement of a PMC for its wastewater operations.

Sincerely,



ANTHONY R. CAMACHO, ESQ.
Staff Attorney for the CCU, GPA, and GWA



GUAM WATERWORKS AUTHORITY

"Good Water Always"

578 North Marine Corps Drive, Tamuning, Guam 96915

Phone: (671) 647-7681 Fax: (671) 646-2335

July 10, 2006

BID AMENDMENT #4 AND RESPONSES TO INQUIRIES:

VIA FAX DELIVERY TO ALL VENDORS:

This letter constitutes GWA's a response to the remainder of the questions received via facsimile by the Guam Waterworks Authority on Friday June 9, 2006, relating to the Guam Waterworks Authority's ("GWA") Bid No. GWA 2006-15 for a Performance Management Contract for GWA's Wastewater System as well as answers to questions submitted on June 23, 2006, June 24, 2006, and July 10, 2006 via e-mail and questions received via hand delivery on June 29, 2006.

I. BID AMENDMENT #4.

Bid Amendment Item #1.

Appendix G of the PMC Bid is hereby amended to add this additional language:

"All fines set forth in Appendix G of the bid are to be held in abeyance for a period of one year from the date the PMC first commences performance and operation of the wastewater system as provided in the Contract. As such, no fines shall be levied by GWA against the PMC in the first year of operation."

Bid Amendment Item #2.

The "Priced Proposal Evaluation Workbook" contained in Volume IV, has been amended to add the following language:

EXHIBIT A

“O&M Matrix. Please note, vendors must be sure to include the following O&M matrix in their price proposal otherwise their price proposal will not be considered:

The following O&M matrix **MUST BE SUBMITTED** along with your price proposals (to break down each years O&M budget):

GWA Waste Water Division O&M Costs
(Collection Lines, Pumping Stations, & Treatment Facilities)

Annual FY Expense Summary by Object Code

Obj Code	Object Code	Fiscal Year					
		2007	2008	2009	2010	2011	2012
204	Training Offisland						
206	POV Mileage Reimbursement						
301	Advertising Expense						
311	Hvy Eqpmnt/Motor Repair						
313	Heavy Equipment Rental						
327	Janitorial Services						
331	Renovation of Facility						
332	Bldg Repair & Maint						
334	Trash Pickup						
365	Various Repair Services						
391	Aircon Maintenance						
402	Fuel/Lubricant						
405	Office Supplies						
408	Operational Sup/Mat						
412	Pumps&Gen Part						
417	Asphalt Material						
419	Safety Equipment						
420	Vehicle Parts						
430	Chemicals						
501	Office Equipment						
502	Equip/Hand Tools						
503	Gas Operated Equip						
506	Pumps/Motor Inv						
600	Miscellaneous						
703	Telephone						
704	Cellular						
705	Radio/Pager						
	SUBTOTAL						

Note: Code #715 – for power products is no longer in use and has been removed. Also, power costs are not to be included in the O&M Bid amounts.

Bid Amendment Item #3.

The Fixed Management fee contained in Volume IV of the “Priced Proposal Evaluation Workbook,” “Proposed Cost Component” is amended to include the following language:

“Please note that the Fixed Management Fee above must include office space needs for the PMC for the duration of the contract term being bid upon (6 years).”

Bid Amendment Item #4.

Volume I, Section 2.14.1, entitled “Performance Bond Form, Amount and Duration” is hereby amended to add the following language at the end of Section 2.14.1:

“While the performance bond is not required to be executed until just prior to the signing of the Contract, each Bidder will need to provide GWA with sufficient proof that they are capable of being bonded as required by Item 8 of the PMC Checklist contained in Volume IV, Qualitative Proposal Scoring Workbook. The required proof will at a minimum consist of a letter from one of the acceptable sureties licensed to practice on Guam, signed by a principal of that surety and duly notarized, stating that the entity submitting the bid is capable of securing a performance bond in the amount of at least the minimum amount required under the bid which is not less than \$ _____.”

Bid Amendment Item #5.

The following language is hereby added to Section 6.1.9, Volume II, (page 18):

“The following performance matrix is to be made part of the minimum operational requirements for all wastewater treatment plants and the appurtenant infrastructure. The PMC Contractor shall at a minimum, beginning on the first day of their performance under any contract for such services, meet all operational requirements set forth in the performance matrix. Following the one year fine moratorium, fines under Appendix G may be imposed for non-conformance with the minimum standards set forth in the Performance Matrix.

Put performance matrix here and keep the ”

Bid Amendment Item #6.

The following is substituted as the new “Proposal Scoring Workbook” as found in Volume IV.

“Invitation For Multi-Step Bid

BID No.: GWA 2006-15

PERFORMANCE MANAGEMENT CONTRACT

FOR THE

**GUAM WATERWORKS AUTHORITY
WASTEWATER TREATMENT PLANTS,
WASTEWATER COLLECTION SYSTEM AND
WASTEWATER LIFT STATIONS**



Volume IV

Proposal Scoring Mechanism

July 2006

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1. Introduction

1.1 Overview

GWA will use the Proposal Scoring Procedures described in this volume of the Invitation for Bid (IFB) to qualify BIDDERS for the participation in the final bid stage. The Proposal Scoring Procedures provide the BIDDERS the opportunity to highlight their qualifications to bid in terms of their resources, skills, operating philosophy and commitments to perform specific tasks and originality.

The IFB proposal evaluation shall be based on such specifications and based on the relative ranking of each BIDDER’s qualifications, financial information, fixed management fees and O&M spending budget.

1.2 Proposal Scoring Worksheets

PROPONENTS shall complete the following:

- Qualitative Proposal Scoring.xls.
- Priced Proposal Evaluation.xls

2. Qualitative Proposal Scoring

2.1 Overview

The qualitative proposal scoring is designed to assess the quality of the BIDDER’s resources, skills, comprehensiveness and responses to open-ended topical questions. Each GWA evaluator shall score each BIDDER separately under a point system to determine the acceptability of each Proposal. The majority of the determinations of GWA evaluators shall prevail in the decision to Qualify or not Qualify a BIDDER for Step 2 — Price Proposal.

2.1.1 Qualitative Proposal Scoring Procedure

The instructions for filling out the Qualitative Proposal Scoring Workbook are listed in the **Proposal Instructions** tab in the Workbook. The BIDDER must complete all entries in the **Part 1- Qual Support References** tabs of the Workbook.

GWA may elect to have no less than four (4) evaluators for this IFB.

Each GWA evaluator will score BIDDER responses in the **Part 1- Qual Support References** Worksheet Tab using the following steps in filling out the Part 2 – Qual Eval Scoresheet tab:

- Review each BIDDER's response to each question;
- Assign a relative score to each BIDDER's response to each question;
- Determine each BIDDER's weighted average raw score using pre-specified weights for each question.

The Total Qualitative Score is **745** points.

Each GWA evaluator will analyze the contents of the Proposals and categorize the Proposals as:

- a. Acceptable $\geq 80\%$
- b. $80\% >$ potentially acceptable, that is reasonably susceptible of being made acceptable $\geq 75\%$
- c. unacceptable $< 75\%$.

A percent score of less than 75% indicates that a GWA evaluator has determined that the BIDDER has not supplied sufficient evidence of qualifications and should not be allowed to participate in Step 2 – Price Proposal.

This Bid requires the vendor to have sufficient capital to support its cash flow requirements as indicated in Volume II – Technical & Functional Requirements. If the vendor has not provided sufficient information to support their financial status to meet this criteria and majority of the committee evaluating scores for Item #8 – Financial Information Checklist rate this item less than one-half (1/2) of the total possible score, then the vendor's proposal will be deemed as "not responsible" and the vendor may not proceed to the next step of the bid process, pursuant to the Guam Administrative Rules and Regulations (2 GAR, DIV 4, CHAP 3, § 3116 - Responsibility of Bidders and Offerors)

After each GWA evaluator has completed the evaluation of BIDDERS, GWA shall complete the Table below. The Procurement Officer will enter for each GWA evaluator and BIDDER one and only one of the following in the appropriate table cell below:

- Acceptable
- Potentially Acceptable
- Unacceptable.

If the majority of the GWA evaluators rate the BIDDER as Acceptable , that BIDDER is determined to be Qualified and will be allowed to participate in Step 2– Price Proposal.

The Procurement Officer may initiate Step Two if there are sufficient acceptable Unpriced Technical Proposals to assure effective price competition in the second phase without technical discussions. If the Procurement Officer finds that such is not the case, the Procurement Officer shall issue an amendment to this Invitation for Bid or engage in technical discussions with BIDDERS who are rated by a majority of the GWA evaluators as Acceptable or Potentially Acceptable. During the course of such discussions, the Procurement officer shall not disclose any information derived from one Unpriced Technical Proposal to any other BIDDER. Once discussions are begun, any BIDDER, who has not been notified that its Offer has been finally found acceptable, may submit supplemental information amending its technical Offer at any time. Such submission may be made at the request of the Procurement Officer or upon the BIDDER’s own initiative.

BIDDERS who are rated by the majority of the GWA evaluators as Unacceptable is determined to be Not Qualified and will not be allowed to participate in Step 2– Price Proposal.

The Procurement Officer shall record in writing the basis for finding a Bidder Not Qualified and make it part of the procurement file.

Table 1. Final Evaluation of Bidder Qualification

Required Qualification Criteria:

- 1. Qualitative Proposal Scoring Item #8 – Financial Information Checklist**
Bidder must meet minimum of 50% (or 10pts.) of maximum score from majority of the evaluators

Weighted Score						
GWA Evaluator	BIDDER 1	BIDDER 2	BIDDER 3	BIDDER 4	BIDDER 5	BIDDER 6
1						
2						
3						
4						
5						
Met/ Not Met						

2. **Qualitative Proposal Scoring Item #9 – Performance Bonding Capability Checklist.** If Proponent cannot obtain a performance bond, the scoring shall automatically reject the proposal as non-compliant.

Weighted Score						
GWA Evaluator	BIDDER 1	BIDDER 2	BIDDER 3	BIDDER 4	BIDDER 5	BIDDER 6
1						
2						
3						
4						
5						
Met/ Not Met						

3. **Qualitative Proposal Scoring Item #15 – CIP Management & Experience**
 If Proponent does not score a minimum of 50% (or 22.5 pts) of this criteria from majority of Evaluation Committee then the Proponent's proposal will be deemed "unresponsible" as indicated in Volume IV - Proposal Scoring Mechanism and may not proceed to next step.

GWA Evaluator	Weighted Score					
	BIDDER 1	BIDDER 2	BIDDER 3	BIDDER 4	BIDDER 5	BIDDER 6
1						
2						
3						
4						
5						
Met/ Not Met						

Upon meeting all above criteria remaining Bidders will be evaluated by their total weighted scores in the table below to determine if bidder qualifies for next step:

GWA Evaluator	BIDDER 1	BIDDER 2	BIDDER 3	BIDDER 4	BIDDER 5	BIDDER 6
1						
2						
3						
4						
5						

3. Step 2 — Priced Proposal: Fixed Management Fee and O&M Spending Budget.

GWA shall score each Qualified BIDDER's Fixed Management Fees and Proposed O&M Spending Budget by:

- Evaluating the Net Present Value (NPV) to GWA for each BIDDER's proposed Fixed Management Fees and the difference of the Proposed O&M Spending Budget and the GWA 7-Year Average at a fixed escalation rate (2.8%).

GWA will perform its Net Present Value evaluation by entering the BIDDER's proposal for **Fixed Management Fee and O&M Spending Budget as found** in the MS EXCEL workbook **Priced Proposal Evaluation.xls**.

GWA will award the PMC Contract to the BIDDER whose proposal yields the highest positive Net Present Value."

Bid Amendment Item #6.

The "Qualitative Proposal Scoring Workbook" contained in Volume IV, has been amended and the Compact Disk that you are receiving with this Bid Amendment and Answers to Questions contains a completely new workbook which includes a Cover Page, Proposal Instructions, Qualification Support References Checklist, Proposal Scoring Information Worksheet, PMC Qualifications Checklist, and the Qualification Evaluation Scoresheet (part 2).

It is the responsibility of the Bidder to review the information carefully and take note the changes. However, to highlight some of the changes, GWA has added a requirement for some CIP and Major Project Management experience given the large amount of anticipated capital projects coming up during the PMC contract period. In addition, GWA removed the section in the Proposal Scoring Information Worksheet relating to requests for changes in the bid documents (which has been addressed by Bid Amendment #2) as detailed in Item #16 of the Worksheet.

**II. QUESTION RESPONSES TO UNANSWERED QUESTIONS
FROM BID AMENDMENT #3 (Dated June 20, 2006)**

QUESTION #19 (numbered as previously submitted):

NPDES Compliance. The IFB provides for a \$2,500 fine "for each Non-Compliant NPDES report following a Compliant NPDES". Volume III shows most plants cycle in and out of compliance. Since there are five NPDES permits with approximately ten items per permit and quarterly reporting, does this create the potential for $5 \times 10 \times 4 = 200$ fines per year beginning in the first year of the PMC contract, plus Continued Non-Compliance Fines?

GWA RESPONSE TO QUESTION #19.

Under the current terms of the bid, the operator will be required to operate GWA facilities under the existing permits and on a level not less than what GWA is currently operating the system as stated in the **Performance Matrix (Amendment #4, Item 5)** and the Discharge Monitor Reports and to assist GWA obtain its full, complete and final NPDES permits required by the Clean Water Act via project management.

Currently all GWA NPDES permits have expired but GWA is still required to comply with whatever permits were in existence prior to the submission of the renewals (the Agat, Baza and Umatac permits may take as long as one year to get

renewed and the Hagåtña and Northern permits are conditioned upon the completion of the outfall extensions. Thus, under the terms of appendix G, the penalties for non-compliance with our existing permit requirements begin immediately after signing the contract. *However, GWA will provide a one-year moratorium on any fines under Appendix G to give the PMC an adequate opportunity to become familiar with GWA operations and to ensure a smooth transition. See Bid Amendment #4, Item #1.*

However, as the second paragraph of Item #2 in Appendix G clearly states, any non-compliance due to force majeure events, or catastrophic equipment failure will be dealt with on an item-by-item basis. Thus, as GWA is making clear, events within the control of the PMC contractor are the contractor's responsibility. For obvious reasons, GWA must ensure that any PMC Contractor meets the same standards if not better than the current operations.

QUESTION #21 (numbered as previously submitted):

Sewage Spills/Overflows, Appendix G states "GWA requires no spills at all wastewater facilities. Each spill is subject to a \$2500 fine per incident." The PMC would therefore be responsible for all spills occurring the moment the contract is approved. GWA's 2004 Annual Report lists 13 spills in FY04. Is this the total of all spills, all reportable spills, or some other criterion? How many spills did GWA experience in FY or CY 2005 which would be subject to this fine?

GWA RESPONSE TO QUESTION #21.

The number of spills subject to the fine would be 13. However, as one can see GWA has significantly reduced the number of spills.

QUESTION #22 (numbered as previously submitted):

EPA/GEPA Notice of Violation (Other). "All notices of violations from EPA/GEPA or other regulatory agencies (federal/local) will be the responsibility of the PMC for all incidents that occur within operations of the wastewater facilities." Does this make the PMC responsible for non-compliance with the 2003 Stipulated Order and existing NPDES permits, as well as future unforeseen changes in permit conditions?

GWA RESPONSE TO QUESTION #22.

The PMC will be responsible for ensuring that GWA meets all NPDES permit requirements as well as the Stipulated Order requirements. However, the PMC will not be liable for paying any fine levied under the Stipulated Order as that

responsibility will rest with GWA.

QUESTION #23 (numbered as previously submitted):

As written, the PMC would incur liability for long standing problems immediately upon award of the contract. Issues with NPDES permits, overflows, etc. will take time to correct. We would appreciate the opportunity to renegotiate this penalty section to provide a grace period, cap the level of penalties, or some other approach.

GWA RESPONSE TO QUESTION #23.

See Bid Amendment #4, Item #1.

**III. ADDITIONAL QUESTIONS SUBMITTED TO GWA VIA E-MAIL
FROM A VENDOR ON THE 24TH AND 25TH OF JUNE, 2006.**

QUESTION #1:

Volume I Clause 2.10.14(10), page 10, : It states that the Bid Bond is "required by Guam law to be 15% of the overall bid"; and modified by **Bid Amendment #3** and responses to inquiries dated June 20, 2006 ".....to be 15% of the total bid price which includes the fixed management fee and proposed O&M spending budgets."

1. Would it be possible for GWA to have a set Bid Bond amount? The reasons are,
 - a. It would put all proponents on a level playing field.
 - b. There is a long lead time to prepare for the bid bond and would not know the cost of the Fixed Management Fee. More importantly, we won't be able to determine the amount of the O&M Budget until we get closer to the Price Proposal submittal date.

GWA RESPONSE TO QUESTION #1.

No, the bid bond will be 15% of the total bid amount.

QUESTION #2:

Can GWA base the Bid Bond and the Performance Bond solely on the Fixed Management Fee? From a practical standpoint, the O&M Budget is a monthly, reimbursable expense. GWA assumes no risk on the O&M part. GWA can disapprove the questionable amount. Furthermore, the PMCs for the GPA Cabras Power Plants require a Bid Bond of 15% and Performance Bond of 100% **only, on the Fixed**

Management Fee. To put both, (the Fixed Management Fee and the O&M Budget) together, is such a large Bond amount for a small project. Please reconsider.

GWA RESPONSE TO QUESTION #2.

The bid bond provision will remain as it is currently written in the bid.

QUESTION #3:

After further checks, we would again, request for the following:

Volume III, paragraph 7, page 63

Item 13: GWA training grant application, which has not been provided on the CD.

Item 12: Monthly Maintenance Work Schedule – Pump Stations which has not been provided on the CD.

Item 16: FY05 Wastewater Power Billing Summary which was also not provided on the CD.

Currently we have Item 15: FY05 Wastewater Power Consumption but this is only for the WW Lift Stations (does not include the treatment plants) and as there is a Structured Tariff for Power at these sites it is not clear what the actual power bill is.

GWA RESPONSE TO QUESTION #3

GWA has provided those documents on the compact disks produced following notification to GWA that some items were missing from the original disks given to vendors when they picked up their bids. If you did not receive a CD with the supplemental documents that were originally listed in the bid that was passed out during the site visits held from June 26 – 29, 2006, please notify Ann Borja at (671) 647-7681 or via e-mail to: annborja@guamwaterworks.org.

However, please note that the supplemental data provided on these disks as well as the SOP's that you were able to view during the site visit are all of the materials that GWA will most likely be providing for this bid as some documents are simply not available, the would take too long to compile or interfere with operations or GWA does not believe that they are necessary to compile your bid.

QUESTION #4:

We would like to clarify the following:

1. Should the bidder be a foreign entity not based in Guam, can Appendix D – Major Shareholders Disclosure Affidavit - and Appendix E – Non Collusion Affidavit – be signed by an authorized representative of the bidder and solely notarized by a Notary Public or other official duly authorized by law in the jurisdiction where they are authorized to witness sworn statements?

2 Volume I, clause 2.10.2.3, page 10 states that “ *A proposal submitted by a corporation must bear the seal of the corporation, be attested by its Secretary, and be accompanied by the necessary Power-of-Attorney documentation*” .

As a foreign bidder, where such requirements are not necessary according to local regulation, can the requirement for a seal and an attestation by the Secretary be waived provided that the foreign bidder submits the proper Power-of-Attorney documentation?

GWA ANSWER TO QUESTION #4:

The documents can be signed by an authorized representative and notarized by a person having a valid notary license in the jurisdiction where the signing took place.

However, there must be a corporate resolution which clearly and unequivocally informs GWA that the person signing the documents has the power to bind the corporation and that the board of the corporation has agreed to be bound in such a manner. The power of attorney documentation is also required unless the resolution itself clearly states that the individual (or individuals) named have the power to bind the corporation as to the bid amount and the performance under the bid should that bidder receive the bid award.

IV. ADDITIONAL QUESTIONS SUBMITTED TO GWA VIA HAND DELIVERY FROM A VENDOR ON JUNE 29, 2006.

QUESTION #1:

“The Power of Attorney, performance bond guarantee...if executed outside Guam, whether required to be submitted with the proposals or after the award of the contract, must be authenticated by a Notary Public or other official duly authorized by law in the jurisdiction where they are authorized to witness sworn statements.” (Section 2.9 of Volume I, IFB).

We take the above statement as meaning such documents can be authenticated in any states of US as well as in a foreign country as long as the above requirements are satisfied. Please confirm this.

GWA RESPONSE TO QUESTION #1:

Yes, the documents can be authenticated anywhere, as long as they are notarized and the notary has a valid license in the jurisdiction they witness the signature in. Also, please note the answer to Section II, Question #4 above.

QUESTION #2:

Is the management, operation and maintenance of storm water system GWA's responsibility? If not, could you please advise the body that takes such responsibility?

GWA RESPONSE TO QUESTION #2.

The storm water system on Guam is operated and maintained by the Guam Department of Public Works.

QUESTION #3:

We understand that there are several CIP/PIPs already in progress. Is the PMC expected to take over the construction and project management responsibility for these existing CIP/PIPs?

GWA RESPONSE TO QUESTION #3.

The PMC will not be taking over existing construction management of ongoing CIP's where there is a Construction Manager already hired by GWA or where there are definitive plans to do so. However, the PMC will be required to perform project management tasks including but not limited to, ensuring the Construction Managers hired by GWA are performing their tasks correctly.

QUESTION #4:

Is there any additional cost associated with the PMC utilizing GWA's existing resources? For example, since laboratory expenses have not been listed as an O&M expense in the Invitation-For-Bid document, does PMC have to pay for samples to be analyzed by the laboratory?

GWA RESPONSE TO QUESTION #4.

No, there are no additional costs other than those which are outlined in the bid and operational costs will be subsumed into the GWA O&M budget unless otherwise specified.

QUESTION #5:

At the end of the contract, the PMC is to return the store back to GWA. Is there any requirement on the condition and quantity of inventory? We note that since inventory optimization is inside the scope of work, the returned inventory may be different to that at the beginning of the contract.

GWA RESPONSE TO QUESTION #5.

The quantity and quality of the inventory at the end of the contract will be negotiated between the parties. However, it is anticipated that some inventory will need to be in place and the condition of the inventory will need to be what is reasonable under the circumstances.

QUESTION #6:

Is it possible for GWA to release more information to help bidders gain a better understanding of the existing system? For example, we would like to have access to GIS maps (those that have been developed), modeling data, and equipment list, etc.

GWA RESPONSE TO QUESTION #6.

No, there will be no further documents released to give bidders a better understanding of the existing system. While GWA does have GIS maps available to it which will be made available to the successful bidder, dissemination of this information is not practicable for the purposes of this bid.

QUESTION #7:

Agat-Santa Rita STP appears to have a recorded average flow rate (DMR Monthly Average Flow Rate of 1.81MGD) that is, >200% higher than the design capacity (0.75MGD). Was the cause of this ever investigated by GWA, and if yes, what was it?

GWA RESPONSE TO QUESTION #7.

The operator who was stationed there during that period was writing down the number off of the flow meter which GWA learned was inaccurate. The current average flow rate (aside from periods of heavy rainfall) is about .82 MGD).

QUESTION #8:

Is GWA able to provide historical data on the number and amount of various wastewater-related fines in each of the past 5 years.

GWA RESPONSE TO QUESTION #8.

First, GWA has been tracking fines only since 2003. Since 2003 there have only been Stipulated Order fines levied against GWA for wastewater items. In addition, the only fines that were levied were as follows:

1. Stipulated Order Paragraph 37 – Chaot wastewater pump station - \$9,000.00 total for two fines (one on January 22, 2004 in the amount of \$6,000.00, and one on August 4, 2004 for \$3,000.00).
2. Stipulated Order Paragraph 10, in the amount of \$13,000.00, for failure to complete the hydraulic model on time for both the water and wastewater – an unknown portion of which was attributed to wastewater.

QUESTION #9:

In the IFB, it was stated that in the price bid that the bid with the highest positive NPV wins. We would like to confirm how this NPV is calculated and what number of years is used as basis in the calculation.

GWA RESPONSE TO QUESTION #9.

Each bidder is bidding on not only their fixed management fee, but also the O&M expenses over a six year period as stated in Price Proposal Scoring Mechanism contained in Volume IV. Please note the addition of Amendment #4, Item Number 2 for the O&M Matrix which must also be filled out.

QUESTION #10:

On page 61 in Volume III of the IFB document, the object codes for GWA's accounting system on expenses are listed. To help cost estimation, is it possible for GWA to provide

a description and examples of each category of expenses listed as an object code? Are vehicle and movable plant (loaders etc) costs an O&M expenses. If so, how are these charge, annually, monthly, weekly or hourly?

GWA RESPONSE TO QUESTION #10.

First, vehicle and movable plant costs are charged hourly.

Second, our accounting department has provided explanations of the (NARUC) accounting codes for you unless they are patently obvious:

<u>Obj. Code:</u>	<u>Description</u>	<u>Example</u>
204	Training Offisland - Employees authorized to attend Sewer/Water related in Hawaii/Texas etc.	
206	POV Mileage Reimb- Employees using their personal cars to inspect sites/projects, etc.	
301	Advertising - Ads related to Bid projects	
311	Hvy/Eqpt/MotorRep – Expenses related to pumping equipment to fix sewer spills	
313	Hvy Eqpt rental – rental of backhoe, trucks to fix leaks, etc.	
327	Janitorial services – cleaning of restrooms	
331	Renovation of facility – NO LONGER IN USE	
332	Bldg Repair & Maint.- Expenses related to office bldg repairs of doors, roofing, ceiling, etc	
334	Trash Pickup - self explanatory	
365	Various repair service – cost of rewinding, fabrication, road repair related to water leaks, etc.	
391	Aircon Maintenance – cost of repairing existing AC units and maintenance of units	
402	Fuel/Lubricant – cost of lubrication/gas/oil	
405	Office supplies – pens, paper supplies, any related admin supplies	
408	Operational supplies – automotive, electrical, plumbing supplies	
412	Pumps & Gen Part - NO LONGER IN USE	
417	Asphalt Material – materials used for road repairs due to leaks	
419	Safety eqpt – safety shoes, etc.	
420	Vehicle parts – cost of motor assembly and others parts purchased to repair trucks and cars	
430	Chemicals – cost of chlorine and other related chemicals	
501	Office eqpt – desk, chairs, calculators & eqpt < \$500	
502	Equipment/Hand Tools – bushcutter, hammer, & other cost of operational hand tools < \$500	
503	Gas Operated Eqpt- cost of blower, trimmer, etc.	
506	Pumps/Motor Inv –cost of labor and materials, electrical, hardware, plumbing	
600	Miscellaneous – NO LONGER IN USE	
703	Telephone – land line communication	
704	Cellular – monthly charge and airtime	
705	Radio/Pager – monthly charge of radio communication & paging	
715	Fuel/Power – not relevant	
701	Power purchases – monthly power bill (GPA)	

QUESTION #11:

Is the PMC required to take on a responsibility for Health and Safety Compliance?

GWA RESPONSE TO QUESTION #11.

Absolutely!

QUESTION #12:

Are those costs of sludge transfer to the northern Treatment Works an O&M expense? If so, is this element currently under long term contract to a supplier? If so, is the PMC required to take over this contract?

GWA RESPONSE TO QUESTION #12.

The sludge transfer costs are in fact an O&M expense. There is no contract to a supplier as GWA utilizes its own wastewater pumper truck that is solely used for wastewater treatment purposes. The truck is operated by a GWA treatment plant heavy equipment operator.

QUESTION #13:

What qualifies as a "Certificate of Good Standing"? Is there any particular form or certificate that GWA is looking for, or would documents such as ISO9000, ISO140000, and the likes sufficient?

GWA RESPONSE TO QUESTION #13.

This is the corporate or partnership "Certificate of Good Standing" in the jurisdiction where the corporation is incorporated or the partnership was registered. If the jurisdiction your corporation or partnership is in does not require this for continued operation of the corporation, the bidder has the burden of proof to show GWA that it is not required. The only forms of adequate proof that GWA will accept are the following:

1. The current statute in the jurisdiction governing the issue; **or**
2. An opinion from the legal counsel for the organization stating unequivocally that there is no such requirement along with a declaration by the Chief Executive Officer for the corporation or the managing partner for a partnership, declaring under oath and upon penalty of perjury that there is no such requirement in the jurisdiction where the corporation resides or the partnership was formed and operates.

Please note, that if your company is incorporated in the United States, GWA would

require the Certificate of Good Standing unless the above two conditions are also met.

V. ADDITIONAL QUESTIONS SUBMITTED TO GWA VIA E-MAIL ON DELIVERY FROM A VENDOR ON JULY 3, 2006

QUESTION #1:

Regarding the performance bond, please confirm that we can use Fidelity and Deposit, Baltimore USA via their agent in Guam, Pam Cruz, Takagi & Associates, Inc.

GWA RESPONSE TO QUESTION #1.

No, the fact that Takagi and Associates is licensed to conduct business on Guam is irrelevant unless the insurance company itself is also licensed to conduct business on Guam.

VI. ADDITIONAL QUESTIONS SUBMITTED TO GWA VIA E-MAIL FROM A VENDOR ON JULY 10, 2006.

QUESTION #1:

Is consortium bid permitted in the subject bidding process?

GWA RESPONSE TO QUESTION #1.

There must be one prime contractor who is ultimately responsible for performance under the bid and who alone must meet the minimum bid requirements. However, that contractor may have subcontractors or partners (who will be subject to the approval of GWA) and those partners must be made known to GWA and shall be bound to GWA under the same terms and conditions as the prime contractor via the contract. In other words, the contract will bind the contractor and their subcontractor or partners to the same set of terms and conditions, however, performance under the contract will ultimately be the responsibility of the bidder (or the prime contractor).

QUESTION #2:

If your answer to the first question is affirmative, what additional documents do you require to submit a consortium bid, e.g., do you require a consortium agreement?

GWA RESPONSE TO QUESTION #2.

See answer to question #1 above.

QUESTION #3:

Under a consortium bid, do you require the leading company to sign bid documents or all parties must sign bid documents.

GWA RESPONSE TO QUESTION #3.

The prime (or lead) company will sign all documents, including the contract, which will bind the prime. The contract will contain language that binds all subcontractor's to the same terms as the contractor (or prime).

Best Regards,

David R. Craddick
General Manager

cc: Sam Taylor
Jennifer Sablan
Berney Sadler
Yvonne Cruz
Vince Guerrero