PUBLIC UTILITIES COMMISSION
SPECIAL MEETING
FEBRUARY 1, 2007
SUITE 207 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 1, 2007 pursuant to due and lawful notice. Commissioners McDonald, Cantoria, 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 September 28, 2006 meeting and on motion duly made, seconded and unanimously carried, the Commission resolved to approve the minutes.

2. Guam Power Authority.

The commissioners reviewed a proposed order, which would: a] establish the LEAC rate for the next six months; b] adjust the LEAC six month cycle to February through July and August through January; c] require further proceedings on the allowability of TCP interest expense recovery under LEAC; d] amend the contract review protocol; e] set an FY07 CIP ceiling; and f] require further proceedings on GPA's request that $17.3 million of disallowed FEMA disaster loss claims be designated a regulatory asset for recovery under GPA's self-insurance reserve account. After review of the reports of its independent regulatory consultant [Georgetown Consulting Group – GCG] and GPA comments and after consideration of a proposed order, for good cause shown and on motion duly made, seconded and unanimously carried, the commissioners resolved to adopt the order made *Attachment B*.

3. Department of Public Works.

At a January 23, 2007 workshop, PUC was briefed by GCG on its January 2007 updated report on the barriers, which obstruct the Government of Guam's ability to comply with the Federal Consent Decree in Civil Case 02-22. Within this context, the commissioners reviewed and discussed at the meeting a proposed Order, which would respond to questions on this subject posed by the Attorney

General's office. On motion duly made, seconded and unanimously carried, the commissioners resolved to adopt the order made *Attachment C.*

4. Telecommunications.

a. **Docket 06-8 [Pulse Mobile petition for ETC designation].** The commissioners reviewed GCG's report and proposed order, which would approve the petition, subject to conditions. After discussion and on motion duly made, seconded and unanimously carried, the commissioners resolved to adopt the order made *Attachment D.*

b. **Docket 05-1 [Affiliate transaction and non-dominant carrier detariffing rules].** The commissioners reviewed an extensive record concerning proposed rules, which would govern affiliate transactions by GTA Telecom, LLC and establish financing record and reporting requirements for the purpose of providing PUC with adequate information to enable it to discharge its regulatory duties under the *Guam Telecommunications Act of 2004.* The commissioners also reviewed uncontested rules, which would detariff the private line tariffs of non-dominant carriers. Both proposed rules underwent a public notice and comment period, as further discussed in the proposed orders adopted them. After discussion and on motion duly made, seconded and unanimously carried, the commissioners resolved to adopt the proposed rules by the orders made *Attachments E and F.*

c. **Docket 05-3 [GTA tariff transmission # 8 – further proceedings].** The commissioners next reviewed GCG's January 17, 2007 recommendation that further proceedings be commenced to examine whether GTA's tariff transmission # 8 *[a reduction in its DID tariff to the military, which does not require PUC approval]* unfairly discriminates against 19 other GTA DID number customers, for whom the tariff reduction was not extended. After discussion and on motion duly made, seconded and unanimously carried, the commissioners resolved to adopt the order made *Attachment G,* which would authorize ALJ to undertake further proceedings regarding the revised tariff.

d. **Docket 05-1 [Interconnection rulemaking].** In ongoing proceedings in Docket 05-11 *[interconnection arrangements between Pacific Data Systems and GTA],* GCG has recommended by letter dated January 4, 2007 that PUC commence a rulemaking proceeding, consistent with FCC policy, in order to: 1] establish

timelines, conditions and standards which GTA, as the incumbent local exchange carrier, should meet in order to implement PUC approved interconnection arrangements and to provide new entrants with a fair and reasonable opportunity to compete in the local exchange market; and 2] to establish a monitoring system by which PUC can be assured that GTA has taken appropriate action to accommodate competitors as well as its own customer base in the future. After discussion and on motion duly made, seconded and unanimously carried, the commissioners resolved to authorize ALJ to conduct these rulemaking proceedings.

e. **Reports.** The commissioners reviewed and approved the following reports: 1] GCG's FY06 report on E911 operations; 2] GTA's 2006 APA section 6.10[c] compliance report and 3] GTA's 2006 transfer authority compliance report.

5. **Guam Waterworks Authority.**

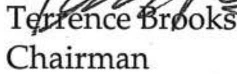
a. **Docket 07-2 [Investigation of GWA violations].** The commissioners reviewed a stipulation, by which GWA and GCG propose that investigative proceedings in this docket be concluded. Underlying this investigation is the indisputable and disturbing fact that GWA, when faced with circumstances which may have justified relief from PUC orders, chose not to seek this relief, but rather cavalierly decided to ignore the orders without notice to either PUC or to its governing authority, the Consolidated Commission on Utilities [CCU]. GCG has correctly observed that unless CCU remedies the corporate culture, which caused this inappropriate behavior and GWA's chronic failure to meet regulatory reporting requirements, PUC will be required to reconsider the regulatory protocol, which it adopted on April 11, 2003. After discussion and on motion duly made, seconded and unanimously carried, the commissioners resolved to adopt the order made *Attachment H.*

b. The commissioners, on motion duly made seconded and unanimously carried, further resolved: 1] to ratify the December 18, 2006 Ugum water treatment refurbishment order, which Chairman Brooks issued under his delegated authority; and 2] to approve a GWA FY07 $2.3 million CIP ceiling.

6. Administration.

The commissioners reviewed and approved PUC's FY06 FOIA report, FY06 staffing study reports on GWA and GPA and Chairman Brooks' January 26, 2007 testimony on Bill 19. The commissioners further resolved to amend PUC's FY07 administrative budget by increasing the utilities line budget from $5,000 to $8,600 in order to cover $300 monthly website maintenance fees.

There being no further business, the meeting was adjourned.



Terrence Brooks
Chairman

PUBLIC UTILITIES COMMISSION OF GUAM

SPECIAL MEETING
SUITE 202 GCIC BUILDING
414 W. SOLEDAD AVE. HAGATNA, GUAM
6:00 p.m. February 1, 2007

AGENDA

1. **Approval of minutes of September 28, 2006 special meeting.**

2. **Guam Power Authority.**

   a. LEAC rate – resolution of open issues: I] six month cycle; ii] requirement of petition to review inclusion of TCP interest as allowable LEAC expense; and iii] timeframe for under recovery reimbursement.
   b. GPA petition for regulatory asset.
   c. Amendment of contract review protocol
   d. FY07 $10.2 million CIP ceiling.

3. **Department of Public Works.**

   Proposed order regarding Georgetown's January 5, 2007 audit update report.

4. **Telecommunications.**

   a. Docket 06-8 – Order approving designation of Pulse Mobile, LLC as eligible telecommunications carrier.
   b. Affiliate transaction rules.
   c. Rules to detariff private line service for non-dominant carriers.
   d. PUC FY06 E911 report.
   e. Investigation of issues relating to GTA's tariff transmission # 8. Proposed order.
   f. 2005 GTA annual reports – APA section 6.10[c] and PUC Transfer Authority Order compliance.

5. **Guam Waterworks Authority.**

   a. Docket 07-2: stipulation and proposed order.
   b. FY07 rate petition – tentative schedule.
   c. PUC December 18, 2006 Ugum order – ratification.
   d. FY07 CIP ceiling: $2.3 million.

6. **Administration.**

   a. PUC FY06 FOIA report.
   b. GWA and GPA staffing study reports.
   c. Testimony on Bill 19

7. **Other business.**

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

GUAM POWER AUTHORITY
REGULATORY REVIEW **DOCKET 02-4**

Regulatory Order

[LEAC, Regulatory Asset, FY07 CIP Ceiling, Contract Protocol Amendment]

This Order reviews: a] GPA's November 16, 2006 petition for approval of a LEAC factor for the period January 1, 2007 through June 30, 2007 and related issues; b] GPA's September 22, 2006 petition, as amended, for establishment of a regulatory asset to assure its recovery of $17.2 million dollars of T&D and generation natural disaster losses; c] GPA's October 5, 2006 petition for the establishment of an FY07 CIP ceiling; and d] Georgetown's October 17, 2006 recommendation that the GPA contract review protocol be amended.

Findings

1. **LEAC.**

In its November 16, 2006 petition, GPA requested the following regulatory relief with regard to its LEAC: a] an adjustment of the six month LEAC cycle *from* October 1 through March 31 and from April 1 through September 30 *to* January 1 to June 30 and from July 1 to December 31; b] an increase in the LEAC factor to $0.110292 per kWh; and c] allowance of its TCP interest expense as a fuel related cost subject to recovery under the LEAC tariff.

a. **Cycle adjustment.**

GPA's LEAC tariff provides only that there shall be a semi-annual regulatory review and adjustment of the LEAC. The tariff does not prescribe when this review will occur. By order dated January 29, 1996 in Docket 94-4, PUC established a semi-annual review on a fiscal year cycle. GPA has expressed concern that this cycle injects politics into the LEAC review every two years. Accordingly, it would prefer that it be changed to a calendar year cycle [January through December]. Georgetown opposes this change. After review, PUC finds that GPA's request is reasonable; provided, however, that as the current factor adjustment will become effective on February 1, the new cycle should run from February through July and from August through January of each year. At PUC's January 23, 2007 regulatory workshop, GPA general manager posed no objection to a February cycle start date.

b. **TCP interest expense [$1.1 million].**

In its petition, GPA requested that it be permitted to recover its TCP interest expense as a fuel related cost under the LEAC. By ruling dated January 21, 2007, PUC's administrative law judge found that GPA failed to adequately petition and document this request. Accordingly, he ruled that the interest expense would not be allowed as a recoverable LEAC expense in this proceeding. In making this ruling, ALJ referenced PUC's October 24, 2004 LEAC Order in which PUC cautioned that it would closely examine any cost which GPA seeks to recover under LEAC as the inclusion of such costs is an exception to traditional rate regulation. Moreover, PUC's October 25, 2005 LEAC Order informed GPA that it would bear the burden of providing convincing evidence why a proposed cost should be allowed as a LEAC expense. Within the context of these requirements, GPA may in due course file a properly documented petition for PUC review of the allowability of this expense.

c. **LEAC Factor.**

With the removal of the TCP expense from the calculation of the next factor, Georgetown computes that the factor should be set at $0.108893 per kWh for implementation effective February 1, 2007. Pursuant to the findings made in section 1[a] above, this factor should remain in force through July 31, 2007[1]. The factor is computed to enable GPA to recover its estimated $16.3 million ($17.3 million less the impact of recording the interest expense to fuel) deferred fuel expense balance over the next twelve months. PUC finds that GPA is currently suffering from a serious cash shortage resulting from its deferred fuel expense balance and its Government receivable. Accordingly, any extension of the deferred expense recovery period beyond a twelve-month period would materially impair GPA operations. PUC also finds that given GPA's financial condition[2], Georgetown should be directed, under ALJ oversight, to investigate and report on the need for GPA to undergo a base rate case review.

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[1] Under PUC's February 1, 2005 *Administrative Order* in Docket 99-12, an existing LEAC factor shall remain in force until a new factor is established. The purpose of this order is to deal with those occasions when regulatory action may be delayed beyond the cycle end date.

[2]During the January 23, 2007 workshop, GPA's general manager informed PUC that GPA would not have available cash during this fiscal year to fund any of its budgeted capital projects, that it would be near the 1.25 debt service ratio established in its bond covenants and that preliminary review shows that GPA will have operated at a loss in FY06.

d. Replacement of excess bond funds [$4.58 million].

By PUC Order dated September 28, 2006, GPA was authorized to utilize up to $4.85 million of excess bond funds as a short term facility, subject to the requirement that these withdrawals be refunded to the excess bond fund. GCG recommends that the funds be repaid with LEAC revenues over a period of twelve months at the rate of $382 thousand per month. The purpose of the facility was to assist GPA in managing the cash shortfall , which was caused by its decision to defer a LEAC adjustment from September 2006 to January 2007. Given that the shortfall exceeded GPA estimates ($16.3 million vs. $10 million estimate), GPA should be required to report how the shortfall was financed and the source of these funds.

2. Regulatory Asset [$17.2 million].

ALJ has deferred regulatory consideration of GPA's petition until the May 2007 session, based on concerns raised in Georgetown's January 24, 2007 letter[3]. The GPA petition deserves close scrutiny as it seeks regulatory authorization to recover from the self-insurance reserve account established by PUC's December 30, 1992 Rate Order in Docket 92-01, as amended, $17.2 million dollars in disaster loss expenses[4], which have been disallowed by FEMA. PUC concurs with Georgetown's recommendation that GPA should be prohibited from recovering any portion of the expenses under review from the reserve account pending PUC authorization.

3. FY07 CIP Ceiling [$10.2 million] and protocol amendment.

By letter dated September 16, 2006, GCG supports GPA's petition for a $10.2 CIP ceiling. PUC finds that GPA's request is reasonable. In addition, PUC agrees that the GPA contract review protocol should be amended to clarify that line extensions and blanket job orders are not included in the ceiling.

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[3] These concerns include: a] substantial changes in GPA's position regarding the amount of costs for which it is seeking recovery; b] the import, which PUC should give to FEMA's disallowance of the petitioned costs; c] the need to undertake a "due diligence" review of the petitioned costs; and d] the need to develop a reporting requirement for the reserve fund.

[4]The $17.2 million dollar amount represents a total $40.3 million claim of disaster losses *less* $21 million FEMA reimbursement *[which GCG assumes represents 90% of allowable claims] less* 10% FEMA co-pay of $2.1 million *[which GCG does not dispute].*

Ordering Provisions

After careful review 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 **HEREBY ORDERS THAT:**

1. A new LEAC semi-annual cycle is hereby established, which shall run from February 1 through July 31 and from August 1 through January 31.

2. A LEAC factor of $0.108893 per kWh shall be used by GPA for all civilian bills, for meters read on and after February 1, 2007 and through the period July 31, 2007 to recover its forecasted fuel and related expenses for that period and a portion of its deferred fuel expense.

3. GPA is ordered and directed to reimburse the excess bond fund from LEAC revenues for the $4.58 million dollars it withdrew under PUC's authorization at the rate of $382 thousand dollars per month commencing March 2007 until fully refunded.

4. On or before April 15, 2007 GPA shall file a report regarding how the $16.3 million LEAC shortfall was financed during the period September 2006 to January 2007 and the source of these funds.

5. GPA's petition for the establishment of the next LEAC factor shall be filed with PUC not later than June 15, 2007. PUC emphasizes its continuing concern regarding line losses, which impose additional rate burden on GPA customers. GPA is directed to fully comply with ALJ directives, which will prepare this subject for regulatory consideration in the May 2007 regulatory session.

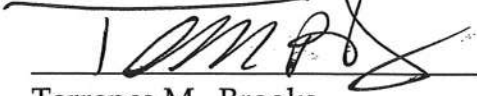
6. ALJ is authorized and directed to oversee regulatory proceedings to investigate and make recommendations regarding GPA's $17.2 million dollar claim for reimbursement under the self insurance reserve account and GPA's petition that said amount be designated by PUC as a regulatory asset. Pending this investigation, GPA is prohibited from withdrawing funds from the self-insurance reserve account to reimburse itself for any portion of this claim under review.

7. Georgetown is authorized and directed, under ALJ oversight, to investigate and report in advance of the May regulatory session on the need for GPA to undergo a base case rate review.

8. An FY07 GPA $10.2 million dollar CIP ceiling for FY07 is approved.

9. Section 1 of PUC's February 2, 2006 order establishing a GPA contract review protocol is amended by adding to the end of the section the following sentence: *Blanket job orders and line extensions shall not be subject to the requirements of this Order.*

Dated this 1st day of February 2007.



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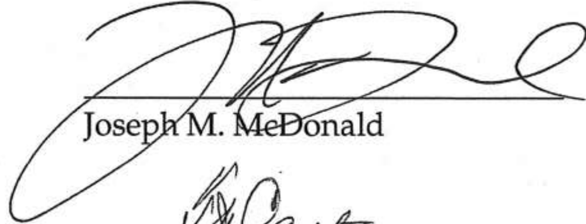

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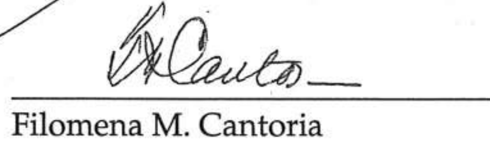
Edward C. Crisostomo



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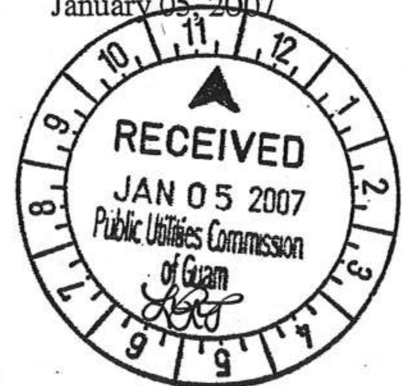
January 05, 2007



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") November 2006 filing for fuel cost recovery. In its filing, GPA is requesting that the factor ("fuel cost recovery factor" or "LEAC" factor) of $0.098589 per kWh for its civilian customers that was approved by the Public Utilities Commission ("PUC" or "Commission") on April 20, 2006 be increased to $0.110292 per kWh for the six months period beginning January 1, 2007 and ending June 30, 2007. GPA has also asked that the LEAC periods be permanently changed to the six month calendar periods (beginning January and July) as opposed to the current six month fiscal year periods (beginning October and April).

GPA previously requested that the PUC defer consideration of a new LEAC factor in September 2006 for implementation on October 1, 2006 and allow the current factor to continue beyond the scheduled expiration date of September 30. GPA requested that the current factor be continued through December 31, 2006 at which time it would seek a new LEAC factor to be effective for the six month period ending June 30, 2007. The PUC granted GPA's request on September 28, 2006 and the current LEAC factor was extended. The extension was conditioned on the submission by GPA of its draft integrated resource plan ("IRP") coincident with the deadline for the LEAC filing (November 15, 2006). The draft IRP was not timely submitted and we will provide a report to you on this item within a week.

In addition GCG and GPA were required to give their positions on line loss and appropriate benchmarks. GPA estimated that the deferral of the new LEAC from October 1, 2006 to January 1, 2007 would increase the deferred fuel cost above the value as of September 30, 2007. The Commission permitted GPA to utilize excess bond funds up to $4.85 million to finance this additional deferral with the repayment timeline to be determined in the January 2007 regulatory

session. GPA was also required to indicate how it planned to fund all of its deferred fuel balances[1] until the new LEAC was implemented. As will be reported later, GPA has not provided the required explanation and did not communicate with the PUC that it would not provide the explanation.

Overall Filing Summary

The requested 11.9% increase in the LEAC factor would result in an additional overall increase of 7.2% in the total bill of a residential customer using 1,000 kWh per month beginning January 2007. For a typical large commercial customer, GPA estimates that the overall increase will be 6.15%.[2] According to GPA, the requested increase is a function of higher forecasted prices and fuel contract premiums for the proposed LEAC period ending June 2007 than was the forecast used in establishing the current LEAC factor in April 2006. GPA's new LEAC request includes recovery of only a portion of the deferred fuel costs ("deferred fuel costs" or "under-recovery") that are on GPA's books as of December 31, 2006.

GPA indicates that the major drivers for this increase relate to the new fuel contracts, particularly the residual fuel oil ("RFO") contract and the increased premiums related to the contract. In addition GPA asserts that the increase is also related to increased fuel handling costs. While we agree that there is upward cost for these items, there are several other major items that are forcing the LEAC factor to increase which were not highlighted by GPA. We will describe these throughout this report.

On a positive note, the recent results of operations for GPA production have shown a continuation of superb load factors for the base load units requiring the less expensive Number 6 oil. GPA is forecasting that this high level of unit efficiency will continue through June 2007 and is forecasting that about 98% of the production for the upcoming period comes from the lower cost units. Any disruption of this high level of cost-effective performance will cause additional deferred fuel expense to be recovered through the LEAC, if approved by the PUC.

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.[3]

[1] At that time estimated to be $10 million

[2] GPA filing, Attachment 3.

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

Table 1
GPA Calculation of Fuel Factor

	($000's)
Cost of Number 6 oil	$ 71,956
Cost of Number 2 oil	3,781
Other Costs	5,236
TOTAL Costs	$ 80,973
Civilian Percentage	79.05%
Civilian Costs	$ 64,007
Deferred Fuel Costs	9,814
Total Cost for Recovery	$ 73,821
Sales (mWH)	669,324
Fuel Factor ($/kWh)	$0.110292

To get a full picture of the causes of the increased LEAC factor a side-by-side comparison should be made to determine which of the above amounts have changed from the levels that were used to determine the current LEAC factor. The following table shows such a comparison:

Table 2
Comparison of Current and Proposed LEAC factors

	GPA Proposed LEAC Factor ($000's)	Existing LEAC Factor ($000's)	Incr./(Decr.)
Cost of Number 6 oil	$ 71,956	$ 74,946	$ (2,990)
Cost of Number 2 oil	3,781	1,823	1,958
Other Costs	5,236	3,360	1,876
TOTAL Costs	$ 80,973	$ 80,128	$ 845
Civilian Percentage	79.05%	78.20%	0.85%
Civilian Costs	$ 64,007	$ 62,690	$ 1,317
Deferred Fuel Costs	9,814	2,071	**7,743**
Total Cost for Recovery	$ 73,821	$ 64,761	$ 9,060
Sales (mWH)	669,324	656,874	12,450
Fuel Factor ($/kWh)	$0.110292	$0.098589	$0.011703

As can be noted from this comparison, despite an increase in demand from the civilian population, the total cost of civilian fuel is projected to increase by only $1.3 million. The major driver in the

requested increase in the LEAC factor is the recovery of approximately 50% of the deferred fuel balance as of December 31, 2006[4] in the six-month period ending June 2007. We will discuss this issue in detail and provide information regarding other projected costs and have attached the detailed projection made by GPA as Exhibit A2.

Recommendations

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

- A new LEAC factor of $0.108893 per kWh be implemented effective February 1, 2007. This represents an increase for the typical residential ratepayer of 6.3%. This Factor should remain in place until September 30, 2007 (8-months) unless GPA petitions the PUC for an additional change. Such petition should be submitted at least forty-five days in advance of the proposed change. The PUC should not accept the arguments made by GPA to change the six month implementation dates of the LEAC from October 1 and April 1 to January 1 and July1. The arguments advanced by GPA are that the current dates fall close to the dates for local elections. Therefore according to GPA this submits the LEAC process to political pressures. We understand that the PUC does not succumb to political pressures and sets the LEAC based on the best evidence of the projected cost of fuel.

- The estimated under-recovery balance of $17.4 million ($16.3 million as adjusted for TCP interest) as of December 31, 2006 should be recovered over a period of one year (12 months) beginning February 2007. This amortization period contrasts to a period of approximately 11 months contained in GPA's request, but is consistent with the recovery period approved by the CCU.

- The interest expense and other charges related to the Taxable Commercial Paper (TCP) should not be included in the LEAC. All charges made to the deferred fuel account for Fiscal 2006 related to this item should be reversed and charged to interest expense.

- Monies from the excess bond funds used to fund the additional deferred fuel expense accumulated between October1, 2006 and December 31, 2006 ($4.58 million) be repaid to the excess bond funds over a period of twelve months at a rate of $382 thousand per month with appropriate reporting to the PUC. GPA should be required to comply with its obligation to report the source of funds used to fund the entire balance of deferred fuel expenses of $17.4 million ($16.5 million as adjusted) one week prior to the PUC hearing on the LEAC and explain the reason for the omission.

- GPA should file a request no later than August 15, 2007 for a new LEAC factor to be effective October 1, 2007.

[4] Much of the balance in the deferred fuel costs as of December 31, 2006 are due to losses in the current fuel hedging program.

- By March 15, 2006 GPA should file with the PUC a CCU-approved plan to reduce the line losses currently occurring on its T&D system. Reduction Loss should decrease the cost of production to the benefit of the ratepayer and could potentially increase base revenue to GPA

- We recommend that a standard be set by the PUC for measuring the success or failure of the proposed target for losses as follows:
  For the period ending September 2007—7.5 percent
  For the period ending March 2008—6.5 percent
  For the period ending September 2008 and beyond—6.0 percent

- Further discussion on this issue is contained in this report and Attachment B.

The Following Table Compares and Contrasts GPA's request and GCG's recommendation:.

Table 3
Comparison of Recommended LEAC Factors

	GPA-Proposed LEAC Factor Six Months ($000's)	GCG-Proposed LEAC Factor Five Months ($000's)
Cost of Number 6 oil	$ 71,956	$ 61,029
Cost of Number 2 oil	3,781	3,228
Other Costs	5,236	3,570
TOTAL Costs	$ 80,973	$ 67,827
Civilian Percentage	79.05%	79.05%
Civilian Costs	$ 64,007	$ 53,615
Deferred Fuel Costs	9,814	6,786
Total Cost for Recovery	$ 73,821	$ 60,490
Sales (mWH)	669,324	554,688
Fuel Factor ($/kWh)	$0.110292	$0.108893

A complete set of detailed schedules are attached to this report as Exhibit A1. The changes made to GPA's filing are as follows:

1. Remove TCP interest charges from forecast and from the deferred fuel balance

2. Adjust Price of Number 6 and Number 2 oil to reflect recent information regarding fuel contracts provided by GPA
3. Amortize the full balance of the estimated deferred fuel balance as of December 31. 2006 of $16.5 million over a period of twelve months at a rate of $1.375 million per month

Discussion of the Variables that Derive the LEAC Factor

We will discuss each of the line items shown in the above tables in this section of our report. The detailed exhibits Exhibit A1 and Exhibit A2 are appended to this report and reflect the details of the LEAC factor recommended by GCG and GPA, respectively.

Cost of Number 6 oil

The first variable in the derivation of the LEAC factor is the cost of Number 6 (or RFO) oil that GPA projects will be required to meet demand on the system for the LEAC period. In order to forecast this cost, GPA projects the amount of barrels of oil that will be consumed and the price per barrel of the oil that is consumed. Schedule 2 of Exhibit A2 shows the units required and the production by month from each unit. You will note that all of the available units[5] are forecasted to be dispatched during this period. As can be seen at the bottom of this Schedule, GPA is projecting that about 98% of the production will come from these units. GPA estimates the number of kWh per barrel for these units and derives the number of barrels per month per unit. The more efficient of these units are those with higher kWh/Barrel amounts. The energy values for number 6 oil are then converted to heat rates. These efficiency measures are based upon recent history of the units.

In order to derive a cost of fuel, GPA uses the amount of barrels and multiplies these by the price per barrel based upon the First in First out (FIFO) methodology that GPA uses for determining fuel costs and inventory for book purposes. One of the key assumptions driving the costs of number 6 oil is the spot Singapore price and the premiums to that price that is consistent with GPA's contract for RFO. For price estimates GPA used Morgan Stanley's Price Forecasts as of November 14, 2006 for High Sulfur Fuel Oil (HSFO). Morgan Stanley has requested that the PUC not make the forecast a public document, but the following table summarizes the price that GPA uses for purchase in a given month:

Table 4
RFO Prices

Morgan Stanley Estimate	$	295.17	/Metric Ton
Conversion Factor		6.6	MT/Barrel
Price per Barrel	$	44.72	
RFO Contract Premium (LSFO)	$	8.00	
RFO Contract Premium (HSFO)	$	4.16	
Average RFO Premium	$	6.08	
Total GPA Price	**$**	**50.80**	

[5] Piti #4 and #5 are not in use.

GPA has recently received a single qualified bid for its Number 6 oil contract. The bid was from British Petroleum-Singapore (BP) and was still in review by GPA at the time that GPA submitted its LEAC filing. For purposes of the fuel cost forecast, GPA assumed that the premiums contained in BP's proposal will be the same as BP had originally proposed, i.e. $8 per barrel for LSFO and $4.16 per barrel for HSFO. Although GPA uses far less of the LSFO than the HSFO to be conservative GPA uses a simple average of the premiums ($6.08 per barrel) to get the purchase price. This purchase is then placed into inventory for accounting purposes and the FIFO method applied for each month of the LEAC period. Updated information that we have recently received indicates that the premium in the BP proposal is higher than originally forecasted by GPA. The proposal by BP included a premium of $5.303 per barrel for HSFO and $8.788 per barrel for low LSFO. As we will describe later the adjustments made to reflect these updated premium is not as significant as it could be, since GPA is projecting that for the early months of the GPA-proposed LEAC period much of the fuel oil will be hedged and the market price will be below the floor price of the hedge. Therefore the price that GPA pays for the volumes of Number 6 oil that are "hedged" will not change, since GPA will pay the floor price. Further discussion of the hedging program will follow below.

The FIFO methodology is shown on Schedule 6 of Attachments A1 and A2. As is shown on these schedules the FIFO price rises continuously throughout the LEAC period from $47.59 per barrel to $53.38 per barrel shown on Schedule 6 (A2=GPA) and from $47.59 per barrel to $54.24 per barrel (A1=GCG). The last purchase price that GPA had on an actual basis was a price of $46.14 per barrel for November 2006.

In September 2006, GCG recommended that the PUC approve the IFB for Number 6 oil. In our recommendation for PUC approval of the IFB for RFO we stated that it was acceptable to go out to bid, but GPA would have to provide further information to the Commission on the straight run versus cracked oil issue. The PUC approved the IFB subject to the GCG conditions in the September 28th Order. A submission to the PUC regarding the above-cited issue has only been submitted on December 28, 2006. We are currently in the process of reviewing the filing and will provide a supplemental response on the issue prior to the January 2007 Regulatory Session.

Cost of Number 2 Oil

The units that consume Number 2 oil (diesel) and the dispatch assumptions for these units are shown on Schedule 3 of Attachments A1 and A2. As indicated earlier, GPA is forecasting that only a small amount of the production required to meet demand will come from these units. GPA then forecasts the amount of oil to be purchased. GPA relies on a forecast of prices from Morgan Stanley and employs the same logic as shown in Table 3 to determine its delivered price for Number 2 oil. In response to a written IFB for Number 2 oil, GPA had only one qualified bidder (Shell). The premium that was added to the price forecast was a weighted average of $20.92 per barrel. This premium is with the 30-day supply guarantee provision that the CCU wanted. Without the 30-day guarantee supply agreement, the premium would drop to $017.89 per barrel.

The Number 2 oil IFB was not specifically included in the September PUC order. GCG had recommended tentative approval of the IFB but requested that GPA come back explaining why the cost differential for the 30-day supply was warranted. The contract went into effect on December 1, 2006. On November 14, 2006 GPA sought PUC approval of the contract. You e-mailed back that the IFB for the diesel contract was approved at the September 2006 meeting, subject to the GCG conditions. No justification for the premium for the thirty-day supply has been submitted. GPA should provide a report with justification prior to the January 2007 Regulatory Session and indicate its reasons for not notifying the PUC regarding the omission.

Other Costs

A full list of the other costs that are included in the Total cost of fuel is shown on Schedule 5 of Attachments A1 and A2. Most of the items listed are identical to those approved by the PUC in prior orders and are at similar levels that have occurred in the recent past. However, there are two items that are either new or significantly different from the past.

The first item is the hedging costs. For the period ending June 2007 (six months) GPA is estimating that it will incur additional costs of $1.5 million related to its hedging program. GPA has two contracts with Morgan Stanley that will expire in March 2007. . GPA has hedged 50% of its purchases during the period January through March 2007 and is forecasting no further hedging programs thereafter. GPA's hedging contracts have a floor that is higher than the projected market price. GPA will have to pay the floor price on that portion of supply that is "hedged" and will not get the benefit of the lower price projected for this period until the end of the hedging contracts. The current hedging program has not been beneficial to GPA. For Fiscal 2007 (beginning October 2006), GPA is projecting that the cost of the program to its ratepayers will be $7.5 million through March 2007. On an actual basis for the fiscal year ending September 2006, GPA incurred an additional $3.8 million of fuel expense for a total of $11.3 ($3.8+7.5) million as a result of setting the floor of the contract too high.

Table 5
Impact on Hedging Costs

	($000's)	
Six Months Ending September 2006	$	3,845
Three Months Ending December 2006		5,956
Three Months Ending March 2007		1,491
TOTAL Hedging Costs	$	11,292

We do not know why GPA did not highlight the hedging costs as a primary cause for the current LEAC increase, but we recommend that the PUC have GPA review the hedging program and

provide the Commission some justification for continuing and modifying the program and controls if necessary.[6]

In the April 2006 proceeding to establish the current LEAC factor, GPA has suggested inclusion of interest expense and other costs related to its Taxable Commercial Paper (TCP) program. In our report of March 28, 2006 we recommended that the PUC exclude these costs from the cost of fuel in quantifying the LEAC factor that went into effect in April 2006. The PUC order requires that the factor be established consistent with GCG's recommendations. The order further lists other items that can be included in the LEAC, but is silent regarding the TCP interest. In the other cost of fuel shown on Schedule 5 of Exhibit A2 is a line for interest expense. The PUC has always allowed for interest expense related to the line of credit used by GPA for the purchase of fuel. We recommended in the last LEAC hearing that GPA not be allowed to include interest and destination costs associated with the TCP program. The PUC approved the factor proposed by GCG and thus we believe disallowed the TCP interest expense.

For the upcoming LEAC period, GPA has included $525 thousand of interest expense related to the TCP based upon its FY2007 budget. On an actual basis, GPA charged $1.1 million of TCP interest expense to fuel expense in Fiscal 2006. GPA should have sought PUC approval for this accounting change since PUC approval to charge interest costs for TCP to fuel has not been granted. Any denial of recovery would necessitate a Journal Entry reversing the interest from TCP charged to fuel. While GPA asserts that it has used TCP to pay for fuel deliveries, there can be little doubt that cash flow problems at GPA have arisen due in large part to the large balances owed to it by GovGuam. To tie the borrowing of funds (TCP) solely to the purchase of oil is incorrect and impossible to determine. It can be argued that had GovGuam been timely in its payments, GPA would not have to borrow any funds to purchase fuel. There may be working capital issue here, but that is best reviewed during a base rate proceeding. The LEAC procedures never anticipated reviewing base rate issues. If the PUC were to make a determination that the interest on TCP represented a working capital requirement and include it in the LEAC, it would have to adjust base rates to reflect the change in the policy to recover some working capital through the LEAC.

The recording of this interest expense has an impact on the deferred fuel balances. Since GPA charged $1.1 million of this expense to fuel, the September 2006 balance of deferred fuel expense would include this sum. In addition, GPA is budgeting $1.05 million of TCP interest expense ($87.5 million per month) to other costs in FY2007. The December 31, 2006 deferred fuel balance includes about $1.4 million of TCP interest expense ($1.1 million plus three months @ $87,500). In our recommendation we have removed the actual and forecasted costs associated with the TCP from the deferred fuel balance and from the projection of fuel costs and recommend that it not be permitted as a fuel cost.

Civilian Allocation of Fuel Expense

[6] Part of the increase stems from the fact that GPA had forecasted hedging 50% of supply and actually signed contracts for 75% of supply.

The Navy does not participate in the LEAC process. Therefore an allocation of the costs of the LEAC needs to be made. For estimation purposes, GPA has assumed that 79% of the sales will be from civilians. We note that this percentage has increased slightly from the last forecast (see Table 1). We would have anticipated that with the increase of military presence on Guam that the percentage allocated to the civilian would decrease. We did not adjust the assumption, since it would require changes in the dispatch and costs. The total costs would most likely increase. The net result for civilian costs would not vary significantly.

<u>Deferred Fuel Expense</u>

One of the major drivers of the increase requested in this proceeding is the large increase in the amount of deferred fuel expense being requested by GPA. In the last LEAC proceeding GPA requested recovery of only $2 million of deferred fuel expense, although it could have sought to recover more (See table below) In this proceeding GPA is requesting that $9.8 million of deferred fuel costs be included in the LEAC had the LEAC begun January 1, 2007.

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 thereby increasing overall fuel costs. At one point in time, the under-recovery balance was approximately $13 million despite passing through millions of dollars of fuel costs associated with the use of 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. As a result of an initial Stipulation that was adopted by the PUC, GPA was allowed to recovery without restriction a total of $6 million of this deferred fuel expense.

Through subsequent stipulation and PUC approval, a method for full recovery of the additional $7 million of deferred fuel was established and approved. In simple terms, if GPA meets an efficiency standard in excess of the approved benchmark, it is entitled to recover one-half of the cost benefit in excess of the benchmark standard during the next 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 in contrast to prior performance.

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 and subsequent periods. GPA did not specifically request that a portion of the $7 million be recovered in its March 2006 LEAC filing and did not calculate the amount of the recovery of the "at risk" balance to which it was entitled. To be consistent with the stipulation, GPA should have (and did not) specifically request a portion of the $7 million of unapproved fuel costs that were subject to the benchmark test and determined the appropriate amount to be recovered in the April through September 2006 LEAC. GCG determined that if the stipulation were applied that there would only be $1.2 million of the deferred fuel expense balance left to recover as GPA's actual performance had recovered the rest.

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:[7]

Table
Under-Recovery Balances
($millions)

	Approved for Recovery	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

As indicated earlier in this report, GPA has experienced and anticipates experiencing production from its Number 6 oil-fired units well in excess of the ratio required under the terms of the stipulation (90%). GPA would have easily been able to recover the remaining balance of the at risk deferred fuel balance. Therefore, this issue of "deferred fuel at risk" should now be considered resolved.

The PUC has expressed concern regarding the cash flow of GPA and in particular the impact on delaying fuel cost recovery on the routine maintenance program of GPA. This concern is also expressed by the CCU in the minutes of the CCU meeting of November 28, 2006. At that meeting the CCU determined that an extended recovery of the deferred fuel expense was not justified and recommended that a period of twelve months be used to recovery those costs.[8]

[7] The amounts shown exclude any additional under- or over-recovery amounts.

[8] The LEAC filing has a logic error in the assumptions that actually results in an 11 month recovery period rather than 12.

In its August filing that requested a deferral in increasing the LEAC factor, GPA projected a deferred fuel balance as of September 30, 2006 of $7.4 million with the balance rising to $10.1 million as of December 31, 2006. These balances were grossly underestimated. The deferred fuel balance as of September 30, 2006 was $9.8 million and the December 2006 is now estimated to be $17.6 million. GCG agrees that extending the recovery of the deferred fuel expense over an extended period of time is unwarranted, especially during a period when GPA has become very efficient in maintaining and dispatching the lower-cost units. GCG opposes amortizing these deferred fuel balances over a longer period of time.

Losses and Uses

The driving assumptions that determine how much production GPA requires in any period are a function of the sales for that period. In addition, GPA must estimate the losses incurred between the plant and the customer. This is referred to as line losses. Line loss may represent accounting problems, capacitor problems, theft and conduction.

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 line losses. To our knowledge, GPA has never filed a quarterly report unless requested through discovery GPA should file an explanation for the lack of reporting prior to the January regulatory session. Recent data appears to indicate that GPA is having some success in reducing its line losses as shown. A full explanation of the potential cost/benefit and approaches to reducing losses and an appropriate top level quarterly submission to the PUC on these losses is contained in Exhibit B.

Adjusting the LEAC timing

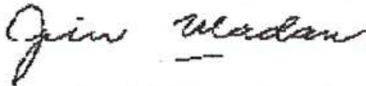
As we indicated earlier, GCG is not recommending adjusting the LEAC periods and is recommending that the proposed factor be maintained through September 30, 2007, at which time a new six-month factor would be proposed by GPA and reviewed by the PUC.

In its filing, GPA states that the reason for the requested change in the LEAC periods is Guam politics. GPA states that August filings would be reviewed shortly before general elections or during

the "political" season. The PUC should not be concerned with the politics of any increase, but rather with whether the increase is warranted and the ratepayer is provided the protection of the investigation of the proposed rates.

The LEAC was originally designed to be coincident with the fiscal year, i.e. six-months beginning October (the beginning of the fiscal year) and six-months ending September (the end of the fiscal year). While it is true that any six-month period would result in fuel cost recovery, it is likewise true that political outcries can and do occur anytime during the year. The PUC was established so as not to be subject to the vagaries of political intervention and political pressures. In other words, the responsibility of the PUC is to take politics out of ratemaking. Therefore, there is no rationale for adjusting the LEAC periods. 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

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Edward R. Margerison
Jean Dorrell

January 24, 2007

Harry M. Boertzel
Administrative Law Judge
Public Utilities Commission of Guam
Suite 401, GCIC Building
Post Office Box 862
Hagatna, Guam 96932

Subject: GPA Regulatory Asset – Docket 04-04 GPA General Matters

Dear Mr. Boertzel:

This letter is in response to Guam Power Authority's (GPA) recent filing with the Public Utilities Commission (PUC or Commission) requesting the authority to create a regulatory asset to be recovered through the self-insurance surcharge. At the time of the filing and presentation to the Consolidated Commission on Utilities (CCU) the estimate of un-recovered costs related to various typhoons and earthquakes after the year 2000 was estimated to be $13.7 million.[1]

The original surcharge was developed in December 1992 (Docket 92-01). The reason that the surcharge was established at that time and the insurance fund "capped" at $2,500,500 was the fact that the Transmission and Distribution insurance deductible was $2,500,000, therefore providing GPA access to $2,500,000 if available in the fund at the time of a typhoon. After a permitted withdrawal the fund was permitted to build up again. The remaining damages would then be largely recovered from the Federal Emergency Management Administration (FEMA) and GPA's insurance carrier. The surcharge was originally limited to Transmission and Distribution (T&D) facilities.

In an order on March 3, 1995, an amendment was issued to the original order permitting recoveries on non T&D assets as follows:

[1] After a review of the cost amounts that were filed, GPA revised the estimate downward to $12.4 million.

9. Paragraph (c) of the Commission's December 30, 1992 order in Docket 92-001 is amended to read:

> c. Account proceeds, including accrued interest, shall be used to cover the costs (including labor) of replacing or of repairing uninsured damage to transmission and distribution and other plant assets which exceeds $50,000.00 per occurrence.

Subsequent to the original petition and corrected filing in their proceeding, GPA has provided us with yet another calculation of its position of the potential recovery from the self insurance reserve. The following table summarizes the three different calculations of the total costs requested to be recovered either through FEMA reimbursement or through the self insurance reserve:

	Recent filed	Filed	Corrected [1]
Pongsonga	$28,183,533	$ 27,815,772	$27,815,772
Chata'an	10,269,739	4,797,401	4,797,400
Earthquake 02	122,287	122,287	122,287
Earthquake 01	360,999	415,100	415,100
Chaba	537,805	330,851	330,851
Halong	365,657	119,692	119,692
Nockten	101,394	3,090	3,090
Tingting	379,460	245,876	245,876
Talsa	4,827	5,810	5,810
	$40,325,701	$ 33,855,879	$33,855,879

We have not had the opportunity to determine the cause of the differences in the most recent calculations. With the most recent calculation, GPA shows that $5.003 million has been with drawn from the self insurance fund cumulatively and $20.965 million has been received through FEMA reimbursement. This would leave $14.356 million to be potentially recovered through the self insurance fund as requested by GPA.

GPA's request in this proceeding raises several significant issues:

1. Given that the cumulative FEMA reimbursement is approximately $20.965 million, and further given that FEMA reimbursements have generally been 90% of the FEMA determined cost allowable for reimbursement, the total FEMA determined cost allowable for reimbursement is $23.3 million. The most recent cost presented by GPA of $40.3 million requested to be recovered through FEMA and the self insurance reserve contains approximately $17 million of costs that have been disallowed by FEMA.

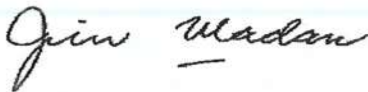
2. GPA is requesting a regulatory commitment, through the establishment of a regulatory asset, that GPA is authorized to recover these claims containing $17 million of costs that have been disallowed by FEMA through the self-insurance reserve account.

Given the significance of the amounts involved we believe that there is a clear duty to perform due diligence of the GPA claims before imposing the burden of reimbursement on ratepayers. We recommend the following procedure going forward:

1. The PUC should determine as a threshold issue whether the total cost for reimbursement related for uninsured damage should be limited to the FEMA determined amounts or some other amount. If the amount is not the FEMA determined amount then the effort and expense in determining the prudent amount for reimbursement from ratepayers will be significant.
2. GPA should make a filing on its position on the first point above. In the event that GPA recommends that a GPA determined amount of the estimate of cost damage is appropriate then GPA should provide a complete filing with the necessary computation and workpapers supporting the difference in amount between that determined by FEMA and that determined by GPA. We recommend that such a filing be made by April 1, 2007. Upon receipt of the filing a determination should then be made of the appropriate response time for GCG.
3. GPA should not be permitted any further access to self insurance reserve funds for the events under review as the amounts already withdrawn exceed the FEMA determined cost cap.
4. We note that there does not currently exist any requirement for GPA to notify and request from the PUC permission to access the self insurance reserve and to make periodic reports. A protocol for this process should be proposed in the April 1, 2007 filing.
5. GCG also believes that the caps set for the self insurance reserve and the funding rate should be reviewed and updated if necessary. GPA should address this issue in the April 1. 2007 filing.

If I can be of further assistance, please do not hesitate to contact me.

Cordially,



Jamshed K. Madan

cc: William J. Blair, Esq.
Joacquin "Kin" Flores, GM
Randall Wiegand, CFO
Graham Boetha, Esq.

BEFORE THE GUAM PUBLIC UTLITIES COMMISSION

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

DOCKET 06-2

Order

The purpose of this Order is to respond to the Attorney General of Guam's January 24, 2007 request[1] for the Guam Public Utilities Commission's *[PUC]* position on issues regarding the Government of Guam's *[Government]* compliance with its obligations as defendant under the *Consent Decree* in District Court of Guam *[District Court]* Civil Case 02-22 *[USA v. Government of Guam]*. The Attorney General serves as counsel for the Government in this proceeding. It is PUC's understanding that this Order may serve some purpose in pending enforcement proceedings now before the District Court regarding the *Consent Decree*.

PUC finds itself in the anomalous situation of attempting to regulate the rates of a line department of the Government, which is the defendant in Federal enforcement proceedings. At PUC's direction, its regulatory consultant has conducted two recent audit reviews[2] of: a] the events and circumstances, which have caused the Government to default in its obligations under the *Consent Decree*; and b] the remedial action, which is necessary to empower the Government to meet its obligations under the Consent Decree in a timely manner.

Findings and Recommendations

After careful review of the GCG reports and the record in this docket, including PUC's September 28, 2006 Order and in response to the Attorney General's request, PUC makes the following findings and recommendations, which are

[1] On January 24, 2007 the Attorney General's office *[Helen Kennedy, Esq.]* requested PUC's position on the following: "*a] A list of time frames PUC needs to review and approve any financing as well as contracts relating to the Landfill, Ordot Closure and the Household Hazardous Waste Facility; b] A list of prerequisites [for] accomplishment by DPW before PUC will approve rate increases to cover the construction costs [e.g. changes in legislation]; and c] PUC's position, from the exercise of its powers and duties, as to significant changes in factual or legal circumstance since February 11, 2004, the date the Court entered the Consent Decree.*"

[2] Georgetown Consulting Group [GCG] Audit Report dated September 2006 and GCG Update Report dated January 5, 2007. The Update Report is enclosed as ***Attachment A.***

relevant, both to PUC's ability to discharge its ratemaking responsibilities and to the Government's ability to discharge its responsibilities under the Consent Decree.

1. *Public Corporation.*

Finding. The Solid Waste Division of the Department of Public Works *[SWM]* is incapable, due to handicaps incident to its status as a line agency[3], of billing and collecting the revenue necessary to meet the financial obligation required to fund procurements mandated by the Consent Decree. SWM is also incapable, due to these handicaps, of complying with the Consent Decree operational mandates.

Recommendation: The District Court should order and direct the Government, within 60 days to enact legislation to reconstitute SWM as a public corporation *[Corporation]* under the oversight of the Consolidated Commission on Utilities [CCU][4]. This legislation should include the Corporation within the definition of *"public utility"* in PUC's enabling legislation [12 GCA 12000(a)]. This recommendation reflects the Government's public policy.[5] GWA's progress under the District Court's October 19, 2006 *Amended Stipulated Order* in Civil Case

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[3] These handicaps include: a] the fragmentation of operational and governing authority among the Management Team established by Executive Order 2006-12 *[Consent Decree administration]*; the Department of Public Works' director *[solid waste operations]*; the Department of Administration *[billing and financial management]*; the Attorney General's Office *[legal]*; the Governor's office *[policy, revenue transfer authority and contract authority]*; and the Legislature *[policy and appropriation power]*; b] lack of adequate personnel, systems and resources to manage and operate waste collection and landfill duties; c] and rate revenues being subject to appropriation and Executive transfer for other purposes.

[4] Several benefits would immediately flow from this recommendation: a] governing authority and Decree compliance responsibility would be consolidated in a single commission; b] CCU has proven its ability to secure the revenue bond financing, which is necessary to comply a with the Consent Decree; c] CCU has in place a seasoned team of managers, who could be tasked with overseeing the performance of the tasks recommended in this Order; d] CCU could draw upon the legal, financial, managerial and operational resources of sister utilities *[Guam Power Authority [GPA] and Guam Waterworks Authority [GWA]]* and its team of outside consultants in empowering the Corporation to establish itself as a functioning utility - such collaborations are already occurring between GPA and GWA; and e]the Corporation's rate revenues would not be subject to appropriation or executive transfer for unrelated purposes. The key benefits discussed in subparagraphs (b), (c), and (d) above would not be available were the Government to reconstitute SWM as a public corporation with a separate governing board other than CCU.

[5]Pursuant to 10 GCA 51103(a), the Guam Environmental Protection Agency adopted a 2006 *Solid Waste Management Plan*, which recommends that SWM be re-established as a public corporation under CCU. The Plan was filed with the Legislature on October 2, 2006 pursuant to 10 GCA 51119(a)(1).

02-35 *[USA v. Guam Waterworks Authority]* confirms the wisdom of empowering a public corporation, under CCU's governance, with financing court mandated capital projects with revenue bonds. This successful model should be applied to SWM.

2. ***Revenue bonding.***

Finding. Over the past two years, the Government's financial advisors have consistently advised it that revenue bonds are the most economic and effective means of financing the Government's obligations under the Consent Decree[6]. The Government currently appears to be reconsidering this advice[7]. Financing must be in place before procurements can be finalized for the capital projects mandated by the Consent Decree.

Recommendation. The District Court should order and direct that the legislation, which establishes the Corporation also empower and authorize it to secure revenue bond financing for Consent Decree capital projects[8]. The Court should further direct that the Corporation should: a] within 70 days of its creation petition PUC for approval of the revenue bonds and for the use of bond proceeds[9] and PUC should act within 70 days on such filing; and b] upon the issuance of PUC's order and with the assistance of the Government's bond counsel, underwriters and financial consultants undertake all reasonable steps necessary to secure revenue bonding as the earliest possible date but in no event later than 120 days after PUC's order. PUC's order should contain customary assurances that the Corporation will be awarded rate relief, which is adequate to enable it to comply with its Indenture obligations.

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[6]*See* DPW's October 2004 *Landfill Financial Plan*, referenced on page 4 of the GCG Update Report *[Attachment A]* and the uniform advice of the Government's financial advisors, as recounted in the Update Report at page 4.

[7]See, the Government of Guam's December 15, 2006 *Response to the United States' Concerns Raised in its Request for a Status Conference* in District Court Civil Case No. 02-22 at pages 8 and 9.

[8]Guam Public Law 28-71, which authorized GWA to secure revenue bond financing, is a model for this proposed legislation.

[9]This recommendation is consistent with the District Court's October 19, 2006 Amended Stipulated Order in *USA v. Guam Waterworks Authority [Civil Case 02-35] [section 30]*, which directs that PUC approve GWA's financial plan for complying with the Stipulated Order. In PUC's experience with revenue bond financing for GPA and GWA, bond counsel requests that PUC approve the bond documents, costs of issuance and commit to providing adequate rate revenues to enable the utility to meet Indenture obligations. In addition, PUC under its contract review authority, reviews and approves the proposed use of bond proceeds.

3. *Residential and commercial collection service.*

Finding. The Corporation, under CCU's oversight, must restructure its billing and collection system and stabilize its residential and commercial service. These immediate reforms are essential to normalize the Corporation's revenue stream, which must support its revenue bond obligations.

Recommendation. The District Court should order and direct that the Corporation's enabling legislation should empower it, subject to PUC review and approval: a] to restructure the Corporation's business relationship with the commercial haulers; b] to either privatize its billing and collection or establish a protocol under which GPA would undertake this responsibility; and c] privatize residential collection for the entire island. Within 90 days of its creation, the Corporation should be ordered to file with PUC a petition for approval of procurement documents and plans for implementing these recommendations. PUC should complete its review of this plan within 70 days of its filing.

4. *Consent Decree Projects.*

Finding. The procurement process for the capital projects mandated by the Consent Decree[10] would be substantially expedited by centralizing this responsibility in the Corporation.

Recommendation. The District Court should order that the Corporation's preparation of the Consent Decree procurement documents and regulatory review of the documents[11] will track the timeline for regulatory review of the revenue bond financing *[i.e., a petition for regulatory review should be filed within 70 days of corporate creation and PUC action on the petition within 70 days of filing.]*

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[10] These procurements include: a] the closure of the Ordot landfill; b] the construction and operation of the Layon landfill; c] the household hazardous waste facility; and d] the collateral procurements to privatize residential collection and billing and collection.

[11] PUC by order dated 10/27/05 in Docket 05-9 *[copy enclosed as **Attachment B**]* has established a protocol for regulatory review and approval of SWM procurements and financial obligations in excess of $50,000.

5. *SWM Rate Relief.*

Finding. In its October 27, 2005 Rate Order in Docket 05-9, PUC expressed its intent to gradually increase SWM's rates in preparation for what the Government assured PUC was the imminent issuance of revenue bonds. The Government's effort to secure this financing has suffered one delay after another. As a result, Consent Decree related procurements have also stalled without a source of revenues to fund them. SWM's inability to collect more than 50% of its residential billings makes it manifestly unfair to raise the rates of the 50% of residential customers who pay for collection service. Moreover, the exposure of SWM rate revenues to Executive transfer for purposes unrelated to solid waste management also causes PUC serious concern[12]. PUC finds these events to be barriers to further ratemaking for SWM.

Recommendation. It is essential that the District Court remove these barriers through the recommendations contained herein in order for Consent Decree compliance to occur.

6. *Layon Landfill Site.*

Finding. PUC does not have in its possession adequate information in order to make specific findings with regard to the status of the Layon landfill site. PUC is informed that the Layon site is not owned by the Government. This presents a substantial barrier to Consent Decree compliance, which must be promptly resolved.

Recommendation. The Corporation should be empowered in its enabling legislation, in the same manner as GPA and GWA, with the power of eminent domain[13]. The District Court should establish a reasonable deadline by which the Corporation must either have negotiated the acquisition and use of the Layon site, subject to PUC review and approval under its contract review protocol, or have initiated eminent domain proceedings for the site under 21 GCA 15101 et. sec.

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[12] *See* January 19, 2007 memorandum of law entitled *Effect of 2007 Budget Bill on Integrity of Solid Waste Operating Fund,* which is an appendix to Georgetown's Update Report - *Attachment A* to this Order. PUC anticipates that the barrier caused by Executive transfer authority would be resolved by legislation, which establishes the Corporation.

[13] GWA is given the power of eminent domain under 12 GCA 14104(b). GPA is given the power of eminent domain under 12 GCA 8104(2).

Ordering Provisions

After careful review, 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. The findings and recommendations, as set forth above, are adopted.

2. PUC is prepared, within the scope of its enabling legislation, to provide any assistance and to perform any task as may be assigned to it by the District Court under the Consent Decree.

3. A copy of this Order shall be transmitted to the Attorney General of Guam and to the United States Attorney.

Dated this 1st day of February 2007.

Terrence M. Brooks

Joseph M. McDonald

Edward C. Crisostomo

Filomena M. Cantoria

Rowena E. Perez

Jeffrey C. Johnson

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January 5, 2007

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

Re: Docket 06-2 (Focused Management Audit of Department of Public Works' Solid Waste Management Division Billing and Collection System).

Dear ALJ Boertzel:

This letter is in response to your December 14, 2006 request that Georgetown Consulting Group (GCG) provide the Guam Public Utilities Commission (PUC) with an update on the findings contained in GCG's September 2006 audit report (Audit) of the Department of Public Works' (DPW) solid waste management division (SWM)[1]. This update is based upon GCG's November 2006 on-site visit with SWM.

Both the Audit and this update focus on GovGuam's inability to meet the requirements of the Consent Decree dated February 2, 2004 in Federal District Court Civil Case 02-22. Although the Government of Guam (GovGuam) is the defendant this proceeding, it delegated to SWM and a management team created by Executive Order 2006-12 the duty of complying with the Consent Decree, including the closure of the Ordot dump and the construction and operation of a new landfill.[2] It is estimated that the capital cost of these mandated projects is in the range of $90-100 million dollars. GovGuam's failure to meet Consent Decree compliance timelines caused the Federal government to recently commence an enforcement proceeding before the District Court, which is currently in progress.

Within the context of the Consent Decree, PUC is directed by Guam law[3] to establish just and reasonable rates for residential waste collection and landfill dumping ("tipping fees"), which are

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[1]PUC's 9/28/06 Order in Docket 06-2 ***(Attachment A)*** directed its administrative law judge (ALJ) to oversee GCG's preparation of a rate proceeding to address SWM's FY07 revenue requirements. After reviewing SWM's 12/5/06 request that the rate proceeding be postponed, ALJ, in consultation with GCG, cancelled the proceeding by letter dated 12/14/06 ***(Attachment B)*** and directed GCG to use the information, which it had collected during its November on-site visit, as a basis for this update letter.

[2] In this letter report, reference is often made to GovGuam as it is the government rather than either its line agency Department of Public Works or the operational division thereof Solid Waste Management. GovGuam is the entity that will prepare and sign contracts as it is the defendant in District Court Civil Case No. 02-22.

[3]10 GCA section 51118.

adequate (with grants and other revenue sources) to fund GovGuam's compliance with the Consent Decree. The Audit found that SWM as currently organized[4] was incapable of billing, collecting and managing the expenditure of SWM rate revenues in keeping with normal business practices that would assure investors in the required capital program associated with compliance with the Consent Decree. This letter enforces this Audit finding. An effective SWM billing and collection system is central to GovGuam's ability to comply with the Consent Decree[5].

SUMMARY OF UPDATED FINDINGS

As is further discussed in the balance of this letter, GCG respectfully submits the following updated findings to PUC:

1. GCG expresses serious concern that GovGuam is revisiting the October 2004 finding in DPW's Landfill Financial Plan[6] that special activity bonding is the preferred means of financing the $90 million dollar cost of Consent Decree compliance. In its December 5, 2006 letter to you, DPW informed PUC that GovGuam now intends to solicit private interest in financing the construction and operation of the Consent Decree projects. GovGuam's December 15, 2006 Response in the Federal enforcement proceeding states that "some legislators appear to prefer private financing for the Layon Landfill development, even though GEDCA's advisor recommends a revenue bond as more economical to Govguam and the ratepayers. Consequently, DPW is now also pursuing private financing for the Layon Landfill construction."[7] Based upon GCG's observations, GovGuam's two year effort to obtain special activity bond financing has been marred by indecision and a lack of urgency and leadership to address operational and organizational problems, which has frustrated the financial advisors tasked assisting GovGuam in securing it. Under PUC's October 27, 2005 Order in Docket 05-9, GovGuam *(DPW)* must obtain PUC approval of the means (private or bond financing) by which it will obtain the funding necessary for Consent Decree compliance[8]. To date, GovGuam has not petitioned PUC to review and approve any financing for Consent Decree compliance. In addition, legislation must be enacted to authorize this financing. There is a

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[4] See the Audit for recommendations to address these critical issues.

[5] In GovGuam's December 15, 2006 *Response to the United States' Concerns Raised in its Request for a Status Conference,* District Court of Guam Civil Case No. 02-22 *(Response)*at page 8, it has asserted that PUC's focus on the immediate need to resolve substantial deficiencies in SWM's billing and collection system and on the privatization of residential waste collection is distracting the Government from its ability to meet Consent Decree timelines. GCG respectfully disagrees. The recommendation to fix a non-functioning billing and collection system, with which the Government intends to repay over $90 million dollars of debt necessary for Decree compliance, is not a "distraction" but the only hope there is to provide for access to the capital markets to fund the necessary SO projects.

[6] This document can be reviewed at *guamlandfill.org.* Select public documents from public link menu.

[7] *See* Govguam's Response at pages 8 and 9.

[8]As with the other regulated utilities, PUC adopted a contract review protocol by Order dated 10/27/05, under which GovGuam (DPW?) must obtain PUC approval before undertaking procurement activities, including borrowing, in excess of $50,000. This Order is supported by a Stipulation dated 10/17/05, signed by authorized representatives of the Department of Public Works, the Attorney General of Guam and GCG. The reason for this regulatory review is that rate revenues will be expected to fund such procurements and the repayment of the financing. Accordingly, to protect the interests of ratepayers, PUC must determine that the financing alternative selected by the government is reasonable and prudent.

compelling need for the legislative and executive branches to join in a unified effort to promptly secure this financing.

2. In its May 2, 2006 letter to the 28th Guam Legislature[9], PUC expressed its serious concern whether the Department of Public Works, a GovGuam line agency, had adequate authority and resources to comply with the covenants and requirements of revenue bonds. PUC recommended that legislation be enacted to transform SWM into a public corporation under the oversight of the Consolidated Commission on Utilities. The Audit strongly supported this recommendation, which is also embodied in the Guam Environmental Protection Agency's 2006 Guam Integrated Solid Waste Management Plan. In its September 28, 2006 Order, PUC offered its assistance, upon request, to propose specific legislation, which is necessary to implement key Audit recommendations, including the transformation of SWM into a public corporation[10]. No such request has been received by PUC. It is essential that the legislative and executive branches join in an expedited collaborative effort to implement the Audit recommendations for remedial legislation. This legislation is indispensable to enable GovGuam to meet the financial obligations incident to Consent Decree compliance.

3. GCC recommends that PUC defer any further SWM rate proceedings until findings 1 and 2 above are addressed by the executive and legislative branches. SWM's current rate revenues are derived 41% from residential customers with the remainder coming from the tipping fees paid by commercial haulers and "self haul" customers. As is discussed later in this letter, SWM currently only collects 50% of its residential billings. GCG concludes that it would be manifestly unfair and unreasonable to increase the collection fees for the 50% of residential customers who actually pay for service[11], without first: a) fixing SWM's billing and collection system and b) privatizing island-wide residential collection service. GCG is encouraged by draft procurement documents, not yet filed for PUC review, by which GovGuam would procure services to implement a prepaid decal system to bill and collect for residential collection service and to privatize residential service. SWM should file a petition for PUC review of these procurements at the earliest possible date. The Audit also establishes that flawed legislation, under which commercial haulers serve as government agents for the collection of commercial tipping fees without any duty or authority to enforce collection, must be fixed before it would be reasonable to increase tipping fees. PUC's first SWM rate proceeding (October 2005) was grounded on the premise that rates needed to be gradually increased to prepare for the impact of revenue bonding. GCG submits that, in light of the GovGuam's reconsideration of its decision to pursue revenue bonding, further rate proceedings should await PUC's review and approval of the means of financing, which may have a substantial bearing on the level and timing of future rate increases.

4. PUC should continue to offer its support and cooperation to GovGuam in its efforts to comply with Consent Decree requirements. Subject to the GovGuam's commitment (either voluntarily or under judicial order) to promptly address findings 1 and 2 above, PUC should support

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[9] ***Attachment C.***

[10] ***Attachment D*** summarizes this proposed remedial legislation.

[11] Even with improved SWM collection rates, the audit estimated that residential rates would increase 220% and tipping would increase 380% to cover anticipated expenses related to a $90 million dollar bond issue and the implementation of required SO projects.

GovGuam's request in ongoing District Court enforcement proceedings that the timelines in the Consent Decree be reasonably amended.

We also observe that in contrast to the GWA Stipulated Order, PUC is not tasked by the DPW Consent Decree with reviewing and approving the Financial Plan, by which GovGuam will meet its duties under the Consent Decree. We recommend that PUC communicate to USEPA its availability to provide this service by PUC order in this proceeding.

This letter will now review in greater detail GCG's findings during its recent visit with SWM.

Detailed findings

1. Financing of Consent Decree compliance.

During our recent visit with SWM, a decision was made to defer filing an application for a rate increase that had tentatively been scheduled for hearing at the January 2007 Regulatory Session. One of the reasons for the requested deferral was that SWM informed us that bond financing of Consent Decree projects is not a certainty and that other options were now being evaluated. Bond financing was the basis of our previous recommendations to increase revenues. Alternative financing measures are being evaluated by SWM and any final decision would have to be reviewed and approved by the PUC for the costs and benefits. Prior to our receiving this information, we were not aware of any other alternatives under consideration. In fact, in the Landfill Financial Plan available on the website (www.guamlandfill.org) prepared by Duenas & Associates and Ernst & Young, LLP in October 2004, the following conclusion is reached:

> It would appear that the preferred alternative for financing the sanitary landfill and costs associated with the closure of the Ordot dump would be the private activity bond. Assuming qualification of the bond issue and approval by the Guam Legislature, it would be anticipated that the bond issue can be accomplished within 90 to 120 days. As noted above, successful financing through the private activity bonds is dependent on the Governor of Guam and the Guam Legislature

We contacted SWM financial advisor and potential bond underwriter, UBS and Bank of America (BOA), to investigate whether they were aware of any alternative to bond financing that was under consideration. They indicated to us that they did not have any such information. Based on our analysis and our conversations with UBS and BOA we believe that any alternative to bond financing and project structure would have to show a net benefit over the following benefits that bond financing would offer:

- Benefits arising from the issuance providing tax free interest to investors
- Potential additional charges by the private investor to offset the risks of assuming a privatized structure
- Potential loss of control of operations assuming a privatized structure
- Potential request for a GovGuam guarantee of payment given SWM's poor history of billing and collection

- Potential delay in gearing up for an alternate project structure and means of financing[12]
- Potential consideration of the amount privately financed as being GovGuam debt in any financial evaluation

Given that all of the prior planning studies relied upon bond financing and the most recent advice of SWM financial advisors does not include evaluating private financing and changing fundamentally the structure of the project, we view this potential change of course as having a considerable risk for delay and not meeting an adequate cost-benefit threshold. Since we are unaware of the basis on which this alternative is being considered, we are unable to provide further analysis. SWM should be required to show why this change in course is prudent, upon whose advice it is being considered and whether and upon what basis it has the potential to meet a cost-benefit standard and overcome the concerns listed above.

We caution again that any plan will be subject to the fundamental reality that SWM must get into a position that those customers who are paying for service receive good service and those customers that do not pay for service are cut off from further service until payment is made. Our recommendations to accomplish this are contained in the Audit.

2. Financial update.

In this section we provide an update on various financial issues discussed in the prior Auditor in the prior rate proceeding.

a. Examination of Accounts Receivable

In our Audit Report to the PUC we highlighted what appeared to be a significant problem regarding collections not only from the residential customers, but from large commercial and other haulers. The following table provides an update of the level of receivables being carried by SWM and shows that this chronic problem remains:

[12] A substantial amount of work has already been completed assuming an initial revenue bond issue of $90 – 95 million.

Table 1
Accounts Receivable Gross

Month Ending	Large Commercial	Other Commercial	Residential	TOTAL
September 30, 2005	3,255,241	222,761	6,305,891	9,783,893
October 31, 2005	3,271,957	226,853	6,429,969	9,928,779
November 30, 2005	3,099,224	230,819	6,605,100	9,935,143
December 31, 2005	3,141,201	233,290	6,804,152	10,178,643
January 31, 2006	3,076,025	237,605	7,004,435	10,318,065
February 28, 2006	3,119,295	232,262	7,208,661	10,560,218
March 31, 2006	3,177,542	234,567	7,420,362	10,832,471
April 30, 2006	3,234,900	236,982	7,495,591	10,967,473
May 31, 2006	3,216,904	236,527	7,454,734	10,908,165
June 30, 2006	3,197,945	239,948	7,593,970	11,031,863
July 31, 2006	3,128,425	241,448	7,577,267	10,947,141
August 31, 2006	3,203,980	242,597	7,530,771	10,977,348
September 30, 2006	3,287,960	260,760	7,677,862	11,226,582

We inquired of the Department of Administration (DOA) whether or not these amounts were collectible, especially from the large commercial and other commercial haulers.[13] DOA provided evidence that, according to its records, there was an allowance for bad debt of nearly $9 million against this amount – i.e. over 80% could have problems being collected. The gross balances equate to almost two year's worth of revenues, making collection of these amounts difficult if not impossible. Current annual revenues are slightly less than $6 million.

In addition to obtaining account information from DOA, we met with the Public Auditor (PA) during our visit. In the last report filed with the Commission, GCG suggested that the PUC and SWM contact the PA to have her review the commercial accounts. We discussed the collection problem with the PA and she agreed to consider use of her time and efforts for follow-up on the commercial accounts, particularly the large commercial accounts. SWM was to meet with her again to discuss the matter further, but we do not know whether or not this meeting has occurred.

[13] At the current time, DOA does the bookkeeping for SWM.

DOA indicated that of the $3.3 million of outstanding receivables for large commercial customers, $1.7 million were for receivables in excess of 120 days. With the Ordot landfill facility a necessary component of the private haulers to conduct their business, we do not understand why this receivable was allowed to reach this magnitude. The Ordot facility should have been closed to haulers with large outstanding receivables, or to those customers of the haulers that have not paid their bills, until some arrangement had been made to pay down the large balance.

DOA also provided a detailed schedule of the gross balance of accounts receivable during our on-site review. That schedule shows that within the large balance of AR in excess of 120 days is an amount of $1.3 million due from one provider, Commercial Sanitation Systems. It is our understanding that key employees of this commercial hauler have been indicted for fraud and bribery related to dumping at the Ordot facility. We are unclear as to whether the AG is seeking recovery of this amount from the hauler. SWM management was going to meet with the AG (at the suggestion of the PA), but we do not know at this time whether such meeting has occurred or if management has even made an appointment to meet with the AG.

b. Results for Fiscal 2006 and Cash Balances

Attached to this testimony is an attachment (**Attachment E**) that contains two exhibits. The first exhibit shows the accrued revenues and the collection of those revenues for the year ending September 2006. As can be seen in the exhibit, the overall collection ratio was 80% of cash to accrued revenues. This is an improvement over the period when the PUC last adjusted rates (November 2005). The current rates were approved by the PUC using an assumption that SWM would collect about 96% of its commercial hauling revenues[14] and 70% of its residential revenues. While the Large Commercial collection ratio was about 96% on an actual basis (the level assumed by the PUC in setting rates), the residential collection ratio was only 50%, which is lower than the assumption used to set the current rates (albeit improved over prior periods) when the collection ratio was approximately 30%. This means that SWM would have less revenue than the PUC assumed in setting rates at a reasonable collection level. Even though the current level of residential collection has shown an improvement, it is still abysmal. No ongoing business could survive with a collection ratio of 50%. The inherent unfairness of requiring half of the customers to support the entire residential population should be obvious. This level of collection could not support bond financing – or any other form of financing.

The following table shows the "net" revenues achieved over the entire fiscal year 2006 and compares that with the net revenues assumed by the PUC when setting rates in November 2005 for FY 2006:

[14] Weight Average of Large and Other Commercial Haulers collection ratio.

Table 2
SWM Net Revenue
($000's)

	PUC Forecast	SWM Actual
Commercial Tipping Fees	$ 3,397	$ 3,610
Allowance For Bad Debt	(170)	(160)
Residential Hauling Fees	2,495	2,765
Allowance For Bad Debt	(748)	(1,382)
Self Hauling Fees	733	266
Total Revenues	$ 5,706	$ 5,100

The shortfall between the PUC forecasted revenues for Fiscal 2006 and the actual SWM revenues for Fiscal 2006 can only be balanced by either a decrease in actual Fiscal 2006 expenditures or by transferring other funds in the general fund to the SWOF account. In other words, while SWM had budgeted expenses of $5.7 million based on expected revenues, only $5.1 million of expenses could have been funded with actual revenues. We were informed by DOA that during Fiscal 2006 SWM only expended approximately $4.7 million for operational expenses. That implies that SWM "under spent" its 2006 expense budget. We do not understand the reasons for this under spending, especially when the Director constantly indicates that he is short of resources.[15] SWM personnel indicate that there was "no variance" in the actual level of 2006 expenses compared to budget. We have not analyzed this conflict further. At the end of the fiscal year 2006, SWM had approximately $840 thousand of cash recognized on its balance sheet. This represents an increase over the Fiscal Year-end 2005 balance of cash of about $515 thousand or a net increase of $325 thousand on a cash basis.

SWM did comply with the PUC order and establish a bank account into which DOA would deposit and escrow funds, as ordered by the PUC in the last rate proceeding. This reserve or escrow account was set up in the Bank of Guam. We were provided a copy of the bank statement as of September 30, 2006 showing that this account had a balance of $575,657 on deposit. We have appended Exhibit 2 of ***Attachment E*** to this testimony. That exhibit shows that at the end of September 2006, DPW should have a total $716 thousand in reserve and not the $584 thousand. Therefore, DOA needs to transfer the difference $132 thousand to the account to complete the required deposits through September 2006. There was verbal acceptance of our proposed computation, but we still do not have an official acceptance.

c. Residential Collection and Hauling

The PUC Order required that SWM accelerate the process that would lead to the privatization of residential collection and hauling for the entire island. This could make a profound difference in the entire residential participation in the billing and collection process. SWM was supposed to submit to the PUC by October 2006 a list of any additional required

[15] We also enquired of the director statements regarding to not having the budget to deal with the recent fire at the dump. We understand this statement to mean that the budget did not specifically allocate expenses for such an incident. As indicated later in this section SWM had cash balance to over $800,000 at the end of FY 2006.

resources that it would need to fully privatize this portion of SWM's business by July 2007. No request has been made. We assume that this means that no additional resources are required. We have recently received a nearly completed draft IFB for this project. The IFB will seek bidders for all of its proposed franchises ("Zones 1, 2 & 3). The bidder may select to bid on any one, two or all three Zones. The IFB is still in draft form and needs additional information to complete. The most significant missing piece of information is the estimate of the number of customers by Zone. This is the same informational hang-up that delays the Decal program proposal. SWM should file the IFB with the PUC before the January 2006 session for review and approval (assuming that the bid is completed).

3. Remedial legislation.

In this section we review issues that we believe require legal intervention.

a. Use of the SWOF by the General Fund

Our counsel informs us that a conflict exists between PL28-56 which gave the PUC regulatory authority to adjust rates and that required that the SWOF used for solid waste management operations and regulatory costs and PL28-150 establishing the budget for the General Fund. The concern centers on the failure of PL28-150 to include the SWOF in the list of special funds that are exempted from the Executive branch's "use and restore" powers.. We have included our Counsel's legal opinion regarding this matter in this report (***Attachment D***).

We believe that the failure to exempt the SWOF from use for purposes other than the uses stated in PL28-56 was an inadvertent omission by the Legislature rather than an implicit attempt to repeal PL28-56. Nonetheless, GCG believes that the Commission should approach the Legislature to amend PL28-150 to exempt the SWOF from uses other than SWM operations and regulatory expenses.

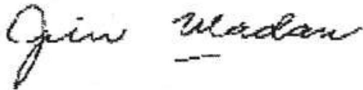
b. Other Legal Issues

There are other legal impediments that should also be addressed by the Legislature in an expedited fashion and if possible before the next rate increase is reviewed by the PUC. We have provided a brief summary of legislative changes as part of ***Attachment D*** as well our legal counsel's opinions regarding the Focused Management Audit Report that we issued in August 2006. In addition to those recommended changes we are informed by counsel that large portions of Chapter 51-Title 10 of the Guam Code Annotated were affected by the invalidation of PL24-272 by the Guam Supreme Court in Pangelinan and Wesley v. Gutierrez, 2004 Guam 16. The result is that Chapter 51 contains several gaps caused by having to delete each provision of Chapter 51 that was enacted into law by PL24-272 and not amended by subsequent legislation. In addition, there are numerous existing statutes that conflict with the plans developed by the Governor's Ordot Consent Decree Compliance Team. These plans include adopting a pre-paid decal program, creating an autonomous Solid Waste Management Authority under the auspices of the Consolidated Commission on Utilities, making commercial collectors responsible for the collection of tipping fees from their customers and floating revenue bonds to finance the tasks that are required pursuant to the Consent Decree in U.S. v. Government of Guam, District Court of Guam Case No. 02-00022. During our recent visit with SWM management, we inquired whether SWM or other members of the Consent Decree Team had created a list of proposed changes to Guam Code Annotated Title 10-Chapter 51 that would essentially make SWM an autonomous agency and permit

unencumbered management decisions regarding operations and cash management. We were informed that the parties had not yet proposed nor even drafted any such "cleansing" legislation.

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

Cordially,



Jamshed K. Madan

Cc: Larry Perez, Director, DPW
Jim Baldwin, Esq.

PUBLIC UTILITIES COMMISSION
OF GUAM

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Harry M. Boertzel
Administrative Law Judge

Lourdes R. Palomo
Administrator

RECEIVED
DATE: 5/2/06
4:30pm

May 2, 2006

VIA HAND DELIVERY
The Honorable Joann Brown
Vice Speaker, 28th Guam Legislature
Chairman, Committee on Utilities and Land
155 Hesler Street
Hagåtña, Guam 96910

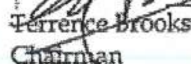
Dear Vice Speaker Brown:

During its recently concluded regulatory session, the Guam Public Utilities Commission [PUC] reviewed and approved the five recommendations contained in the enclosed April 20, 2006 report from Administrative Law Judge Boertzel. The report summarizes the challenges, which must be resolved in order to secure the financing necessary to enable the Government of Guam to comply with the Federal Consent Decree.

The purpose of this letter is to share with you PUC's serious concern whether Department of Public Works [DPW], a line agency, has adequate authority and resources to comply with the covenants and requirements, which will be imposed by the bond documents. It should be recalled that it took Guam Waterworks Authority, under the Consolidated Commission on Utilities' [CCU] governance and with a capable management team *[experienced general manager, engineer, chief financial officer and legal counsel]* almost three years to prepare itself for its first bond financing. DPW is being expected, without comparable resources or lead time, to assume the same responsibilities. These realities persuade PUC that the recommendation made in Guam Environmental Protection Agency's 2005 *Guam Integrated Solid Waste Management Plan*, that solid waste management be transferred to a public corporation under CCU's oversight, should be given serious consideration.

PUC stands ready to work with the Guam Legislature as it considers the legislation, which will be necessary to authorize the important revenue bond financing discussed in this letter.

Respectfully,



Terrence Brooks
Chairman

Attachment A
PUC Order Docket 06-02

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

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

DOCKET 06-02

ORDER

Public Law 28-56 authorizes and directs the Guam Public Utilities Commission *[PUC]* to undertake a focus management audit of the existing operations of the Department of Public Works' *[DPW]* Division of Solid Waste Management *[DSWM]*. The law provides that the audit will be funded by the *Solid Waste Operations Fund*.

In furtherance of this statutory duty, after review of the protocol used by PUC to conduct management audits of Guam Power Authority, Guam Telephone Authority and Guam Memorial Hospital Authority, 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. PUC's administrative law judge [ALJ] is authorized and directed to:

    a. Conduct a competitive selection process for the procurement of a firm to perform the audit, using a request for proposal *[RFP]*, which is crafted in consultation with the Committe created under subsection [b] below;

    b. Organize and oversee the activities of a management audit committee *[Committee]*, which shall be comprised of a DPW representative, ALJ as chair, and a representative from Georgetown Consulting Group; provided, however, that: I] DPW's failure to either appoint a Committee member or to attend Committee meetings, as scheduled by ALJ, shall not delay the Committee's business; and ii] the DPW representative shall be expected to have full authority to make recommendations on its behalf; and

    c. After consulting with the Committee, make all decisions on behalf of the Committee as required herein and under the RFP, when a consensus among the Committee members is not reached.

2. The Committee is authorized and directed to:

a. Review the proposals submitted in response to the RFP and establish an unranked list of the three best qualified offerors;

b. Interview the best qualified offers;

c. Rank the three offerors in order of their respective qualifications; and

d. Negotiate a contract with the best qualified offeror, in form as attached hereto, subject to such amendments as it may deem appropriate and necessary during the course of the negotiation, including the determination of the compensation which is deemed to be fair and reasonable, and thereafter to submit the negotiated contract to the PUC chairman for signature.

3. PUC authorizes and directs ALJ to under take the following:

a. In his capacity as Committee chairman, to oversee the audit as the duly authorized PUC representative with delegated authority to take such action as may be reasonably necessary or appropriate in furtherance thereof

b. To keep PUC fully advised on the audit's progress and to submit the final audit report to PUC for review and approval.

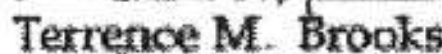
4. DPW is ordered and directed to:

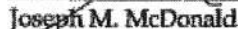
a. Pay for the auditor's fees and expenses from the Solid Waste Operations Fund in accordance with the contract terms and all other fees and expenses, which are incurred by PUC in this docket;

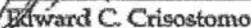
b. Provide the logistical and office support which the auditor may require during the course of the audit; and

c. Fully cooperate with the audit process under ALJ oversight.

Dated this 27th day of October 2005.


Terrence M. Brooks


Joseph M. McDonald


Edward C. Crisostomo

Rowena E. Perez

Attachment B
December 14, 2006 Letter From ALJ

PUBLIC UTILITIES COMMISSION
OF GUAM

Terrence M. Brooks

Edward C. Crisostomo
Filomena M. Cantoria
Joseph M. McDonald
Rowena E. Perez
Jeffrey C. Johnson

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Harry M. Boertzel
Administrative Law Judge

Lourdes R. Palomo
Administrator

December 14, 2006

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

RE: Docket 07-1 [SWM FY07 Rate Proceeding]

Dear Mr. Perez:

In response to your December 5, 2006 letter:

1. I am canceling the DPW rate hearing previously scheduled for January 24, 2007. Enclosed is Georgetown's December 12, 2006 letter, which supports your request, with observations and reservations. The issue of when and under what circumstances the rate proceeding should be rescheduled will be reviewed by PUC during the January 2007 regulatory session. The Georgetown rate report, previously deadlined for December 27, 2007, will now focus instead on Mr. Margerison's findings during his recent Guam visit. Georgetown principal, Jim Madan, will present this report to PUC at a multi-purpose regulatory workshop, which will be held at 6:00 p.m. on January 23, 2007.

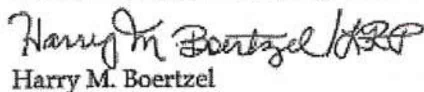
2. Your request that PUC approve the omnibus RFP *concept* mentioned in your letter is premature. DPW is required under PUC's October 27, 2005 Docket 05-9 Order *[contract review protocol]* to file with PUC the detailed information described in section 4[b] of the Order, including the full text of the proposed RFP, in support of a petition for PUC review of a proposed procurement. The Order emphasizes that DPW must obtain PUC's approval *before the procurement process begins*. PUC awaits this long overdue filing from DPW so that Georgetown can be authorized to begin its review of the omnibus RFP.

3. A SWM regulatory conference has been scheduled for 2:00 p.m. January 18, 2006 at Suite 207 GCIC Building to review the status of DPW's efforts to prepare and submit for regulatory review: a] a petition for approval of financing for Consent Decree projects; and b] a petition for approval of the omnibus RFP discussed in paragraph 2 above.

4. In its September 28, 2006 Order [Docket 06-2] PUC emphasized the importance of privatizing residential collection for the entire island by July 2007. The Order required DPW to inform PUC not later than October 15, 2006 of the additional resources it would require to successfully meet this deadline. PUC has not received any filing from DPW in response to this order.

I look forward to meeting with you on January 18, 2007 to discuss the above matters. Please let me know if there is any regulatory assistance which PUC can provide in the interim.

With best wishes for a merry Christmas and successful New Year,



Harry M. Boertzel

cc: Jim Madan, Georgetown
Terrence Brooks, Esq.

Encl: Georgetown 12/12/06 letter

Attachment C
PUC Letter to Legislature

Attachment D
Summary of Required Legislation
And Legal Memoranda

The following statutes and regulations that have identified as being problematic for the reason stated:

1. 10 GCA §51101 (enacted by invalidated statute);
2. 10 GAC §51102 (enacted by invalidated statute);
3. 10 GCA §51103(b) (enacted by invalidated statute);
4. 10 GCA §51103(c) (enacted by invalidated statute);
5. 10 GCA §51118(a) (DPW reference needs to be changed if autonomous agency created);
6. 10 GCA §51118(f) (control of Solid Waste Operating Fund);
7. 10 GCA §51118(h) (DPW reference needs to be changed if autonomous agency created);
8. 10 GCA §51118(h)(1) (GHURA low income housing criteria over-inclusive for use as residential tipping fee lifeline criteria);
9. 10 GCA §51118(l) (Governor's authority to suspend tipping fees after force majeure incompatible with pledge of revenues for revenue bond);
10. 29 GAR §2100 (enacted by invalidated statute);
11. 29 GAR §2101 (target date of January 1, 2001);
12. 29 GAR §2105(j) (billing after services provided with payment due 60 days thereafter);
13. 29 GAR §2105(m) (commercial haulers must be responsible for payment of tipping fees in order to avoid need for PUC oversight); and
14. 29 GAR §2105(n) (commercial haulers currently face no consequences if solid waste collected from customer delinquent in tipping fees is brought to landfill).

ATTACHMENT E
Financial Analysis

Exhibit 1

	Oct. 2005	Nov. 2005	Dec. 2005	Jan. 2006	Feb. 2006	Mar. 2006	Apr. 2006	May. 2006	June 2006.	July 2006.	Aug. 2006.	Sep. 2006.	YTD
	$	$	$	$	$	$	$	$	$	$	$	$	$
Commercial Billings	241,820	308,069	307,260	297,564	278,315	317,952	302,555	313,645	299,435	289,650	310,570	342,955	3,609,790
OCH Billings	8,532	8,440	7,795	8,200	4,190	5,100	5,210	5,325	7,345	5,385	6,485	8,025	80,032
Residential Billings	187,384	231,954	232,146	234,360	234,778	235,270	233,740	234,092	234,364	234,806	235,746	236,622	2,765,262
Total Billed Revenue	437,736	548,463	547,201	540,124	517,283	558,322	541,505	553,062	541,144	529,841	552,801	587,602	6,455,084
Self Haul Collections													
Ordot Landfill	9,338	13,413	11,980	12,529	11,911	12,983	12,348	17,225	12,503	14,179	14,055	16,625	159,088
Agat Transfer Station	1,644	1,377	1,750	2,100	1,980	1,630	1,430	1,675	1,510	2,290	1,400	1,830	20,616
Dededo Transfer Station	4,108	6,123	6,140	6,995	5,270	5,230	4,828	5,740	5,640	6,270	5,895	5,935	68,174
Malojloj Transfer Station	1,224	1,298	1,720	1,855	1,270	1,440	1,260	1,720	1,390	1,950	1,695	1,545	18,367
Total Revenues	454,050	570,674	568,791	563,603	537,714	579,605	561,371	579,422	562,187	554,530	575,846	613,537	6,721,329
Commercial Payments	225,104	480,802	356,283	362,740	235,015	259,705	245,197	274,283	332,760	264,554	138,550	286,311	3,461,303
OCH Payments	4,440	4,474	5,324	3,885	5,336	9,633	2,795	3,340	3,924	9,755	3,595	5,830	62,331
Residential Payments	63,306	46,823	33,092	34,077	30,552	23,969	158,511	275,055	94,878	251,509	282,252	89,541	1,383,564
Transfer Payments	16,314	22,211	21,590	23,479	20,431	21,283	19,866	26,360	21,043	24,689	23,045	25,935	266,245
Total Collections	309,164	554,310	416,289	424,181	291,334	314,589	426,369	579,037	452,605	550,507	447,442	407,616	5,173,443
Collection Success													
Commercial Haulers	93.1%	156.1%	116.0%	121.9%	84.4%	81.7%	81.0%	87.4%	111.1%	91.3%	44.6%	83.5%	95.9%
Other Commercial Haulers	52.0%	53.0%	68.3%	47.4%	127.4%	188.9%	53.6%	62.7%	53.4%	181.2%	55.4%	72.6%	77.9%
Residential Customers	33.8%	20.2%	14.3%	14.5%	13.0%	10.2%	67.8%	117.5%	40.5%	107.1%	119.7%	37.8%	50.0%
Transfer Stations	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Total Collection	70.6%	101.1%	76.1%	78.5%	56.3%	56.3%	78.7%	104.7%	83.6%	103.9%	80.9%	69.4%	80.1%

Exhibit 2

Customer Classification	Nov. 2005	Dec. 2005	Jan. 2006	Feb. 2006	Mar. 2006	Apr. 2006	May-06	Jun. 2006	Jul, 2006	Aug. 2006	Sept. 2006	Total	
Payments													
CH - Payment	480,802	356,283	362,740	235,015	259,705	245,197	274,283	332,760	264,554	138,550	286,311	3,236,199	
OC - Payment	4,474	5,324	3,885	5,336	9,633	2,795	3,340	3,924	9,755	3,595	5,830	57,891	
Residential - Payment	46,823	33,092	34,077	30,522	23,969	158,511	275,055	94,878	251,509	282,253	89,541	1,320,230	
Total Payments - CH/OC/Residential	532,099	394,699	400,702	270,873	293,307	406,503	552,678	431,562	525,818	424,398	381,682	4,614,319	
Payments adjusted to "old" rates													
Commercial Haulers	384,642	285,026	290,192	188,012	207,764	196,158	219,426	266,208	211,643	110,840	229,049	2,588,959	
Other Commercial Haulers	3,579	4,259	3,108	4,269	7,706	2,236	2,672	3,139	7,804	2,876	4,664	46,312	
Residential	37,458	26,474	27,262	24,418	19,175	126,809	220,044	75,902	201,207	225,802	71,633	1,056,184	
Total Payments - CH/OC/R Old Rates	425,679	315,759	320,561	216,698	234,646	325,202	442,142	345,250	420,654	339,518	305,346	3,691,456	25%
Uncomp/Cash Transactions													
Uncompacted (Ordot - 341661005)	13,413	11,960	12,529	11,911	12,983	12,348	17,225	12,503	14,179	14,055	16,625	149,729	
Cash Collection - Transfer Stations:													
Agat (341661006)	1,377	1,750	2,100	1,980	1,630	1,430	1,675	1,510	2,290	1,400	1,830	18,972	
Dededo (341661007)	6,123	6,140	6,995	5,270	5,230	5,923	5,740	5,640	6,270	5,895	5,935	65,161	
Malojloj (341661008)	1,298	1,720	1,855	1,270	1,440	1,260	1,720	1,390	1,950	1,695	1,545	17,143	
Total Ordot/Transfer Stations	22,211	21,570	23,479	20,431	21,283	20,960	26,360	21,043	24,689	23,045	25,935	251,005	
Total Ordot/Transfer @old rates	17,769	17,256	18,783	16,345	17,026	16,768	21,088	16,834	19,751	18,436	20,748	200,804	25%
Percent of Payments with Increase													
CH - Payment	0.0%	0.0%	33.3%	66.7%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%		
OC - Payment	0.0%	0.0%	33.3%	66.7%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%		
Residential - Payment	0.0%	0.0%	33.3%	66.7%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%		
Ordot/Transfer Stations	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%		
PUC Escow													
CH - Payment	0	0	24,183	31,335	51,941	49,039	54,857	66,552	52,911	27,710	57,262	415,790	
OC - Payment	0	0	259	711	1,927	559	668	785	1,951	719	1,166	8,745	
Residential - Payment	0	0	2,272	4,070	4,794	31,702	55,011	18,976	50,302	56,451	17,908	241,485	
Ordot/Transfer Stations	4,442	4,314	4,696	4,086	4,257	4,192	5,272	4,209	4,938	4,609	5,187	50,201	
Total Escrow (25% Increase)	4,443	4,315	31,411	40,205	62,921	85,496	115,810	90,524	110,104	89,492	81,526	$ 716,220	

Total Escrow @ 9/30/06 $ 584,832 *Includes Interest*

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION
OF GUAM

ADMINISTRATIVE DOCKET	)	
CONTRACT REVIEW PROTOCOL FOR	)	**DOCKET 05-09**
DEPARTMENT OF PUBLIC WORKS	)	
DIVISION OF SOLID WASTE	)	
MANAGEMENT	)	

ORDER

Pursuant to its authority under 10 GCG Section 51118 (e), the Guam Public Utilities Commission [PUC] establishes the following protocol to identify and review regulated contracts and obligations of Department of Public Works' Division of Solid Waste Management [Division], which are funded by the Solid Waste Operations Fund.

1. The following Division contracts and obligations shall require prior PUC approval under 10 GCG Section 5118 (e), which shall be obtained before the procurement process is begun:

    a) All capital improvement projects (CIP) in excess of $50,000 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 $50,000;
    c) All professional service procurements in excess of $50,000;
    d) All externally funded loan obligations and other financial obligations such as lines of credit, bonds, etc. in the excess of $50,000 and any use of said funds;
    e) Any contract or obligation not specifically referenced above which exceeds $50,000, not including individual contracts within an approved CIP or contract;
    f) Any agreement to compromise or settle disputed charges for services by Division, when the amount of the waived charges would exceed $50,000.

2. Emergency procurements, which are made by Division under 5 GCA section 5215, shall not require PUC approval; provided, however that Division shall file its section 5215 determination, 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.

3. 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 $50,000 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, Division 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, Division 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, Division will file a cost estimate for the coming year of the procurement. Division 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.

4. On or before September 15 of each year, Divsion will use best efforts to file with PUC:
    a) Its budget for the coming fiscal year beginning October 1 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.
    b) The following information should be provided with regard to each CIP project / contract or obligation requiring PUC approval under paragraph 1:

        i) Scheduled start, completion and in service dates.
        ii) Capital requirements by year of the expected expenditure and anticipated source of funding (i..e., bonds, internal, etc.)
        iii) Impact on service of delaying or canceling the project, contract or obligation.
        iv) Copies of all economic and engineering studies, where relevant.

5. If during any fiscal year, Division 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 4(b) above. Division shall obtain PUC approval thereof before the procurement process is begun.

6. Division 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 stipulation. 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 estimateds, start dates and inservice or completion dates.

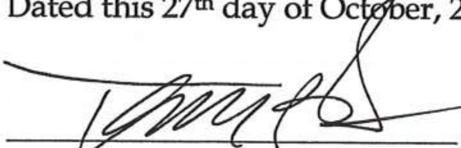
7. Division shall not incur expenses for PUC approved contracts and obligations in excess of 20% over the amount authorized by PUC without prior approval. In the event Division estimates that it will exceed the PUC approved level of expenditures by more than 20%, it shall submit to PUC the revised estimate and full explanation of all additional cost.

8. To the extent Division submits a filing to PUC under this order which PUC staff believes in incomplete or deficient, it shall notify Division and the PUC with in 15 calendar days thereof with specific indication of the alleged incompleteness or deficiency.

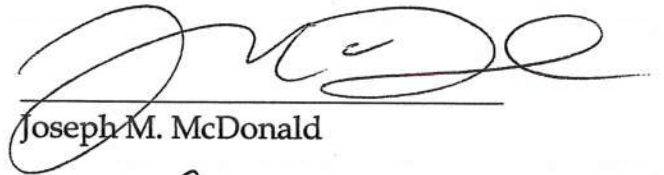
9. PUC staff will use best efforts to be prepared for hearing within 45 days of a complete Division filing under the terms of paragraph 4 above. PUC's administrative law judge, is authorized, in his judgment, to shorten the above 45 day period, for good cause shown by Division.

10. 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 27th day of October, 2005.



Terrence M. Brooks



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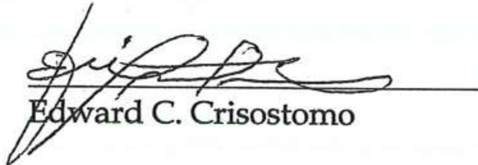
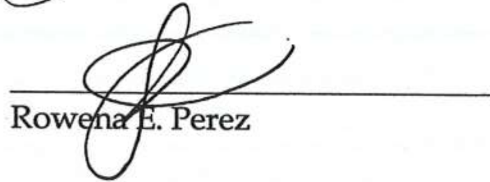


Edward C. Crisostomo



Rowena E. Perez

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

APPLICATION OF PULSE MOBILE, LLC FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER	} }]	**DOCKET NO. 06-8**

ORDER APPROVING DESIGNATION

Procedural History

On or about January 31, 2005, Pulse Mobile, LLC ("Pulse Mobile") (formerly GTA Wireless, LLC) requested a letter from the Commission that Pulse Mobile is not subject to the jurisdiction of the Commission, or that the Commission declines jurisdiction, so that Pulse Mobile could petition the Federal Communications Commission ("FCC") for designation as an eligible telecommunications carrier ("ETC") under Section 214(e)(6) of the federal Communications Act of 1934, as amended (the "Federal Act"). A telecommunications carrier that has been designated as an ETC is eligible to receive federal high-cost universal service support under Section 254 of the Federal Act.

The Commission issued a letter on February 25, 2005, stating that the Commission intended to refrain from exercising jurisdiction over Pulse Mobile for the limited purpose of acting upon Pulse Mobile's then proposed petition for designation as an ETC. Pulse Mobile filed a petition for ETC designation with the FCC on May 19, 2005.

After Pulse Mobile's petition was not timely acted upon by the FCC, Pulse Mobile filed with the Commission on July 26, 2006 a petition for designation as an ETC throughout the Territory of Guam. On September 28, 2006, the Commission issued an order asserting jurisdiction over Pulse Mobile's petition. On October 2, 2006, Pulse Mobile withdrew its petition to the FCC for ETC designation.

On November 17, 2006, the Commission's consultant, Georgetown Consulting Group, filed comments indicating that Pulse Mobile's petition for ETC designation should be granted subject to the following conditions:

(1) Pulse Mobile must comply with any local usage requirements prescribed by the FCC;

(2) Pulse Mobile must comply with any FCC requirements concerning E911 service when implemented in the Territory of Guam;

(3) Pulse Mobile must certify to the Commission on October 1 of each year, beginning October 1, 2007, that Pulse Mobile (a) offers all of the services designated by the FCC for support pursuant to Section 254(c) of the Federal Act either using its own facilities or a combination of its own facilities and resale and (b) advertises the availability of supported services and the charges therefor using medial of general distribution as described in its petition;

(4) Pulse Mobile must notify the Commission within thirty (30) days of any determination that it cannot provide service to a requesting customer in accordance with the FCC's requirements;

(5) Pulse Mobile must file a detailed build-out plan satisfying the FCC's requirements no later than October 1, 2007;

(6) Pulse Mobile must file with the Commission a copy of each annual certification made by Pulse Mobile under Section 54.314(b) of the FCC's rules;

(7) Pulse Mobile must submit to the Commission on October 1 of each year, beginning October 1, 2007 the following records and documentation: (a) Pulse Mobile's progress towards meeting its build-out plans; (b) information on any outage lasting at least 30 minutes and potentially affecting either at least 10 percent of the end users served or 911 facilities; (c) the number of requests for service from potential customers within Pulse Mobile's service area that were unfulfilled for the past year; (d) the number of complaints per 1,000 handsets; (e) Pulse Mobile's compliance with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service (the "CTIA Consumer Code"); (f) Pulse Mobile's certification that it is able to function in emergency situations; (g) Pulse Mobile's certification that it is offering a local usage plan comparable to that offered by the incumbent local exchange carrier; and (h) Pulse Mobile's certification that it acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other ETC is providing equal access in the service area.

(8) Pulse Mobile must promptly submit to the Commission any additional information or reports that that Commission may reasonably request from time to time.

On November 22, 2006 and November 27, 2006, the Commission published notice of Pulse Mobile's petition and requested comments from interested persons. No comments were received by the Commission from any other interested party.

Discussion and Findings of Fact

1. Pursuant to 47 U.S.C. § 214(e)(2), the Commission is generally responsible for designating a telecommunications carrier as an ETC within the Territory of Guam in accordance with the requirements of the Federal Act.

2. The Federal Act provides that the Commission may designate a telecommunications carrier as an ETC if the following requirements are satisfied:

(a) the carrier offers services that are supported by the federal universal service support mechanism, either using its own facilities or a combination of its own facilities and resale of another carrier's services;

(b) the carrier advertises the availability of such services and the charges therefor using media of general distribution; and

(c) the designation of such carrier as an ETC is in the public interest (if such carrier is seeking designation for an area served by a rural telephone company that has already been designated as an ETC).[1]

3. Pulse Mobile is authorized to provide commercial mobile radio service in the entire Territory of Guam. Pulse Mobile also certifies in its petition that: "Pulse Mobile offers, or will offer, all of the services designated by the FCC for support pursuant to Section 254(c) of the [Federal] Act to any requesting customer within its designated service area; Pulse Mobile offers, or will offer, the supported services either using its own facilities or a combination of its own facilities and resale of another carrier's services; and Pulse Mobile advertises, or will advertise, the availability of supported services and the charges therefor using media of general distribution as described in the Advertising Plan attached to the ... Petition."

4. The FCC has indicated that a commitment in the petition to provide all of the supported services and to advertise using media of general application upon designation as an ETC is sufficient to satisfy the FCC's requirements. However, the Commission finds that Pulse Mobile must certify to the Commission no later than October 1, 2007 that Pulse Mobile (a) offers all of the services designated by the FCC for support pursuant to Section 254(c) of the Federal Act either using its own facilities or a combination of its own facilities and resale and (b) advertises the availability of supported services and the charges therefor using media of general distribution as described in its petition.

5. With respect to supported local usage, Pulse Mobile indicates that it "will satisfy the local usage criterion for ETC designation based upon its offering of unlimited local usage calling plans." Consistent with the FCC's rules, the Commission finds that any designation of Pulse Mobile as an ETC be conditioned on Pulse Mobile's compliance with any local usage requirements prescribed by the FCC.

6. With respect to supported access to emergency service, Pulse Mobile indicates that it will offer emergency 911 service but not E911 service. However, to the extent a governmental authority in the Territory of Guam implements E911 systems, Pulse Mobile will be required to provide E911 service. Therefore, the Commission finds that any designation of Pulse Mobile as an ETC be conditioned on Pulse Mobile's compliance with any FCC requirements concerning E911 service when implemented in the Territory of Guam.

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[1] 47 U.S.C. § 214(e). The FCC has defined the services that are to be supported by the federal universal service support mechanisms to include: (1) voice grade access to the public switched network; (2) local usage; (3) dual tone multifrequency (DTMF) signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services, including 911 and enhanced 911; (6) access to operator services; (7) access to interexchange services; (8) access to directory assistance; and (9) toll limitation for qualifying low-income customers. 47 C.F.R. § 54.101(a).

7. On March 17, 2005, the FCC adopted additional requirements for ETC designation proceedings in which the FCC acts pursuant to 47 U.S.C. § 214(e)(6).[2] All carriers seeking ETC designation from the FCC must satisfy these requirements. By order dated September 28, 2006 in this docket, the Commission determined that the additional requirements adopted by the FCC would be used by the Commission in evaluating Pulse Mobile's petition.

8. Pursuant to the additional requirements adopted by the FCC in the *ETC Designation Order*, any applicant for ETC designation must:

(1) (i) Commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service. Each applicant shall certify that it will:

(A) Provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises; and

(B) Provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network coverage, if service can be provided at reasonable cost by:

(1) Modifying or replacing the requesting customer's equipment;

(2) Deploying a roof-mounted antenna or other equipment;

(3) Adjusting the nearest cell tower;

(4) Adjusting network or customer facilities;

(5) Reselling services from another carrier's facilities to provide service; or

(6) Employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment.

(ii) Submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated

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[2] In *the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 05-46 (released March 17, 2005) (the "*ETC Designation Order*").

service area. Each applicant shall demonstrate how signal quality, coverage or capacity will improve due to the receipt of high-cost support; the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; the specific geographic areas where the improvements will be made; and the estimated population that will be served as a result of the improvements. If an applicant believes that service improvements in a particular wire center are not needed, it must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area.

(2) Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.

(3) Demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.

(4) Demonstrate that it offers a local usage plan comparable to the one offered by the incumbent local exchange carrier in the service areas for which it seeks designation.

(5) Certify that the carrier acknowledges that the FCC may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

9. Except as provided below, the Commission finds that Pulse Mobile has satisfied all of the additional mandatory requirements set forth in the *ETC Designation Order*. First, Pulse Mobile has certified that it will provide service throughout the Territory of Guam to all customers making a reasonable request for service in accordance with the FCC's requirements. In this regard, Pulse Mobile has committed that it will notify the Commission within thirty (30) days of any determination that it cannot provide service to a requesting customer in accordance with the FCC's requirements. Second, Pulse Mobile has certified that it has a reasonable amount of back-up power, the ability to reroute traffic and the capability to manage traffic spikes to remain functional in emergency situations. Third, Pulse Mobile has committed to comply with the CTIA Consumer Code. Fourth, Pulse Mobile has indicated that it will offer a rate plan to its universal service customers that includes unlimited local usage comparable to the rate plan offered by GTA Telecom, LLC. Fifth, Pulse Mobile has certified that it acknowledges that the FCC may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

10. Pulse Mobile has also submitted a five-year plan that describes proposed improvements or upgrades to its network in a summary fashion. The Commission finds that such plan does not currently include sufficient detail to satisfy the FCC's requirements. For example, the plan does not describe improvements on a wire center-by-wire center or cell tower-by-cell tower basis and does not provide the estimated amount of investment for each project that is funded by high-cost support. However, because the FCC has recognized that such plans are always subject to change and given FCC precedent for the filing of such plans after ETC designation, the Commission finds that such a detailed build-out plan may be filed by Pulse Mobile following ETC designation as part of its first annual filing with the Commission discussed below in this order. Therefore, the Commission directs Pulse Mobile to file a current, detailed build-out plan satisfying the FCC's requirements no later than October 1, 2007.

11. For the public interest determination, the *ETC Designation Order* provides that the Commission should consider the benefits of increased consumer choice, and the unique advantages and disadvantages of the ETC applicant's service offering. In instances where an ETC applicant seeks designation below the study area level of a rural telephone company, the Commission must also conduct a creamskimming analysis that compares the population density of each wire center in which the ETC applicant seeks designation against that of the wire centers in the study area in which the ETC applicant does not seek designation.

12. The Commission believes that Pulse Mobile's universal service offering may provide a variety of benefits to customers in Guam, including consumer choice and advantageous service offerings. For instance, universal service support will help Pulse Mobile construct facilities to improve quality of service and upgrade its current technology. In addition, Pulse Mobile has indicated that it will use support to offer a basic universal service package to subscribers who are eligible for Lifeline support and Pulse Mobile has made detailed commitments to provide high quality service throughout the Territory of Guam. The mobility of Pulse Mobile's wireless service will provide further benefits to consumers, such as access to emergency services in geographically isolated areas. Finally, given the size of the federal universal service fund, the commission believes it is unlikely that Pulse Mobile's ETC designation would have an adverse impact on the federal universal service fund.

13. Because Pulse Mobile seeks ETC designation for the entire Territory of Guam and not below the study area level of the incumbent local exchange carrier, the creamskimming analysis required by the *ETC Designation Order* is not required.

14. Pulse Mobile is obligated under Section 254(e) of the Federal Act to use high cost support "only for the provision, maintenance, and upgrading of facilities and services for which support is intended" and is required under Section 54.314 of the FCC's rules to certify annually that it is in compliance with this requirement. Pulse Mobile has certified to the Commission that, "consistent with Section 54.314(b) of the FCC's rules, all federal high-cost support will be used solely for the provision, maintenance and upgrading of facilities and services for which support is intended pursuant to Section 254(e) of the [Federal] Act." The Commission finds that Pulse Mobile should be required to file with the Commission a copy of each annual certification made by Pulse Mobile under Section 54.314(b) of the FCC's rules.

15. In addition, Pulse Mobile has committed to submit to the Commission on an annual basis the following records and documentation, in addition to any other information or reports that that Commission may reasonably request from time to time:

- Pulse Mobile's progress towards meeting its build-out plans;
- Information on any outage lasting at least 30 minutes and potentially affecting either at least 10 percent of the end users served or 911 facilities;
- The number of requests for service from potential customers within Pulse Mobile's service area that were unfulfilled for the past year;
- The number of complaints per 1,000 handsets;
- Pulse Mobile's compliance with the CTIA Consumer Code;
- Pulse Mobile's ability to function in emergency situations;
- Pulse Mobile's certification that it is offering a local usage plan comparable to that offered by the incumbent local exchange carrier; and
- Pulse Mobile's certification that it acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other ETC is providing equal access in the service area.

16. The Commission finds that Pulse Mobile must submit these records and documentation to the Commission on October 1 of each year, beginning October 1, 2007. Consistent with FCC requirements: (1) the progress report should include maps detailing progress towards meeting Pulse Mobile's five-year service quality improvement plan, explanations of how much universal service support was received and how the support was used to improve service quality in each wire center or cell tower for which designation was obtained, and an explanation of why any network improvement targets have not been met; and (2) the information on Pulse Mobile's outages should include the date and time of onset of the outage, a brief description of the outage, the particular services affected by the outage, the geographic areas affected by the outage and steps taken to prevent a similar outage situation in the future. The Commission finds that Pulse Mobile must provide additional information and reports to the Commission when request therefor is made by the Commission or its staff from time to time.

Order

Based upon the foregoing, the Commission orders that:

1. Pulse Mobile is hereby designated as an ETC throughout the Territory of Guam subject to the following conditions:

(a) Pulse Mobile must comply with any local usage requirements prescribed by the FCC;

(b) Pulse Mobile must comply with any FCC requirements concerning E911 service when implemented in the Territory of Guam;

(c) Pulse Mobile must certify to the Commission on October 1 of each year, beginning October 1, 2007, that Pulse Mobile (i) offers all of the services designated by the FCC for support pursuant to Section 254(c) of the Federal Act either using its own facilities or a combination of its own facilities and resale and (ii) advertises the availability of supported services and the charges therefor using medial of general distribution as described in its petition;

(d) Pulse Mobile must notify the Commission within thirty (30) days of any determination that it cannot provide service to a requesting customer in accordance with the FCC's requirements;

(e) Pulse Mobile must file a detailed build-out plan satisfying the FCC's requirements no later than October 1, 2007;

(f) Pulse Mobile must file with the Commission a copy of each annual certification made by Pulse Mobile under Section 54.314(b) of the FCC's rules;

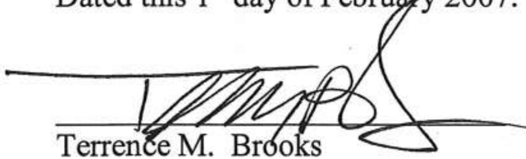
(g) Pulse Mobile must submit to the Commission on October 1 of each year, beginning October 1, 2007 the following records and documentation: (i) Pulse Mobile's progress towards meeting its build-out plans; (ii) information on any outage lasting at least 30 minutes and potentially affecting either at least 10 percent of the end users served or 911 facilities; (iii) the number of requests for service from potential customers within Pulse Mobile's service area that were unfulfilled for the past year; (iv) the number of complaints per 1,000 handsets; (v) Pulse Mobile's compliance with the CTIA Consumer Code; (vi) Pulse Mobile's certification that it is able to function in emergency situations; (vii) Pulse Mobile's certification that it is offering a local usage plan comparable to that offered by the incumbent local exchange carrier; and (viii) Pulse Mobile's certification that it acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other ETC is providing equal access in the service area.

(h) Pulse Mobile must promptly submit to the Commission any additional information or reports that that Commission may reasonably request from time to time.

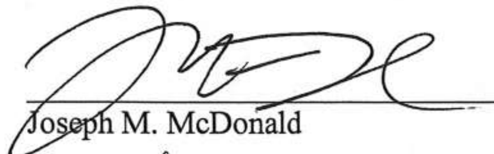
2. The Commission reserves jurisdiction and authority to (a) institute an inquiry on its own motion to examine Pulse Mobile's records and documentation to ensure that the high-cost support it receives is being used "only for the provision, maintenance, and upgrading of facilities and services" in the Territory of Guam, (b) revoke Pulse Mobile's ETC designation if it fails to fulfill any requirements of Section 214 of the Federal Act, the FCC's rules and

regulations or the Commission's order after Pulse Mobile begins receiving universal service support and (c) assess penalties for violations of the Commission's rules and orders.

Dated this 1st day of February 2007.



Terrence M. Brooks



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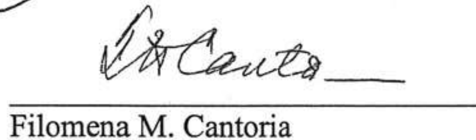
Edward C. Crisostomo



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November 17, 2006

Harry M. Boertzel, Esq.
Administrative Law Judge
The Guam Public Utilities Commission
Suite 207, GCIC Building
Hagatña, Guam 96932

Re: Docket No. 06-8: Application of Pulse Mobile, LLC for Designation as an Eligible Telecommunications Carrier

Dear Judge Boertzel:

As requested, this is the report of Georgetown Consulting Group concerning the application of Pulse Mobile, LLC ("Pulse Mobile") (formerly GTA Wireless, LLC) for designation as an eligible telecommunications carrier ("ETC") throughout the Territory of Guam.[1] As discussed below, we recommend that Pulse Mobile's Petition be **GRANTED** subject to the conditions set forth in this report.

STANDARD OF REVIEW

A telecommunications carrier that has been designated as an ETC is eligible to receive federal high-cost universal service support under Section 254 of the federal Communications Act of 1934, as amended (the "Federal Act"). Under Section 214(e)(2) of the Federal Act, a state commission, such as the Guam PUC, is generally responsible for designating a telecommunications carrier as an ETC within such state in accordance with the requirements of the Federal Act.[2] Specifically, the Federal Act provides that a state commission may designate a telecommunications carrier as an ETC if the following requirements are satisfied:

(a) the carrier offers services that are supported by the federal universal service support mechanism, either using its own facilities or a combination of its own facilities and resale of another carrier's services;

[1] Petition for Designation as an Eligible Telecommunications Carrier, filed July 26, 2006 (the "Petition").

[2] 47 U.S.C. §214(e)(2); 47 C.F.R. § 54.201(b).

(b) the carrier advertises the availability of such services and the charges therefor using media of general distribution; and

(c) the designation of such carrier as an ETC is in the public interest (if such carrier is seeking designation for an area served by a rural telephone company that has already been designated as an ETC).

On January 22, 2004, the Federal Communications Commission (the "FCC") released the *Virginia Cellular Order*, which adopted a new public interest analysis for ETC designations for rural areas and imposed ongoing conditions and reporting requirements on such ETC designations.[3] On April 12, 2004, the FCC released the *Highland Cellular Order*, in which the FCC concluded, among other things, that a telephone company in a rural study area may not be designated as a competitive ETC below the wire center level.[4] Finally, on March 17, 2005, the FCC released the *ETC Designation Order*, generally affirming the holdings of the *Virginia Cellular Order* and *Highland Cellular Order* and adopting additional requirements for ETC designation proceedings in which the FCC acts pursuant to Section 214(e)(6) of the Federal Act.[5] All carriers seeking ETC designation from the FCC must satisfy these requirements. By order dated September 28, 2006 in this docket, the Guam PUC determined that the standards in the *ETC Designation Order* will be used by the Guam PUC in evaluating Pulse Mobile's Petition.[6]

JURISDICTION

Under Section 214(e)(2) of the Federal Act, a state commission, such as the Guam PUC, is generally responsible for designating a telecommunications carrier as an ETC within such state in accordance with the requirements of the Federal Act.[7] However, under Section 214(e)(6), the FCC may make the ETC designation with respect to a telecommunications carrier that is "not subject to the jurisdiction of a State commission."[8] In this respect, Pulse Mobile previously requested a letter from the Guam PUC that Pulse Mobile is not subject to

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[3] *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket 96-45, Memorandum Opinion and Order, FCC 03-338 (released January 22, 2004) ("Virginia Cellular Order").

[4] *Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket 96-45, Memorandum Opinion and Order, FCC 04-37 (released April 12, 2004) ("Highland Cellular Order"). Pulse Mobile's Petition indicates that Pulse Mobile seeks ETC designation for the entire Territory of Guam and not below the wire center level.

[5] *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 05-46 (released March 17, 2005) (the "ETC Designation Order").

[6] Application of Pulse Mobile, LLC for Designation as an Eligible Telecommunications Carrier, Docket 06-8, Order Asserting Jurisdiction (September 28, 2006).

[7] 47 U.S.C. §214(e)(2); 47 C.F.R. § 54.201(b).

[8] 47 U.S.C. §214(e)(6).

the jurisdiction of the Guam PUC, or that the Guam PUC declines jurisdiction, so that Pulse Mobile could petition the FCC for designation as an ETC under Section 214(e)(6). The Guam PUC issued such a letter on February 25, 2005, stating that the Guam PUC intended to refrain from exercising jurisdiction over Pulse Mobile for the limited purpose of acting upon Pulse Mobile's then proposed petition for designation as an ETC.[9] Pulse Mobile then filed a petition for ETC designation with the FCC on May 19, 2005.

After Pulse Mobile's petition was not acted upon by the FCC, the Guam PUC issued a further order on September 28, 2006 asserting jurisdiction over Pulse Mobile's Petition.[10] On October 2, 2006, Pulse Mobile withdrew its petition to the FCC for ETC designation.[11]

ANALYSIS OF PULSE MOBILE'S PETITION

A. Statutory Requirements Under Section 214(e) of the Federal Act

To be designated as an ETC under Section 214(e) of the Federal Act, Pulse Mobile must (1) offer the services that are supported by federal universal service support mechanisms under Section 254(c) of the Federal Act, either using its own facilities or a combination of its own facilities and resale of another carrier's services, and (2) advertise the availability of such services and the charges therefor using media of general distribution.[12]

Pulse Mobile is authorized to provide commercial mobile radio service in the entire Territory of Guam.[13] Pulse Mobile also certifies in its Petition that: "Pulse Mobile offers, or will offer, all of the services designated by the FCC for support pursuant to Section 254(c) of the [Federal] Act to any requesting customer within its designated service area; Pulse Mobile offers, or will offer, the supported services either using its own facilities or a combination of its own facilities and resale of another carrier's services; and Pulse Mobile advertises, or will advertise, the availability of supported services and the charges therefor using media of general distribution as described in the Advertising Plan attached to the ... Petition."[14]

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[9] Letter from Terrence M. Brooks, Chairman of the Guam PUC, to Paul O. Gagnier dated February 25, 2005.

[10] Application of Pulse Mobile, LLC for Designation as an Eligible Telecommunications Carrier, Docket 06-8, Order Asserting Jurisdiction (September 28, 2006).

[11] Letter from Richard J. Metzger to the Guam PUC in this docket dated October 4, 2006.

[12] 47 U.S.C. § 214(e). The FCC has defined the services that are to be supported by the federal universal service support mechanisms to include: (1) voice grade access to the public switched network; (2) local usage; (3) dual tone multifrequency (DTMF) signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services, including 911 and enhanced 911; (6) access to operator services; (7) access to interexchange services; (8) access to directory assistance; and (9) toll limitation for qualifying low-income customers. 47 C.F.R. § 54.101(a).

[13] Pulse Mobile Petition at p. 4.

[14] Declaration of Robert Taylor dated July 28, 2006, attached as Exhibit 1 to the Petition.

We note that Pulse Mobile's certificate implies that Pulse Mobile is not currently offering all of the services supported by the federal universal service support mechanism either using its own facilities or a combination of its own facilities and resale and that Pulse Mobile is not currently advertising the availability of such services and the charges therefor using media of general distribution as required by Section 214(e) of the Federal Act. However, the FCC has indicated that a commitment in the petition to provide all of the supported services and to advertise using media of general application upon designation as an ETC is sufficient to satisfy the FCC's requirements.[15]

With respect to supported local usage, Pulse Mobile indicates that it "will satisfy the local usage criterion for ETC designation based upon its offering of unlimited local usage calling plans."[16] Consistent with the FCC's rules, we recommend that any designation of Pulse Mobile as an ETC be conditioned on Pulse Mobile's compliance with any local usage requirements prescribed by the FCC.[17] However, it is our understanding that the FCC has not yet established a minimum local usage requirement.[18]

With respect to supported access to emergency service, Pulse Mobile indicates that it will offer emergency 911 service but not E911 service.[19] However, to the extent a governmental authority in the Territory of Guam implements E911 systems, we believe Pulse Mobile will be required to provide E911 service.[20] Therefore, we recommend that any designation of Pulse Mobile as an ETC be conditioned on Pulse Mobile's compliance with any FCC requirements concerning E911 service when implemented in the Territory of Guam.[21]

In light of the foregoing, we recommend that the Guam PUC find that Pulse Mobile has satisfied the statutory requirements of Section 214(e) subject to the following conditions:

- Pulse Mobile must comply with any local usage requirements prescribed by the FCC; and
- Pulse Mobile must comply with any FCC requirements concerning E911 service when implemented in the Territory of Guam.

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[15] See, e.g., *Corr Wireless Communications, LLC Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, CC Docket 96-45, Order, DA 06-286 at ¶¶ 13, 20-21 (released February 3, 2006) ("Corr Wireless Order"); *Virginia Cellular Order* at ¶ 17.

[16] Pulse Mobile's Petition at p. 6.

[17] 47 C.F.R. §54.101(a)(2).

[18] See, e.g., *Corr Wireless Order* at ¶ 17.

[19] Pulse Mobile's Petition at p. 6.

[20] 47 C.F.R. §54.101(a)(5).

[21] See, e.g., *Corr Wireless Order* at ¶ 18.

We further recommend that Pulse Mobile certify to the Guam PUC no later than October 1, 2007 that Pulse Mobile (a) offers all of the services designated by the FCC for support pursuant to Section 254(c) of the Federal Act either using its own facilities or a combination of its own facilities and resale and (b) advertises the availability of supported services and the charges therefor using media of general distribution as described in its Petition.

B. Additional FCC Requirements for ETC Designation

In addition to the statutory requirements under Section 214(e) of the Federal Act, the FCC requires any applicant for ETC designation to:

(1) (i) Commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service. Each applicant shall certify that it will:

(A) Provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises; and

(B) Provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network coverage, if service can be provided at reasonable cost by:

(1) Modifying or replacing the requesting customer's equipment;

(2) Deploying a roof-mounted antenna or other equipment;

(3) Adjusting the nearest cell tower;

(4) Adjusting network or customer facilities;

(5) Reselling services from another carrier's facilities to provide service; or

(6) Employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment.

(ii) Submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. Each applicant shall demonstrate how signal quality, coverage or capacity will improve due to the receipt of high-cost support; the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; the specific geographic areas

where the improvements will be made; and the estimated population that will be served as a result of the improvements. If an applicant believes that service improvements in a particular wire center are not needed, it must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area.

(2) Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.

(3) Demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.

(4) Demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation.

(5) Certify that the carrier acknowledges that the FCC may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.[22]

Except as provided below, we believe Pulse Mobile has satisfied all of the additional mandatory requirements set forth in the *ETC Designation Order*. First, Pulse Mobile has certified that it will provide service throughout the Territory of Guam to all customers making a reasonable request for service in accordance with the FCC's requirements.[23] In this regard, Pulse Mobile has committed that it will notify the Guam PUC within thirty (30) days of any determination that it cannot provide service to a requesting customer in accordance with the FCC's requirements. Second, Pulse Mobile has certified that it has a reasonable amount of back-up power, the ability to reroute traffic and the capability to manage traffic spikes to remain functional in emergency situations.[24] Third, Pulse Mobile has committed to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service.[25] Fourth, Pulse Mobile has indicated that it will offer a rate plan to its universal service customers that includes unlimited local usage comparable to the rate plan

[22] 47 C.F.R. § 54.202(a). See also *ETC Designation Order*.

[23] Pulse Mobile's Petition at pp. 8-9.

[24] Pulse Mobile's Petition at p. 10.

[25] Pulse Mobile's Petition at p. 10.

offered by GTA Telecom, LLC.[26] Fifth, Pulse Mobile has certified that it acknowledges that the FCC may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.[27]

Pulse Mobile has also submitted a five-year plan that describes proposed improvements or upgrades to its network in a summary fashion.[28] We do not believe that such plan currently includes sufficient detail to satisfy the FCC's requirements. For example, the plan does not describe improvements on a wire center-by-wire center or cell tower-by-cell tower basis and does not provide the estimated amount of investment for each project that is funded by high-cost support.[29] However, because the FCC has recognized that such plans are always subject to change and given FCC precedent for the filing of such plans after ETC designation, we believe that such a detailed build-out plan may be filed by Pulse Mobile following ETC designation as part of its first annual filing with the Guam PUC discussed below in this report.[30] Therefore, we recommend that Pulse Mobile be required to file a current, detailed build-out plan satisfying the FCC's requirements no later than October 1, 2007.[31] As indicated below in this report, we further recommend that the Guam PUC should monitor Pulse Mobile's implementation of such five-year plan using universal service support.

C. Public Interest Analysis

For the public interest, the *ETC Designation Order* provides that the Guam PUC should consider the benefits of increased consumer choice, and the unique advantages and disadvantages of the ETC applicant's service offering. In instances where an ETC applicant seeks designation below the study area level of a rural telephone company, the Guam PUC shall also conduct a creamskimming analysis that compares the population density of each wire center in which the ETC applicant seeks designation against that of the wire centers in the study area in which the ETC applicant does not seek designation.[32]

We believe that Pulse Mobile's universal service offering may provide a variety of benefits to customers in Guam, including consumer choice and advantageous service offerings. For instance, universal service support will help Pulse Mobile construct facilities to improve

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[26] Pulse Mobile's Petition at pp. 5-6.

[27] Pulse Mobile's Petition at p. 11.

[28] Pulse Mobile's Petition at Exhibit 4 (designated as confidential and filed under seal by Pulse Mobile).

[29] See, e.g., *Corr Wireless Order* at fn. 41 ("Specifically, Corr provides the location of cell sites it plans to construct, the timeframe for commencement of construction, the populations served by new cell sites, the predicted contours of each of the proposed cell sites, and the estimated cost of its build-out plans.").

[30] See, e.g., *ETC Designation Order* at fn. 191 ("If an ETC had not previously submitted a network improvement plan to the Commission, it should do so with its first reporting compliance filing.").

[31] In preparing its report, Pulse Mobile should review paragraph 23 of the *ETC Designation Order*.

[32] 47 C.F.R. § 54.202(c). See also *ETC Designation Order*.

quality of service and upgrade its current technology. In addition, Pulse Mobile has indicated that it will use support to offer a basic universal service package to subscribers who are eligible for Lifeline support and Pulse Mobile has made detailed commitments to provide high quality service throughout the Territory of Guam. The mobility of Pulse Mobile's wireless service will provide further benefits to consumers, such as access to emergency services in geographically isolated areas. Finally, given the size of the federal universal service fund, we believe it is unlikely that Pulse Mobile's ETC designation would have an adverse impact on the federal universal service fund.[33]

Because Pulse Mobile seeks ETC designation for the entire Territory of Guam and not below the study area level of the incumbent local exchange carrier, the creamskimming analysis required by the *ETC Designation Order* is not required.[34]

REGULATORY OVERSIGHT AND REPORTING REQUIREMENTS

We note that Pulse Mobile is obligated under Section 254(e) of the Federal Act to use high cost support "only for the provision, maintenance, and upgrading of facilities and services for which support is intended" and is required under Section 54.314 of the FCC's rules to certify annually that it is in compliance with this requirement.[35] Pulse Mobile has certified to the Guam PUC that, "consistent with Section 54.314(b) of the FCC's rules, all federal high-cost support will be used solely for the provision, maintenance and upgrading of facilities and services for which support is intended pursuant to Section 254(e) of the [Federal] Act."[36] We recommend that Pulse Mobile be required to file with the Guam PUC a copy of each annual certification made by Pulse Mobile under Section 54.314(b) of the FCC's rules.

In addition, Pulse Mobile has committed to submit to the Guam PUC on an annual basis the following records and documentation, in addition to any other information or reports that that Guam PUC may reasonably request from time to time:[37]

- Pulse Mobile's progress towards meeting its build-out plans;
- Information on any outage lasting at least 30 minutes and potentially affecting either at least 10 percent of the end users served or 911 facilities;

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[33] See, e.g., *ETC Designation Order* at ¶ 54 ("given the size of the total high-cost fund - approximately $3.8 billion a year - it is unlikely that any individual ETC designation would have a substantial impact on the overall size of the fund").

[34] See, e.g., *Core Wireless Order* at ¶ 28.

[35] 47 C.F.R. §§ 54.313 and 54.314.

[36] Pulse Mobile's Petition at p. 8.

[37] Pulse Mobile's Petition at p. 11. See also *ETC Designation Order* at ¶ 69.

- The number of requests for service from potential customers within Pulse Mobile's service area that were unfulfilled for the past year;
- The number of complaints per 1,000 handsets;
- Pulse Mobile's compliance with the CTIA Consumer Code;
- Pulse Mobile's ability to function in emergency situations;
- Pulse Mobile's certification that it is offering a local usage plan comparable to that offered by the incumbent local exchange carrier; and
- Pulse Mobile's certification that it acknowledges that the Guam PUC may require it to provide equal access to long distance carriers in the event that no other ETC is providing equal access in the service area.

We recommend that Pulse Mobile be required to submit these records and documentation to the Guam PUC on October 1 of each year, beginning October 1, 2007. Consistent with FCC requirements: (1) the progress report should include maps detailing progress towards meeting Pulse Mobile's five-year service quality improvement plan, explanations of how much universal service support was received and how the support was used to improve service quality in each wire center or cell tower for which designation was obtained, and an explanation of why any network improvement targets have not been met; and (2) the information on Pulse Mobile's outages should include the date and time of onset of the outage, a brief description of the outage, the particular services affected by the outage, the geographic areas affected by the outage and steps taken to prevent a similar outage situation in the future.[38] Further, we recommend that Pulse Mobile be directed to provide additional information and reports to the Guam PUC when request therefor is made by the Guam PUC or its staff from time to time.

As indicated above, we recommend that Pulse Mobile's revised build-out plan be filed with the Guam PUC as part of the initial filing above and that the Guam PUC should monitor Pulse Mobile's implementation of such build-out plan. This is important to ensure that Pulse Mobile is using the high-cost support it receives in compliance with FCC requirements.

Consistent with FCC practice,[39] we recommend that the Guam PUC reserve its jurisdiction and authority to institute an inquiry on its own motion to examine any ETC's records and documentation to ensure that the high-cost support it receives is being used "only for the provision, maintenance, and upgrading of facilities and services" in the areas where it is designated as an ETC. Pulse Mobile should be required to provide such records and

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[38] *ETC Designation Order* at ¶ 4.

[39] *ETC Designation Order* at ¶ 63.

documentation to the Guam PUC upon request. Further, if Pulse Mobile fails to fulfill the requirements of Section 254 of the Federal Act, the FCC's rules and regulations, or the terms of the Guam PUC's order after it begins receiving universal service support, the Guam PUC should reserve authority to revoke Pulse Mobile's ETC designation. The Guam PUC should also reserve authority to assess penalties for violations of the Guam PUC's rules and orders.

SUMMARY OF RECOMMENDATION

Based on the foregoing, we recommend that Pulse Mobile's Petition be **GRANTED** and that Pulse Mobile be designated as an eligible telecommunications company throughout the entire Territory of Guam under Section 214(e) of the Federal Act, subject to the following conditions:

(1) Pulse Mobile must comply with any local usage requirements prescribed by the FCC;

(2) Pulse Mobile must comply with any FCC requirements concerning E911 service when implemented in the Territory of Guam;

(3) Pulse Mobile certify to the Guam PUC on October 1 of each year, beginning October 1, 2007, that Pulse Mobile (a) offers all of the services designated by the FCC for support pursuant to Section 254(c) of the Federal Act either using its own facilities or a combination of its own facilities and resale and (b) advertises the availability of supported services and the charges therefor using medial of general distribution as described in its Petition;

(4) Pulse Mobile must notify the Guam PUC within thirty (30) days of any determination that it cannot provide service to a requesting customer in accordance with the FCC's requirements;

(5) Pulse Mobile must file a detailed build-out plan satisfying the FCC's requirements no later than October 1, 2007;

(6) Pulse Mobile must file with the Guam PUC a copy of each annual certification made by Pulse Mobile under Section 54.314(b) of the FCC's rules;

(7) Pulse Mobile must submit to the Guam PUC on October 1 of each year, beginning October 1, 2007 the following records and documentation: (a) Pulse Mobile's progress towards meeting its build-out plans; (b) information on any outage lasting at least 30 minutes and potentially affecting either at least 10 percent of the end users served or 911 facilities; (c) the number of requests for service from potential customers within Pulse Mobile's service area that were unfulfilled for the past year; (d) the number of complaints per 1,000 handsets; (e) Pulse Mobile's compliance with the CTIA Consumer Code; (f) Pulse Mobile's certification that it is able to function in emergency situations; (g) Pulse Mobile's certification that it is offering a local usage plan comparable to that offered by the incumbent

local exchange carrier; and (h) Pulse Mobile's certification that it acknowledges that the Guam PUC may require it to provide equal access to long distance carriers in the event that no other ETC is providing equal access in the service area.

(8) Pulse Mobile must promptly submit to the Guam PUC any additional information or reports that that Guam PUC may reasonably request from time to time.

Consistent with FCC practice, the Guam PUC should reserve jurisdiction and authority to (a) institute an inquiry on its own motion to examine Pulse Mobile's records and documentation to ensure that the high-cost support it receives is being used "only for the provision, maintenance, and upgrading of facilities and services" in the Territory of Guam, (b) revoke Pulse Mobile's ETC designation if it fails to fulfill any requirements of Section 214 of the Federal Act, the FCC's rules and regulations or the Guam PUC's order after Pulse Mobile begins receiving universal service support and (c) assess penalties for violations of the Guam PUC's rules and orders.

Finally, we note that the Guam PUC should consider its jurisdiction and authority over other ETCs in the Territory of Guam previously designated by the FCC. We believe these designations were made by the FCC, rather than the Guam PUC, because the Guam PUC lacked jurisdiction over such telecommunications carriers prior to the enactment of the Guam Telecommunications Act of 2004. At the very least, the Guam PUC should consider requiring such ETCs to submit to the Guam PUC copies of any reports and certifications submitted to the FCC under the FCC's universal service rules.

If you have any questions concerning this report or require any additional information, please let us know.

Cordially,

/s/ Jamshed K. Madan

Jamshed K. Madan

Cc: Richard J. Metzger
Paul O. Gagnier, Esq.
Walter Schweikert
John Ingram Esq.

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RICHARD J. METZGER
VICE PRESIDENT-REGULATORY

October 4, 2006

By Hand Delivery

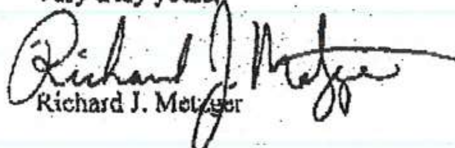
Public Utilities Commission of Guam
Suite 207, GCIC Building
414 West Soledad Avenue
Hagatna, Guam 96910

Re: GPUC Docket 06-8: ***Petition of Pulse Mobile, LLC for Designation as an Eligible Telecommunications Carrier***

Dear Sir or Madam:

In response to ordering clause 5 of the Commission's September 28, 2006 Order Asserting Jurisdiction in the above-referenced docket, on behalf of Pulse Mobile, LLC ("Pulse"), I hereby certify that on October 3, 2006, Pulse withdrew its May 19, 2005 petition to the Federal Communications Commission ("FCC") requesting designation as an eligible telecommunications carrier ("ETC"). Enclosed are copies of the letter to the FCC withdrawing the petition and the FCC's confirmation of filing.

Very truly yours,



Richard J. Metzger

cc: Harry M. Boertzel, Administrative Law Judge
Lou Palomo
Jim Madan
John N. Ingram
Bob Taylor
Andrew Gayle
Paul O. Gagnier

DCiManage/9310840.1

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

GUAM TELECOMMUNICATIONS ACT OF 2004 **DOCKET 05-1**

ORDER

[Affiliate Transaction Rules]

By its order dated July 27, 2005 in this docket, the Guam Public Utilities Commission *[PUC]* authorized the commencement of a rulemaking proceeding under 12 GCA 12104 [c][8] to propose rules relating to cost allocation and affiliate transactions for incumbent local exchange carriers and other carriers *[Rules]*. The purpose of the Rules is to establish reasonable accounting, discrimination, structural separation, affiliate transaction and other safeguards consistent with the legislative findings and intent set forth in 12 GCA 12101 of the Guam Telecommunications Act of 2004 *[Act]*. It is the intent of the rules that they apply to GTA Telecom LLC *[GTA]*, which is the only incumbent local exchange carrier doing business on Guam.

On November 16, 2006, PUC's independent regulatory consultant [Georgetown Consulting Group *(GCG)*] filed proposed Rules. On November 20, 2006, PUC issued public notice of the proposed Rules and invited interested persons to file comments on or before December 22, 2006. Only GTA filed comments, in which it complained that: a] the proposed disaggregation of GTA's financial data is excessive; b] the requirement that it annually file a cost allocation manual is unnecessary; and c] the requirement that GTA obtain PUC approval of certain transactions is unprecedented. In responsive comments dated January 19, 2007, GCG asserts that GTA has available the disaggregated financial data, which would be required by the Rules. The issue is whether GTA should be required to provide this data to PUC, which GCG asserts is essential in order for PUC to regulate GTA's operations and the relationships between its regulated and non-regulated affiliates. Such data would be entitled to confidential treatment under PUC's Confidentiality Rules. GCG further asserts that a CAM requirement is entirely consistent with the Act's intent [12 GCA 12104[d] that PUC apply, to the extent practicable, accepted regulatory practices in other U.S. jurisdictions. With regard to the approval of sizeable affiliate transactions, GCG asserts that this requirement is grounded on assuring that such transactions do not adversely affect the rates, terms and conditions of service or the quality and availability of basic telecommunications services on Guam. GTA filed additional comments on January 23, 2007 and GCG on January 26, 2007.

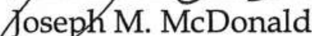
After careful review of the GTA and GCG comments, for good cause shown and in furtherance of the Act's findings and intent, the Guam Public Utilities Commission, on motion duly made, seconded and carried by the undersigned commissioners **HEREBY ORDERS THAT:**

1. The Rules, in form attached to this order, are approved and made applicable to GTA. PUC finds that the Rules are reasonable and necessary in order for it: a] to have adequate information to monitor GTA's financial and business transactions to assure that they are consistent with the Act and with GTA's commitments in the Asset Purchase Agreement with the Government of Guam dated August 31, 2004; and b] to assure that sizeable transactions between GTA and its unregulated affiliates are at arms length and consistent with the public interest.

2. These rules shall be effective January 1, 2005, except Rule 8[g], which shall be effective on February 1, 2007. GTA shall file with PUC within ninety days of this Order, all financial reports for 2005, as required by the rules.

Dated this 1st day of February 2007.

Terrence M. Brooks



Joseph M. McDonald

Edward C. Crisostomo

Filomena M. Cantoria

Rowena E. Perez

Jeffrey C. Johnson

BEFORE THE GUAM PUBLIC UTLITIES COMMISSION

GUAM TELECOMMUNICATIONS ACT **DOCKET 05-01**

RULES RELATING TO COST ALLOCATION AND AFFILIATE TRANSACTIONS FOR INCUMBENT LOCAL EXCHANGE CARRIERS AND OTHER CARRIERS

Rule 1. Background and Authority

The FCC has promulgated regulations prescribing a uniform system of accounts (including accounting for transactions with affiliates), the allocation of costs for regulated and non-regulated activities and the filing of cost allocation manuals by certain telecommunications carriers to provide a financial-based system maintained in sufficient detail to facilitate recurrent regulatory decision making and for other purposes, including the prevention of cross-subsidization between regulated and non-regulated services. The Commission desires to adopt similar rules to prescribe cost allocation methodologies for the segregation of intrastate investments and expenses, to prevent the price of deregulated and nonregulated services (hereinafter referred to as "nonregulated" services) from being set below cost by use of subsidization from customers of regulated services and to ensure that transactions between affiliates are fair and reasonable.

The Commission has authority and jurisdiction under 12 GCA 12104(c)(8) to establish reasonable accounting, discrimination, structural separation, affiliate transaction and other safeguards consistent with the legislative findings and intent set forth in 12 GCA 12101.

Rule 2. Applicability

These rules shall apply to the incumbent local exchange carrier in the Territory of Guam, as defined in 47 U.S.C. § 251(h) or designated by the FCC, and any other telecommunications carrier (except commercial mobile radio system providers) providing intrastate telecommunications services in the Territory of Guam that the Commission designates by Order.

Rule 3. Incorporation by Reference

References in these rules to Parts 32 and 64 are references to rules issued by the FCC found at 47 C.F.R. Part 32 (§32.1 *et seq.*) and 47 C.F.R. Part 64 (§64.1 *et seq.*), revised as of October 1, 2005, which rules are incorporated by reference.

Rule 4. Definitions

For purposes of these rules, the following definitions shall apply:

(a) "Affiliate" means any person or entity that directly or indirectly through one or more intermediaries, Control or are Controlled by, or are under common Control with, the accounting company.

(b) "Commission" means the Public Utilities Commission of Guam.

(c) "Control" (including the terms "Controlling," "Controlled by," and "under common Control with") means the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether such power is exercised through one or more intermediary entities, or alone, or in conjunction with, or pursuant to an agreement with, one or more other entities, and whether such power is established through a majority or minority ownership or voting of securities, common directors, officers, or stockholders, voting trusts, holding trusts, affiliated companies, contract, or any other direct or indirect means.

(d) "Dominant Carrier" means the incumbent local exchange carrier in the Territory of Guam, as defined in 47 U.S.C. § 251(h), and any other telecommunications carrier providing intrastate telecommunications services in the Territory of Guam that the Commission designates by Order pursuant to Rule 2.

(e) "FCC" means the Federal Communications Commission.

Rule 5. Prohibition Against Cross-Subsidization

A Dominant Carrier shall not use revenues from services that are not competitive to subsidize services subject to competition. A Dominant Carrier shall not use revenues from regulated services to subsidize the services or products of its Affiliates.

Rule 6. Uniform System of Accounts

(a) The Uniform System of Accounts adopted by the FCC in Part 32 is hereby adopted and prescribed for all Dominant Carriers except as set forth in these rules. All Dominant Carriers shall maintain their books and accounts in accordance with Part 32 except as modified in these rules.

(b) In the event a Dominant Carrier is authorized by the FCC to maintain its books and accounts in a manner other than as set forth in Part 32, such Dominant Carrier may seek a variance from paragraph (a) allowing it to maintain its books and accounts as permitted by the FCC. However, the Dominant Carrier requesting such a variance shall implement a suitable alternative method of producing Guam intrastate-specific information to the Commission.

Rule 7. Allocation of Costs

(a) Each Dominant Carrier that provides both regulated and nonregulated intrastate service shall allocate intrastate investments, expenses and revenues between regulated activities and nonregulated activities according to the principles, procedures and accounting requirements in Part 32 and Part 64.

(b) In the event a Dominant Carrier is authorized by the FCC to allocate costs between regulated and nonregulated activities in a manner other than as set forth in Part 32 and Part 64, such Dominant Carrier may seek a variance from paragraph (a) allowing it to allocate costs as permitted by the FCC. However, the Dominant Carrier requesting such

a variance shall implement a suitable alternative method of producing Guam intrastate-specific information to the Commission.

Rule 8. Transactions with Affiliates

(a) Unless otherwise approved by the Commission, transactions between a Dominant Carrier and any Affiliate of such Dominant Carrier involving asset transfers or provision of services into or out of regulated accounts shall be recorded by the Dominant Carrier in its regulated accounts as provided in paragraphs (b) through (e) below.

(b) Assets sold or transferred between a Dominant Carrier and its Affiliate pursuant to a tariff, including a tariff filed with a state commission, shall be recorded in the appropriate revenue accounts at the tariffed rate. Non-tariffed assets sold or transferred between a Dominant Carrier and its Affiliate that qualify for prevailing price valuation, as defined in paragraph (d) of this rule, shall be recorded at the prevailing price. For all other assets sold by or transferred from a Dominant Carrier to its Affiliate, the assets shall be recorded at no less than the higher of fair market value and net book cost. For all other assets sold by or transferred to a Dominant Carrier from its Affiliate, the assets shall be recorded at no more than the lower of fair market value and net book cost.

(1) Floor. When assets are sold by or transferred from a Dominant Carrier to an Affiliate, the higher of fair market value and net book cost establishes a floor, below which the transaction cannot be recorded. Dominant Carriers may record the transaction at an amount equal to or greater than the floor, so long as that action complies with the Communications Act of 1934, as amended, FCC and Commission rules and orders, and is not otherwise anti-competitive.

(2) Ceiling. When assets are purchased from or transferred from an Affiliate to a Dominant Carrier, the lower of fair market value and net book cost establishes a ceiling, above which the transaction cannot be recorded. Dominant Carriers may record the transaction at an amount equal to or less than the ceiling, so long as that action complies with the Communications Act of 1934, as amended, FCC and Commission rules and orders, and is not otherwise anti-competitive.

(3) Threshold. For purposes of this rule Dominant Carriers are required to make a good faith determination of fair market value for an asset when the total aggregate annual value of the asset(s) reaches or exceeds $500,000, per Affiliate. When a Dominant Carrier reaches or exceeds the $500,000 threshold for a particular asset for the first time, the Dominant Carrier must perform the market valuation and value the transaction on a going-forward basis in accordance with the Affiliate transactions rules on a going-forward basis. When the total aggregate annual value of the asset(s) does not reach or exceed $500,000, the asset(s) shall be recorded at net book cost.

(c) Services provided between a Dominant Carrier and its Affiliate pursuant to a tariff, including a tariff filed with a state commission, shall be recorded in the appropriate revenue accounts at the tariffed rate. Non-tariffed services provided between a Dominant Carrier and its Affiliate pursuant to publicly-filed agreements submitted to a state commission pursuant to Section 252(e) of the Communications Act of 1934 or statements

of generally available terms pursuant to Section 252(f) shall be recorded using the charges appearing in such publicly-filed agreements or statements. Non-tariffed services provided between a Dominant Carrier and its Affiliate that qualify for prevailing price valuation, as defined in paragraph (d) of this rule, shall be recorded at the prevailing price. For all other services sold by or transferred from a Dominant Carrier to its Affiliate, the services shall be recorded at no less than the higher of fair market value and fully distributed cost. For all other services sold by or transferred to a Dominant Carrier from its Affiliate, the services shall be recorded at no more than the lower of fair market value and fully distributed cost.

(1) Floor. When services are sold by or transferred from a Dominant Carrier to an Affiliate, the higher of fair market value and fully distributed cost establishes a floor, below which the transaction cannot be recorded. Dominant Carriers may record the transaction at an amount equal to or greater than the floor, so long as that action complies with the Communications Act of 1934, as amended, FCC and Commission rules and orders, and is not otherwise anti-competitive.

(2) Ceiling. When services are purchased from or transferred from an Affiliate to a Dominant Carrier, the lower of fair market value and fully distributed cost establishes a ceiling, above which the transaction cannot be recorded. Dominant Carriers may record the transaction at an amount equal to or less than the ceiling, so long as that action complies with the Communications Act of 1934, as amended, FCC and Commission rules and orders, and is not otherwise anti-competitive.

(3) Threshold. For purposes of this rule, Dominant Carriers are required to make a good faith determination of fair market value for a service when the total aggregate annual value of that service reaches or exceeds $500,000, per Affiliate. When a Dominant Carrier reaches or exceeds the $500,000 threshold for a particular service for the first time, the Dominant Carrier must perform the market valuation and value the transaction in accordance with the affiliate transactions rules on a going-forward basis. All services received by a Dominant Carrier from its Affiliate(s) that exist solely to provide services to members of the Dominant Carrier's corporate family shall be recorded at fully distributed cost.

(d) In order to qualify for prevailing price valuation in paragraphs (b) and (c) of this rule, sales of a particular asset or service to third parties must encompass greater than 25 percent of the total quantity of such product or service sold by an entity. Dominant Carriers shall apply this 25 percent threshold on an asset-by-asset and service-by-service basis, rather than on a product-line or service-line basis.

(e) Income taxes shall be allocated among the regulated activities of the Dominant Carrier, its nonregulated divisions, and members of an affiliated group. Under circumstances in which income taxes are determined on a consolidated basis by the Dominant Carrier and other members of the affiliated group, the income tax expense to be recorded by the Dominant Carrier shall be the same as would result if determined for the Dominant Carrier separately for all time periods, except that the tax effect of carry-back and carry-forward operating losses, investment tax credits, or other tax credits generated by operations of the Dominant Carrier shall be recorded by the Dominant Carrier during the

period in which applied in settlement of the taxes otherwise attributable to any member, or combination of members, of the affiliated group.

(f) Each Dominant Carriers shall file with the Commission annually a statement identifying all Affiliates that engage in transactions with the Dominant Carrier and all transactions between such Affiliates and the Dominant Carrier; provided, such statement may be included in the cost allocation manual filed by the Dominant Carrier pursuant to these rules. The statement shall describe: (i) the nature of each transaction, including whether the transaction involves the provision of services or asset transfers and how such transfers are accomplished; (ii) the terms at which the service is provided, including the amounts charged and the basis of valuation used *(i.e.*, at the tariff rate, prevailing market price or fully distributed cost); and (iii) the frequency with which the service is rendered. Copies of any agreements between the Dominant Carrier and any Affiliate shall be made available to the Commission's staff for review. The statement and agreements filed or made available to the Commission's staff pursuant to this paragraph may be treated as confidential pursuant to applicable Commission rules governing confidential information.

(g) Notwithstanding anything to the contrary in this rule, any transaction or series of transactions between a Dominant Carrier and its Affiliates which involve either (i) the transfer from the Dominant Carrier to its Affiliates of assets with an aggregate fair market value of more than $1,000,000 in any year or (b) the purchase by the Dominant Carrier from its Affiliates of services with an aggregate price of more than $1,000,000 in any year, shall require the prior approval of the Commission.

Rule 9. Cost Allocation Manual

(a) Each Dominant Carrier shall maintain and file with the Commission annually a cost allocation manual describing the methodology used for allocating its costs between its regulated activities and its nonregulated activities in accordance with these rules. The cost allocation manual shall contain the following information regarding the Dominant Carrier's allocation of costs between regulated and nonregulated activities:

(1) A description of each of the Dominant Carrier's nonregulated activities;

(2) A list of all the activities to which the Dominant Carrier now accords incidental accounting treatment and the justification therefor;[1]

(3) A chart showing all of the Dominant Carrier's corporate Affiliates;

(4) A statement identifying each Affiliate that engages in or will engage in transactions with the Dominant Carrier and describing the nature, terms and frequency of each transaction;

[1] Incidental accounting treatment refers to small nonregulated activities that do not constitute a line of business, such as rental of space in a telephone company's building to another party for purposes unrelated to telecommunications services. The revenues and expenses of such activities are accounted as regulated and are not subject to allocation using the cost allocation manual procedures.

(5) A cost apportionment table showing, for each account containing costs incurred in providing regulated services, the cost pools with that account, the procedures used to place costs into each cost pool, and the method used to apportion the costs within each cost pool between regulated and nonregulated activities; and

(6) A description of the time reporting procedures that the Dominant Carrier uses, including the methods or studies designed to measure and allocate non-productive time.

(b) Each Dominant Carrier shall ensure that the information contained in its cost allocation manual is accurate. Dominant Carriers must update their cost allocation manuals at least annually, except that changes to the cost apportionment table and to the description of time reporting procedures must be filed at the time of implementation. Annual cost allocation manual updates shall be filed on or before the last working day of each calendar year. Proposed changes in the description of time reporting procedures, the statement concerning affiliate transactions, and the cost apportionment table must be accompanied by a statement quantifying the impact of each change on regulated operations. Changes in the description of time reporting procedures and the statement concerning affiliate transactions must be quantified in $100,000 increments at the account level. Changes in cost apportionment tables must be quantified in $100,000 increments at the cost pool level. The Commission may suspend any such changes for a period not to exceed 180 days, and may thereafter allow the change to become effective or prescribe a different procedure. In the event no changes to the cost allocation manual were needed or made during the calendar year, a statement attesting thereto shall be provided to the Commission in accordance with the above schedule and Rule 12.

Rule 10. Financial Records

(a) A Dominant Carrier's financial records shall be kept in accordance with generally accepted accounting principles to the extent permitted by the system of accounts adopted in these rules. The financial records shall be kept with sufficient particularity to show fully the facts pertaining to all entries in these accounts. With limiting the foregoing, the financial statements shall contain sufficient detail to display total company, total nonregulated and total regulated network plant assets, revenues and operating expenses. Revenues shall be reported at the detailed account level (*e.g.*, Basic Local Service, Private Line, Other Local Service, Cellular, Long Distance, End User Access Charge, Switched and Special Access, *etc.*). The remaining data shall be disaggregated at least by major account category. Telecommunications Plant in Service shall report General Support Facilities, Central Office Equipment, Information Origination/Termination Equipment, and Cable & Wire Facilities separately. Operating Expenses shall report at a minimum Plant Specific, Plant Non-specific, Depreciation, Customer Operations and Corporate Operations expenses. The detail records shall be maintained and filed in such manner as to be readily accessible for examination by the Commission and its staff.

(b) Each Dominant Carrier shall provide the Commission with copies of its consolidated audited financial statements for each fiscal year promptly after such financial statements are available and at such other times as may be requested by the Commission. Any work papers used by independent auditors shall be made available for the Commission staff's

review. The Dominant Carrier shall authorize the release of such work papers by auditors to the Commission's staff.

(c) Each Dominant Carrier shall maintain subsidiary accounting records in sufficient detail to support the amounts reported on its financial reports. These records should be based on the assignments or allocations used in its cost allocation manual in accordance with these rules. These records should also include detailed subsidiary records of each affiliate transaction showing the services rendered or assets transferred, the amounts charged and the basis of valuation used for each transaction

(d) The financial records, including auditor's report and work papers, provided by a Dominant Carrier under these rules may be treated as confidential pursuant to applicable Commission rules governing confidential information.

Rule 11. Independent Audit

If the Commission enters upon an investigation regarding a Dominant Carrier's compliance with these rules, the Commission may require such Dominant Carrier to have either (a) an attest engagement performed by an independent auditor that the systems, processes, and procedures applied by the Dominant Carrier to generate the results reported pursuant to these rules comply with these rules, or (b) a financial audit performed by an independent auditor that the Dominant Carrier's annual financial report required by these rules present fairly, in all material respects, the information of these rules.

Rule 12. Annual Certification

Each Dominant Carrier shall file a certification with the Commission stating that (a) it is complying with these rules and (b) it has followed its cost allocation manual throughout the year for regulatory reporting purposes. The certification must be signed, under oath, by an officer of the Dominant Carrier, and filed with the Commission on an annual basis at the time that the Dominant Carrier files its cost allocation manual as provided by these rules.

Rule 13. Effective Date

These rules shall be effective January 1, 2005, except that Rule 8(g) shall be effective on the date of approval of these rules by the Commission. Any financial reports or other information for 2005 shall be filed with the Commission within ninety (90) days of the promulgation of these rules.

P.O. Box 9008
Tamuning, Guam 96931

624 North Marine Corps Drive
Tamuning, Guam 96913

December 22, 2006

VIA ELECTRONIC MAIL

Harry M. Boertzel, Esq.
Administrative Law Judge
Guam Public Utilities Commission
Suite 207, GCIC Building
Hagatña, Guam 96932

Re: Docket No. 05-1; Comments on Proposed Affiliate Transaction Rules

Dear Judge Boertzel:

GTA Telecom LLC ("GTA") submits these comments in response to the Guam Public Utilities Commission's ("PUC" or "Commission") notice of November 20, 2006, regarding Docket 05-01: "Promulgation of rules under Guam Telecommunications Act of 2004" relating to cost allocation and affiliate transactions. GTA thanks the Commission for the opportunity to comment on the proposed rules.

As GTA has noted in its previous filings associated with this proceeding, the Federal Communications Commission ("FCC") has already established cost allocation and affiliate transaction rules to safeguard against improper discriminatory practices and cross-subsidization. Because GTA is a carrier subject to the Communications Act of 1934, as amended, and the FCC's jurisdiction, GTA must comply with those rules. In fact, the FCC's cost allocation and affiliate transaction rules impose significant restrictions and controls on GTA's activities. Consequently, GTA maintains that the obligations currently in place are more than adequate to protect against any potential wrongdoing and that the additional rules proposed by the Commission are unnecessary to protect the public interest.

To the extent that the Commission seeks to impose obligations above and beyond those already in place, GTA respectfully contends that the enactment of the proposed requirements would only impose further regulatory and administrative costs on GTA without providing greater protection against unlawful behavior. The net result would be that GTA would be required to expend additional resources for a result already achieved.

While GTA believes that many of the proposed rules duplicate what the FCC already requires, GTA appreciates that the Commission may desire to nuance those the FCC's rules to the Guam market. GTA, however, questions the need for the Commission to expand GTA's accounting and reporting obligations well beyond the scope and scale of GTA's current responsibilities. Specifically, GTA objects to three rules proposed by the Commission: (1) the extensive disaggregation of GTA's financial information, (2) an annual filing of a cost allocation manual, and (3) the need for prior approval by the Commission for certain transactions.

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The Proposed Disaggregation Of GTA's Financial Data Is Excessive

The imposition of additional accounting obligations that require the disaggregation of GTA's revenues and expenses and increase the granularity of subsidiary accounting records are unwarranted and superfluous, and they will impose substantial additional costs on GTA. The FCC's Uniform System of Accounts ("USoA") and cost allocation requirements already provide adequate safeguards to protect against the improper discrimination and improper cross-subsidization about which the Commission is concerned. Accordingly, the Commission should decline to adopt those provisions of its proposed rules that would impose accounting and administrative burdens on GTA beyond the current requirements, specifically proposed Rules 10(a) and (c).

As stated previously, GTA is obligated to and complies with the FCC's affiliate transaction and cost allocation rules (Parts 32 and 64). For example, GTA is required by the USoA to separate regulated from non-regulated entries (47 C.F.R. §§ 32.23 and 32.27). The Commission duplicates those and similar requirements in proposed Rules 6, 7, and part of 8.

To date, the FCC has not found it necessary to proscribe specific accounting categories for the financial records that carriers like GTA must maintain. Nor has the FCC required the level of disaggregation of expenses and revenues as those proposed by the Commission (*see* proposed Rule 10(a)). Only GCG has suggested implementing such measures. GCG has not articulated any rationale for imposing these additional accounting burdens and the Commission should reject them.

GTA submits that subjecting it to FCC rules that are not applicable to it would be unnecessary and an inefficient use of the Company's resources. TeleGuam's accounting systems, including the financial statements provided to the Commission, already reflect the philosophy of the FCC's Part 64 requirements. Transactions among TeleGuam's affiliates, including GTA, meet the requirement that such transactions be booked at "arm's length" prices. No one has identified any problem with TeleGuam's accounting or the transactions among its affiliates, nor identified any instance of cross-subsidization. Therefore, the imposition of additional regulatory requirements is unwarranted.

Additionally, GTA would incur significant expense to implement and maintain an accounting model that disaggregated revenues and expenses at the detailed account level and increased the granularity of subsidiary accounting records. The enactment of such additional requirements would only increase GTA's regulatory and administration costs without demonstratively providing additional protection against unlawful behavior beyond what is currently in place. The net result would be that GTA would expend more of its limited resources to comply with the proposed rules for a result already achieved. GTA is operating under a price freeze for its basic services and thus cannot recover the costs of compliance from its customers. Therefore, the compliance costs will be bore entirely by GTA which could impact the quality of GTA's services.

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Lacking a valid reason to impose additional accounting obligations, the Commission should not adopt proposed Rule 10(a) and (c), as drafted. Instead, GTA proposes that 10(a) be modified as follows:

> (a) A Dominant Carrier's financial records shall be kept in accordance with generally accepted accounting principles to the extent permitted by the system of accounts adopted in this rules. The financial records shall be kept with sufficient particularity to show fully the facts pertaining to all entries in these accounts.

An Annual Filing Of GTA's Cost Allocation Manual Is Unnecessary

The proposed requirement that GTA file its cost allocation manual ("CAM") annually is unnecessary. Under the FCC's current rules, only carriers with revenues in excess of $100,000,000 are required to submit annual cost allocation manuals. GTA's revenues are approximately one-third of that threshold. The FCC has declined to require companies like GTA to submit their CAMS annually.

Now the Commission again seeks to impose additional requirement beyond the FCC's demands without a clear articulation of need. GTA is unaware of any pending event that could support increased regulatory scrutiny (such as a general rate case or a sale of GTA), yet the Commission seeks to impose additional requirements on GTA. As a result, GTA requests that the Commission drop its proposed requirement that GTA annually file its CAM.

Commission Approval For Certain Transactions Is Unprecedented

GTA objects to the Commission proposal that any transaction or series of transactions between GTA and its affiliates for assets or services in excess of $1,000,000 will require prior approval by the Commission (proposed Rule 10(g)). This requirement is superfluous and unnecessarily intrusive into the GTA's normal business operations.

While the Commission has not yet shared its basis for proposing such a rule, GTA contends that given the underlying cross-subsidization rules and affiliate transaction rules already in place, the need for such a requirement is unnecessary. Transactions between GTA and its affiliates are already regulated through the FCC's affiliated transaction rules. Any potential harm resulting from cross subsidization or unlawful discrimination is addressed through those rules. The potential for GTA to engage in such behavior is therefore addressed regardless of the dollar amount for the transaction. As a result, any transaction consistent with the FCC's affiliate transaction rules is by definition permissible. The Commission's proposed rule seeks to place hurtles for GTA to clear without any basis to institute its compliance. Again, the Commission is imposing additional regulatory and administrative obligations when the stated goals of no cross

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subsidization and unlawful discrimination are already addressed. GTA respectfully asserts that the Commission not adopt its propose Rule 10(g).

Remainder Of Proposed Rules Duplicative But Unobjectionable

GTA does not strenuously object to the remainder of the Commission's proposed rules, mainly because the Commission has merely codified principles and requirements already embodied by the FCC. For example, "Rule 8. Transactions with Affiliates" sections (a) through (e), essentially duplicate the FCC's rules codified at 47 C.F.R. § 32.37 (a)-(e). That proposed Rule 8 substitutes "Dominant Carrier" for the term "carrier" in the FCC's rules; "Affiliate" is capitalized; a Bell Operating Company specific provision is eliminated; and an addition is made to subsection (a) that clarifies that the affiliate transaction rules apply to the provision of services.

As also stated in previous filings, GTA does not object to filing an annual statement that identifies all of its affiliate transactions, to having an independent audit performed under certain conditions (proposed Rule 11), and to submitting an annual certification of GTA's compliance with cost allocation and affiliated transaction requirements.

GTA does point out what it believes is a typographical error to proposed Rule 13. In the current draft the effective date of the Commission's proposed rules is listed as January 1, 2005. GTA presumes that the Commission had intended that date to be January 1, 2007.

Please do not hesitate to contact the undersigned if you have any questions.

Respectfully submitted,

Richard J. Metzger

cc: Jamshed Madan (GCG)
John Ingram (GCG)
Paul Gagnier (Bingham McCutchen)
Frank G. Lamancusa (Bingham McCutchen)

BMN 1/22/07

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January 19, 2007

Harry M. Boertzel, Esq.
Administrative Law Judge
The Guam Public Utilities Commission
Suite 207, GCIC Building
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Re: Docket No. 05-1: Response to GTA's Comments on Affiliate Transaction Rules

Dear Judge Boertzel:

As requested in your January 16, 2007 e-mail message, this is the report of Georgetown Consulting Group to the comments of GTA on the proposed affiliate transaction rules. The principal objections raised by GTA were:

GTA believes the proposed disaggregation of financial data in support of reporting requirements is excessive and will result in increased costs without providing "additional protection against unlawful behavior beyond what is currently in place." Specifically, GTA objects to rules 10(a) and (c).

GTA objects to the filing of a Cost Allocation Manual (CAM) with the Commission pursuant to rule 9. GTA contends the FCC does not require the filing of CAMs by carriers with annual revenues under $100 million.

GTA believes rule 8(g) which requires Commission approval of affiliate transactions for assets or services in excess of $1 million is unprecedented, superfluous and an unwarranted intrusion into GTA's normal business processes.

A copy of the proposed rules is attached for your convenience.

As noted in our December 22, 2006 report, the regulatory purpose of these rules was to ensure that proper cost allocation methodologies and related financial reports are in place to prevent the price of deregulated and nonregulated services from being set below cost by use of subsidization from customers of regulated services and to ensure that transactions between

affiliates are fair and reasonable. This purpose has been expressed by the FCC and mainland US public utilities commissions and is fundamental to effective regulation. Please note that the objective is prevention, not a finding of fault. Also, the rules should be in place as soon as reasonably possible. The Commission should not delay crafting them until GTA files a general rate case as GTA appears to imply. To do so would introduce unnecessary delay when an application for rate relief is made.

For the reasons stated below, we believe GTA's objections are unfounded and should be dismissed.

Disaggregation of Financial Data

Rule 10(a) requires financial statements to display total company, total nonregulated and total regulated network plant assets, revenues and operating expenses. Revenues are to be reported at the detailed account level (*e.g.*, Basic Local Service, Private Line, Other Local Service, Cellular, Long Distance, End User Access Charge, Switched and Special Access, *etc.*). The remaining data are to be disaggregated at least by major account category. Telecommunications Plant in Service is to be disaggregated into General Support Facilities, Central Office Equipment, Information Origination/Termination Equipment, and Cable & Wire Facilities. Operating Expenses are to be disaggregated into Plant Specific, Plant Non-specific, Depreciation, Customer Operations and Corporate Operations expenses.

Rule 10(c) supports rule 10(a) and requires each Dominant Carrier to maintain subsidiary accounting records in sufficient detail to support the amounts reported on its financial reports. These records should be based on the assignments or allocations used in its cost allocation manual and should also include detailed subsidiary records of each affiliate transaction showing the services rendered or assets transferred, the amounts charged and the basis of valuation used for each transaction

GTA apparently objects to reporting of financial data at the Class B level of accounts[1] even though that is the norm for mid-sized and smaller telephone companies. The FCC requires all Class B carriers like GTA to keep their books at the Class B level, although carriers are allowed to keep more detailed records if they so desire. The level of reporting detail in rule 10(a) is consistent with Class B accounting. It is also less granular than is required to support the NECA tariffs in which GTA is a concurring carrier. Further, it is less granular than the accounting data provided to GTA's auditors. Since the level of detail for financial information required by rules 10(a) and (c) is already an FCC and NECA requirement and

[1] Part 32 rules classify all companies as Class A or Class B on the basis of total annual revenues. Those above an indexed level are Class A companies while those below the threshold are Class B companies. *Part 32.11* The FCC permitted small and mid-sized companies to keep their books at the Class B level in order to reduce the administrative cost of maintaining accounts in compliance with the rewrite of the Uniform System of Accounts which went into effect in 1988.

since the data already exist, GTA's objection is meaningless. We do not believe GTA will incur any significant additional costs by complying with these rules.

GTA claims "the FCC has not found it necessary to proscribe (sic) (prescribe?) specific accounting categories for the financial records that carriers like GTA must maintain. Nor has the FCC required the level of disaggregation of expenses and revenues as those proposed by the Commission (see rule 10(a)). Only GCG has suggested implementing such measures. GCG has not articulated any rationale for imposing these additional accounting burdens and the Commission should reject them." Contrary to GTA's statement, the FCC does require companies of the same size as GTA to maintain Part 32 accounts and to perform their cost allocations at the Class B level or optionally at the Class A level.[2]

GTA says its current accounting systems and the financial statements submitted to the Commission already reflect the philosophy of the FCC's Part 64 requirements. However, the Commission should not blindly accept GTA's assurances that it is in compliance with the cost allocation and affiliate transaction rules. As we noted in our October 6, 2006 report in Docket 05-03, the financial statements provided by GTA provide little if any useful information for the regulation of GTA. All financial data was redacted from the public version of the 2005 audited financial statements, while the confidential version provided only very high level summarized results and the auditors' notes. Not only was there no way to determine if GTA was in compliance with the Part 64 cost allocation and affiliate transactions rules due to lack of detail but by design, the statements were based on consolidated data. In other words, there was no breakdown of non-regulated vs. regulated revenues, expenses and assets and no usable information on the amount of services provided to or by the regulated operations. The level of disaggregation required under rule 10(a) represents the absolute minimum needed to regulate GTA's operations.

<u>Filing of Cost Allocation Manual</u>

GTA objects to the requirement in rule 9 to file a copy of its Cost Allocation Manual with the Commission on the basis that Part 64 does not require companies having revenues under $100 million annually to file one at the FCC. However, the FCC's decision is not relevant in the case of Guam. The PUC is free to set its own standards, including whether or not to require the filing of a CAM.

A review of several state PUC websites showed that the filing of a CAM varies from state to state. For example, Texas requires all except the smallest ILECs[3] to file one.

> "Cost allocation manual requirement. Each dominant certificated telecommunications utility that provides regulated intrastate utility service and also provides nonregulated utility service or sells other services or products shall maintain and file with the

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[2] FCC RAO Letter 30, DA 00-355, Released February 24, 2000

[3] These ILECs are called "average schedule" companies. Most serve under 5,000 access lines.

> commission annually a cost allocation manual (CAM) describing the methodology used for allocating its costs between its regulated activities and its other activities in accordance with this subsection." *Substantive Rules §26.98. Cost Allocation Manual*

Colorado does not explicitly require the filing of a CAM but does require ILECs to provide its Commission all data needed to verify cost separation. Also, every ILEC must provide an audit of the CAM in connection with any rate case or re-determination of rate of return. *PUC Rules Part 723-2, Section 2408(a).* Some other PUCs only require the ILEC to demonstrate compliance with cost allocation rules in connection with a general rate case. However, it should be noted that all of the mainland PUCs have had extensive histories of regulating the ILECs in their jurisdictions. Consequently, they are far more familiar with each ILEC's accounting practices than the Commission is with regard to GTA.

The reason for GCG's proposed rule 9 is compelling. Since the acquisition by TeleGuam, GTA has not provided any information that demonstrates compliance with the Part 64 rules. Yet the Commission must act to prevent improper subsidies of nonregulated services by regulated services. This is a well accepted principle and is implied in the Commission's authority under Section 12104(c)(2) the Guam Telecommunications Act to set just and reasonable rates for intra-Guam services. It is also consistent with the legislative intent expressed in Section 12101(b)(4) to protect the consumers of Guam during the transition to a competitive telecommunications market and ensure that every person in Guam has access to basic telecommunications services at reasonable and affordable prices. It is fundamental to the operations of the Commission that it have sufficient information from the companies it regulates to carry out this responsibility.

Approval of Affiliate Transactions

Rule 8(g) requires Commission approval of any transaction or series of transactions between a Dominant Carrier and its Affiliates which involve either (i) the transfer from the Dominant Carrier to its Affiliates of assets with an aggregate fair market value of more than $1,000,000 in any year or (b) the purchase by the Dominant Carrier from its Affiliates of services with an aggregate price of more than $1,000,000 in any year. GTA objects to this rule, calling it unprecedented, superfluous and an unwarranted intrusion into GTA's normal business processes.

In its Order in Docket 05-03, granting the transfer of TeleGuam's Certificate of Authority to GTA Telecom, the Commission determined it has authority under the Guam Telecommunications Act to review and consider the business terms under which GTA Telecom utilizes intrastate telecommunications assets and services provided by third parties, including TeleGuam and its subsidiaries, in assessing whether to approve rate changes requested by GTA Telecom. This authority is rooted in Section 12104(c) of the Act which requires the Commission to determine just and reasonable rates, terms and conditions and to adopt rules governing the availability and quality of telecommunications services in Guam to ensure that the residents of Guam have access to quality and affordable telecommunications services. We believe that the Commission's jurisdiction to review and impose conditions on affiliate transactions may be reasonably inferred where such matters

may adversely affect the rates, terms and conditions of service or the quality and availability of basic telecommunications services in Guam.[4]

We believe irreparable harm may result if the review of sizeable affiliate transactions was delayed until GTA actually files a rate case. If the transaction was found to violate Guam law, the Commission's orders or FCC rules, it would likely be disallowed for ratemaking purposes. If the transaction was sufficiently large, the cash flow needed to continue regulated operations could be jeopardized. This is not in the best interests of either the telecommunications subscriber or GTA.

In proposing this rule, GCG set a lower threshold of $1 million as a way to limit prior review to only those transactions that were large enough to have serious consequences. We believe this level is reasonable for a company of GTA's size. Smaller transactions would not require prior Commission review and approval.

If you have any questions concerning this report or require any additional information, please let us know.

Cordially,

/s/ Jamshed K. Madan

Jamshed K. Madan

Cc: Richard J. Metzger
Paul O. Gagnier, Esq.
Walter Schweikert
John Ingram Esq.

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[4] See, e.g., Atlantic Tele-Network Co. v. Public Services Commission of the Virgin Islands, 841 F.2d 70 (3rd Cir. 1988).

hboertzel@hotmail.com Printed: Monday, January 29, 2007 6:46 AM

From : Dick Metzger <DMetzger@gta.net>
Sent : Tuesday, January 23, 2007 10:34 AM
To : hboertzel@hotmail.com
CC : jkmadan@gmail.com, We3and1@aol.com, jingram@mckennalong.com, Letitia L Byerly <LLByerly@gta.net>
Subject : GTA proposal concerning GCG's draft affiliate transaction rules

Attachment : GTAProposal-AffiliateTransRules.doc (0.06 MB)

Dear Judge Boertzel --

Pursuant to the regulatory conference this morning, GTA hereby proposes deleting sections 10(a) and 10(c) of GCG's proposed affiliate transaction rules in exchange for GTA accepting a CAM obligation, as reflected in the attached redline version of the draft rules.

In order to make clear that other issues remain unresolved even if GCG accepts this proposal, I have also redlined the remaining portions of the proposed rules where GTA continues to have issues [the "Original Showing Markup" view seems most useful]. Of course, I would welcome any ideas for resolving these remaining problems.

Dick

(See attached file: GTA Proposal - Affiliate Trans Rules.doc)

RULES RELATING TO COST ALLOCATION AND AFFILIATE TRANSACTIONS

FOR INCUMBENT LOCAL EXCHANGE CARRIERS AND OTHER CARRIERS

~~**Rule 1. Background and Authority**~~

~~The FCC has promulgated regulations prescribing a uniform system of accounts (including accounting for transactions with affiliates), the allocation of costs for regulated and non-regulated activities and the filing of cost allocation manuals by certain telecommunications carriers to provide a financial-based system maintained in sufficient detail to facilitate recurrent regulatory decision making and for other purposes, including the prevention of cross-subsidization between regulated and non regulated services. The Commission desires to adopt similar rules to prescribe cost allocation methodologies for the segregation of intrastate investments and expenses, to prevent the price of deregulated and nonregulated services (hereinafter referred to as "nonregulated" services) from being set below cost by use of subsidization from customers of regulated services and to ensure that transactions between affiliates are fair and reasonable.~~

~~The Commission has authority and jurisdiction under 12 GCA 12104(c)(8) to establish reasonable accounting, discrimination, structural separation, affiliate transaction and other safeguards consistent with the legislative findings and intent set forth in 12 GCA 12101.~~[Policy and legal recitations are inappropriate in actual rules.]

Rule 2. Applicability

These rules shall apply to the incumbent local exchange carrier in the Territory of Guam, as defined in 47 U.S.C. § 251(h) or designated by the FCC, and any other telecommunications carrier (except commercial mobile radio system providers) providing intrastate telecommunications services in the Territory of Guam that the Commission designates by Order.[1]

Rule 3. Incorporation by Reference

References in these rules to Parts 32 and 64 are references to rules issued by the FCC found at 47 C.F.R. Part 32 (§32.1 *et seq.*) and 47 C.F.R. Part 64 (§64.1 *et seq.*), revised as of October 1, 2005, which rules are incorporated by reference.

Rule 4. Definitions

For purposes of these rules, the following definitions shall apply:

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[1] The Commission Order approving these rules should indicate that these rules apply to GTA Telecom, LLC.

(a) "Affiliate" means any person or entity that directly or indirectly through one or more intermediaries, Control or are Controlled by, or are under common Control with, the accounting company.

(b) "Commission" means the Public Utilities Commission of Guam.

(c) "Control" (including the terms "Controlling," "Controlled by," and "under common Control with") means the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether such power is exercised through one or more intermediary entities, or alone, or in conjunction with, or pursuant to an agreement with, one or more other entities, and whether such power is established through a majority or minority ownership or voting of securities, common directors, officers, or stockholders, voting trusts, holding trusts, affiliated companies, contract, or any other direct or indirect means.

(d) "Dominant Carrier" means the incumbent local exchange carrier in the Territory of Guam, as defined in 47 U.S.C. § 251(h), and any other telecommunications carrier providing intrastate telecommunications services in the Territory of Guam that the Commission designates by Order pursuant to Rule 2.

(e) "FCC" means the Federal Communications Commission. [As above, recitations of policy considerations belong in the reasoning of an agency decision adopting rules, not in the rules themselves]

~~Rule 5. Prohibition Against Cross-Subsidization~~

~~A Dominant Carrier shall not use revenues from services that are not competitive to subsidize services subject to competition. A Dominant Carrier shall not use revenues from regulated services to subsidize the services or products of its Affiliates.~~

~~Rule 6. Uniform System of Accounts~~

[GTA is already subject to the USOA, as is every ILEC. There is no need to recite this fact in the Commission's rules. In the unlikely event the FCC were to exempt all ILECs from such reporting, the assumption should be that the FCC's mandate would be followed in Guam, absent some showing to the contrary.] ~~(a) The Uniform System of Accounts adopted by the FCC in Part 32 is hereby adopted and prescribed for all Dominant Carriers except as set forth in these rules. All Dominant Carriers shall maintain their books and accounts in accordance with Part 32 except as modified in these rules.~~

[GCG in effect argues that no FCC change in Part 32 (which is in the exclusive jurisdiction of the FCC) nor Part 64 can be assumed to be appropriate for Guam, so each change (no matter or big or small) must be relitigated at the Commission. There is no reason for so harsh an assumption. Any FCC changes that GCG objects to can be raised on a case-by-case basis, with the burden falling on GCG to show that some Guam-specific issue exists.] ~~(b) In the event a Dominant Carrier is authorized by the FCC to maintain its books and accounts in a manner other than as set forth in Part 32, such Dominant Carrier may seek a variance from paragraph (a) allowing it to maintain its books and accounts as permitted by the FCC. However, the Dominant Carrier requesting such a variance shall implement a suitable alternative method of producing Guam intrastate-specific information to the Commission.~~

Rule 7. Allocation of Costs

(a) Each Dominant Carrier that provides both regulated and nonregulated intrastate service shall allocate intrastate investments, expenses and revenues between regulated activities and nonregulated activities according to the principles, procedures and accounting requirements in Part 32 and Part 64.

~~(b) In the event a Dominant Carrier is authorized by the FCC to allocate costs between regulated and nonregulated activities in a manner other than as set forth in Part 32 and Part 64, such Dominant Carrier may seek a variance from paragraph (a) allowing it to allocate costs as permitted by the FCC. However, the Dominant Carrier requesting such a variance shall implement a suitable alternative method of producing Guam intrastate-specific information to the Commission.~~[Same point as immediately above.]

Rule 8. Transactions with Affiliates

~~(a) Unless otherwise approved by the Commission, transactions between a Dominant Carrier and any Affiliate of such Dominant Carrier involving asset transfers or provision of services into or out of regulated accounts shall be recorded by the Dominant Carrier in its regulated accounts as provided in paragraphs (b) through (e) below.~~

~~(b) Assets sold or transferred between a Dominant Carrier and its Affiliate pursuant to a tariff, including a tariff filed with a state commission, shall be recorded in the appropriate revenue accounts at the tariffed rate. Non-tariffed assets sold or transferred between a Dominant Carrier and its Affiliate that qualify for prevailing price valuation, as defined in paragraph (d) of this rule, shall be recorded at the prevailing price. For all other assets sold by or transferred from a Dominant Carrier to its Affiliate, the assets shall be recorded at no less than the higher of fair market value and net book cost. For all other assets sold by or transferred to a Dominant Carrier from its Affiliate, the assets shall be recorded at no more than the lower of fair market value and net book cost.~~

> ~~(1) Floor. When assets are sold by or transferred from a Dominant Carrier to an Affiliate, the higher of fair market value and net book cost establishes a floor, below which the transaction cannot be recorded. Dominant Carriers may record the transaction at an amount equal to or greater than the floor, so long as that action complies with the Communications Act of 1934, as amended, FCC and Commission rules and orders, and is not otherwise anti-competitive.~~
>
> ~~(2) Ceiling. When assets are purchased from or transferred from an Affiliate to a Dominant Carrier, the lower of fair market value and net book cost establishes a ceiling, above which the transaction cannot be recorded. Dominant Carriers may record the transaction at an amount equal to or less than the ceiling, so long as that action complies with the Communications Act of 1934, as amended, FCC and Commission rules and orders, and is not otherwise anti-competitive.~~
>
> ~~(3) Threshold. For purposes of this rule Dominant Carriers are required to make a good faith determination of fair market value for an asset when the total aggregate annual value of the asset(s) reaches or exceeds $500,000, per~~

~~Affiliate. When a Dominant Carrier reaches or exceeds the $500,000 threshold for a particular asset for the first time, the Dominant Carrier must perform the market valuation and value the transaction on a going-forward basis in accordance with the Affiliate transactions rules on a going-forward basis. When the total aggregate annual value of the asset(s) does not reach or exceed $500,000, the asset(s) shall be recorded at net book cost.~~

~~(c) Services provided between a Dominant Carrier and its Affiliate pursuant to a tariff, including a tariff filed with a state commission, shall be recorded in the appropriate revenue accounts at the tariffed rate. Non-tariffed services provided between a Dominant Carrier and its Affiliate pursuant to publicly-filed agreements submitted to a state commission pursuant to Section 252(e) of the Communications Act of 1934 or statements of generally available terms pursuant to Section 252(f) shall be recorded using the charges appearing in such publicly-filed agreements or statements. Non-tariffed services provided between a Dominant Carrier and its Affiliate that qualify for prevailing price valuation, as defined in paragraph (d) of this rule, shall be recorded at the prevailing price. For all other services sold by or transferred from a Dominant Carrier to its Affiliate, the services shall be recorded at no less than the higher of fair market value and fully distributed cost. For all other services sold by or transferred to a Dominant Carrier from its Affiliate, the services shall be recorded at no more than the lower of fair market value and fully distributed cost.~~

~~(1) Floor. When services are sold by or transferred from a Dominant Carrier to an Affiliate, the higher of fair market value and fully distributed cost establishes a floor, below which the transaction cannot be recorded. Dominant Carriers may record the transaction at an amount equal to or greater than the floor, so long as that action complies with the Communications Act of 1934, as amended, FCC and Commission rules and orders, and is not otherwise anti-competitive.~~

~~(2) Ceiling. When services are purchased from or transferred from an Affiliate to a Dominant Carrier, the lower of fair market value and fully distributed cost establishes a ceiling, above which the transaction cannot be recorded. Dominant Carriers may record the transaction at an amount equal to or less than the ceiling, so long as that action complies with the Communications Act of 1934, as amended, FCC and Commission rules and orders, and is not otherwise anti-competitive.~~

~~(3) Threshold. For purposes of this rule, Dominant Carriers are required to make a good faith determination of fair market value for a service when the total aggregate annual value of that service reaches or exceeds $500,000, per Affiliate. When a Dominant Carrier reaches or exceeds the $500,000 threshold for a particular service for the first time, the Dominant Carrier must perform the market valuation and value the transaction in accordance with the affiliate transactions rules on a going-forward basis. All services received by a Dominant Carrier from its Affiliate(s) that exist solely to provide services to members of the Dominant Carrier's corporate family shall be recorded at fully distributed cost.~~

~~(d) In order to qualify for prevailing price valuation in paragraphs (b) and (c) of this rule, sales of a particular asset or service to third parties must encompass greater than 25 percent of the total quantity of such product or service sold by an entity. Dominant Carriers shall apply this 25 percent threshold on an asset-by-asset and service-by-service basis, rather than on a product-line or service-line basis.~~

~~(e) Income taxes shall be allocated among the regulated activities of the Dominant Carrier, its nonregulated divisions, and members of an affiliated group. Under circumstances in which income taxes are determined on a consolidated basis by the Dominant Carrier and other members of the affiliated group, the income tax expense to be recorded by the Dominant Carrier shall be the same as would result if determined for the Dominant Carrier separately for all time periods, except that the tax effect of carry-back and carry-forward operating losses, investment tax credits, or other tax credits generated by operations of the Dominant Carrier shall be recorded by the Dominant Carrier during the period in which applied in settlement of the taxes otherwise attributable to any member, or combination of members, of the affiliated group.~~

~~(f) Each Dominant Carriers shall file with the Commission annually a statement identifying all Affiliates that engage in transactions with the Dominant Carrier and all transactions between such Affiliates and the Dominant Carrier; provided, such statement may be included in the cost allocation manual filed by the Dominant Carrier pursuant to these rules. The statement shall describe: (i) the nature of each transaction, including whether the transaction involves the provision of services or asset transfers and how such transfers are accomplished; (ii) the terms at which the service is provided, including the amounts charged and the basis of valuation used *(i.e.*, at the tariff rate, prevailing market price or fully distributed cost); and (iii) the frequency with which the service is rendered. Copies of any agreements between the Dominant Carrier and any Affiliate shall be made available to the Commission's staff for review. The statement and agreements filed or made available to the Commission's staff pursuant to this paragraph may be treated as confidential pursuant to applicable Commission rules governing confidential information.~~

~~(g) Notwithstanding anything to the contrary in this rule, any transaction or series of transactions between a Dominant Carrier and its Affiliates which involve either (i) the transfer from the Dominant Carrier to its Affiliates of assets with an aggregate fair market value of more than $1,000,000 in any year or (b) the purchase by the Dominant Carrier from its Affiliates of services with an aggregate price of more than $1,000,000 in any year, shall require the prior approval of the Commission.~~[If GCG's intention is to impose Part 64 on interaffiliate transactions, then the rule need only state that part 64 is hereby imposed. If GCG's goal is somehow not so simple, then that goal should be made explicit to the Commission.

Concerning proposed Rule 8(g), GTA renews its objection. GCG claims the Commission has authority to adopt such a rule, which GTA acknowledges. But the point remains that GCG has not attempted to show why such a rule is necessary given the existence of a CAM.]

~~Rule 9. Cost Allocation Manual~~

~~(a) Each Dominant Carrier shall maintain and file with the Commission annually a cost allocation manual describing the methodology used for allocating its costs between its regulated activities and its nonregulated activities in accordance with these rules. The cost~~

~~allocation manual shall contain the following information regarding the Dominant Carrier's allocation of costs between regulated and nonregulated activities:~~

~~(1) A description of each of the Dominant Carrier's nonregulated activities;~~

~~(2) A list of all the activities to which the Dominant Carrier now accords incidental accounting treatment and the justification therefor;~~[2]

~~(3) A chart showing all of the Dominant Carrier's corporate Affiliates;~~

~~(4) A statement identifying each Affiliate that engages in or will engage in transactions with the Dominant Carrier and describing the nature, terms and frequency of each transaction;~~

~~(5) A cost apportionment table showing, for each account containing costs incurred in providing regulated services, the cost pools with that account, the procedures used to place costs into each cost pool, and the method used to apportion the costs within each cost pool between regulated and nonregulated activities; and~~

~~(6) A description of the time reporting procedures that the Dominant Carrier uses, including the methods or studies designed to measure and allocate non-productive time.~~

~~(b) Each Dominant Carrier shall ensure that the information contained in its cost allocation manual is accurate. Dominant Carriers must update their cost allocation manuals at least annually, except that changes to the cost apportionment table and to the description of time reporting procedures must be filed at the time of implementation. Annual cost allocation manual updates shall be filed on or before the last working day of each calendar year. Proposed changes in the description of time reporting procedures, the statement concerning affiliate transactions, and the cost apportionment table must be accompanied by a statement quantifying the impact of each change on regulated operations. Changes in the description of time reporting procedures and the statement concerning affiliate transactions must be quantified in $100,000 increments at the account level. Changes in cost apportionment tables must be quantified in $100,000 increments at the cost pool level. The Commission may suspend any such changes for a period not to exceed 180 days, and may thereafter allow the change to become effective or prescribe a different procedure. In the event no changes to the cost allocation manual were needed or made during the calendar year, a statement attesting thereto shall be provided to the Commission in accordance with the above schedule and Rule 12.~~[See above. If GCG is arguing for an FCC CAM, the rule should so state. If not, GCG should indicate how its language would produce a different result, and why that would be desirable.]

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[2] Incidental accounting treatment refers to small nonregulated activities that do not constitute a line of business, such as rental of space in a telephone company's building to another party for purposes unrelated to telecommunications services. The revenues and expenses of such activities are accounted as regulated and are not subject to allocation using the cost allocation manual procedures.

Rule 10. Financial Records

~~(a) A Dominant Carrier's financial records shall be kept in accordance with generally accepted accounting principles to the extent permitted by the system of accounts adopted in these rules. The financial records shall be kept with sufficient particularity to show fully the facts pertaining to all entries in these accounts. With limiting the foregoing, the financial statements shall contain sufficient detail to display total company, total nonregulated and total regulated network plant assets, revenues and operating expenses. Revenues shall be reported at the detailed account level (*e.g.*, Basic Local Service, Private Line, Other Local Service, Cellular, Long Distance, End User Access Charge, Switched and Special Access, *etc.*). The remaining data shall be disaggregated at least by major account category. Telecommunications Plant in Service shall report General Support Facilities, Central Office Equipment, Information Origination/Termination Equipment, and Cable & Wire Facilities separately. Operating Expenses shall report at a minimum Plant Specific, Plant Non-specific, Depreciation, Customer Operations and Corporate Operations expenses. The detail records shall be maintained and filed in such manner as to be readily accessible for examination by the Commission and its staff.~~

(b) Each Dominant Carrier shall provide the Commission with copies of its consolidated audited financial statements for each fiscal year promptly after such financial statements are available and at such other times as may be requested by the Commission. Any work papers used by independent auditors shall be made available for the Commission staff's review. The Dominant Carrier shall authorize the release of such work papers by auditors to the Commission's staff.

~~(c) Each Dominant Carrier shall maintain subsidiary accounting records in sufficient detail to support the amounts reported on its financial reports. These records should be based on the assignments or allocations used in its cost allocation manual in accordance with these rules. These records should also include detailed subsidiary records of each affiliate transaction showing the services rendered or assets transferred, the amounts charged and the basis of valuation used for each transaction~~

(d) The financial records, including auditor's report and work papers, provided by a Dominant Carrier under these rules may be treated as confidential pursuant to applicable Commission rules governing confidential information.

Rule 11. Independent Audit

If the Commission enters upon an investigation regarding a Dominant Carrier's compliance with these rules, the Commission may require such Dominant Carrier to have either (a) an attest engagement performed by an independent auditor that the systems, processes, and procedures applied by the Dominant Carrier to generate the results reported pursuant to these rules comply with these rules, or (b) a financial audit performed by an independent auditor that the Dominant Carrier's annual financial report required by these rules present fairly, in all material respects, the information of these rules.

Rule 12. Annual Certification

Each Dominant Carrier shall file a certification with the Commission stating that (a) it is complying with these rules and (b) it has followed its cost allocation manual throughout the year for regulatory reporting purposes. The certification must be signed, under oath, by an officer of the Dominant Carrier, and filed with the Commission on an annual basis at the time that the Dominant Carrier files its cost allocation manual as provided by these rules.

~~**Rule 13. Effective Date**~~

~~These rules shall be effective January 1, 2005, except that Rule 8(g) shall be effective on the date of approval of these rules by the Commission. Any financial reports or other information for 2005 shall be filed with the Commission within ninety (90) days of the promulgation of these rules.~~[The Commission has neither the need nor authority to adopt retroactive rulemaking.]

G E O R G E T O W N C O N S U L T I N G G R O U P, I N C.
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R I D G E F I E L D, C T. 0 6 8 7 7

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January 26, 2007

Harry M. Boertzel, Esq.
Administrative Law Judge
The Guam Public Utilities Commission
Suite 207, GCIC Building
Hagatña, Guam 96932

Re: Docket No. 05-1: Response to GTA's Mark-up of Affiliate Transaction Rules

Dear Judge Boertzel:

Thank you for the opportunity to respond to GTA's mark-up of the proposed rules governing cost allocations, affiliate transactions and reporting of financial information. We are greatly disturbed by GTA's latest positions as implied by its mark-up of these rules. When placed against the background of GTA's lack of responsiveness to its financial reporting obligations in connection with the transfer of authority (Docket 05-03), it appears that GTA is pursuing a strategy of withholding information in order to diminish the ability of the Commission to regulate GTA in any meaningful way.

In this letter, we have prioritized GTA's comments and edits on the basis of their potential impact on the Commission's ability to discharge its obligations to regulate GTA and to protect ratepayers, competitors and others from potential improper cross-subsidization or other impermissible behavior. Where we agreed with GTA, we have made appropriate changes to the proposed rules. The attachment contains the revised text. A redline version is being sent to you separately.

1. **Financial reporting (Rule 10)**

   GTA position: GTA objects to rule 10(a) which required reporting of financial data on a summary account (Class B) level and a breakdown of total company data between nonregulated and regulated operations. Consequently, it deleted this rule. It also deleted rule 10(c) which requires each dominant carrier to maintain subsidiary accounting records in sufficient detail to support the amounts reported on its financial reports.

GCG position: GCG strongly opposes the elimination, relaxation or modification of these rules. The level of disaggregation proposed by GCG is the minimum needed in order to gain any understanding of GTA's financial operations. Without this information, the Commission would be unable to track GTA's financial condition as authorized by Section 12104(e) which reads:

> Subject to subsections (c) (5) and (d) of this Section, the Commission shall have access to the books and records of each telecommunications company as may be necessary to examine the financial condition of the company, to ensure compliance with the provisions of this Article and with the Commission's rules, regulations, and orders and to carry out the Commission's responsibilities under this Article.

The Commission would also lack any historic accounting information with which to assess the lawfulness of any rate changes requested by GTA in the future. The Commission is required to determine if such rates are just and reasonable. In addition, this level of detail is needed to initialize a price cap or similar form of incentive regulation if the Commission decides to consider one in the future.

Many PUCs that still regulate telephone companies under traditional rate-of-return regulation[1] have reporting rules similar to rule 10(a).[2] However, GCG's recommendation is far less stringent than is the norm in some other jurisdictions. For example, Montana requires income statements for total company, total state, total intrastate and total intrastate regulated detail at the class B level for most accounts and at the class A (more detailed) level for others. It also requires a total company balance sheet at the Class B level with numerous supporting schedules. Other required reports include a statement of cash flow, names of officers and directors, compensation of key employees and operating statistics.

We must also note that the level of disaggregation we proposed is already available to GTA and compliance with rules 10(a) and (c) would not result in any significant increase in costs for GTA. GTA provides lower level detail to its auditors and to NECA. Therefore, it is incomprehensible why GTA believes it should not also be provided to the Commission.

2. **Cost Allocation Manual (Rule 9)**

GTA position: At the recent regulatory meeting, GTA offered to accept rule 9 related to maintaining a Cost Allocation Manual (CAM) and filing it with the Commission in

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[1] As noted on our September 15, 2006 report on pricing standards (in connection with GTA tariff transmittal #7), 35 states still apply traditional RoR regulation to at least some of their smaller ILECs.

[2] See for example: Washington rule WAC 480-120-385 Annual report and quarterly results of operations reports for companies not classified as competitive, or North Carolina rule R9-9 Financial and operating reporting requirements for telephone companies.

return for deletion of rule 10(a) which is discussed above. However, GTA's mark-up deleted rule 9 as well.

GTA also says if GCG is arguing for an FCC CAM, the rule should so state. If not, GCG should indicate how its language would produce a different result, and why that would be desirable.

GCG position: GCG has already presented its arguments in favor of a requirement to file GTA's CAM with the Commission.[3] Such filing is not uncommon in the practices of other public utilities commissions on the mainland.

The basic principle in determining the amounts under federal or state jurisdiction is expressed in the following formula: Total company amount less nonregulated amount (Part 64) equals amount subject to jurisdictional separation (Part 36). Without the CAM, the Commission would be unable to determine the formulae used to derive the amounts subject to separation.

GCG would like to make you aware of the fact that a CAM provides only the cost allocation formulae for the separation of jointly used plant investment and operating expenses. It does not provide the results of the allocation. In the absence of detailed financial reports, the Commission's ability to trace cost allocations would be seriously compromised. Therefore, the Commission should not accept an offer to provide the CAM in lieu of the financial reports described in rule 10(a).

GCG has not proposed that GTA maintain a different CAM for intrastate operations. Instead, we propose GTA file the same CAM used for federal purposes, including NECA requirements. We have revised the draft rules to explicitly state that only one CAM is required

We believe the jurisdictional separation (Part 36) studies filed annually by GTA with NECA should also be filed with the Commission but that requirement was not within the scope of this proceeding and therefore was not part of the proposed rules.

3. Affiliate transactions (Rule 8)

GTA position: GTA deleted rule 8 in its entirety, saying "If GCG's intention is to impose Part 64 on interaffiliate transactions, then the rule need only state that part 64 is hereby imposed. If GCG's goal is somehow not so simple, then that goal should be made explicit to the Commission."

"Concerning proposed Rule 8(g), GTA renews its objection. GCG claims the Commission has authority to adopt such a rule, which GTA acknowledges. But the point

[3] GCG letter dated January 19, 2007 responding to GTA's comments on the affiliate transaction rules.

remains that GCG has not attempted to show why such a rule is necessary given the existence of a CAM."

GCG position: Although some of the states we reviewed establish affiliate transaction rules by reference to the FCC part 32 and Part 64 rules, those that still regulate their ILECs under rate-of-return tend to write out their affiliate transaction rules in a manner similar to rule 8(a) through (e) and require an annual report similar in detail to rule 8(f). GCG chose to write out these rules in the interest of clarity and to avoid the necessity for a reader to examine multiple sources of rules. We still believe these are worthwhile considerations and, therefore, we oppose GTA's deletion of this rule.

Regarding rule 8(g), GCG has already commented on this issue.[4] We remain concerned that the ratepayer may be irreparably harmed if the review of sizeable affiliate transactions was delayed until GTA actually files a rate case. A disallowance at that time could not recover the monies expended earlier in major transactions that were not in the public interest.

4. Prohibition of Cross-subsidy (Rule 5)

GTA position: GTA deleted rule 5 on the basis it represents a policy statement and belongs in the reasoning of an agency decision adopting rules, not in the rules themselves.

GCG position: Rule 5 is not a policy statement. It is a rule supporting the policy outlined in draft rule 1. It is similar to the federal rule in Part 64.901(c) which says: "A telecommunications carrier may not use services that are not competitive to subsidize services subject to competition. Services included in the definition of universal service shall bear no more than a reasonable share of the joint and common costs of facilities used to provide those services." GCG modified this rule to apply only to dominant carriers.

Some states include Part 64.901(c) by reference while others have wording similar to proposed rule 5. For example, Utah rule 54-8b-6 reads: "A telecommunications corporation providing intrastate public telecommunications services may not subsidize its intrastate telecommunications services which are exempted from regulation or offered pursuant to a price list or competitive contract under authority of this chapter with proceeds from its other intrastate telecommunications services not so exempted or made subject to a price list or competitive contract. Similarly, proceeds from intrastate telecommunications services which are exempted from regulation or offered pursuant to a price list or competitive contract as authorized by this chapter may not subsidize other intrastate telecommunications services not so exempted or made subject to a price list or competitive contract."

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[4] Ibid.

GCG believes rule 5 should remain unchanged since it is a concise statement that is consistent with the FCC rule and the federal and Guam Telecommunications Act requirements to set just and reasonable rates and prevent anticompetitive behavior.

In the course of reviewing the proposed rules, we found that we inadvertently omitted a definition of cross-subsidization. Therefore, we propose adding the following definition to rule 4. This definition was obtained verbatim from Colorado rule 2401.

> "Cross-subsidization" occurs when telecommunications services which are not subject to the jurisdiction of the Commission (deregulated services) are priced below cost by use of subsidization from customers of services subject to the jurisdiction of the Commission (regulated services); or when a provider's deregulated services derive benefits from the regulated operations without the regulated operations receiving just and reasonable compensation from the deregulated operations for the benefits derived.

5. **Incorporation by reference (Rules 3 and 6)**

GTA Position: GTA accepted rule 3 but deleted rule 6 in its entirety.

Referring to rule 6(a), it asserts "GTA is already subject to the USOA, as is every ILEC. There is no need to recite this fact in the Commission's rules."

Referring to rule 6(b), GTA says "In the unlikely event the FCC were to exempt all ILECs from such reporting, the assumption should be that the FCC's mandate would be followed in Guam, absent some showing to the contrary. GCG in effect argues that no FCC change in Part 32 (which is in the exclusive jurisdiction of the FCC) nor Part 64 can be assumed to be appropriate for Guam, so each change (no matter or big or small) must be relitigated at the Commission. There is no reason for so harsh an assumption. Any FCC changes that GCG objects to can be raised on a case-by-case basis, with the burden falling on GCG to show that some Guam-specific issue exists."

GCG position: It is not uncommon for mainland PUC rules to specifically state that the federal Part 32 rules apply in their states. For example, Colorado rule 2404(a), Uniform System of Accounts reads: "All providers shall maintain their books and records in accordance with FCC regulations found at 47 C.F.R., Part 32, Class A, except for rural telecommunications providers, who may use 47C.F.R., Part 32, Class A or Class B." Other state rules either duplicate the Part 32 rules in their entirety or refer to the majority of Part 32 rules and write out modifications and exceptions. However, in the interest of clarity, GCG proposed the language in rule 6(a). We would like to point out that duplication of the FCC rules does not pose any danger to GTA.

Rule 6(b) reads: "In the event a Dominant Carrier is authorized by the FCC to maintain its books and accounts in a manner other than as set forth in Part 32, such Dominant

Carrier may seek a variance from paragraph (a) allowing it to maintain its books and accounts as permitted by the FCC. However, the Dominant Carrier requesting such a variance shall implement a suitable alternative method of producing Guam intrastate-specific information to the Commission." While we generally agree with GTA that if the FCC were to exempt all ILECs from Part 32, the assumption would be that the FCC's mandate would be followed in Guam, absent some showing to the contrary. However, unless and until the Commission is relieved of its duty to regulate intra-Guam telecommunications companies, it must retain its ability to set accounting rules. The language proposed in rule 6(b) was taken almost verbatim from Colorado rule 2404(b)[5] Therefore, it meets the test contained in the Guam Telecommunications Act at §12104 (d) that says "the Commission shall apply, to the extent practicable, generally accepted regulatory practices in other United States jurisdictions."

We completely disagree with GTA's statement that "GCG in effect argues that no FCC change in Part 32 (which is in the exclusive jurisdiction of the FCC) nor Part 64 can be assumed to be appropriate for Guam, so each change (no matter or big or small) must be relitigated at the Commission." There is simply no basis for such speculation. We also find very little justification to support the fear that each change would require litigation. As discussed above, GCG included rule 6(b) to preserve the Commission's authority to set accounting rules.[6]

6. Allocation of Costs (Rule 7(b))

GTA position: GTA deleted rule 7(b) for the same reasons as rule 6(b).

GCG position: GCG opposes deletion on the same basis discussed in relation to rule 6(b). Again, the language proposed was nearly identical to the Colorado rule.

7. Effective date (Rule 13)

GTA position: GTA deleted rule 13 saying "The Commission has neither the need nor authority to adopt retroactive rulemaking."

GCG position: Rule 13 makes January 1, 2005 the effective date of all proposed rules except rule 8(g). This proceeding covers the first year of reporting required under the

[5] Rule 2404(b) "In the event a provider, other than a CLEC, is authorized by the FCC to maintain its books of account and records in a manner other than under the USOA, it may seek a variance from paragraph (a) allowing it to maintain its books of account and records as permitted by the FCC. However, the provider requesting such a variance shall implement a suitable alternate method of producing Colorado intrastate-specific information to the Commission."

[6] Although this is a minor point in this proceeding, contrary to GTA's statement, Part 32 is not exclusively in the FCC's jurisdiction. The right of the state regulators to modify Part 32 rules in setting intrastate rates or monitoring intrastate financial performance has been well established for more than 20 years.

APA. GCG believes it is essential that GTA recreate its financial reports to cover the two years since TeleGuam acquired the assets of the Guam Telephone Authority from the Government of Guam. Notwithstanding previous agreements, including its stipulation in connection with the Transfer of Authority, GTA has yet to provide any financial data that would be useful in regulation of the company. Consequently, rule 13 should not be construed as retroactive rulemaking.

8. **Background and authority (Rule 1)**

GTA position: GTA deleted rule 1 which contains background information and the legal authority for these rules saying "Policy and legal recitations are inappropriate in actual rules."

GCG position: We generally agree that much of the background contained in rule 1 could be removed. However, contrary to GTA's assertion, most state PUC accounting rules do, in fact, contain some introductory language and the legal citations supporting the rules. Therefore, we have modified rule 1 as shown on the attachment.

If you have any questions concerning this report or require any additional information, please let us know.

Cordially,

/s/ Jamshed K. Madan

Jamshed K. Madan

Cc: Richard J. Metzger
Paul O. Gagnier, Esq.
Walter Schweikert
John Ingram Esq.

Attachment

Revised Proposed Accounting And Affiliate Transaction Rules

RULES RELATING TO COST ALLOCATION AND AFFILIATE TRANSACTIONS

FOR INCUMBENT LOCAL EXCHANGE CARRIERS AND OTHER CARRIERS

Rule 1. Background and Authority

The following rules prescribe cost allocation methodologies for the segregation and reporting of intrastate investments and expenses, and the prevention of improper cross-subsidies between regulated services and deregulated or nonregulated services (hereinafter referred to as "nonregulated" services). These rules also ensure that transactions between affiliates are fair and reasonable.

The Commission has authority and jurisdiction under 12 GCA 12104(c)(8) to establish reasonable accounting, discrimination, structural separation, affiliate transaction and other safeguards consistent with the legislative findings and intent set forth in 12 GCA 12101.

Rule 2. Applicability

These rules shall apply to the incumbent local exchange carrier in the Territory of Guam, as defined in 47 U.S.C. § 251(h) or designated by the FCC, and any other telecommunications carrier (except commercial mobile radio system providers) providing intrastate telecommunications services in the Territory of Guam that the Commission designates by Order.[7]

Rule 3. Incorporation by Reference

References in these rules to Parts 32 and 64 are references to rules issued by the FCC found at 47 C.F.R. Part 32 (§32.1 *et seq.*) and 47 C.F.R. Part 64 (§64.1 *et seq.*), revised as of October 1, 2005, which rules are incorporated by reference.

Rule 4. Definitions

For purposes of these rules, the following definitions shall apply:

(a) "Affiliate" means any person or entity that directly or indirectly through one or more intermediaries, Control or are Controlled by, or are under common Control with, the accounting company.

(b) "Commission" means the Public Utilities Commission of Guam.

(c) "Control" (including the terms "Controlling," "Controlled by," and "under common Control with") means the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether such power is exercised through one or more intermediary entities, or alone, or in conjunction with, or pursuant to an agreement

[7] The Commission Order approving these rules should indicate that these rules apply to GTA Telecom, LLC.

with, one or more other entities, and whether such power is established through a majority or minority ownership or voting of securities, common directors, officers, or stockholders, voting trusts, holding trusts, affiliated companies, contract, or any other direct or indirect means.

(d) "Cross-subsidization" occurs when telecommunications services which are not subject to the jurisdiction of the Commission (deregulated services) are priced below cost by use of subsidization from customers of services subject to the jurisdiction of the Commission (regulated services); or when a provider's deregulated services derive benefits from the regulated operations without the regulated operations receiving just and reasonable compensation from the deregulated operations for the benefits derived.

(e) "Dominant Carrier" means the incumbent local exchange carrier in the Territory of Guam, as defined in 47 U.S.C. § 251(h), and any other telecommunications carrier providing intrastate telecommunications services in the Territory of Guam that the Commission designates by Order pursuant to Rule 2.

(f) "FCC" means the Federal Communications Commission.

Rule 5. Prohibition Against Cross-Subsidization

A Dominant Carrier shall not use revenues from services that are not competitive to subsidize services subject to competition. A Dominant Carrier shall not use revenues from regulated services to subsidize the services or products of its Affiliates.

Rule 6. Uniform System of Accounts

(a) The Uniform System of Accounts adopted by the FCC in Part 32 is hereby adopted and prescribed for all Dominant Carriers except as set forth in these rules. All Dominant Carriers shall maintain their books and accounts in accordance with Part 32 except as modified in these rules.

(b) In the event a Dominant Carrier is authorized by the FCC to maintain its books and accounts in a manner other than as set forth in Part 32, such Dominant Carrier may seek a variance from paragraph (a) allowing it to maintain its books and accounts as permitted by the FCC. However, the Dominant Carrier requesting such a variance shall implement a suitable alternative method of producing Guam intrastate-specific information to the Commission.

Rule 7. Allocation of Costs

(a) Each Dominant Carrier that provides both regulated and nonregulated intrastate service shall allocate intrastate investments, expenses and revenues between regulated activities and nonregulated activities according to the principles, procedures and accounting requirements in Part 32 and Part 64.

(b) In the event a Dominant Carrier is authorized by the FCC to allocate costs between regulated and nonregulated activities in a manner other than as set forth in Part 32 and Part 64, such Dominant Carrier may seek a variance from paragraph (a) allowing it to allocate costs as permitted by the FCC. However, the Dominant Carrier requesting such a variance shall implement a suitable alternative method of producing Guam intrastate-specific information to the Commission.

Rule 8. Transactions with Affiliates

(a) Unless otherwise approved by the Commission, transactions between a Dominant Carrier and any Affiliate of such Dominant Carrier involving asset transfers or provision of services into or out of regulated accounts shall be recorded by the Dominant Carrier in its regulated accounts as provided in paragraphs (b) through (e) below.

(b) Assets sold or transferred between a Dominant Carrier and its Affiliate pursuant to a tariff, including a tariff filed with a state commission, shall be recorded in the appropriate revenue accounts at the tariffed rate. Non-tariffed assets sold or transferred between a Dominant Carrier and its Affiliate that qualify for prevailing price valuation, as defined in paragraph (d) of this rule, shall be recorded at the prevailing price. For all other assets sold by or transferred from a Dominant Carrier to its Affiliate, the assets shall be recorded at no less than the higher of fair market value and net book cost. For all other assets sold by or transferred to a Dominant Carrier from its Affiliate, the assets shall be recorded at no more than the lower of fair market value and net book cost.

(1) Floor. When assets are sold by or transferred from a Dominant Carrier to an Affiliate, the higher of fair market value and net book cost establishes a floor, below which the transaction cannot be recorded. Dominant Carriers may record the transaction at an amount equal to or greater than the floor, so long as that action complies with the Communications Act of 1934, as amended, FCC and Commission rules and orders, and is not otherwise anti-competitive.

(2) Ceiling. When assets are purchased from or transferred from an Affiliate to a Dominant Carrier, the lower of fair market value and net book cost establishes a ceiling, above which the transaction cannot be recorded. Dominant Carriers may record the transaction at an amount equal to or less than the ceiling, so long as that action complies with the Communications Act of 1934, as amended, FCC and Commission rules and orders, and is not otherwise anti-competitive.

(3) Threshold. For purposes of this rule Dominant Carriers are required to make a good faith determination of fair market value for an asset when the total aggregate annual value of the asset(s) reaches or exceeds $500,000, per Affiliate. When a Dominant Carrier reaches or exceeds the $500,000 threshold for a particular asset for the first time, the Dominant Carrier must perform the market valuation and value the transaction on a going-forward basis in accordance with the Affiliate transactions rules on a going-forward basis. When the total aggregate annual value of the asset(s) does not reach or exceed $500,000, the asset(s) shall be recorded at net book cost.

(c) Services provided between a Dominant Carrier and its Affiliate pursuant to a tariff, including a tariff filed with a state commission, shall be recorded in the appropriate revenue accounts at the tariffed rate. Non-tariffed services provided between a Dominant Carrier and its Affiliate pursuant to publicly-filed agreements submitted to a state commission pursuant to Section 252(e) of the Communications Act of 1934 or statements of generally available terms pursuant to Section 252(f) shall be recorded using the charges appearing in such publicly-filed agreements or statements. Non-tariffed services provided between a Dominant Carrier and its Affiliate that qualify for prevailing price valuation, as defined in paragraph (d) of this rule, shall be recorded at the prevailing price. For all other services sold by or transferred from a Dominant Carrier to its Affiliate, the services shall be recorded at no less than the higher of fair market value and fully distributed cost. For all other services sold by or transferred to a Dominant Carrier from its Affiliate, the services shall be recorded at no more than the lower of fair market value and fully distributed cost.

(1) Floor. When services are sold by or transferred from a Dominant Carrier to an Affiliate, the higher of fair market value and fully distributed cost establishes a floor, below which the transaction cannot be recorded. Dominant Carriers may record the transaction at an amount equal to or greater than the floor, so long as that action complies with the Communications Act of 1934, as amended, FCC and Commission rules and orders, and is not otherwise anti-competitive.

(2) Ceiling. When services are purchased from or transferred from an Affiliate to a Dominant Carrier, the lower of fair market value and fully distributed cost establishes a ceiling, above which the transaction cannot be recorded. Dominant Carriers may record the transaction at an amount equal to or less than the ceiling, so long as that action complies with the Communications Act of 1934, as amended, FCC and Commission rules and orders, and is not otherwise anti-competitive.

(3) Threshold. For purposes of this rule, Dominant Carriers are required to make a good faith determination of fair market value for a service when the total aggregate annual value of that service reaches or exceeds $500,000, per Affiliate. When a Dominant Carrier reaches or exceeds the $500,000 threshold for a particular service for the first time, the Dominant Carrier must perform the market valuation and value the transaction in accordance with the affiliate transactions rules on a going-forward basis. All services received by a Dominant Carrier from its Affiliate(s) that exist solely to provide services to members of the Dominant Carrier's corporate family shall be recorded at fully distributed cost.

(d) In order to qualify for prevailing price valuation in paragraphs (b) and (c) of this rule, sales of a particular asset or service to third parties must encompass greater than 25 percent of the total quantity of such product or service sold by an entity. Dominant Carriers shall apply this 25 percent threshold on an asset-by-asset and service-by-service basis, rather than on a product-line or service-line basis.

(e) Income taxes shall be allocated among the regulated activities of the Dominant Carrier, its nonregulated divisions, and members of an affiliated group. Under circumstances in which income taxes are determined on a consolidated basis by the Dominant Carrier and other members of the affiliated group, the income tax expense to be recorded by the Dominant Carrier shall be the same as would result if determined for the Dominant Carrier separately for all time periods, except that the tax effect of carry-back and carry-forward operating losses, investment tax credits, or other tax credits generated by operations of the Dominant Carrier shall be recorded by the Dominant Carrier during the period in which applied in settlement of the taxes otherwise attributable to any member, or combination of members, of the affiliated group.

(f) Each Dominant Carriers shall file with the Commission annually a statement identifying all Affiliates that engage in transactions with the Dominant Carrier and all transactions between such Affiliates and the Dominant Carrier; provided, such statement may be included in the cost allocation manual filed by the Dominant Carrier pursuant to these rules. The statement shall describe: (i) the nature of each transaction, including whether the transaction involves the provision of services or asset transfers and how such transfers are accomplished; (ii) the terms at which the service is provided, including the amounts charged and the basis of valuation used *(i.e.*, at the tariff rate, prevailing market price or fully distributed cost); and (iii) the frequency with which the service is rendered. Copies of any agreements between the Dominant Carrier and any Affiliate shall be made available to the Commission's staff for review. The statement and agreements filed or made available to the Commission's staff pursuant to this paragraph may be treated as confidential pursuant to applicable Commission rules governing confidential information.

(g) Notwithstanding anything to the contrary in this rule, any transaction or series of transactions between a Dominant Carrier and its Affiliates which involve either (i) the transfer from the Dominant Carrier to its Affiliates of assets with an aggregate fair market value of more than $1,000,000 in any year or (b) the purchase by the Dominant Carrier from its Affiliates of services with an aggregate price of more than $1,000,000 in any year, shall require the prior approval of the Commission.

Rule 9. Cost Allocation Manual

(a) Each Dominant Carrier shall maintain and file with the Commission annually a cost allocation manual describing the methodology used for allocating its costs between its regulated activities and its nonregulated activities in accordance with these rules. The cost allocation manual shall contain the following information regarding the Dominant Carrier's allocation of costs between regulated and nonregulated activities:

(1) A description of each of the Dominant Carrier's nonregulated activities;

(2) A list of all the activities to which the Dominant Carrier now accords incidental accounting treatment and the justification therefor;[8]

(3) A chart showing all of the Dominant Carrier's corporate Affiliates;

(4) A statement identifying each Affiliate that engages in or will engage in transactions with the Dominant Carrier and describing the nature, terms and frequency of each transaction;

(5) A cost apportionment table showing, for each account containing costs incurred in providing regulated services, the cost pools with that account, the procedures used to place costs into each cost pool, and the method used to apportion the costs within each cost pool between regulated and nonregulated activities; and

(6) A description of the time reporting procedures that the Dominant Carrier uses, including the methods or studies designed to measure and allocate non-productive time.

(b) Each Dominant Carrier shall ensure that the information contained in its cost allocation manual is accurate. Dominant Carriers must update their cost allocation manuals at least annually, except that changes to the cost apportionment table and to the description of time reporting procedures must be filed at the time of implementation. Annual cost allocation manual updates shall be filed on or before the last working day of each calendar year. Proposed changes in the description of time reporting procedures, the statement concerning affiliate transactions, and the cost apportionment table must be accompanied by a statement quantifying the impact of each change on regulated operations. Changes in the description of time reporting procedures and the statement concerning affiliate transactions must be quantified in $100,000 increments at the account level. Changes in cost apportionment tables must be quantified in $100,000 increments at the cost pool level. The Commission may suspend any such changes for a period not to exceed 180 days, and may thereafter allow the change to become effective or prescribe a different procedure. In the event no changes to the cost allocation manual were needed or made

[8] Incidental accounting treatment refers to small nonregulated activities that do not constitute a line of business, such as rental of space in a telephone company's building to another party for purposes unrelated to telecommunications services. The revenues and expenses of such activities are accounted as regulated and are not subject to allocation using the cost allocation manual procedures.

during the calendar year, a statement attesting thereto shall be provided to the Commission in accordance with the above schedule and Rule 12.

If a Dominant Carrier has filed a cost allocation manual with the FCC or if it uses a cost allocation manual for interstate purposes, that manual should be filed with the Commission in lieu of the intrastate manual described in this rule, provided that it contains all of the information required by rule 9(a) items 1 through 6 above.

Rule 10. Financial Records

(a) A Dominant Carrier's financial records shall be kept in accordance with generally accepted accounting principles to the extent permitted by the system of accounts adopted in these rules. The financial records shall be kept with sufficient particularity to show fully the facts pertaining to all entries in these accounts. With limiting the foregoing, the financial statements shall contain sufficient detail to display total company, total nonregulated and total regulated network plant assets, revenues and operating expenses. Revenues shall be reported at the detailed account level (*e.g.*, Basic Local Service, Private Line, Other Local Service, Cellular, Long Distance, End User Access Charge, Switched and Special Access, *etc.*). The remaining data shall be disaggregated at least by major account category. Telecommunications Plant in Service shall report General Support Facilities, Central Office Equipment, Information Origination/Termination Equipment, and Cable & Wire Facilities separately. Operating Expenses shall report at a minimum Plant Specific, Plant Non-specific, Depreciation, Customer Operations and Corporate Operations expenses. The detail records shall be maintained and filed in such manner as to be readily accessible for examination by the Commission and its staff.

(b) Each Dominant Carrier shall provide the Commission with copies of its consolidated audited financial statements for each fiscal year promptly after such financial statements are available and at such other times as may be requested by the Commission. Any work papers used by independent auditors shall be made available for the Commission staff's review. The Dominant Carrier shall authorize the release of such work papers by auditors to the Commission's staff.

(c) Each Dominant Carrier shall maintain subsidiary accounting records in sufficient detail to support the amounts reported on its financial reports. These records should be based on the assignments or allocations used in its cost allocation manual in accordance with these rules. These records should also include detailed subsidiary records of each affiliate transaction showing the services rendered or assets transferred, the amounts charged and the basis of valuation used for each transaction

(d) The financial records, including auditor's report and work papers, provided by a Dominant Carrier under these rules may be treated as confidential pursuant to applicable Commission rules governing confidential information.

Rule 11. Independent Audit

If the Commission enters upon an investigation regarding a Dominant Carrier's compliance with these rules, the Commission may require such Dominant Carrier to have either (a) an attest engagement performed by an independent auditor that the systems, processes, and procedures applied by the Dominant Carrier to generate the results reported pursuant to these rules comply with these rules, or (b) a financial audit performed by an independent auditor

that the Dominant Carrier's annual financial report required by these rules present fairly, in all material respects, the information of these rules.

Rule 12. Annual Certification

Each Dominant Carrier shall file a certification with the Commission stating that (a) it is complying with these rules and (b) it has followed its cost allocation manual throughout the year for regulatory reporting purposes. The certification must be signed, under oath, by an officer of the Dominant Carrier, and filed with the Commission on an annual basis at the time that the Dominant Carrier files its cost allocation manual as provided by these rules.

Rule 13. Effective Date

These rules shall be effective January 1, 2005, except that Rule 8(g) shall be effective on the date of approval of these rules by the Commission. Any financial reports or other information for 2005 shall be filed with the Commission within ninety (90) days of the promulgation of these rules.

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

GUAM TELECOMMUNICATIONS ACT OF 2004 **DOCKET 05-1**

ORDER

[Private line service detariffing for non-dominant carriers]

By order dated November 20, 2006 in Docket 06-9 *[Application of Guam Telecom LLC for Certificate of Authority]*, the Guam Public Utilities Commission *[PUC]* authorized the commencement of a rulemaking proceeding under 12 GCA 12111 of the Guam Telecommunications Act of 2004 *[Act]* to propose rules to detariff private line service for non-dominant carriers *[Rules]*. On December 1, 2006, PUC's independent regulatory consultant [Georgetown Consulting Group *(GCG)]* filed proposed Rules and commentary.

On December 6, 2006 PUC issued public notice of the proposed Rules and invited interested persons to file comments on or before January 15, 2007. No comments were filed.

After careful review of the Rules and GCG's commentary, for good cause shown, the Guam Public Utilities Commission, on motion duly made, seconded and carried by the undersigned commissioners **HEREBY ORDERS THAT:**

1. The Rules, in form attached to this order, are approved.

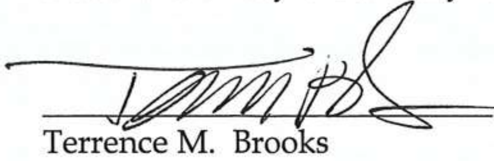
2. Consistent with the requirement of 12 GCA 12111, PUC finds that:

    a. Tariff review of non-dominant carriers' private line service *[Service]* is not necessary to ensure that the rates, charges, classifications, terms and conditions of this service are just and reasonable and are not unjustly or unreasonably discriminatory;

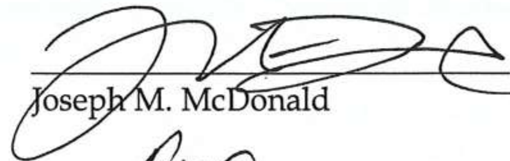
    b. Tariff review of the Service is not necessary for the protection of customers; and

    c. The promulgation of these Rules is consistent with the public interest and the legislative findings and intent of 12 GCA 12101.

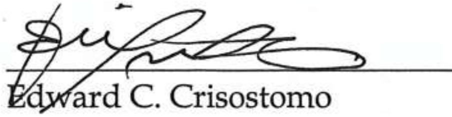
Dated this 1st day of February 2007.



Terrence M. Brooks



Joseph M. McDonald



Edward C. Crisostomo

Filomena M. Cantoria

Rowena E. Perez

Jeffrey C. Johnson

BEFORE THE GUAM PUBLIC UTLITIES COMMISSION

GUAM TELECOMMUNICATIONS ACT **DOCKET 05-01**

RULES RELATING TO DETARIFFING OF PRIVATE LINE SERVICE FOR NON-DOMINANT CARRIERS

Rule 1. Background and Authority

By virtue of 12 GCA 12106, all telecommunications companies, except commercial mobile service providers, are required to file a tariff with the Commission indicating the rates and charges and the classifications, terms and conditions of its telecommunications services. Further, 12 GCA 12106(c) provides that no telecommunications company may (1) charge, demand, collect or receive a greater or less or different compensation for such service than the charges specified in its tariffs, (2) refund or remit by any means or device any portion of the charges so specified, or (2) extend to any person any privileges or facilities or employ or enforce any classifications, terms and conditions, except as specified in such tariffs.

The Commission has authority and jurisdiction under 12 GCA 12111 to forbear from applying any provision of 12 GCA 12106 to a telecommunications company or telecommunications service if the Commission determines that:

(1) enforcement of such provision is not necessary to ensure that the rates, charges, classifications, terms and conditions by, for or in connection with that telecommunications company or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

(2) enforcement of such provision is not necessary for protection of consumers; and

(3) forbearance from applying such provision is consistent with the public interest and the legislative findings and intent set forth in 12 GCA 12101.

Pursuant to such authority and jurisdiction, the Commission has determined that Private Line Service provided by Non-Dominant Carriers, each as defined herein, should be detariffed and should not be subject to the requirements of 12 GCA 12106.

Rule 2. Definitions

For purposes of these rules, the following definitions shall apply:

(a) "Commission" means the Public Utilities Commission of Guam.

(b) "Dominant Carrier" means the incumbent local exchange carrier in the Territory of Guam, as defined in 47 U.S.C. § 251(h) or designated by the FCC, and any other telecommunications company providing Private Line Service in the Territory of Guam that the Commission designates as a Dominant Carrier by Order.

(c) "FCC" means the Federal Communications Commission.

(d) "Non-Dominant Carrier" means any telecommunications company other than a Dominant Carrier.

(e) "Private Line Service" means any point-to-point or point-to-multipoint service dedicated to the exclusive use of an end user for the transmission of any intrastate telecommunications service but does not include any service used to connect multiple customers.

Rule 3. Detariffing of Private Line Service

The Commission shall forbear from applying the requirements of 12 GCA 12106 to Private Line Service provided by Non-Dominant Carriers. Accordingly, Non-Dominant Carriers shall not be required to file or maintain tariffs for Private Line Service, including the filing of proposed tariffs for Private Line Service with a Non-Dominant Carrier's application for a certificate of authority. In lieu of a tariff, Private Line Service shall be provided by Non-Dominant Carriers pursuant to either a price list or customer contracts in accordance with Rule 5 below.

Rule 4. Notice to Affected Customers

Consistent with 12 GCA 12111(c), each Non-Dominant Carrier providing Private Line Service prior to the effective date of these rules shall give notice to its customers purchasing Private Line Service that such service will be detariffed on the effective date. Such notice shall be given at least thirty (30) days prior to the effective date of these rules.

Rule 5. Price Lists, Customer Contracts and Rates and Terms

(a) If Private Line Service is offered by a Non-Dominant Carrier pursuant to a price list, the price list for such Private Line Service must be submitted to the Commission and conspicuously posted and maintained on the Non-Dominant Carrier's website prior to providing Private Line Service pursuant to such price list. Any change to an existing price list shall be submitted to the Commission and conspicuously posted and maintained on the Non-Dominant Carrier's website at least ten (10) days prior to its effective date. Existing customers affected by any change to a price list shall be provided with notice of such change at least thirty (30) days prior to the effective date thereof.

(b) If Private Line Service is offered by a Non-Dominant Carrier pursuant to a customer contract, the contract must include a provision that the Commission, after investigation, may change or void any contract provision in accordance with the law or the Commission's rules or regulations. The customer contract must also inform customers of their rights to pursue with the Commission any complaints within the jurisdiction of the Commission regarding Private Line Service.

(c) Except as specifically provided in these rules, the rates, terms and conditions applicable to any price list or customer contract for Private Line Service shall comply with applicable law and the Commission's rules and regulations. Without limiting the foregoing, the rates, charges, classifications, terms and conditions offered by a Non-Dominant Carrier for Private Line Service shall not unreasonably discriminate between similarly situated customers in accordance with 12 GCA 12105(c).

(d) Non-Dominant Carriers providing Private Line Service shall maintain and make available to the Commission upon request a historical database of rates, terms and conditions of Private Line Service, including copies of customer contracts, for no less than three (3) years after the expiration of such rates, terms and conditions.

Rule 6. Reservation of Commission Jurisdiction

(a) Except as provided in these rules, Non-Dominant Carriers providing Private Line Service are subject to all other provisions of the Guam Telecommunications Act of 2004, as amended, and the Commission's rules and regulations.

(b) Without limiting paragraph (a) of this rule, Private Line Service provided any Non-Dominant Carrier shall remain subject to petitions, complaints and investigations in accordance with 12 GCA 12107 and penalties in accordance with 12 GCA 12108. Nothing in these rules is intended to limit the Commission's jurisdiction to investigate, resolve complaints or impose penalties pursuant to such provisions of law or to take any other actions permitted under applicable law.

(c) The Commission may, in its discretion, impose special reporting requirements on Non-Dominant Carriers providing Private Line Service.

Rule 7. Effective Date

These rules shall be effective February 1, 2007, except that Rule 4 shall be effective sixty (60) days prior to such date.

PDN 12/6:11

G E O R G E T O W N C O N S U L T I N G G R O U P, I N C.
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RIDGEFIELD, CT. 06877

Jamshed K. Madan
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December 1, 2006

Harry M. Boertzel, Esq.
Administrative Law Judge
The Guam Public Utilities Commission
Suite 207, GCIC Building
Hagatña, Guam 96932

Re: Proposed Rules to Detariff Private Line Service for Non-Dominant Carriers

Dear Judge Boertzel:

As requested, enclosed please find (a) draft rules to detariff private line service for non-dominant carriers in Guam and (b) a notice requesting comments from interested persons regarding such draft rules. We would anticipate that the rules would be considered by the Commission within the framework set forth in 12 GCA 12111.

In our report in Docket 06-9 (Application of Guam Telecom, LLC for a Certificate of Authority to Provide Intrastate Telecommunications Services), we recommended that the Commission consider detariffing private line service for non-dominant carriers pursuant to 12 GCA 12111. Our recommendation was based on the detariffing of such service in some other jurisdictions and the perception that tariff requirements for such service may create a barrier to entry for non-dominant carriers. However, we note that the Commission should still evaluate whether the criteria for detariffing set forth in 12 GCA 12111(a) have been satisfied, and our ultimate recommendation regarding promulgation of the draft rules may depend on the evidence and other comments submitted by interested persons in response to the notice of proposed rules.

If you have any questions concerning this report or require any additional information, please let us know.

Cordially,

/s/ Jamshed K. Madan

Jamshed K. Madan

Enclosures

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

INVITATION FOR PUBLIC COMMENT ON PROPOSED RULES TO DETARIFF PRIVATE LINE SERVICE FOR NON-DOMINANT CARRIERS	**DOCKET 05-1**

NOTICE

The Guam Public Utilities Commission [PUC] invites written comment from interested persons on proposed rules relating to detariffing of private line service for non-dominant telecommunications carriers.

Pursuant to 12 GCA section 12111, PUC specifically invites comments concerning the following issues with respect to the proposed rules:

a. whether the enforcement of 12 GCA 12106 with respect to private line service is necessary to ensure that the rates, charges, classifications, terms and conditions by, for or in connection with private line service are just and reasonable and not unjustly or unreasonably discriminatory;

b. whether the enforcement of 12 GCA 12106 with respect to private line service is necessary for the protection of customers;

c. whether the proposed rules are consistent with the public interest and the legislative findings and intent set forth in 12 GCA section 12101; and

d. the extent to which private line service is available from competitive providers in Guam.

Comments should be filed on or before January 15, 2007 with PUC at its office [Suite 207 GCIC Building, Hagatna] or via email to info@guampuc.com. Documents relevant to this notice, including the proposed rules, may be viewed either on PUC's website [guampuc.com] or upon request at PUC's office. Comments which are filed in response to this notice will be posted on PUC's website under PUC Documents, telecommunications, Docket 05-1.

For further information regarding this notice please contact PUC's administrator Mrs. Lou Palomo at 472-1907.

Public Notice

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

INVITATION FOR PUBLIC COMMENT
ON PROPOSED RULES IN DOCKET ___
TO DETARIFF PRIVATE LINE SERVICE
FOR NON-DOMINANT CARRIERS

NOTICE

The Guam Public Utilities Commission [PUC] invites written comment from interested persons on the following proposed rules, which will be considered by PUC during its ______ 2007 regulatory session:

> Docket _____. Proposed Rules Relating to Detariffing of Private Line Service for Non-Dominant Carriers.

Pursuant to 12 GCA 12111, the PUC specifically invites comments concerning the following issues with respect to the proposed rules:

(a) whether the enforcement of 12 GCA 12106 with respect to private line service is necessary to ensure that the rates, charges, classifications, terms and conditions by, for or in connection with private line service are just and reasonable and not unjustly or unreasonably discriminatory;

(b) whether the enforcement of 12 GCA 12106 with respect to private line service is necessary for the protection of customers;

(c) whether the proposed rules are consistent with the public interest and the legislative findings and intent set forth in 12 GCA 12101; and

(d) the extent to which private line service is available from competitive providers in Guam.

Comments should be filed on or before __________, 2007 with PUC at its office [Suite 207 GCIC Building, Hagatna] or via email at info@guampuc.com. Documents relevant to this notice, including the proposed rules, may be viewed either on PUC's website [guampuc.com] by clicking PUC documents, telecommunications and docket number or upon request at PUC's office. Comments which are filed in response to this notice will also be posted on PUC's website under the appropriate docket.

For further information regarding this notice, please contact PUC's administrator Mrs. Lou Palomo at 472-1907.

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Edward R. Margerison
Jean Dorrell

January 15, 2007

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

Re: E911 Fiscal 2007 Surcharge Summary

Dear Harry,

This letter is being provided to you in response to PL28-44 that requires 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 billing, collections and disbursements resulting from the $1 per month surcharge designed to contribute toward the enhanced E911 system. We have relied upon this information as filed by the Agents and have not performed a full audit. 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, 2006 (Fiscal 2006) in this report and present this compilation in summary format to preserve confidentiality of the various agents.

The Agents are required by the PUC to file information regarding transactions related to the $1 per month E911 surcharge on a quarterly basis (within forty-five days following the end of a quarter – March, June, September and December). Many of the agents were not providing the information required by the PUC until those delinquent agents were personally contacted by your office. Even though the agents were contacted by your office shortly after the reports were due, the last report was received on December 17, 2006. Some filings are in spreadsheet format, while others are scanned documents. Some of the agents are keeping the older data, while others are providing only recent information. The ALJ should remind the agents that each is to retain the data for at least four years[1] and request that data be submitted in spreadsheet format.

The "Balance in Fund" is the amount of cash held by the Agents awaiting transfer to the Department of Administration (DOA). The following table shows information regarding E911 funds and related

1 PUC Order, June 24, 2002

line information as of September 30, 2006:

Table 1
Island-Wide Total

Total Lines [2]	121,648
Exempt Lines	8,830
Fund Balance	$ 116,604
Uncollected Surcharge	$ 81,124
Uncollectible Surch.	$ 6,183

Therefore at the end of the fiscal year, there was an additional source of funds of $198 thousand (Fund Balance and Uncollected Surcharge) that was in the "pipeline" for Fiscal 2007.

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. Guam Cellular Communications, Guam Wireless and I-Connect do not provide information regarding uncollected E911 amounts under the assumption that each has collected the entire surcharge each month. Any uncollected amounts are the accounts receivable by the Agent for the $1 per month E911 surcharge.

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 at that time, 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." While the Fiscal 2006 dollar value for these uncollected funds have dropped significantly beginning in August 2006 (particularly for landline), GTA is in the process of receiving information regarding whether or not this decrease represents the write-off of the surcharge portion of these disconnected accounts.

In the last report, I also requested 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. GTA is in the process of reviewing this and should do so before the January regulatory session. GTA inquires whether or not it can adjust its customer deposit policy to include the $1 surcharge in addition to basic service. The current tariff requires that customers deposit no more than two and one-half months' local exchange charges.[3] At current rates, I believe that this deposit would be $35 per month for single-line residence. In discussing this with

2 In preparing this report, we note that there was an error in the report for Fiscal 2005. The number of lines as of September 30, 2005 should have read 127,844

3 Teleguam Holdings LLC, General Exchange Tariff, Section 1, original page 11.

GTA management, it appears that GTA may be reviewing its options concerning whether or not to charge a deposit that includes the surcharge.[4]

The Agents are required by law to submit the names of those customers that refuse to pay; only GTA has provided the name of one customer.[5] The following table summarizes the cash flow for the surcharge funds

Table 2
Annual Funds Flow
FY2006

Revenues Billed	$1,315,114
Cash Collected	$1,284,462
Funds Retained/PUC	$ 157,344
Transfers to DOA	$1,170,809

Table 2 shows the total Island-wide amount of E911 revenues and collections and the amount transferred to the DOA. The law requires that agents transfer to the DOA the cash collections within forty-five days of receipt. There has been notable improvement the routine transfers to the DOA, when compared to prior years. However, there are still agents that are retaining fund balances in excess of forty-five days' revenue.[6]

We have also reviewed the level of funds retained by the agent for administrative and start-up costs as approved by the PUC. In some instances these amounts are not consistent with various PUC orders regarding this. Beginning in October 2005, IT&E retained $3,370 per month in Fiscal 2006. The July Reimbursement Order from the PUC permits IT&E to retain only $2,694 per month through July 2006 and $4,149 per month through July 2008. The PUC should determine how the amount currently retained was determined. In addition, Guam Cellular is not withholding $1,245 per month as permitted by the PUC order dated March 2004 for ongoing expenses. A full reconciliation of withholding and costs should be provided from these two agents in particular and perhaps all.

It is impossible to 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).

4 I would also note that the Subscriber Line Charges ("SLC") is also not included in the deposit, although GTA is responsible for payment.
5 Prior to this, IT&E reported that the US Government refused to pay the surcharge. Those accounts have since been deactivated.
6 Guam Wireless has a small spreadsheet error regarding the opening balance as of January 1, 2006. Balance does not tie to closing balance of December 31, 2005.

The FY2007 E911 budget is in excess of the $2 million shown in PL28-150. The funds in which transfers from the agents are deposited are not exempted from use by the general fund and information obtained from the accounting office indicates that there was no available cash at year-end FY2006. As can be seen in Table 2, GovGuam will have to find a source of funding for E911 in addition to the surcharge collections for the current Fiscal Year even with modest growth.

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 2007\07 01 15 Letter to HMB regarding E911Fiscal2006 results.doc

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

GTA TARIFF TRANSMITTAL
 # 8 **DOCKET 05-3**

ORDER

On December 1, 2006, GTA Telecom LLC *[GTA]* filed with the Guam Public Utilities Commission *[PUC]* notice of its reduction of its tariff applicable to the Department of Defense's purchase of DID numbers. Pursuant to 12 GCA 12106(d), the reduction became effective without PUC review or approval.

By report dated January 17, 2007, PUC's independent regulatory consultant [Georgetown Consulting Group *[GCG]]* expressed concern regarding whether the tariff reduction unreasonably discriminated against similarly situated customers in contravention of 12 GCA 12105[c]. In response to GCG discovery, GTA admits that it has other DID number customers. GCG recommends that GTA be required to either: a] demonstrate to PUC that the rate reduction for the Department of Defense does not unreasonably discriminate between similarly situated customers or b] submit a corresponding rate reduction for similarly situated customers of DID numbers. GCG also recommends that GTA should be required to submit cost support with its tariff filings for any rate reduction to protect against anti-competitive conduct.

After due consideration of the GCG recommendations, for good cause shown and on motion duly made, seconded and carried by the vote of the undersigned commissioners, PUC **ORDERS THAT:**

1. PUC's administrative law judge *[ALJ]* is authorized and directed to conduct regulatory proceedings in which GTA shall be required to either: a] demonstrate that the rate reduction for the Department of Defense does not unreasonably discriminate between similarly situated customers or b] submit a corresponding rate reduction for similarly situated customers of DID numbers.

2. ALJ is further authorized and directed to schedule a comment period for GTA to file its position on the cost support filing requirement recommended by GCG.

3. These matters will be considered by PUC at its May 2007 regulatory session.

Dated this 1st day of February 2007.

Terrence M. Brooks

Joseph M. McDonald

Edward C. Crisostomo

Filomena M. Cantoria

Rowena E. Perez

Jeffrey C. Johnson

GEORGETOWN CONSULTING GROUP, INC.
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January 17, 2007

Harry M. Boertzel, Esq.
Administrative Law Judge
The Guam Public Utilities Commission
Suite 207, GCIC Building
Hagatña, Guam 96932

Re: Docket No. 05-3: GTA Tariff Transmittal #8

Dear Judge Boertzel:

As requested, this is the report of Georgetown Consulting Group concerning Tariff Transmittal # 8 (Rate Reduction for Volume Purchasers of DID Numbers) filed by GTA Telecom LLC ("GTA") on December 1, 2006. Pursuant to 12 GCA 12106(d), GTA's rate reduction in Tariff Transmittal #8 became effective without Commission review or approval.

However, 12 GCA 12106(d) does not excuse GTA from compliance with other provisions of applicable law. Specifically, GTA must comply with 12 GCA 12105(c), which provides that all rates for a telecommunications service shall not "unreasonably discriminate between similarly situated customers." Because GTA's rate reduction in Tariff Transmittal #8 only applied to the Department of Defense's purchase of DID numbers, we sent inquiries to GTA on January 4, 2007 to determine the existence of other purchasers of DID numbers. GTA responded to our inquiry on January 12, 2007 indicating the existence of other volume purchasers of DID numbers. Based on GTA's response, we believe similarly situated customers may exist for the purchase of DID numbers who did not receive a corresponding rate reduction. Accordingly, we recommend that GTA be required to either (a) demonstrate to the Commission that the rate reduction for the Department of Defense does not unreasonably discriminate between similarly situated customers or (b) submit a corresponding rate reduction for similarly situated customers of DID numbers.[1]

[1] GTA's response indicates that the "contract tariff recognizes the distinct volume and history of DOD's DIDs, and is part of an overall settlement between DOD and GTA that permits the parties to move to a normal commercial working relationship." However, the response does not contain sufficient evidence to demonstrate the distinct volume of the Department of Defense's DID numbers versus other customers of DID numbers and any cost justification for the difference in rates for DID numbers based on such volume purchases.

In addition, as we have previously recommended, we believe GTA, as the incumbent local exchange carrier in Guam, should be required by Commission rule to submit cost support with its tariff filings for any rate reduction to protect against anti-competitive conduct. As discussed in detail in our September 15, 2006 report (concerning GTA Tariff Transmittal #7), we believe this is consistent with generally accepted practices in other jurisdictions.

If you have any questions concerning this report or require any additional information, please let us know.

Cordially,

/s/ Jamshed K. Madan

Jamshed K. Madan

cc: Richard J. Metzger
John N. Ingram, Esq.
Walt Schweikert

G E O R G E T O W N C O N S U L T I N G G R O U P, I N C.
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October 6, 2006

Harry M. Boertzel, Esq.
Administrative Law Judge
The Guam Public Utilities Commission
Suite 207, GCIC Building
Hagatña, Guam 96932

Re: Docket No. 05-03: GTA Telecom LLC compliance with Order Transferring Authority

Dear Judge Boertzel:

This is the updated Georgetown Consulting Group, Inc. ("GCG") report on GTA Telecom LLC (GTA) compliance with its commitments under the July 27, 2005 Order Transferring Authority (hereinafter referenced as the "Order"). In keeping with your September 26, 2006 e-mail, this report covers only the financial reporting issues under the Order. We have addressed the APA compliance issues in a separate report and will reserve comment on GTA's responses to our questions regarding accounting issues and affiliate transactions until the PUC conducts its inquiry into those issues.

The Order states in part:

> 6. TeleGuam shall provide to PUC audited financial statements and consolidated tax returns for TeleGuam and its subsidiaries for each of the next three (3) years and unaudited financial statements for each quarter during such period.
> 7. TeleGuam shall cooperate with PUC and respond to all PUC requests seeking information or documents from TeleGuam or its affiliates, provided such requests are relevant to PUC's regulation of GTA Telecom and its telecommunications services.

We believe that the clear intent of these restrictions was to ensure that the transfer of assets between GTA Telecom and its affiliates would not result in harm to GTA ratepayers, potential competitors, or the people and government of Guam.

On or about May 15, 2006, GTA provided to the PUC both a public and confidential version of its audited financial reports for the calendar year 2005. Prior to issuing our initial report, we requested certain information from GTA to assist us in examining its

compliance in providing the appropriate documents and with the other requirements. A response was received September 14, 2006, well after our report was due.

As we pointed out in our initial report, the public version of the audited financial statements redacted all financial information while very high level summaries of financial information and the auditor's notes were provided in the confidential version. Neither the statements nor the notes provide details that could break down the operating expenses into the major classes under Part 32 accounting (e.g., Plant Specific, Plant Non-specific, Customer Operations, and Corporate Operations). We believe this is the absolute minimum level of detail that should be required of GTA and is no more burdensome than the requirements in most, if not all, of the other jurisdictions in the US that still employ rate-of-return regulation. The statements as submitted provide virtually nothing usable for the "PUC's regulation of GTA Telecom and its telecommunications services" as required by the Order. We note that providing the details requested by GCG should be simple given that it is already in the possession of GTA and its auditors. We therefore believe that the requirement of providing the annual audited statement is not complete. We recommend that the PUC require that complete annual information as requested be provided. GTA has been silent and ignored the requirement to provide unaudited financial statements for each quarter. This requirement should also require GTA to provide meaningful and usable financial information containing the major breakdowns required by Part 32 accounting. Requiring reports without meaningful information would serve no purpose for the PUC.

GTA provided its consolidated tax returns for 2005 as an attachment to its September 14, 2006 letter and contain no explanatory notes or transmittal. We are unclear at this time as to whether this return consolidates all of the affiliated companies that were spun off at the time of the granting of the COA. This return appears to contain the level of detail as required by the Guam Department of Revenue and Taxation.[1] GTA also provided a single page consolidated income statement for the year 2005 with no explanatory notes or transmittal. The title stated that revenues and expenses were summarized by the major Part 32 accounting classifications. No balance sheet or cash flow statements were included in GTA's response and no quarterly reports have been provided. We regard these omissions as a serious violation of the spirit and letter of the Order. We also note that provision of the reports at the level of detail requested by GCG should not impose any additional burden for GTA since it already has all of the information in its accounting system. We are also unsure as to whether GTA's tax position is further consolidated upstream with another company.

Given that these are very complex issues and that the information was provided very late and that this report was required soon thereafter we cannot provide an opinion at this time as to whether these filings satisfy the PUC requirements. Further, direct comparison between the audited financials and tax return filed shows that the amounts for similar data elements do not agree. For example, GTA reported gross revenues for tax purposes more than $3 million higher than on the consolidated income statement. Depreciation on the

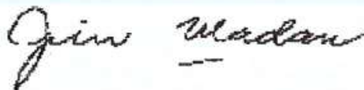
[1] GCG makes no representation as to the accuracy of the data or the adequacy of the tax return filed by GTA.

other hand was $2 million lower. We are unable to reconcile these differences due to the lack of detail on the audited and unaudited financial statements although we recognize that accounting for taxation may differ from regulatory accounting.

We would also like to reply to GTA's response to GCG question 3 in which GTA states that it is in compliance with the Part 32 and 64 rules applicable to ILECs such as GTA, that the additional information we requested is not required under applicable rules and that the practices of the Guam Telephone Authority "are not necessarily relevant to GTA's operations." First, the PUC cannot merely rely on an unsupported statement of compliance with applicable rules. GTA's understanding of those rules, particularly with regards to the applicability of Parts 64.901 (allocation of costs) and 64.902 (affiliate transactions), we believe is flawed and the cross-charging for services and assets provided or used by GTA regulated operations may not be compliant with the FCC's affiliate transaction rules. We will address these issues in the proceeding on accounting safeguards and affiliate transactions. Second, nothing in the FCC's rules bars the PUC from imposing its own standards. This may include the obligation to file detailed accounting reports with the PUC. Third, GTA remains under the PUCs rules applicable to the Guam Telephone Authority except to the degree waived or modified by the PUC or invalidated by the Guam Telecommunications Act. The Guam Telephone Authority was required to provide monthly financial statements that showed detail at the summary account classification level and clearly differentiated between regulated and unregulated operations and lines of business and it not clear to us as to why these obligations do not continue for GTA. GCG has only requested data at the minimum level we believe is necessary for the PUC to monitor compliance with the Order.

If you have any questions concerning this response or require any additional information, please let us know.

Cordially,



Jamshed K. Madan

Cc: William J. Blair, Esq.
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October 6, 2006

Harry M. Boertzel, Esq.
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Hagatña, Guam 96932

Re: Docket No. 05-01: GTA Telecom LLC compliance with APA commitments

Dear Judge Boertzel:

This is the updated Georgetown Consulting Group, Inc. ("GCG") report on GTA Telecom LLC (GTA) compliance with its commitments under the Asset Purchase Agreement (APA). In keeping with your September 26, 2006 e-mail, this report covers only Section 6.10, paragraphs (b) through (e) of the APA and does not address the financial reporting issues under Docket No. 05-03, the Commission's Order Transferring GTA's Certificate of Authority and the joint protocol agreed to by GTA and GCG and approved by the PUC. These issues are covered in a separate letter.

Asset Purchase Agreement - Background

Section 6.10 of the APA requires the buyer of the Guam Telephone Authority's assets to meet certain warranties and covenants. In Sections 6.10 (b) through (e), the buyer agrees to:

> (b) use commercially reasonable efforts to provide service, within three hundred sixty-five (365) days following the Closing Date, which meets or exceeds the quality of service and time commitments set forth in Schedule 6.10(b);
>
> (c) for at least the first five (5) years following the Closing Date, provide periodic annual audited reports to the GPUC, in such form as the GPUC deems appropriate, related to the Buyer's compliance with the service standards and rate commitments made under this Agreement;

(d) not take any action, or seek any relief from the GPUC, to raise or increase the residential and business rates set forth on Schedule 6.10(d) for at least five (5) years following the Closing Date;

(e) use its commercially reasonable efforts to implement the infrastructure enhancements set forth in Schedule 6.10(e), which implementation shall be subject to (i) changes in general and local market conditions, (ii) the availability of new technology, (iii) the receptivity of the customers of the Business to new products and innovations, (iv) the financial condition of the Business and (v) the obligations of the Buyer to its investors, to the extent such obligations arose prior to the date of this Agreement.

Quality of Service

After our comments on APA compliance were filed and well after the reports were due, GTA produced its report on "Quality of Service and Time Commitments, Year 2005-2006. This report consists of three sections. The first section reproduces APA Schedule 6.10(b), which contains the Quality of Service (QoS) standards for ten measurements of service. These standards are identical to those previously established by the PUC for the Guam Telephone Authority. The second section lists each service standard, identifies the source of the data, provides a procedure for generating the measurement and business rules and due dates. The third section provides a month-by-month running view of actual results vs. targets for the calendar year 2005 and through August 2006.

GTA's report showed that for the period January 2005 through August 2006, GTA usually met the monthly objective for:

- Number of Held Orders:
- Customer Trouble Reports per Access Line:
- Network Call Completion;
- Dial Tone Acquisition Speed; and
- Directory Assistance Speed of Answer.

GTA was given 365 days to meet or exceed the required service standards but never met the objectives for:

- Business Office Answer Time;
- Installation - Line Energizing;
- Repair Service Call Answer Time; and
- Customer Trouble Reports Cleared in 48 Hours.
- (No data were provided for Installation - Line Energizing for 2005).

There is no clear trend toward improvement for these measurements. This failure is particularly troubling since these standards generally involve personal contact between the customer and the company and affect customer perception of quality to a higher degree than the network related QoS standards that were met by GTA. It would also be particularly troubling if GTA's requirement to freeze rates resulted in GTA not making the required investment to improve the quality of service to the required levels.

We note that GTA's QoS report does not contain any information concerning the steps GTA expects to take to improve performance. There are no plans, timelines or other information to demonstrate that GTA would be in compliance with the APA commitments in the near future. We would recommend that this information be produced as soon as possible and filed with the Commission.

We also note that the second section which describes the report generation process for each metric provides little assurance that the metrics are being compiled correctly. In other words, we have accepted at face value that the process generates appropriate data and that the metrics are calculated correctly. It would appear that the requirements of Section 6.10 (c) requires that this be provided as an audited statement. We do note that in your September 26, 2006 email you indicate that GCG has been designated the "auditor". While we can review the information as described in this letter we believe that it falls short of the requirements of an "audit". Much of this letter relies on taking at face value what we have been provided (very belatedly) by GTA. We recommend that in a manner similar to what the PUC required of the "Old GTA", the independent auditors of current GTA include in the scope of the annual audit the certification requirement required for the QoS statistics and the rate commitment.

In summary, GTA's QoS statistics show that performance has been spotty, particularly in the critical customer-facing activities. Metrics in key areas show failure to meet the objectives in the 365 days allotted by the APA. We recommend that future reports be filed quarterly and contain action plans that can be monitored by the PUC to ensure the objectives will be met in a reasonably short period. The PUC should also take note of the deficiencies noted above and should decide if it wants to investigate further or whether it should impose the penalties for non-compliance as set forth in Section 12108 of the Guam Telecommunications Act.

Rate Commitments

GTA has, in its September 14, 2006 response to GCG's Request for Information, provided an affirmation that the tariff rates for those basic services identified in APA Schedule 6.10(d) have not changed since the acquisition of the Guam Telephone Authority's assets and no rate increases for these services have been requested. GTA affirmed its compliance with the PUC Order regarding the Gross Receipts Tax on frozen services. GCG believes these affirmations, while falling short of a sworn affidavit, should suffice as documentation of GTA's rate commitments. We recommend that future GTA compliance documents be in the form of a certification sworn to and signed by an officer of the company and as stated above be made part of the annual independent audit.

Infrastructure Enhancements

According to Section 6.10(e), GTA is to use its commercially reasonable efforts to implement the 14 major infrastructure enhancements set forth in Schedule 6.10(e) over a period of five years. In response to GCG's Request for Information, GTA's September

14, 2006 letter contains information showing progress and costs for each project. GTA reports that the following projects have been completed:
1.) Connect GTA to the mainland US with STM-1 undersea cable links;
2.) Implement Signal Transfer Point (STP) switches to improve signaling capacity; and
3.) Implement Government Emergency Telecommunications Services (GETS).

The cost of the completed projects was approximately $1.66 million.

GTA stated that the following are in ongoing projects, meaning they are implemented as needed to support normal operations:
4.) Implement warm dial tone;
5.) Deployment of Digital Loop Carrier (DLC) systems;
8.) Deployment of WiFi technology in public schools and libraries; and
9.) Replacement of six generators and upgrade of power equipment.

Substantial progress has been made on:
6.) Upgrade of the GTA cellular network;
7.) Adding new cell sites; and
14.) New service offerings to include long distance, broadband Internet, full retail wireless services and digital television service.

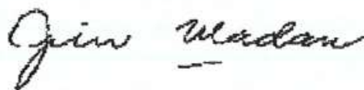
Project 10.) Improve E-911 functionality is awaiting vendor quotes.

GTA expects to implement the following projects in the indefinite future:
11.) Upgrades to GTA's headquarters building;
12.) Implementing an Automatic Call Distributor to improve handling of 411 and 611 calls; and
13.) Deployment of advanced network security technologies.

GCG believes GTA has made substantial progress on its five year commitment to improve infrastructure. The next report filed at a time required by the PUC should show progress since 2005, and should highlight progress since the current report.

If you have any questions concerning this response or require any additional information, please let us know.

Cordially,



Jamshed K. Madan

Cc: William J. Blair, Esq.
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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 Data 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.

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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,

Richard Metzger, VP GTA

Jamshed Madan, GCG

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

12 GCA 12110 RULEMAKING ON GTA TELECOM LLC MINIMUM TECHNICAL STANDARDS

DOCKET 05-03

ORDER

This Order addresses inconsistent requirements in Public Law 27-110 regarding Guam Public Utilities Commission's *[PUC]* duty to establish minimum technical standards for telecommunications services provided by GTA Telecom LLC[1]. While 12 GCA 12110(a) requires PUC to establish these standards on or before January 1, 2006, section 12110(c) prohibits PUC, for a period of three years, from adopting technical standards more stringent than those contained in the Asset Purchase Agreement *[APA]*.

By letter dated September 22, 2005, PUC's regulatory consultant Georgetown Consulting Group *[GCG]*, through counsel, recommended that PUC immediately commence a rulemaking to adopt the technical standards established in the APA. GCG also recommends that PUC require GTA Telecom to provide periodic service quality reports. By letter dated October 6, 2005, GTA Telecom recommends that PUC defer any consideration of technical standards until after the expiration of the three year period established by section 12110(c) and it opposes any PUC requirement that it provide service quality reports more frequently than the annual report required under APA section 6.10(c).

After due consideration of the positions of GCG and GTA Telecom, 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:**

1. ALJ is authorized and directed on or after January 1, 2007 to commence regulatory proceedings to consider the establishment of minimum technical service standards for telecommunications services provided by GTA Telecom, which would become effective on January 1, 2008.

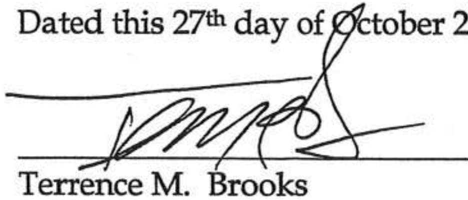
2. GTA Telecom is required under APA section 6.10(c) to provide periodic annual audited reports to PUC in such form as PUC deems appropriate,

---

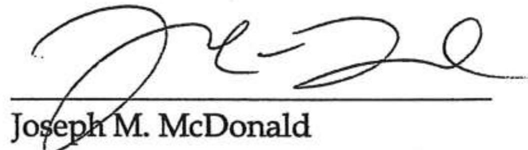
[1] By PUC Order dated July 27, 2005 in this Docket, TeleGuam Holdings, LLC's petition for authority to assign its certificate of authority to GTA Telecom LLC was granted.

related to its compliance with the service standards and rate commitments made in the APA. PUC finds that the first such annual report should be required for the calendar year ending December 31, 2005[2]. ALJ is authorized and directed, in consultation with GTA Telecom and GCG, to establish the required form and content of this report. After considering this report, PUC will decide whether more frequent reports would be useful and necessary.

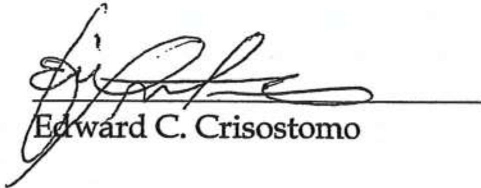
Dated this 27th day of October 2005.



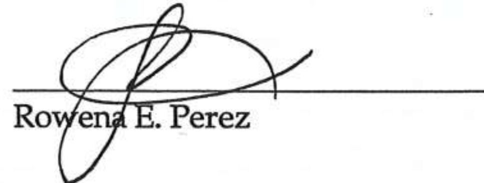
Terrence M. Brooks



Joseph M. McDonald



Edward C. Crisostomo



Rowena E. Perez

[2] TeleGuam is obligated under PUC's July 27, 2005 Order in Docket 05-03 to provide PUC with audited financial statements and consolidated tax returns for TeleGuam and its subsidiaries for a three year period commencing January 1, 2005 and unaudited financial statements for each quarter during this period.

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

INVESTIGATION OF GUAM WATERWORKS AUTHORITY'S VIOLATION OF PUC ORDERS **DOCKET 07-2**

ORDER

On September 28, 2006, the Guam Public Utilities Commission [PUC] directed that an investigation be conducted, under the oversight of its administrative law judge *[ALJ]*, of Georgetown's [GCG] September 21, 2006 assertion that Guam Waterworks Authority [GWA] violated PUC's October 14, 2004 and February 2, 2006 rate orders regarding the rate stabilization fund *[Rate Orders]*, which was established by those orders. After conducting an investigation of the alleged violations, GCG filed its report on December 29, 2006. This report is reviewed in ALJ's January 2, 2007 *Second Memorandum Order*. GWA responded to the report on January 12, 2007. As a result of regulatory conferences concerning these reports, GCG and GWA agreed to stipulated terms under which they recommend that PUC address the substance of the investigation. The stipulation, which was filed on January 23, 2007, is enclosed as *Attachment A.*

After review of the record, including the GCG and GWA reports, ALJ's memorandum orders and the Stipulation, 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. The Stipulation is accepted as a reasonable proposal for resolving issues related to alleged GWA violation of the Rate Orders, which established and controlled the use of GWA revenues deposited into GWA's rate stabilization fund. While accepting the Stipulation, PUC makes clear its serious concern over GWA's decision to ignore the Rate Order rather than to seek regulatory relief from the Rate Orders, when it concluded that subsequent events made it impossible to comply with them.

2. GWA duty under the Rate Orders to make deposits into the Fund is suspended pending PUC's review and consideration of an anticipated GWA petition for FY07 rate relief.

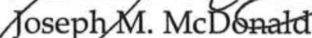
3. On April 11, 2003 PUC established a regulatory protocol *[Protocol]*, which was intended to reduce the need for regulatory oversight of GWA, subject to GWA's timely production of reports and information identified in the Protocol. GWA concedes in the Stipulation that, due a lack of personnel, it has failed to comply with these reporting requirements. PUC calls upon the Consolidated Commission on Utilities [CCU] to examine and correct the problems, which have caused GWA to repeatedly violate its reporting duties under the Protocol. GWA is directed to report to PUC not later than April 15, 2007 on the action steps, which it and CCU have taken to redress this problem. After reviewing this report, PUC will consider whether the Protocol remains a viable paradigm for regulating GWA.

4. GWA is directed to prepare and file on or before April 1, 2007 the reports described in paragraph 9 of the Stipulation. After reviewing these reports, ALJ may direct GCG to file responsive comments.

5. On or before April 15, 2007, GWA will certify to PUC that it is in compliance with the requirements of December 1, 2005 Indenture section 6.08 *[Authority Budget]*.

Dated this 1st day of February 2007.

Terrence M. Brooks



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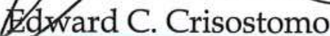

Edward C. Crisostomo

Filomena M. Cantoria

Rowena E. Perez

Jeffrey C. Johnson

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE: RATE STABILIZATION ACCOUNT HEARING	))))	**GUAM PUC DOCKET NO. 07-2** **STIPULATION**

1. Georgetown Consulting Group, Inc. ("GCG"), the independent rate consultant to the Guam Public Utilities Commission ("PUC"), and the Guam Waterworks Authority ("GWA"), enter into this Stipulation for the purpose of recommending to the PUC a process for resolving issues related to alleged violations by GWA of PUC orders, including the February 2, 2006 Rate Order in Docket 04-01 which established and controlled the use of GWA revenues deposited into GWA's Rate Stabilization Fund (the "Fund").

2. In March 2006 GWA caused to be withdrawn from the Fund the sum of $2,000,000. GWA has asserted that the funds deposited in the Fund had been deposited erroneously and that the funds should have instead into a reserve fund GWA is obligated to establish under the Stipulated Order in District Court of Guam Civil Case 02-00035. After transferring the funds from the Fund, GWA used them to pay off vendor payables which GWA represented was necessary to prevent it from having problems receiving parts and equipment to maintain the water and wastewater system.

3. GWA had been authorized under the Rate Order to withdraw up to $2,000,000 from the fund on the conditions that it (a) first file with the PUC delinquent quarterly reports and (b) refund the withdrawal by no later than September 30, 2006. GWA concedes that it withdrew the funds from the Fund prior to filing the delinquent reports and failed to refund the withdrawal by September 30, 2006. GWA disputes, however, that this constituted a violation of the Rate Order, as GWA asserts that the funds should not have been deposited in the Fund in the first place. GWA further asserts that the fund flow requirements under its bond indenture have prevented it from refunding the withdrawn amounts.

4. GCG acknowledges that the funding requirements of the Stipulated Order and GWA's bond indenture have legal precedence over the Rate Order, to the extent that there are any conflicts. GCG attempted through discovery in this docket to verify the assertions of GWA but was unable to do so. GWA, on its part, concedes that, due to deficiencies in its current accounting and reporting systems, it has been unable to provide complete evidence establishing the veracity of its assertions.

5. Notwithstanding the lack of complete evidence, GCG has, based on the available data, conclude that GWA's failure to refund the amounts withdrawn from the Fund was justifiable under the revenue fund flow restrictions imposed on GWA under its bond indenture. GCG is also mindful of the fact that the PUC had authorized GWA to withdraw up to $2,000,000 from the Fund to meet temporary working capital requirements, even though GWA does not purport to have withdrawn the funds pursuant to that authority.

6. In light of the reality that it is highly unlikely that GWA's revenues will be sufficient in the foreseeable future to allow funds to be deposited in the Fund, as contemplated by the Rate Order, GCG has recommended to the PUC that the Rate Order be amended to suspend GWA's obligation to make further deposits pending further review and consideration by the PUC of the rate petition GWA is anticipated to be filing shortly. GWA accepts and joins in this recommendation.

7. On April 11, 2003, the PUC established a regulatory protocol which was intended to minimize the need for regulatory oversight of GWA and thereby minimize the regulatory expenses assessed against it. GWA agrees that in order for this regulatory protocol to work successfully, GWA must provide both the PUC and GWA's governing authority, the Consolidated Commission on Utilities ("CCU") with timely, accurate and complete financial and other reports. GWA has provided testimony in this proceeding that it is unable to meet PUC reporting requirements due to staffing and other resource challenges. GWA represents that, with the approval of the CCU, GWA is seeking to address those challenges by, among other things, hiring a full time chief financial officer and three additional supporting accounting personnel. As part of its upcoming rate case, GWA agrees to advise the PUC as to the progress made by it in addressing its resource problems as well as any setbacks it may have encountered. On its part, GCG agrees that, as part of its review of the upcoming rate case, GCG will review all the currently existing PUC reporting requirements applicable to GWA to see if they can be consolidated or simplified and to make recommendations for appropriate changes, if any are identified.

8. GWA will use its best efforts to obtain from the CCU confirmation of its commitment to provide GWA the resources needed by it meet its reporting obligations and to fulfill the requirements expected of GWA and the CCU under the PUC's regulatory protocol. In the event that the CCU does not provide assurances satisfactory to GCG, GCG reserves the right to make recommendations for the repeal or amendment of the April 11, 2003 order establishing the current regulatory protocol.

9. In order to address specific concerns identified by GCG in its investigation in this docket, GWA agrees to file with the PUC by no later than April 1, 2007 a report addressing the following:

    (1) the current deficiencies in the Operations and Maintenance Fund and Operation, Maintenance, Renewal and Replacement Reserve Fund created under Article V of GWA's bond indenture. This report shall set forth the legal requirements related to these funds and provide a plan and timeline for restoring the fund balances to their required levels. The report shall be supported by an appropriate opinion from GWA's bond counsel and financial advisors.

(2) a description of the relationship between the Operation, Maintenance, Renewal and Replacement Reserve Fund created under the bond indenture and the Emergency Operations, Maintenance, Renovation and Replacement Reserve GWA is required to establish under paragraph 32(2) of the Stipulated Order. This description shall explain how the two funds overlap and interplay with one another and how the different dates on which the funds were created may impact on the required buildup of the balances in these two funds. GWA further agrees to seek from the Region IX USEPA representative a written concurrence that the Stipulated Order Emergency Reserve Fund can be used interchangeably with the aforementioned Bond Fund and also provide GWA with the current required funding levels for the Stipulated Order Reserve Fund.

Dated this 23rd day of January 2007.

BY: [signature]
Counsel of Record for
Georgetown Consulting Group

BY: [signature]
Counsel of record for
Guam Waterworks Authority

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

GUAM WATERWORKS AUTHORITY
2005 REVENUE BONDS

DOCKET 05-10

ORDER
Ugum Water Treatment Plant Refurbishment Project

By Order dated October 27, 2005 *[Order]*, the Guam Public Utilities Commission *[PUC]* established project funding limits for Guam Waterworks Authority's *[GWA]* use of its 2005 General Revenue Bond proceeds. The Order provides that GWA must obtain PUC approval in order to either reallocate funds for uses not authorized therein or, except as otherwise noted, to utilize funds in the contingency reserve established by the Order.

On November 8, 2006, GWA petitioned PUC for authorization to reallocate $6.3 million dollars of allocated bond funds and contingency reserves to fund the refurbishment of the Ugum water treatment plant *[Project]*. The Project is mandated by the Stipulated Order in District Court Civil Case 02-02. After conducting necessary discovery, PUC's regulatory consultant by a report dated December 13, 2006 has recommended that the GWA petition be approved. Pursuant to section 1[f] of the Order, the undersigned has been delegated the authority to approve the reallocation of bond proceeds and the use of the contingency reserve.

After review of the GWA petition, Georgetown's December 13, 2006 report and for good cause shown, the undersigned in the exercise of the authority delegated by the Order, **HEREBY FINDS AND ORDERS THAT:**

1. GWA petition for authority to reallocate an amount not to exceed $6.3 million dollars from the following sources to fund the Project is hereby approved:

    a. The reallocation of $1.0 million from the NSO[1] Agat Collector Line Project, thereby reducing the bond proceeds authorized and available for this project to $1.2 million;

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[1] The Order, in Attachment C, separates approved uses of bond proceeds into projects required by the Stipulated Order [SO] and those not required by the Stipulated Order [NSO].

b. The reallocation of $800,000 from the SO Leak detection/line replacement project, thereby reducing the bond proceeds authorized and available for this project to $12.151 million[2];

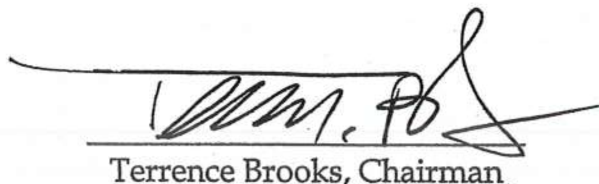
c. The reallocation of the entire $2.5 million authorized for the NSO Ugum tank replacement project, thereby leaving no bond proceeds authorized and available for this project.

d. Utilization of $2.0 million in interest, which has been earned from bond proceeds and which reverted to the contingency reserve.

2. GWA's attention is drawn to the importance of its faithful and timely compliance with section 1[g] of the Order, which requires that it file quarterly reports, which summarize the use of bond proceeds pursuant to the Order. These reports are due within 30 days after the end of each quarter. In these reports and all other regulatory filings, GWA shall use the project name contained in Attachment C of the Order in identifying the projects.

3. In its December 13, 2006 report, Georgetown renews its concern about the substantial cost overruns, which GWA has recently experienced with the Ugum project and with the Northern District and Hagatna District Outfall Projects *[approved by PUC Order dated June 1, 2006.]*. Georgetown has recommended that GWA examine its procurement practices in an effort to strengthen its cost analysis process. After review of the recommendations in Georgetown's May 31, 2006 *[outfall projects cost overruns]* and December 13, 2006 reports, GWA shall file with PUC and with the Consolidated Commission on Utilities on or before April 1, 2007 a report, which evaluates these recommendations and which proposes remedial action to address them.

Dated this 18 day of December 2006.



Terrence Brooks, Chairman

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[2] This $12.151 million authorization balance is the sum of the original authorization in the 10/27/05 Order of $8.2 million plus an additional $4.751 million authorized by PUC's 2/2/06 Order less the $800,000 adjustment authorized in this Order.

G E O R G E T O W N C O N S U L T I N G G R O U P, I N C.
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Edward R. Margerison
Jean Dorrell

January 22, 2007

Harry Boertzel, Esq. ALJ
The Guam Public Utilities Commission
Suite 207, GCIC Building
Hagatna, Guam96932

Re: FY 2007 GWA 04-03 Contract Review (General Matters)

Dear Harry,

This is a supplemental letter to our earlier letter dated January 12, 2007. In that letter we indicated that:

- GWA requested Public Utilities Commission (PUC) approval for a ceiling of internally funded CIP of $2.3 million.
- GWA indicates that there are no projects in excess of $1 million (the level that would require PUC specific approval).

GCG sent a letter to you informing you that GCG believed that the GWA filing was insufficient and copied management at GWA on that letter The reasons for the insufficiencies were:

  - The lack of evidence that the CCU approved these items;[1] and
  - The lack of a three-year capital budget.[2]

- In Docket 07-02, GWA is alleging that it could not fund the Rate Stabilization Trust Fund (RSTF), since GWA states that it is unable to fully fund the other cash requirements identified in its bond indenture. Since the CIP fund is the last fund in which deposits are to be made (subordinate to the RSTF), there should be no expenditure for Fiscal 2007 CIP.

In light of this confusing and paradoxical situation we recommend the following:

- The CIP ceiling for FY 2007 be set at the requested level of $2.3 million.
- The projects comprising the $2.3 million be conditionally approved. They should be permanently approved upon either a showing that there are no further capital requirements in future years, or after further review when the entire multi-year capital is presented for review and approval.
- GWA should be required to meet the regulatory protocol in all future fiscal years.

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

Yours truly,

[1] PUC October 27, 2005 protocol, ¶ 6.
[2] PUC October 27, 2005 protocol, ¶ 5.

Jim Madan

Jamshed K. Madan

Cc: William J. Blair, Esq.
David Craddick, GM
Randall Wiegand, CFO
Sam Taylor, Esq.

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January 12, 2007

Harry Boertzel, Esq. ALJ
The Guam Public Utilities Commission
Suite 207, GCIC Building
Hagatna, Guam96932

Re: FY 2007 GWA 04-03 Contract Review (General Matters)

Dear Harry,

Per your instructions, this letter is an update to the status of the Guam Waterworks Authority (GWA) contract review filing of October 16, 2006. In that filing, GWA requested Public Utilities Commission (PUC) approval for a ceiling of internally funded CIP of $2.3 million. GWA indicates that there are no projects in excess of $1 million (the level that would require PUC specific approval).

The contract review protocol as approved by the PUC on October 27, 2005 requires that Georgetown Consulting Group (GCG) as PUC Staff notify the PUC if the filing is deemed insufficient. On October 17, 2006, I sent a letter to you informing you that I believed that the GWA filing was insufficient and copied management at GWA on that letter. The reasons for the insufficiencies were:

- The lack of evidence that the CCU approved these items;[1] and
- The lack of a three-year capital budget.[2]

I indicated in that letter that I believed that the CCU may have approved these items along with the FY2007 budget. The FY2007 budget was approved at the CCU meeting of September 26, 2006. I was informed that there was no CCU resolution approving the budget. As a result, the detailed requirements shown in the protocol[3] may not exist. The level of the GWA budget was most likely set on a default basis driven by remaining cash after available revenue less other required expenditures is determined. This is similar to what was done in the last two fiscal years and formed the basis of the stipulated revenue increases. In Docket 05-05, the stipulated rates were set in the same fashion with an allowance for $3.6 million of internally funded CIP for Fiscal 2006.

Regarding the three-year capital budget showing the projects that are to be internally funded, GWA has indicated that no such document exists. Repeated on-line, telephonic and in-person requests for this item have come to no avail. As of today, we do not have this three year budget and therefore cannot affirm

[1] PUC October 27, 2005 protocol, ¶ 6.
[2] PUC October 27, 2005 protocol, ¶ 5.
[3] PUC October 27, 2005 protocol, ¶ 6b.

GWA's statement that no project is in excess of $1 million, as multi-year projects may indeed require PUC approval even though the fiscal year expenditure is less than $1 million. That item may be in excess of the minimum requirement, but extended over several years. It is more disconcerting that the document does not exist at all. It would seem that sound operational and financial planning would require this forecast. Moreover the PUC ordered that GWA provide annual five-year CIP forecasts for all capital projects each fiscal year.[4]

The issue of capital expenditures in Fiscal 2007 may be moot at this point in time. In Docket 07-02, GWA is alleging that it could not fund the Rate Stabilization Trust Fund (RSTF), since GWA states that it is unable to fully fund the other cash requirements identified in its bond indenture. Since the CIP fund is the last fund in which deposits are to be made (subordinate to the RSTF), there should have been no expenditure for Fiscal 2007 CIP. We have issued requests in Docket 07-02 on this matter, but have not received a response.[5] If GWA has expended funds it may be in violation of the bond covenant as well as PUC orders.

The contract review protocol permits further investigation into these procurements (as well as others) in the context of a rate audit.[6] GWA has already provided notice of the pending rate case and GCG will review capital expenditures during those proceedings. We would note that GWA was supposed to file a budget variance report on December 1, 2006 comparing the approved level of internally funded CIP with the actual expenditures.[7] It has not filed this report.

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

Yours truly,

Ed

Edward R. Margerison

Cc: William J. Blair, Esq.
David Craddick, GM
Randall Wiegand, CFO
Sam Taylor, Esq.

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[4] PUC Order February 2, 2006, ¶ 9
[5] Requests For Information, Set 3, Items 9 & 10.
[6] PUC October 27, 2005 protocol, ¶ 13.
[7] PUC October 27, 2005 protocol, ¶ 9.

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Harry M. Brooks
Administrative Law Judge

Lourdes R. Palomo
Administrator

January 26, 2007

VIA HAND DELIVERY
Honorable Alicia Limtiaco
Attorney General of Guam
Office of the Attorney General
Hagatna, Guam 96910

RE: Freedom of Information Act [FOIA] Annual Report [FY06]

Dear Attorney General Limtiaco:

Pursuant to the requirements of *5 GCA 10107,* the Guam Public Utilities Commission [PUC] respectfully submits the following FOIA Annual Report for FY06:

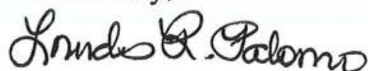
1. During the fiscal year, PUC made no determination not to comply with an FOIA request for records.

2. As of September 30, 2005 there were no FOIA request for records pending before PUC.

3. During the fiscal year, PUC received two formal FOIA request for records. PUC responded to the request in six days. PUC regularly receives informal requests to inspect or obtain copies of PUC records, which are normally processed within several business days of request.

4. PUC has only one staff person who is responsible for PUC's administration and day to day operations, including the task of responding to FOIA request. The expense incurred by PUC for processing FOIA request is nominal.

Cordially,



Lourdes R. Palomo
Administrator

Cc: Terrence M. Brooks, Chairman

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January 15, 2007

Harry M. Boertzel
Administrative Law Judge
Public Utilities Commission of Guam
Suite 401, GCIC Building
Post Office Box 862
Hagatna, Guam 96932

Subject: Docket 01-07 Guam Waterworks Authority Staffing Study

Dear Mr. Boertzel:

This letter is in response to your recent request that GCG formalize a position regarding the necessity to perform an update of the staffing studies required by PL26-23 for Fiscal 2007.

In March 2003, GCG issued its final report regarding the level of staffing of GWA. In that report, we found that the level of staffing for GWA was below that of the panel(s) selected by which to measure the appropriate staffing levels (as shown in the table below)[1]

Table A
GWA Staffing Study

GWA Function	Predicted GWA Employees	Actual GWA Employees	Variance
Water Employees	198	196	-2
Wastewater Employees	133	120	-13
Total	331	316	-15

In November 2003, we indicated to you that we believed no study would be required in FY2004 as a result of the reduced level of staffing of 267 positions. In October 2004 we indicated that the CCU-approved budget contained funds to support 247 positions showing further attrition at GWA. Moreover, the labor force and organizational structure were then under the scrutiny of the EPA and the Court as a result of the Stipulated Order (paragraph 9). Not only is the level of Staff being reviewed, but the Order also placed strict requirements regarding the level of competency of several positions at GWA. It is for

[1] Staffing Study for the Guam Waterworks Authority, page 4.

these reasons we did not believe that a review of the level of Staff positions by the PUC in Fiscal 2005 was warranted. After we received GWA's Fiscal 2006 budget in which the total number of funded positions was 260. There were 238 positions filled as of the date of CCU approval of the FY2006 budget. As a result, we did not recommend an update to the staffing study.

This year, GWA has budgeted positions of 275 personnel and at the time of the approval of the budget there was 245 people "on board." The number of employees "on board" and approved positions are still well below the predicted level of Staff resulting from our initial study. The following table summarizes the level of staffing, since our first study:

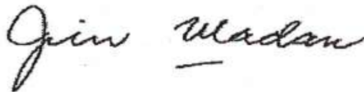
Table B
GWA Staffing Levels

Staffing Study	331
Fiscal 2003 Actual	316
Fiscal 2004 Actual	267
Fiscal 2005 Budget	247
Fiscal 2006 Budget	260
Fiscal 2007 Budget	275

As a result, we believe that there is no necessity to perform another staffing study at this time. This is true not only for the reason that the employee count is well below the staffing study levels, but a full review of operating costs (including labor) will be performed during the review of the pending rate request.

If I can be of further assistance, please do not hesitate to contact me.

Cordially,



Jamshed K. Madan

cc: William J. Blair, Esq.
David R. Craddick, GM
Randall Wiegand, CFO

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January 15, 2007

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Post Office Box 862
Hagatna, Guam 96932

Subject: Docket 01-05 Guam Power Authority Staffing Study

Dear Mr. Boertzel:

This letter is in response to your recent E-Mail requesting that GCG formalize a position regarding the necessity to perform a Fiscal 2007 update of the staffing studies required by PL26-23.

On March 26, 2003, GCG provided the Commission a report on the Staffing Levels of Guam Power Authority. The report found that the predicted level of employees (overall) would be 587. At the time of the report, GPA had 589 positions on board.[1] The report therefore concluded that:

> *Our conclusion based upon this analysis is that GPA is currently staffed at levels that are supported based upon its peers in the industry and the characteristics deemed by GPA and GCG to impact its staffing requirements. Accordingly, based upon current work practices GPA staffing levels appear to be appropriate. While staffing reductions may be possible, any meaningful reductions will require the implementation of best industry practices.*[2]

Since that time, we have monitored the staffing level per your request. In our letter to you of November 2003, we indicated that we did not feel that the cost and effort required to do an updated study was warranted in light of the fact that GPA's staffing level had fallen to 535 full time employees on an actual basis, while the Fiscal 2004 budget contained 583 positions. The Fiscal 2005

[1] Staffing Study for the Guam Power Authority, page 17.
[2] Ibid.

budget contained a total of 583 positions, which was below the level of the predicted levels based upon the comparative study finalized in 2003. As a result we concluded that a staffing study need not be performed for FY2005. Subsequently, GCG received the Fiscal 2006 budget, in which a total staffing budget for 584 positions is included. At the time that this budget was prepared, GPA had a total of 538 employees. GPA continued to budget for a number of positions that is consistent with the predicted level of employees stemming from our 2003 study, while maintaining a staffing level below the budgeted number. We reported to you that GCG believed that there is no need to undertake a new Staffing study for Fiscal 2006.

We have recently received the Fiscal 2007 budget in which there are again 584 positions funded in that budget. At the current time, there are 537 active employees[3]. Both levels are still below the 2003 staffing study. The following table summarizes the above:

Table 1
Staffing Level

Staffing Study Level (employees)	**587**	
	Budget	Actual
Fiscal 2004	583	535
Fiscal 2005	583	NA
Fiscal 2006	584	538
Fiscal 2007	584	537

There appears to be a fairly constant number of positions that have been budgeted over recent years as well as a fairly consistent level of staff on an actual basis. We recommend that no new study be performed at this time.

If I can be of further assistance, please do not hesitate to contact me.

Cordially,

Jamshed K. Madan

cc: William J. Blair, Esq.
Joacquin "Kin" Flores, GM

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[3] There are also 76 apprentices who are currently employed by GPA

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Harry M. Boertzel
Administrative Law Judge

Lourdes R. Palomo
Administrator

January 26, 2007

VIA HAND DELIVERY
Senator Jim Espaldon
29th Guam Legislature
Suite 16B, Sinajana Shopping Mall
777 Route 4
Sinajana, Guam 96926

Dear Senator Espaldon,

The Guam Public Utilities Commission [PUC] respectfully submits the following comments regarding Bill 19:

1. The Amended Federal Stipulated Order in District Court of Guam Civil Case 02-35 *[U.S.A. v. Guam Waterworks Authority (GWA) and the Government of Guam (GovGuam)]* dated October 19, 2006 mandates that GWA shall establish, with PUC approval, a restructured user fee system, which is based on **actual water usage** and **actual costs of service.**[1] As GovGuam is a defendant in this proceeding, it would be prudent for the Legislature to obtain comfort that the enactment and implementation of Bill 19 would not violate the Stipulated Order. It would also be prudent for the Legislature to consider whether the bill would violate the decision in *Guam Power Authority v. Bishop of Guam*, 383 F. Supp. 476 (1974) *(copy enclosed)*.

2. With regard to the Legislature's policy review of the appropriate scope of Bill 19 *[currently limited to non-profit organizations who operate sports or recreational facilities on property leased from GovGuam]* PUC encloses correspondence from the Ji Foundation dated May 24, 2006. This non-profit foundation, which provides low cost housing to low income Guam residents, has asked whether GPA and GWA could provide it with discounted service rates. PUC has informed the foundation that it is not authorized to establish such a discount rate under existing law.

[1] See section 10(5) of the Stipulated Order.

3. The bill contains a several vague terms: "recreational facilities" and "regular customer". It would be useful if the bill were amended to empower PUC to interpret its provisions, consistent with its intent, in the course of establishing the discount rates.

4. The bill would shift the economic burden of the unrecovered costs associated with extending discounted water and power service to non-profit sports and recreational facilities from these facilities to the other customer classes, including the residential and business customers.

5. The bill would require a discounted rate for GWA water service but not for GWA's wastewater service.

6. The bill also ties the discounted water rate to the GWA rate currently provided to agricultural customers. Under the mandate of the Stipulated Order, GWA's water rates, including those extended to agricultural customers, must be reexamined to determine whether they are based on actual usage and actual costs of service. Accordingly, as a result of this review, current agricultural rates may increase.

PUC hopes that the above comments are of some assistance in your deliberation on the bill.

Cordially,

Terrence Brooks
Chairman

Cc: Consolidated Commission on Utilities
Ji Foundation

PO Box 6403
Tamuning, Guam 96931
Telephone: 671-477-9219/9220
Fax: 671-477-2030

JAMES JI FOUNDATION

May 24, 2006

To: Mr. Terrance M. Brooks
Chairman
PUBLIC UTILITIES COMMISSION
GCIC Building Suite 207
Hagatna, Guam 96921

Dear Mr. Brooks:

The James Ji Foundation has two (2) 40 forty single residency occupancy units in what is know as the HAVEN and RICH. For the past three (3) years this Foundation has greatly served the island of Guam without local funding, federal funding or donations. We house families and many young children. The people who come to us were referred to us by either the office of the Governor, Superior Court, Salvation Army, The Department of Mental Health, Catholic Social Services or GHURA. Now you know that we serve people who are low income and or have a substance abuse, mental or criminal problem. The HAVEN and RICH has provided a chance for these people and their families to turn their lives around. At anytime you or your staff is invited to visit our buildings and speak with the families to whom we provide shelter.

Our Foundation can close it's doors, turn around and lease our building for Hotel Operation and receive 100% income. However, we want to help end homelessness and stop the violence in Guam. We want to give those who have difficult and challenging lives an opportunity to become self-sufficient and responsible individuals in our community. We want to make a difference.

Mr. Chairman, all we charge is $300.00 a month. An all-inclusive rate consisting of rent, power, water, telephone and mail services. Said to say we are lucky to collect $0.15 cents to the dollar. Because we serve families who are in the low to below poverty level, many of them cannot even meet the $300.00 monthly payment and make a small percentage paymdent. Some of them, no payments at all.

Our profit making companies are paying for the utilities, which are rather excessive. Shouldering the utility cost for the shelters has placed a financial strain on our companies. Mr. Brooks, is there anyway that the Utility Commission may find a "reduced" surcharge for our buildings? For non-profit organizations, who assist the homeless? The utility rate hikes are making it hard for us to control operating cost for our building.

We appreciate your advisement regarding this matter. Should you have any questions, please call me at 477-9219/9220.

Sincerely,

Narci San Agustin

GUAM POWER AUTHORITY, a public corporation, et al., Plaintiffs,
v.
BISHOP OF GUAM, a corporation sole, and Church of Christ-Latter Day Saints, Defendants.

Civ. No. 191-73.

Oct. 18, 1974.

Guam public utility brought suit challenging the validity of Guam Government Code amendment which reduced the charges for utility services furnished to nonprofit educational facilities, churches, and publicly owned hospitals. The District Court, Duenas, J., held that the amendment was too indefinite and uncertain to be valid, and it also violated federal statute by denying equal protection of the laws to utility customers unfavorably affected by the amendment.

Summary judgment for plaintiff.

West Headnotes

[1] Statutes
361k47

Public Law 12-42, which amended the Government Code of Guam for the purpose of reducing charges for utility services furnished to nonprofit educational facilities, churches and publicly owned hospitals, was invalid for vagueness and ambiguity, since it was unclear whether the legislature intended the law to become effective immediately or at such time as it became necessary to alter the rate system, since the amendment's language "shall not exceed one-half (1/2) of the minimum rate charged to any other customer" was ambiguous, and since the classes benefited by the amendment were also ambiguously defined. Government Code Guam, §§ 21003, 21503(4), 21553; Organic Act of Guam, § 5(n, u).

[2] Religious Societies
332k1

The term "church" can mean an organization for religious purposes and it can also have the more physical meaning of a place where persons regularly assemble for worship.

[3] Electricity
145k11.2(3)

When a government undertakes to furnish a public service, such as the supplying of electricity to consumers other than itself, it acts in its proprietary capacity and cannot grant free or reduced rates, or otherwise make discriminations which would be unlawful if the service were rendered by an individual or private corporation.

[4] Statutes
361k55

Guam Government Code amendment which reduced the charges for utility services furnished to nonprofit educational facilities, churches and publicly owned hospitals and which, in net effect, placed the burden of providing half of their electric power requirements upon ordinary consumers of electric power arbitrarily and capriciously discriminated against ordinary consumers, thereby violating federal statute providing that "No discrimination shall be made in Guam against any person on account of race, language, or religion, nor shall the equal protection of the laws be denied." Government Code Guam, §§ 21003, 21503(4), 21553; Organic Act of Guam, § 5(n, u), 48 U.S.C.A. § 1421b(n, u); U.S.C.A.Const. Amend. 14.

*476 Fred E. Bordallo, Agana, Guam, for plaintiffs.

Howard G. Trapp, Agana, Guam, for defendant Bishop of Guam.

*477 OPINION

DUENAS, District Judge.

The Guam Power Authority commenced this action on Friday, October 12, 1973, asking this Court to declare Sections 3 and 4 of Public Law 12-42 illegal and void. Public Law 12-42 amended Sections 21003, 21503(4) and 21553 of the Government Code of Guam for the purpose of reducing charges for utility services furnished to nonprofit educational facilities, churches, and publicly owned hospitals.

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EXHIBIT "E"

Ensuing joining of issues, Plaintiffs made a motion for Summary Judgment to declare that Sections 3 and 4 of Public Law 12-42 are illegal and void and of no force and effect. The motion was heard by the Court on May 17, 1974. Ensuing argument of the parties, the Court took the matter under advisement.

Plaintiff, Guam Power Authority (GPA), a public corporation, distributes and sells electric power to the citizens and residents of the Territory of Guam. Defendants, Bishop of Guam, a corporation sole, and the Church of Christ of the Latter Day Saints are customers of GPA and are favorably effected by Public Law 12-42 in that their electric power rates are in some way decreased by it.

Plaintiffs, Eugene Schaardt, Joaquin G. Blaz, Frank P. Torres, Charles W. Spero, and Tomas J. Flores are directors of GPA and customers of GPA who do not fall under that class of customers benefited by Public Law 12-42.

Section 2 of Public Law 12-42 effects the rates fixed by the Board on Utility Rates. The Board on Utility Rates determines the charges on all utility services furnished by the Government of Guam other than those furnished by GPA. The validity of Section 2 is not challenged by Plaintiffs and, therefore, is not in issue.

Section 3 of Public Law 12-42 amended Section 25103(4) of the Government Code of Guam, to read:

'(4) Establish and modify from time to time, without reference to the Board on Utility Rates, reasonable rates and charges for electric service, at least adequate to cover the full cost of such service, and collect money from customers using such service, all subject to any contractual obligation of the Board to the holders of any bonds, provided, however, that the rate for services supplied to any nonprofit educational facility, church, or publicly-owned hospital, shall not exceed one half (1/2) of the minimum rate charged to any other customer; enter into covenants to increase rates or charges from time to time as may be necessary pursuant to any such contractual obligation; and refund rates and charges collected in error in accordance with regulations prescribed by the Board.' (The italicized material was added by Public Law 12-42).

Section 4 of Public Law 12-42 amended Section 21553 of the Government Code of Guam, to read:

'Section 21553. Amounts of rates and charges; refunds. Except to the extent otherwise permitted or required by an indenture or any contract relating to indebtedness incurred by the Board, all rates and charges shall at all times be fixed to yield annual revenues equal to the annual principal payments and interest charges and reserve fund requirements on all bonds at any time issued and outstanding hereunder, the annual system operation and maintenance costs and the annual principal payments and interest charges on all other outstanding indebtedness incurred by the Board, provided, however, that the rate for services supplied to any nonprofit educational facility, church, or publicly- owned hospital shall not exceed one half (1/2) of the minimum rate charged to any other customer. An indenture or contract of indebtedness may provide for payment from revenues of refunds of rates and ***478** charges that are collected in error and that are refundable by the Board in accordance with regulations prescribed by it.' (The italicized material was added by Public Law 12-42).

The effect of Public Law 12-42 is to create a special class of customers who will be charged a reduced rate for electricity furnished by GPA, while those customers not in that class will be required to pay a higher rate in order for GPA to maintain the same income level. Plaintiffs contend that the statute 1) is vague and ambiguous, 2) violates 48 U.S.C. § 1421b(p), in that it provides electric power at reduced rates to churches and sectarian institutions, 3) violates 48 U.S.C. § 1421b(n), by denying equal protection of the laws to the GPA customers who are unfavorably affected by the statute, 4) violates 48 U.S.C. 1421b(j), in that it impairs the contractual obligations of GPA, and 5) is void because Bill No. 352, which became Public Law 12-42, was vetoed by the Governor and returned to the Legislature while the Legislature was in recess and, therefore, was in effect pocket vetoed by the Governor.

To determine the outcome of this case, it is only necessary to consider Plaintiffs' first and third contentions.

[1] The statute is vague and ambiguous in several respects. Section 21513 of the Guam Government

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Code requires the GPA to hold public hearings every time it establishes new rate schedules. The process of establishing new rate tables is not only time consuming but entails a substantial expenditure of funds. Section 21503(4) provides that GPA must establish reasonable rates and charges for electrical service which are at least adequate to cover the full cost of such service. Moreover, GPA, acting pursuant to the Guam Power Authority Revenue Bond Act of 1968, Section 21550 et seq., Government Code of Guam, entered into a bond indenture agreement under which the GPA Board covenanted among other things to pledge the revenues of its electric system towards the payment of bonds issued by it. Twenty-five Million Dollars ($25,000,000) worth of bonds were issued under such agreement, and the GPA Board also agreed under the indenture that it would establish and fix its rate structure so as to yield net revenues equal to at least 1.30 times its annual debt service. GPA has no other means of income other than the rates it charges for electrical service. Consequently in order to abide by the terms of Section 21503(4) and to meet its contractual obligations and at the same time to carry out the provisions of Public Law 12-42, GPA must hold hearings and change its rate schedules to reflect lower charges for the benefited class of customers and higher charges for the other class of customers. It is unclear from Public Law 12-42 whether or not the Legislature intended the GPA to undertake the substantial expense of holding hearings immediately and establishing new schedules or whether it intended for GPA to change its schedules at such a time that a change in the cost of furnishing electricity to its customers would require rescheduling. GPA clearly cannot reduce its rates to the benefited class of customers until it restructures its rate system. It simply is unclear from the amendments to Sections 21503(4) and 21533 whether the Legislature intended the law to become effective immediately or at such time as it becomes necessary to alter the rate system.

Furthermore, the language 'shall not exceed one half (1/2) of the minimum rate charged to any other customer' is ambiguous. The GPA Electric Rate Book consists of eight different rate schedules for eight different classes of customers. The eight classes of service are: Residential Service, Governmental Residential Service, Small General Service, Large General Service, Government Institutions and Agencies (small), Government Institutions and Agencies (large), Public Street and Outdoor Lighting Service; Private Outdoor Lighting Service. It is extremely difficult, ***479** if not impossible, for GPA as well as the Court to determine which schedules are applicable to the benefited class of customers. The Legislature could have intended that each benefited customer should be charged at one half (1/2) the minimum rate for the class in which it falls. However, in each class there are different rates for the first so many kilowatt hours, another rate for the next so many kilowatt-hours, and so forth. For example, under Residential Service, the customer is billed as follows:

First	30	Kwh or less	$1.95		
Next	70	"	$0.0504	per	Kwh
"	200	"	$0.0336	"	"
Over	300	"	$0.0246	"	"

Does the Legislature intend by the words 'shall not exceed one half (1/2) of the minimum rate charged to any other customer' that the benefited customer be charged one half (1/2) of the $0.0246 per Kwh rate or one half (1/2) of the rate at each level depending upon the individual customers consumption.

If the Legislature intended that the schedule with the lowest rates of the eight be used, it is impossible to determine which schedule has the lowest rates. For one member of the benefited class, the residential service schedule might be best while another member might be better off under another schedule. The schedules are a complicated system of rate structures which take certain matters into account, such as maximum kilowatt demand. One schedule cannot fit every member of the benefited class.

The term 'any customer' appears to mean that hospitals and large schools will be billed at one half (1/2) the rate of the smallest residence in Guam, yet such a result is not logical. Residences are billed

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only on their consumption of kilowatt hours of electricity, but large users, such as hospitals and schools, are billed both for their energy consumption as well as their energy demand, based on their highest demand in any 15-minute period in a given month. It is doubtful that the Legislature really considered the application of the law to the actual circumstances. The term 'any customer' simply cannot be given a logical meaning by the Court.

[2] Public Law 12-42 ambiguously defines the classes benefited by the law. The bill refers to churches as belonging to the benefited class, but it is unclear as to how inclusive the term 'church' is intended to be. It can mean an organization for religious purposes. Williams v. Williams, 215 N.C. 739, 3 S.E.2d 334, 338. It can also have the more physical meaning of a place where persons regularly assemble for worship. Stubbs v. Texas Liquor Control Board, Tex.Civ.App., 166 S.W.2d 178, 180. If the word 'church', as used in the statute, has the more abstract meaning of an organization for religious purposes, then it can be assumed that all meters in the name of religious organizations would be members of the benefited class regardless to what use the facility was actually put. For example, income producing property could be owned by religious organizations and consequently receive reduced power rates. On the other hand, if 'church' is interpreted to mean a place where persons regularly assemble for worship, does this include merely sanctuaries, chapels, and cathedrals, or does it also include buildings adjacent there to such as parsonages, friaries, convents, fellowship halls, Sunday schools, and rectories? The term 'church' is too vague to enable GPA to determine what customers are to be members of the benefited class.

The Legislature has attempted to alter a complex and extremely technical rate structure for electric utility services with a bill which is incomplete and which contains undefined terms.

'§ 472. Indefiniteness and Uncertainty. In the enactment of statutes reasonable precision is required. Indeed, one of the prime requisites of any statute is certainty, and legislative enactments may be declared by the courts to be inoperative and void for uncertainty in the meaning thereof. *480 This power may be exercised where the statute is so incomplete, or so irreconcilably conflicting, or so vague or indefinite, that the statute cannot be executed and the court is unable, by the application of known and accepted rules of construction, to determine what the legislature intended, with any reasonable degree of certainty . . .' 50 Am.Jur. on Statutes, p. 281.

'An act which is so uncertain that its meaning cannot be determined by any known rules of construction cannot be enforced. If no judicial certainty can be settled upon as to the meaning of a statute, the courts are not at liberty to supply one. It must be capable of construction and an interpretation; otherwise it will be inoperative and void. An act is void where its language appears on its face to have a meaning, but it is impossible to give it any precise or intelligible application in the circumstances under which it was intended to operate.' In re Di Torio, 8 F.2d 279 (N.D.Ill., 1925).

Although the terms of Public Law 12-42 can be given a general intent, it is virtually impossible to give them any precise or intelligible application in the circumstances under which it was intended to operate.

In State v. Gaitskill, 133 Kan. 389, 300 P. 326, 328 (1931), the Supreme Court of Kansas addressed itself to the problem of uncertainty in statutes and adopted a rule set forth in 25 R.C.L. 810:

'Where an act of the legislature is so vague, indefinite and uncertain that the courts are unable to determine, with any degree of certainty, what the legislature intended, or is so incomplete or is so conflicting and inconsistent in its provisions that it cannot be executed, it will be declared to be inoperative and void.' 300 P. 326, 328 (1931).

The Eastern District of Illinois recently applied the same standard:

'A legislative act or statute which is so vague, indefinite and uncertain that courts are unable, by accepted rules of construction, to determine, with any reasonable degree of certainty, what the General Assembly intended, or which is so incomplete or conflicting and inconsistent in its provisions that it cannot be executed, will be declared inoperative and void. The duty imposed by a statute must be prescribed in terms definite enough to serve as a guide for those who must comply with it.' Whitfield

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v. Simpson, 312 F.Supp. 889, 897 (E.D.Ill., 1970).

Public Law 12-42 is so imprecisely drafted. It would be unfair to require this Court or GPA to determine which of the many interpretations were intended by the Legislature. The law is simply too indefinite and uncertain to be valid.

THE RELATION OF 48 U.S.C. § 1421b(n), TO PUBLIC LAW 12-42:

Section 1421b(n) of Title 48 of the United States Code, provides:

'No discrimination shall be made in Guam against any person on account of race, language, or religion, nor shall the equal protection of the laws be denied.'

The equal protection clause of the Fourteenth Amendment to the Constitution of the United States was also made applicable to Guam by Section 1421b(u) of Title 48 of the United States Code.

It is Plaintiffs' contention that Public Law 12-42 reduces electric rates for a special class of customers at least 50% Of the rate charged to other customers. Since GPA must maintain the same level of revenue to operate, the burden of making up the difference falls on customers outside the special class. Plaintiffs maintain that such a classification is arbitrary and capricious and deprives the individual Plaintiffs of their right to equal protection under the law. This Court agrees with Plaintiffs.

*481 There is a scarcity of recent case law involving instances where municipally owned utilities provided special classes of customers with utility services at no charge or at greatly reduced rates. However, an excellent synopsis of case law on this issue is set forth in 50 A.L.R. at page 126.

[3] There is abundant authority for the proposition that when a government undertakes to furnish a public service, such as the supplying of electricity to consumers other than itself, it acts in its proprietary capacity and cannot grant free or reduced rates, or otherwise make discriminations which would be unlawful if the service were rendered by an individual or private corporation. 50 A.L.R. 126.

There is some case authority holding that a government agency operating a public utility can give free or reduced rates to public, charitable, or religious institutions. However, the great weight of authority holds that any such discrimination is unlawful. Many Public Utility Commissions have invalidated such discriminatory practices.

In Re Elkhorn Light and Water Commission, (1923, Wis.), P.U.R. 1923E, 235, the commission held that the furnishing of electricity from a municipal plant to a consumer, at less than cost, constitutes an unreasonable discrimination in favor of the consumer, and casts a burden upon other customers in the municipality or upon the taxpayers.

In University of Montana v. Bozeman, (1923, Mont.), P.U.R. 1924A, 705, it was held that it would be unlawful for a municipal utility to grant a preference to the state through the furnishing of water to a state university at rates based merely on operating costs, exclusive of depreciation, interest, etc.,-- as service to the school on such a scale would mean merely that the taxpayers of the municipality, or the water consumers thereof, must make up the deficiency for which the school-service rate did not compensate.

And, the Missouri Commission in Botts v. Brookfield, (1917, Mo.), P.U.R. 1917D, 224, held that the furnishing of water free from a municipal water plant to churches and schools in the city, while other consumers were charged for a like service, constituted unlawful discrimination.

In Cavanaugh v. Whitefish Municipal Water Utility, (1922, Mont.), P.U.R. 1922E, 198, where it appeared that water was taken by the public from a municipal water plant for fire protection, public buildings, and other public purposes, the commission said that to render the public these services without charge constituted unlawful discrimination in favor of taxpayers and against the water consumers.

And, on petition for the establishment of rates of a municipal electric utility, the commission in Re Hillis, (1926, Ind.), P.U.R. 1927A, 443, held that discrimination was shown against private consumers, in that the city paid nothing for street lighting, it being said that the utility should be paid a fair rate for all service rendered, whether rendered to an individual or to the city. And, it was held that

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the city's rate for service should be the same as the rate for the largest power consumer.

A city which operates a municipal lighting plant is not justified in charging itself for street lighting a sum per light which is less than the actual cost of rendering the service, since other consumers of electricity would thus be paying a part of the expense of lighting the streets. Bonser v. Electric Light Commission, (1920, Me.), P.U.R. 1920F, 183.

Public Law 12-42 forces the consumer of electricity to subsidize churches, educational institutions, and publicly-owned hospitals. Plaintiffs contend that the term 'nonprofit educational institutions' is ambiguous, in the respect that it is unclear whether it includes Government of Guam schools. The Court is of the opinion that the law does include Government of Guam schools, as well as ***482** hospitals operated by the Government of Guam within the benefited class.

[4] The electric power bills of the University of Guam, the Guam public schools, and the Guam Memorial Hospital must be substantial. To place the burden of providing half of their electric power requirements upon the ordinary consumer of electric power would be an onerous burden indeed. The placing of this public responsibility upon the consumer's shoulders, rather than upon the taxpayer's, is a capricious and arbitrary discrimination. No rational basis exists to force the consumer of electric power to subsidize the private functions of churches and private schools, or the public functions of government schools and hospitals.

Let Summary Judgment issue.

383 F.Supp. 476

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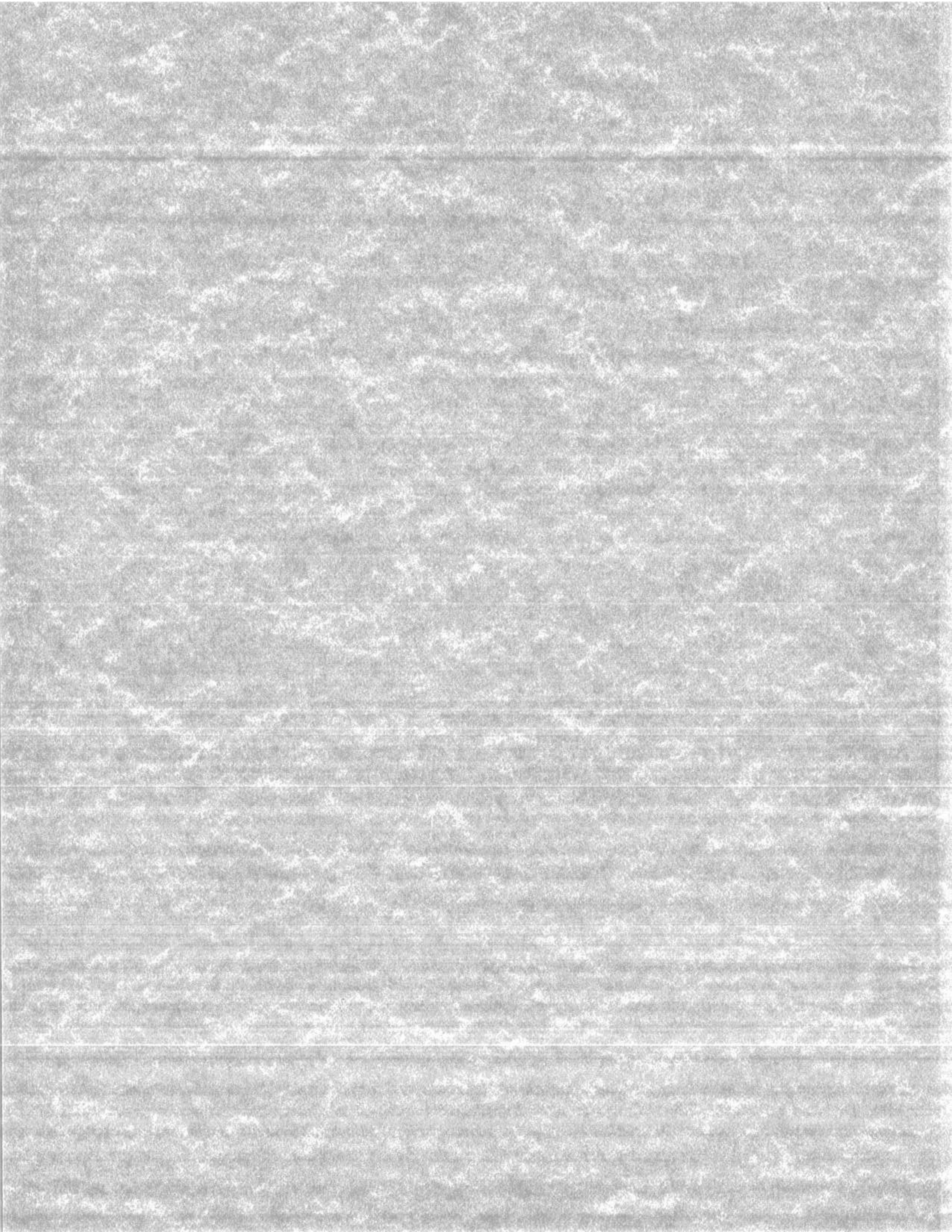


PUBLIC UTILITIES COMMISSION
BUSINESS MEETING
MAY 26, 2007
SUITE 207 GCIC BUILDING HAGATNA

MINUTES

The Guam Public Utilities Commission [PUC] conducted a business meeting commencing at 3:00 p.m. on May 26, 2007 pursuant to due and lawful notice[1]. Commissioners Brooks, Johnson, Crisostomo and McDonald were in attendance. The following matters were considered at the meeting under the agenda made *Attachment A*.

1. **Approval of minutes.**

After review and discussion of the minutes of the February 1, 2007 meeting and on motion duly made, seconded and unanimously carried, the Commission resolved to approve the minutes.

2. **Guam Power Authority.**

The commissioners reviewed an Administrative Law Judge report dated May 21, 2007 regarding GPA petitions which request:

a. Ratification of GPA's Shell diesel contract.
b. Authorization to recover TCP interest expenses its tariff schedule Z [LEAC].
c. Establishment of a regulatory asset to recover uninsured losses under the self-insurance fund established by PUC orders dated December 21, 1992 and March 3, 1995.
d. Authorization to amend its customer service agreement with Navy.
e. Authorization to convert the Macheche to San Vitores and Macheche to Guam Airport 34 kV transmission lines to underground facilities.

After review of the ALJ report and the positions of the parties, including stipulations between GPA and Georgetown [GCG] concerning the Shell contract

[1] The meeting was initially noticed for May 24, 2007. Due to a lack of a quorum, the meeting was reset for 3:00 p.m. May 24, with notice of the rescheduled meeting posted as required by 5 GCA § 8109.

and the regulatory asset petitions, and on motion duly made, seconded and carried, the commissioners resolved to adopt the order made *Attachment B*[2].

3. Telecommunications.

The agenda items for telecommunications items were tabled.

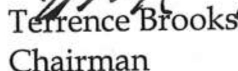
4. Solid Waste Management.

The commissioners reviewed a proposed order, which would express serious reservations about PUC's ability to regulate solid waste management activities in the face of Public Law 29-150, which authorizes the Governor to use rate revenues in the Solid Waste Operations Fund for purposes other than solid waste management. Under the proposed order, PUC would suspend all regulatory activities regarding solid waste management until the Fund's integrity was restored. After discussion, the commissioners directed that approval of the order should be deferred until Federal magistrate judge Manibusan issued his report and recommendations in Federal District Court Civil Case 02-22 *[USA v. Government of Guam]*.

5. Guam Waterworks Authority.

The commissioners reviewed ALJ's May 11, 2007 order, which dismissed Guam Waterworks Authority's March 30, 2007 petition for rate relief. GWA had failed to comply with the mandatory prefiling notice requirements of the Guam Ratepayers' Bill of Rights [12 GCA § 12001.2(b)].

There being no further business, the meeting was adjourned.



Terrence Brooks
Chairman

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[2] GPA's petition for authorization to recover accrued TECP expenses under its Tariff Schedule Z was denied on a vote of 3 against and one in favor of approving the petition. Under 12 GCA § 12006, the affirmative vote of four commissioners is required to act or issue a decision.

GUAM PUBLIC UTILITIES COMMISSION

SPECIAL MEETING
SUITE 202 GCIC BUILDING
414 W. SOLEDAD AVE. HAGATNA, GUAM
6:00 p.m. May 24, 2007

AGENDA

1. **Approval of minutes of February 1, 2007 special meeting.**

2. **Guam Power Authority.**

   . Regulatory asset petition.
   . Shell diesel contract ratification.
   . TCP interest expense allowability under LEAC.
   . GPA – Navy customer service agreement amendment.
   . Contract review protocol amendment.

3. **Telecommunications.**

   . Docket 05-01 – Rules for interconnection implementation standards.
   . Docket 05-03 - GTA Tariff Transmission # 8.
   . GTA APA compliance report.
   . Docket 05-11 – Enforcement Order.
   . Docket 07-5 – GTA – Guam Cell arbitration – status report.

4. **Solid Waste Management.**

   . Proposed order.

5. **Guam Waterworks Authority.**

   . Docket 07-5 – Dismissal order.

6. **Other Business.**

PUBLIC UTILITIES COMMISSION
SPECIAL MEETING
FEBRUARY 1, 2007
SUITE 207 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 1, 2007 pursuant to due and lawful notice. Commissioners McDonald, Cantoria, 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 September 28, 2006 meeting and on motion duly made, seconded and unanimously carried, the Commission resolved to approve the minutes.

2. **Guam Power Authority.**

The commissioners reviewed a proposed order, which would: a] establish the LEAC rate for the next six months; b] adjust the LEAC six month cycle to February through July and August through January; c] require further proceedings on the allowability of TCP interest expense recovery under LEAC; d] amend the contract review protocol; e] set an FY07 CIP ceiling; and f] require further proceedings on GPA's request that $17.3 million of disallowed FEMA disaster loss claims be designated a regulatory asset for recovery under GPA's self-insurance reserve account. After review of the reports of its independent regulatory consultant [Georgetown Consulting Group – GCG] and GPA comments and after consideration of a proposed order, for good cause shown and on motion duly made, seconded and unanimously carried, the commissioners resolved to adopt the order made *Attachment B*.

3. **Department of Public Works.**

At a January 23, 2007 workshop, PUC was briefed by GCG on its January 2007 updated report on the barriers, which obstruct the Government of Guam's ability to comply with the Federal Consent Decree in Civil Case 02-22. Within this context, the commissioners reviewed and discussed at the meeting a proposed Order, which would respond to questions on this subject posed by the Attorney

General's office. On motion duly made, seconded and unanimously carried, the commissioners resolved to adopt the order made *Attachment C.*

4. Telecommunications.

a. **Docket 06-8 [Pulse Mobile petition for ETC designation].** The commissioners reviewed GCG's report and proposed order, which would approve the petition, subject to conditions. After discussion and on motion duly made, seconded and unanimously carried, the commissioners resolved to adopt the order made *Attachment D.*

b. **Docket 05-1 [Affiliate transaction and non-dominant carrier detariffing rules].** The commissioners reviewed an extensive record concerning proposed rules, which would govern affiliate transactions by GTA Telecom, LLC and establish financing record and reporting requirements for the purpose of providing PUC with adequate information to enable it to discharge its regulatory duties under the *Guam Telecommunications Act of 2004.* The commissioners also reviewed uncontested rules, which would detariff the private line tariffs of non-dominant carriers. Both proposed rules underwent a public notice and comment period, as further discussed in the proposed orders adopted them. After discussion and on motion duly made, seconded and unanimously carried, the commissioners resolved to adopt the proposed rules by the orders made *Attachments E and F.*

c. **Docket 05-3 [GTA tariff transmission # 8 – further proceedings].** The commissioners next reviewed GCG's January 17, 2007 recommendation that further proceedings be commenced to examine whether GTA's tariff transmission # 8 *[a reduction in its DID tariff to the military, which does not require PUC approval]* unfairly discriminates against 19 other GTA DID number customers, for whom the tariff reduction was not extended. After discussion and on motion duly made, seconded and unanimously carried, the commissioners resolved to adopt the order made *Attachment G,* which would authorize ALJ to undertake further proceedings regarding the revised tariff.

d. **Docket 05-1 [Interconnection rulemaking].** In ongoing proceedings in Docket 05-11 *[interconnection arrangements between Pacific Data Systems and GTA],* GCG has recommended by letter dated January 4, 2007 that PUC commence a rulemaking proceeding, consistent with FCC policy, in order to: 1] establish

timelines, conditions and standards which GTA, as the incumbent local exchange carrier, should meet in order to implement PUC approved interconnection arrangements and to provide new entrants with a fair and reasonable opportunity to compete in the local exchange market; and 2] to establish a monitoring system by which PUC can be assured that GTA has taken appropriate action to accommodate competitors as well as its own customer base in the future. After discussion and on motion duly made, seconded and unanimously carried, the commissioners resolved to authorize ALJ to conduct these rulemaking proceedings.

e. **Reports.** The commissioners reviewed and approved the following reports: 1] GCG's FY06 report on E911 operations; 2] GTA's 2006 APA section 6.10[c] compliance report and 3] GTA's 2006 transfer authority compliance report.

5. **Guam Waterworks Authority.**

a. **Docket 07-2 [Investigation of GWA violations].** The commissioners reviewed a stipulation, by which GWA and GCG propose that investigative proceedings in this docket be concluded. Underlying this investigation is the indisputable and disturbing fact that GWA, when faced with circumstances which may have justified relief from PUC orders, chose not to seek this relief, but rather cavalierly decided to ignore the orders without notice to either PUC or to its governing authority, the Consolidated Commission on Utilities [CCU]. GCG has correctly observed that unless CCU remedies the corporate culture, which caused this inappropriate behavior and GWA's chronic failure to meet regulatory reporting requirements, PUC will be required to reconsider the regulatory protocol, which it adopted on April 11, 2003. After discussion and on motion duly made, seconded and unanimously carried, the commissioners resolved to adopt the order made *Attachment H.*

b. The commissioners, on motion duly made seconded and unanimously carried, further resolved: 1] to ratify the December 18, 2006 Ugum water treatment refurbishment order, which Chairman Brooks issued under his delegated authority; and 2] to approve a GWA FY07 $2.3 million CIP ceiling.

6. Administration.

The commissioners reviewed and approved PUC's FY06 FOIA report, FY06 staffing study reports on GWA and GPA and Chairman Brooks' January 26, 2007 testimony on Bill 19. The commissioners further resolved to amend PUC's FY07 administrative budget by increasing the utilities line budget from $5,000 to $8,600 in order to cover $300 monthly website maintenance fees.

There being no further business, the meeting was adjourned.

Terrence Brooks
Chairman

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

GUAM POWER AUTHORITY
REGULATORY REVIEW **DOCKET 02-4**

Administrative Law Judge Report

The purpose of this report is to summarize and make recommendations regarding the following Guam Power Authority [GPA] petitions, which are currently before the Guam Public Utilities Commission [PUC].

1. **Shell Diesel Contract.**

On September 28, 2006, PUC approved GPA's petition for expedited review and approval of two diesel fuel procurements, subject to the condition that GPA obtain prior regulatory approval if it wanted to accept a higher price in the procurement proposals in order to assure minimum inventory levels. As ***Attachment A*** to this report recounts, GPA failed to comply with the order before entering into the contract with Shell. At my direction, on March 22, 2007 GPA filed a petition for ratification of the Shell contract, which had been entered into in violation of the September 28 order. By letters dated April 18, 2007 and April 24, 2007 ***[Attachment B]***, Georgetown [GCG] opposed the ratification petition. However, as a result of meetings between GPA and GCG, they have agreed in the stipulation ***[Attachment C]*** to terms under which they recommend that the contract be ratified. I support PUC's ratification of the contract subject to the terms of the stipulation.

2. **TCP Expense.**

On February 23, 2007, GPA petitioned PUC for authorization to recover $1.61 million dollars in interest expense, which has accrued under its taxable commercial paper *[TCP]* since October 1, 2005, through its levelized fuel adjustment clause [LEAC]. GPA has asserted that this interest expense is directly attributable to fuel expenses. By its October 24, 2004 LEAC Order, PUC cautioned that it would closely examine any cost which GPA seeks to recover under LEAC as the inclusion of such costs is an exception to traditional rate regulation.

By letters dated April 11, 2007 and May 4, 2007 ***[Attachment D]*** GCG has opposed the petition. GCG makes the convincing argument that in a most favorable light, GPA's petition links the TCP interest expense with the Government of Guam's failure to pay power bills, which resulted in promissory notes under which this account receivable would be paid with interest over time.

Accordingly, GCG argues that were GPA authorized by PUC to also recover TCP interest under LEAC in addition to the interest it is recovering under the promissory notes, GPA would double recover for this expense. GPA's May 9, 2007 response to the GCG position is made ***Attachment E.*** The undersigned is persuaded by GCG's position and, therefore, recommends that GPA's petition be denied.

3. Regulatory Asset.

On March 2, 2007, GPA petitioned PUC to designate $12 million dollars in unrecovered natural disaster claims as a regulatory asset for recovery under the self-insurance fund, which PUC established by order dated December 21, 1992, as amended on March 3, 1995. This order, as amended, provides that the fund may be used to cover the costs of replacing or repairing uninsured damage to transmission and distribution and other plant assets, which exceed $50,000 per occurrence.

By letter dated April 27, 2007 ***[Attachment F]***, GCG recommended that PUC's consideration of the petition be deferred until the next regulatory session. However, as a result of conferences between GPA and GCG during this regulatory session, GCG and GPA have agreed to terms under which they recommend that PUC approve the terms of the stipulation, which is made ***Attachment G.*** The undersigned supports PUC adoption of the stipulation and the establishment of a regulatory asset.

4. CSA Amendment.

On April 5, 2007, GPA petitioned PUC for approval of amendment #3 to the Customer Service Agreement between GPA and the United States Navy. By letter dated September 10, 2002 ***[Attachment H]***, GCG recommended approval of the amendment subject to certain procedural conditions. The time gap between GCG' report and the current petition is attributable to the time necessary to obtain legislative approval of the amendment, as required by P.L. 21-112. GPA has agreed to the GCG conditions. Accordingly, the undersigned recommends that PUC approve the amendment, subject to the GCG conditions.

5. Underground FEMA projects.

On September 14, 2006, GPA petitioned PUC for approval of projects to convert the Macheche to San Vitores and Macheche to Guam Airport Authority 34.5kV transmission lines to underground facilities. FEMA will fund $4.95 million of the project costs. GPA intends to use excess bond funds to cover the $4.12 million balance of the projected costs. By letter dated April 16, 2007 ***[Attachment I]***, GCG

recommends that the projects and proposed funding source be approved. The undersigned supports the GCG recommendation.

Enclosed as ***Attachment J*** to this report is an order by which PUC could implement the recommendations made in the report.

Dated this 21st day of May 2007.

Harry M. Boertzel
Administrative Law Judge

Memorandum

To: **Kin Flores**

From: **Harry Boertzel**

Date: **March 7, 2007**

RE: **GPA Diesel Fuel Procurement**

Thank you for the prompt reply to my 3/6/07 email. As the facts described below cause regulatory concern, I wanted to review them in this memo.

Regulatory Record

1. GPA [Anthony Camacho] petitioned PUC on 9/22/06 for expedited review and approval of two diesel fuel procurements.

2. Georgetown [GCG] made an extraordinary effort to review the petition and to file its report two business days after its receipt of the petition. GCG recommended in Mr. Blair's 9/26/06 letter that the procurements be approved subject to condition.

3. On 9/28/06, PUC approved the procurements by resolution, subject to the condition stated in Mr. Blair's letter that GPA **"come back to PUC to explain why accepting a higher price in order to assure minimum inventory levels would be justified and prudent** ***and obtain PUC approval to accept the option bid".***

4. On 9/29/06, I emailed you regarding PUC's decision on this procurement, provided you with a copy of Mr. Blair's letter and instructed you that **"GPA should comply with the condition by communicating with me in the event it intends to accept an option [b] bid" -** as described in Mr. Blair's letter.

5. The next thing I heard from GPA was on the subject was its 11/9/06 petition for PUC review and approval of the same diesel procurements, which were approved, with condition, on 9/28/06. I emailed your counsel, with copy to you, on 11/14/06 and asked what was going on and also asked about the status of GPA's compliance with the condition, which must be met before GPA was authorized to proceed with the procurement.

6. When I received no response from GPA, I emailed you and GPA counsel again on 2/1/07 asking why I had not received any response. GPA counsel responded on 2/1/07 that the 11/9/06 petition had been filed in error and that it was **"GPA's position that approval was already granted** ***subject to the conditions set***

forth previously". Of course, this begged the question of whether GPA had complied with the condition.

7. In my 2/5/07 conference letter, I again informed you that **"I await GPA's counsel's response to my 2/1/07 email regarding whether GPA complied with PUC's 9/28/06 resolution, which approved the procurement subject to the condition that it obtain PUC's approval before including an option [b] provision in the contract.**

8. When I received no response to this letter, I sent you my 3/6/07 email to which you responded, without, however, addressing the key question of whether GPA has complied with PUC's Resolution.

Regulatory Concerns

The above facts are troubling for several reasons:

1. In what is becoming a disturbing pattern, this procurement was categorized by GPA as an emergency matter requiring immediate PUC review and action. When emergency procurements become the rule rather than the exception, they compromise the integrity of a meaningful regulatory review process and suggest poor procurement management.

2. This pattern becomes even more disturbing when GPA takes the benefit of an expedited review process, but ignores regulatory conditions for approval, as appears to have occurred in this case.

3. This matter is further aggravated by GPA's failure to candidly respond to four inquiries from me over a four month period whether it had complied with PUC's condition for approval. GPA has still not informed me whether it violated PUC's order by entering into a diesel fuel procurement, which contains an option (b) minimum fuel inventory provision, without PUC approval.

4. Your 3/6/07 email also appears to misunderstand GCG's role in the regulatory process. GCG has no authority to provide *"PUC approvals"*. GCG's role is to review and make recommendations. I directed you in my 9/29/06 email to communicate **with me** regarding the "option [b]" approval process, not GCG, and I never heard from you.

5. This is not the first time that PUC has had to deal with GPA's violation of the 12 GCA § 12004 contract review process, including PUC procurement orders. It would be prudent for GPA to review PUC's 2/6/06 and 3/31/04 Procurement Orders, which also address recent improper GPA procurement activities and Mr. Blair's 12/16/98 opinion on the criminal and civil ***Consequences of Failure to***

Comply with 12 GCA §12004, which documents are attachments to the 2/6/06 Order. Indeed, PUC's 3/31/04 Order recommended that the CCU *"institute governing controls to assure that GPA strictly complied with the requirements of the [contract review] Protocol".*

Further Proceedings

GPA's conduct, as described above, runs contrary to the hard work, which we have invested in building a productive, collaborative regulatory relationship between GPA and PUC. Such a relationship, to be successful, must be grounded on GPA's respect for and compliance with the regulatory process. PUC has the right to expect, as it recommended to CCU in 3/04, that a regulated utility task someone with the responsibility to assure that regulatory orders are on the radar screen and are complied with. The above regulatory record strongly suggests that this tasking has not occurred. PUC also has the right to insist that utility petitions are filed in a timely manner, so as to permit regulatory review under the guidelines established in the contract review protocol.

By copy of this email, I am requesting Georgetown on or before March 30, 2007 to make recommendations for PUC consideration to preclude the repetition of the problems encountered in this fuel procurement review and regarding the contract review process in general.

Under the assumption that GPA has entered into a diesel fuel contract, which contains an "option (b)" minimum inventory requirement in violation of PUC's 9/28/06 Resolution, GPA is directed on or before March 23, 2007 to file a petition for ratification of this contract, which provides appropriate evidence concerning *why accepting a higher price in order to assure minimum inventory levels would be justified and prudent"*, as required by the PUC Resolution.

Let me know if you have any questions.

GEORGETOWN CONSULTING GROUP, INC.

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April 18, 2007

Harry M. Boertzel
Administrative Law Judge
Public Utilities Commission of Guam
Suite 207, GCIC Building
Post Office Box 862
Hagatna, Guam 96932

Subject: Amendment to Contract Review Protocol

Dear Mr. Boertzel:

As requested in your March 7th Memorandum to Kin Flores, we are making recommendations regarding suggested amendments to the Contract Review Protocol for the PUC to consider in light of the recent events regarding the diesel fuel procurement.

The contract approval protocol is the result of a stipulation between GCG and GPA. If GPA breaches the protocol, it is up to the PUC to take appropriate action. The PUC's powers are limited since it is a quasi-judicial entity. Thus, if GPA enters into a contract without needed PUC approval or exceeds the scope of any approval it obtained, any remedy to prevent further transgressions by GPA or to reverse GPA's actions can only be based on the limited powers of the PUC.

One possibility would be to require GPA (GWA & DPW) to insert clear and standardized language in its contracts relating to the need to obtain PUC approval. This would provide a stronger legal basis for a challenge to an imprudent contract that GPA entered into improperly. The PUC could require that GPA provide a copy of the contract approval protocol to any potential bidder on GPA contracts as part of any bid package and to include in any bid package a statement advising whether PUC approval was obtained or the basis upon which GPA asserts that PUC approval is not required. This would at least alert the bidders to the issue and put them on notice of possible action by the PUC or concerned ratepayer.

The PUC could of course deny rate recovery by not recognizing an obligation as being a legitimate revenue requirement, but this could potentially harm ratepayers by denying GPA funds that could be used for the unapproved contract and the lack of such funds could also cause other O&M costs to increase from the reduced funding for maintenance or other projects. Denial of rate recovery used as a remedy for ignoring existing PUC protocols should only be used sparingly. However at the same

time, the PUC cannot allow imprudent expenses to be incurred that would result in rates that are not just and reasonable. Retaining the express right to disregard contracts that have not been legally authorized and putting would be bidders on notice of the need for PUC approval would enhance the limited enforcement powers of the PUC.

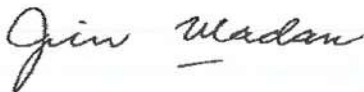
Another major concern to GCG is the lack of responses to recent GPA procurements, especially for supply of fuels. A basic premise underlying the Contract Approval Protocol is that once the PUC has conducted its prudence review and approved GPA proceeding with a particular procurement, the interests of the ratepayers will be protected by the competitive procurement process. However, only one bidder responded to recent diesel fuel procurements. In response to inquiries made by GCG, GPA advised that it made no effort to determine what aspects of bid documents may have discouraged other potential bidders. Thus, it is unknown if changes to the contract terms required by GPA in its bid documents might have encouraged more competition with the resulting benefits to GPA and its ratepayers. GPA's apparent indifference to the lack of competition is troubling to GCG. GCG believes GPA should be more proactive in its efforts to maximize competition, such as, by means of examples, scheduling a pre-bid conference to consider concerns or suggestions of interested bidders. We have made recommended changes to the Contract Approval Protocol in an effort to address our concerns and have attached our proposed redline version to this letter.

As the PUC has recommended and GPA appears to have implemented, we recommend that a specific person be identified as being responsible for the GPA filings and compliance with PUC orders also monitor GPA actions regarding the Contract Review Protocol.

In the past, annual filings required each December 1[1] have generally not made. This requirement would also be a task for the regulatory compliance contact at GPA. We also recommend that it be the responsibility of this individual to inform the PUC a week before each contract that has been approved for implementation is to be executed. .Our recommendations have been inserted into the attached version of the existing GPA Contract Review Protocol.

If I can be of further assistance, please do not hesitate to contact me.

Cordially,



Jamshed K. Madan
cc: William J. Blair, Esq.
Joaquin ("Kin") Flores, GM
Graham Boetha, Esq.

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[1] February 2006 Contract Review Protocol, ¶ 8.

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 improvements 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 contracts 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~~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~~l(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~~subparagragh (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 ~~in~~in service 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 ~~that~~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~~ 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.

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.13. In the event that: (a) GPA fails to obtain PUC approval of a contract or obligation as required under 12 GCA 12004 and this protocol prior to entering into such contract or obligation, or (b) GPA enters into a contract or obligation on terms materially different from those previously approved by the PUC, such contract or obligation shall be voidable. GPA shall include in all procurement solicitation documents a statement to be approved by PUC advising potential bidders or proponents that procurements by GPA are subject to PUC rules and orders and that failure to comply with applicable PUC rules or orders governing procurements may affect the enforceability of contracts entered into pursuant to such procurements.

PUC's administrative law judge is authorized to interpret the meaning of any provision of this order, in furtherance of the contract review process14. GPA shall include a copy of this Order in every procurement package provided to interested bidders or proponents.

15. GPA shall include in the standard terms and provisions of every contract awarded by it a statement approved by the PUC certifying compliance with the terms of this Order.

Dated this 2nd day of February, 2006

16. GPA shall assign an individual to be responsible for carrying out all of the requirements of this protocol.

17. For each contract that has been approved by the PUC, GPA shall provide notification to the PUC one week before the final contract is executed and with the annual variance report required under this protocol a matrix shall be provided that shows the dates that the PUC approved the contract and the date the contract was executed.

18. For any project that is bid out by GPA and for which only one bid is received, GPA shall inform the PUC of this occurrence and shall support

why it believes it should be permitted to enter the contract. GPA shall await specific PUC approval to enter such a contract. GPA shall undertake appropriate liaison procedures to maximize potential participation of bidders in any bidding process.

198. 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.

20. PUC's administrative law judge is authorized to interpret the meaning of any provision of this order, in furtherance of the contract review process.

Terrence M. Brooks Joseph M. McDonald

Edward C. Crisostomo Rowena E. Perez

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BEFORE THE
PUBLIC UTILITIES COMMISSION OF GUAM

APPLICATION OF GUAM POWER AUTHORITY TO RATIFY AWARD OF DIESEL FUEL SUPPLY CONTRACT TO SHELL GUAM, INC.	)))))	**DOCKET 94-04**

REPORT AND RECOMMENDATIONS OF
GEORGETOWN CONSULTING GROUP, INC.

Georgetown Consulting Group, Inc. ("GCG"), the independent rate consultant to the Guam Public Utilities Commission ("PUC"), hereby submits its report and recommendations with respect to its request that the PUC ratify a contract entered into by GPA with Shell Guam, Inc. for the supply of diesel fuel for certain of GPA's generators, specifically GPA Contract GPA-037-06.

BACKGROUND

On September 22, 2006, GPA petitioned the PUC for expedited review and approval of two diesel fuel procurements GPA proposed to initiate. GPA is obligated by 12 GCA 12004 and the PUC-approved Contract Approval Protocol to seek PUC approval of such contracts prior to initiating any procurement activity.

The proposed bid documents GPA submitted to the PUC included a provision whereby prospective bidders were to be offered the opportunities to bid alternate prices based on the requirement that they maintain a minimum diesel fuel inventory levels calculated by GPA to be necessary to provide a 30-day emergency supply in the event of a major typhoon or other natural disaster.

After reviewing the GPA petition, GCG recommended PUC approval of the proposed procurements subject to certain conditions. GCG was concerned that GPA had provided no evidence or other information establishing that payment of a higher price for diesel fuel in exchange for the obligation to maintain a minimum inventory was reasonable or prudent. GCG was also concerned that the bid documents did not provide any evaluation criteria whereby the advisability of accepting an option bid would be judged. GCG thus recommended to the PUC that GPA be required, before it accepted an option, to "come back to PUC to explain why accepting a higher price in order to assure minimum inventory levels would be justified and prudent and obtain PUC approval to accept the option bid." September 28, 2006 from William J. Blair, legal counsel for GCG (the "Blair letter").

On September 28, 2006, the PUC approved GPA's petition to proceed with the diesel fuel procurements, subject to the conditions set forth in the Blair letter. GPA was

instructed by the PUC's administrative law judge that "GPA should comply with the condition by communicating with [the ALJ] in the event it intends to accept an option bid."

GPA thereafter amended its bid documents in an apparent attempt to address certain of the concerns raised by GCG in the Blair letter and the PUC order. GPA added evaluation criteria whereby any option bid would be measured against an "acceptable differential cost" that GPA had determined. GPA did not submit the amended bid documents to the PUC for its approval despite this material change, as it should have done under the contract approval protocol.

On November 9, 2006, GPA petitioned the PUC for approval of two contracts it proposed to award to Shell Guam, Inc. ("Shell") as the result of those procurements. Shell was the only bidder for each procurement. Shell had bid an option price under one contract, but not the other.

On November 14, 2006, the PUC's ALJ inquired of GPA as to the status of its compliance with the PUC's condition to approval of the procurements. GPA failed to respond. The ALJ sent a further inquiry on February 1, 2007. GPA responded by asserting that the November 9, 2006 petition had been filed in error and that the PUC had already approved the contracts subject to the conditions (which were unfilled).

On November 29, 2006, without having obtained the required PUC approval, GPA executed Contract GPA-037-06, accepting Shell's option bid. Under this contract GPA agreed to pay premiums of $0.06 and $0.10 per gallon for diesel fuel, depending on the generator sites.

The ALJ again reminded GPA on February 7, 2007 of the need to comply with the PUC September 28, 2006 order. After once more receiving no response, the ALJ again reminded GPA on March 6, 2007, to which GPA finally responded.

On March 7, 2007, the ALJ issued a memorandum order recounting the above factual history and ordering GPA to file a petition for ratification of the contract which included the option bid.

On March 22, 2007, GPA filed with the PUC its petition to ratify its award of Contract No. GPA-037-06. Attached to the petition as Exhibit A was GPA's justification for requiring a 30-day emergency supply (or "set aside") of diesel fuel. Attached as Exhibit B was an explanation of the evaluation criteria developed by GPA and used by it to determine the "acceptable differential cost" for each of the generator sites. A copy of GPA's petition, entitled "GPA's Response Relative to 30-day Set Aside Provision" ("GPA's Response"), and Exhibits A-C thereto are attached hereto as Attachment B for convenient reference.

ANALYSIS OF THE ECONOMICS OF THE "ACCEPTABLE DIFFERENTIAL COSTS"

GCG has carefully reviewed GPA's request to ratify the award GPA-037-06. As noted above, in Exhibit A to its Response GPA described the process whereby the GPA management determined the prudence for accepting a higher price for diesel fuel in order to assure minimum inventory levels. GPA used the following key assumptions:

> 1. The Authority was approaching the 5th anniversary of Super Typhoon Pongsonga. Since the average time between Federal Disaster declarations on Guam due to Typhoons is about five years, the Authority thought it prudent to consider a thirty-day (30-day) inventory for diesel fuel similar to that employed by the Authority for its residual fuel oil supply.
>
> 2. The Authority and Anderson Air Force Base have made mutual informal commitments to serve AAFB's electric power needs during and immediately after natural disasters such as typhoons using the Authority's diesel-fired assets at Dededo and Yigo. The Authority foresaw the need to assure its diesel fuel supply for this purpose. The Authority estimates that fulfilling this obligation for one month requires about 22,000 barrels of diesel fuel.
>
> 3. There are other users of diesel no. 2 fuel. The Authority's supply is not assured.

GPA Response, Exhibit A, page 3 of 12.

The CCU directed GPA to request two quotations for diesel fuel--one with and one without a 30-day set aside for fuel. GPA states that its analysis of the aftermath of Typhoon Pongsonga showed that it carried the entire island for a period of 30 days almost entirely on diesel fuel before meaningful generation from other sources was available to be transmitted over a functioning transmission and distribution system.

In Exhibit B to its Response GPA describes the methodology used by it to evaluate the bids to be received for the option to provide for the 30-day supply. The process was described as follows:

> GPA determined a method to evaluate the bids received for both IFB GPA34-06 and IFB GPA 37-06, the bids being complicated by the inclusion of an option to increase the security of the diesel supply by guaranteeing a minimum thirty day inventory that GPA would pay a per gallon premium for. The method involved calculation of an "acceptable differential cost" that is based on:
>
> 1. GPA's estimate of leasing tankage for fuel storage;

2. and opportunity costs for the value of the diesel oil inventory.

The acceptable differential cost determinations are provided in the enclosed spreadsheets. The process for the differential cost determinations involved the following:

1. defining the 30 day inventory for the plant sites;

2. determined the cost of leasing storage tanks;

3. determining the various parameters for the economic analyses, e.g. interest rate, cost of diesel fuel in inventory; and

4. estimating the amount of diesel fuel to be used annually (to spread the cost of the 30 day inventory costs).

GPA determined the 30 day security inventory at three plant sites based on our experience after Typhoon Pongsona:

Combustion turbine plants & Dededo Diesel Plant	24,000 barrels
Tenjo Vista	5,000 barrels
Fast Track Diesel, TEMES, Baseload Plants	15,000 barrels

GPA Response, Exhibit B.

After determining the "acceptable differential cost" for the three sites, GPA amended the bid documents to advise how it would perform the evaluation and on what criteria what the award would be based.

GPA's analysis resulted in the following acceptable differential costs for the three sites.[1]

- $0.13 per gallon for the Fast Track Generators, the TEMES CT, and the Baseload Plants.[2]
- $0.10 per gallon for the Tenjo Vista Diesel Plant.
- $0.20 per gallon for the Dededo, Macheche, and Yigo CTs and the Dededo Diesel Plants.

---

[1] The acceptable differentials for the Fast Track, et al. and the Tenjo supply are transposed in GPA's Response. Compare GPA's Response Exhibit B with Response Exhibit C (spreadsheets).

[2] A second inconsistency exists between E GPA Exhibit B and C showing different premium standards for the Fast Track contract ($0.13 versus $0.12)

GPA received option bids from Shell for the first two sites. No option bid was received for the Dededo, Macheche and Yigo CTs and the Dededo diesel plants.[3]

GCG has reviewed the logic, process and calculations followed and made by GPA and comes to the following conclusions:

1. A material error was made by GPA in calculating the "acceptable differential costs" used by it evaluate the option bids. GPA calculated the costs of leasing the storage tanks and the cost of carrying the emergency fuel inventory under the assumption that this would be undertaken by GPA itself for a period of three years (the initial contract term). GPA then divided the resulting three year cost totals by the projected GPA purchases for the three sites for a period of **one** year in order to determine the price differential that GPA would be willing to pay per gallon. The proper calculation would have been to divide the three year costs by the expected purchases over a **three** year period. This error in effect tripled the price differential that GPA was willing to accept and the premium it was willing to pay. The correct "acceptable differential costs" for the two sites for which GPA did receive options (accepting GPA's assumptions) and the bids received would have been as follows (our calculations are shown in detail in Attachment A attached hereto):

> The acceptable cost differential for the Fast Track Generators, et al., if calculated correctly, would have been $0.05 rather than $0.13 ($0.12), as computed by GPA. Using an acceptable cost differential of $0.05 rather than $0.13 ($0.12), Shell's option bid of $0.06 would have been rejected rather than accepted.
>
> The actual cost differential for the Tenjo site, if calculated correctly, would have been $0.03 rather than the $0.10 computed by GPA. Using an acceptable cost differential of $0.03 rather than $0.10, Shell's option bid of $0.10 would also have been rejected.

2. The methodology used by GPA of computing a cost and then spreading the cost over the expected purchases of diesel fuel for the year puts the risk of major variances on the ratepayers. In the event that there is a major base load outage as GPA's GM has indicated could happen in his LEAC presentations, the replacement energy would come in part from generators using diesel fuel and would result in the premium being paid over a much larger volume of fuel than used by GPA to set the premium.

//

[3] Thus, GPA's desire to have an emergency diesel supply so as meet its commitment to Andersen Air Force Base, one of the stated justifications for seeking an option bid, was not realized.

CONCLUSIONS AND RECOMMENDATIONS

We conclude:

As the consequence of GPA's calculation error, if the contract is ratified as requested by GPA, GPA's ratepayers will be paying for the next three years $0.06 and $0.10 per gallon more for diesel supplied to GPA under GPA-037-06 than they otherwise would have paid had GPA accepted the lower non-option bids. Based on GPA's projected purchases, this will cost the ratepayers the sum of $318,800 annually or $956,400 over the three year period. These additional costs are unjust and unreasonable.

GPA has significantly increased the risk to ratepayers of higher fuel costs in the event that it consumes more diesel fuel than it has projected, as has been portrayed as possible by the General Manager.

It would be imprudent for the PUC to ratify the award of GPA-037-06.

Based on the conclusions above, we recommend the following:

1. The PUC should disapprove GPA's petition and issue an order declaring that GPA-037-06 was awarded in violation of 12 GCA 12004, the contract approval protocol and the PUC's September 28, 2006 order.

2. The PUC should not allow GPA to recover through the LEAC the premium related to any purchases of diesel fuel pursuant to GPA-037-06.

3. GPA should be ordered to advise its supplier Shell that the contract was awarded without necessary PUC approval and is thus non-binding pursuant to Section 6.01 thereof.

4. GPA should attempt to amend the contract to provide that the price shall be determined by Shell's non-option bid prices. If Shell is willing to accept this amendment, then GCG would recommend ratification of the contract, as thus amended.

5. If the contract is rebid, it would be our recommendation that the premium be determined as a fixed dollar value per year as shown on the GPA spreadsheets and that this dollar figure be used as the

target for the premium for an assured 30 day supply after a typhoon, etc.[4]

6. The PUC should be concerned in any bidding process that results in a single final bid. We recommend that the PUC take the following actions through a modification of the contract review protocol:

   a. Prior to accepting a final bid in a situation where there is a single bidder the PUC should require GPA to file a document with the PUC explaining why the single bid should be accepted and await PUC approval.

   b. The PUC should require that GPA improve the liaison process in the bidding process with potential bidders to assure that the maximum number of bids is received.

DATED this 9th day of April, 2007.

GEORGETOWN CONSULTING GROUP, INC.

By: **BLAIR STERLING JOHNSON MARTINEZ & LEON GUERRERO**
A PROFESSIONAL CORPORATION

By: ______________________
WILLIAM J. BLAIR
Attorneys for Georgetown Consulting Group, Inc.

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G:\WORDDOC\GCG\PLD\131-REPORT & RECOMMENDATIONS RE PETITION TO RATIFY DFO CONTRACT (FINAL).DOC

[4] The previous GPA analysis done in the aftermath of Typhoon Pongsonga showed that it was able to obtain a 30 day supply of diesel without having to pay a premium. The reasons why GPA assumed that there might now be a lack of supply of fuel are not explained.

THE GUAM POWER AUTHORITY
Correct Decision Analysis (DFO)
Docket 94-04

ATTACHMENT A

ASSUMPTIONS AND COST CALCULATIONS FOR DFO 30 DAY INVENTORY SECURITY
16-Oct-06
FOR IFB GPA 37-06 TENJO VISTA SITE

These costs are an estimate of the opportunity costs of not contracting for a 30-day set aside from fuel suppliers. GPA would have to borrow money to purchase the commodity, and spend for storage of this additional inventory out of revenues.

COSTS OF PURCHASING COMMODITY			
interest rate of TECP	5.3%	1.053	interest rate factor
amount of 30 day inventory in bbl	5000		Based upon "management experience" Pongsonga
cost of leasing storage tank per bbl per month	$0.25		Based on existing leases of Shell storage tanks
cost of DFO per bbl	$84		Forecast for November was $80.11
cost of 30 day inventory	$420,000		5,000 x 84
projected .3% DFO annual purchase in bbls	$33,333		Annual Estimated Fuel Requirement in bid-Tenjo
1st year principal plus interest	$442,260.000		*Cost plus one year interest*
2nd year principal plus interest	$465,699.780		*Cost plus two years interest*
3rd year principal plus interest	$490,381.868		*Cost plus three years interest*
interest at end of 3rd year		$70,381.868	*Total Interest on Three Years*
additional cost per bbl for interest expense		$2.111	*Division only one year as opposed to total contract*
		$0.704	Division on total contract
COSTS FOR STORAGE			
monthly cost of tank lease	$1,250.000		
cost of 3 year tank lease	$45,000.000		
tank lease cost per bbl	$1.350		
Division on total contract	$0.450		
cost per bbl for .3% inventory security		$3.461	*Carrying Cost plus inventory costs*
Division on total contract		$1.154	Corrected Carrying Cost plus inventroy Costs
cost per gal for .3% inventory security		$0.082	Rounded up to $0.10 per gallon
Revised Cost per gallon		$0.027	Rounded up to $0.03 per gallon

Under corrected calculation bid would have been rejected
Since premium in bid was $0.10 per gallon

ASSUMPTIONS AND COST CALCULATIONS FOR DFO 30 DAY INVENTORY SECURITY
16-Oct-06
FOR IFB GPA 37-06, FAST TRACKS, BASELOADS AND TEMES CT

These costs are an estimate of the opportunity costs of not contracting for a 30-day set aside from fuel suppliers. GPA would have to borrow money to purchase the commodity, and spend for storage of this additional inventory out of revenues.

COSTS OF PURCHASING COMMODITY			
interest rate of TECP	5.3%	1.053	interest rate factor
amount of 30 day inventory in bbl	15000		Based upon "management experience" Pongsonga
cost of leasing storage tank per bbl per month	$0.25		Based on existing leases of Shell storage tanks
cost of DFO per bbl	$80		Forecast for November was $80.11
cost of 30 day inventory	$1,200,000		15,000 x 80
projected .5% DFO annual purchase in bbls	$70,952		Annual Estimated Fuel Requirement in bid-all others
1st year principal plus interest	$1,263,600.000		*Cost plus one year interest*
2nd year principal plus interest	$1,330,570.800		*Cost plus two years interest*
3rd year principal plus interest	$1,401,091.052		*Cost plus three years interest*
interest at end of 3rd year		$201,091.052	*Total Interest on Three Years*
additional cost per bbl for interest expense		$2.834	*Division only one year as opposed to total contract*
		$0.945	Division on total contract
COSTS FOR STORAGE			
monthly cost of tank lease	$3,750.000		
cost of 3 year tank lease	$135,000.000		
tank lease cost per bbl	$1.903		
Division on total contract	$0.634		
cost per bbl for .5% inventory security		$4.737	*Carrying Cost plus inventory costs*
		$1.903	Corrected Carrying Cost plus inventroy Costs
cost per gal for .5% inventory security		$0.113	Rounded up to $0.12 per gallon
Revised Cost per gallon		$0.045	Rounded up to $0.05 per gallon

Under corrected calculation bid would not have been accepted
Since premium in bid was $0.06 per gallon

Table 2, IFB GPA 34-06 and IFB GPA 37-06 Results

Plants	Base Bid ($/gallon)	Option Bid (Contract) ($/gallon)	Cost Difference ($/gallon)	Gallons Per Contract Year	% Increase From Base Bid	Cost Difference From Base Bid ($)
IFB GPA 37-06 - Awarded to Shell Guam Inc. (Option Bid Accepted)						
Fast Track	$ 2.904	$ 2.964	$ 0.06	280,000	2.07%	$ 16,800
Baseload	$ 2.944	$ 3.004	$ 0.06	200,000	2.04%	$ 12,000
TEMES CT	$ 2.379	$ 2.439	$ 0.06	2,500,000	2.52%	$ 150,000
Tenjo Vista Diesels	$ 2.495	$ 2.595	$ 0.10	1,400,000	4.01%	$ 140,000
Total Dollar Increase From Base Bid						$ 318,800
Total % Increase From Base Bid						2.94%
IFB GPA 34-06 - Awarded to Shell Guam Inc. (Proponents Did Not Bid on Option)						
Total Dollar Increase From Base Bid						$ -
Total % Increase From Base Bid						0.00%

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For the Guam Power Authority

BEFORE THE PUBLIC UTILITIES COMMISSION

IN THE MATTER OF GUAM POWER AUTHORITY CONTRACT REVIEW OF AWARD OF DIESEL FUEL SUPPLY CONTRACT TO SHELL GUAM, INC.	**DOCKET NO.94-04** **GPA's Response Relative to 30-day Set Aside Provision and Copy of Executed Contracts GPA-034-06 & GPA-037-06**

COMES NOW, GUAM POWER AUTHORITY and hereby submits its filing vis-à-vis the Authority's petition to ratify the contract, GPA 37-06 for supply of diesel no. 2 fuel containing the provision for a 30-day set aside.

In his letter of March 7, 2007 to the General Manager, the ALJ directs the Authority to provide appropriate evidence concerning why accepting a higher price in order to assure minimum inventory levels would be justified and prudent.

Exhibit A describes the process wherein the Authority determined the prudence for accepting a higher price in order to assure minimum inventory levels. Exhibit B shows the criteria by which the bids including those responding to the option for the 30-day set aside were evaluated. The Authority determined that if a bidder met the criteria such that the costs bid by the proponents were less than the Authority costs for maintaining this inventory, then contracting the 30-day set aside option is justified.

1 Exhibit C presents the criteria. Exhibit D presents the results of the bids received for IFB
2 GPA 37-06, including the contract award. Proponents for IFB GPA34-06 did not bid the
3 minimum inventory or 30-day set aside option.

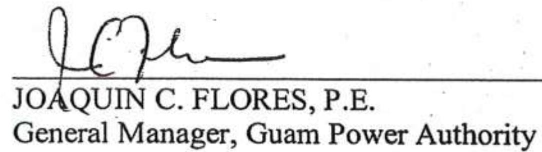
4 Further in his email of March 6, 2007 to the General Manager, the ALJ requests
5 copies of the related executed contracts, GPA-034-06 and GPA-037-06, which are
6 attached here to as Exhibit E and Exhibit F, respectively.

7

8 **RESPECTFULLY SUBMITTED** this 22nd day of March, 2007, by:

9

10



11
12 JOAQUIN C. FLORES, P.E.
13 General Manager, Guam Power Authority
14
15

EXHIBIT A: JUSTIFICATION FOR 30-DAY SUPPLY

This section provides evidence why accepting a higher diesel fuel price in order to assure minimum inventory levels is justified and prudent. The basis of the Authority's justification for a 30-day set aside for diesel fuel oil is based on a heuristic rather than rigorous analytical process. This process is no different from the determination of the Authority's current 30 to 60-day inventory policy for RFO. After the resolution of its diesel fuel bids, the Authority has formalized a rigorous analytical process that it intends to use in the future for similar issues.

During the Authority's bid process for diesel no. 2 fuel (IFB-GPA-034-06 and IFB-GPA-037-06), the CCU and the Authority considered three issues related to its procurement for diesel fuel:

1. The Authority was approaching the 5th anniversary of Super Typhoon Pongsonga. Since the average time between Federal Disaster declarations on Guam due to Typhoons is about five years, the Authority thought it prudent to consider a thirty-day (30-day) inventory for diesel fuel similar to that employed by the Authority for its residual fuel oil supply.
2. The Authority and Anderson Air Force Base have made mutual informal commitments to serve AAFB's electric power needs during and immediately after natural disasters such as typhoons using the Authority's diesel-fired assets at Dededo and Yigo. The Authority foresaw the need to assure its diesel fuel supply for this purpose. The Authority estimates that fulfilling this obligation for one month requires about 22,000 barrels of diesel fuel.
3. There are other users of diesel no. 2 fuel. The Authority's supply is not assured.
4. The CCU, on a motion carried at the August 15, 2006 CCU regular meeting, directed the Authority to request for two (2) quotations, one with and one without a 30-day set aside for diesel fuel. (http://www.ccuguam.com/documents/Minutesof8.15.06.pdf, p.6)

In the aftermath of a major typhoon, the Authority typically uses its diesel fired units first to serve isolated loads or until sufficient demand is available. The Authority's diesel-fired generation units are typically smaller than its Cabras-Piti Baseload RFO-fired units, and closer to large load centers. After a typhoon, there is a high probability that there would be downed transmission power lines between the Cabras-Piti complex and the central, southern and northern loads. Many of these diesel-fired units can serve isolated loads such as Manengon. The Authority has in the past operated several islanded systems with diesel-fired units immediately after typhoons. Additionally, as the use of baseload generated power becomes prudent and possible, the Authority's baseload units use diesel as a fuel during startup.

The Authority used the post-Ponsonga restoration period as its test case for determining the quantity of diesel fuel inventory that it believes prudent to maintain. The

following narrative serves to illustrate the situational need for a reserve of diesel fuel.

Super Typhoon Pongsona struck Guam on December 8, 2002. It damaged power facilities and transmission lines and caused an island-wide outage. As the storm settled, GPA dispatched crews to assess the damage and determine how to power-up critical loads such as the Hospitals, Civil Defense and Military Bases. GPA sustained major damage to transmission lines that feed station power to the Cabras Steam Plants (Units #1&2) as well as provided power from the Tanguisson Power Plants.

As it completed repairs and cleared lines for energizing, the Authority operated smaller diesel fueled units to accommodate a significantly low system load. Peak demand for the partially restored system was less than 30 MWs through December 21, 2002. On December 23, 2002, the Tanguisson Unit #2 was the first baseload unit placed online with a system peak load at 52.3MW. Tanguisson Unit #1 was operational by December 31, 2002 but was placed on standby mode due to lack of load.

While restoration efforts enabled serving additional system load, it was evident that the system was very unstable and units were tripping sporadically. The Authority operated smaller diesel-fired units to assist with system stability.

On January 4, 2003, the Authority provided the Cabras Steam Power Plant (Units #1 &2) with station power. After completing all essential repairs and operational checks, Cabras Unit #1 initiated startup on January 12, 2003 and was cleared on January 13, 2003. For almost a month, the Authority predominantly used diesel-fired units to provide island power. The Authority is not the sole user of diesel No. 2 on island. The Authority needs to prudently assure itself of an adequate supply under similar circumstances. Furthermore, the Authority deems supporting the AAFB as one of its critical loads during and after natural disasters.

Table 1 illustrates the consumption of diesel no. 2 during the restoration process following Pongsonga.

Table 1 Generation Plant Consumption during the Pongsonga Recovery Period

Location	Plants	Plant Diesel No. 2 Consumption (bbls)			
		Dec-02	Jan-03	Feb-03	Mar-03
North-Central Plants	Dededo CT #1 & 2	12,371	25,302	8,272	14,801
	Macheche CT	-	-	-	-
	Marbo CT	-	-	-	-
	Yigo CT	8,684	10,395	5,966	8,485
	Dededo Diesel Plant	655	251	256	316
	Subtotal	21,710	35,948	14,494	23,602
Southern & Baseload Plants	TEMES	7,484	17,093	601	13,481
	Tenjo Vista	1,542	5,005	1,685	4,914
	Manengon & Talofofo	1,504	3,300	1,180	966
	Cabras, MEC, Tangussion Baseload Plants	551	997	52	314
	Subtotal	10,973	26,395	3,518	19,675
	Total	**32,683**	**62,343**	**18,012**	**43,277**

EXHIBIT B: EVALUATION CRITERIA FOR GPA 34-06 AND GPA 34-06, DIESEL FUEL SUPPLY FOR IWPS POWER PLANTS

GPA determined a method to evaluate the bids received for both IFB GPA34-06 and IFB GPA 37-06, the bids being complicated by the inclusion of an option to increase the security of the diesel fuel supply by guaranteeing a minimum thirty day inventory that GPA would pay a per gallon premium for. The method involved calculation of an "acceptable differential cost" that is based on:

(1) GPA's estimate of leasing tankage for fuel storage;

(2) and opportunity costs for the value of the diesel oil inventory.

The acceptable differential cost determinations are provided in the enclosed spreadsheets. The process for the differential cost determinations involved the following:

1. defining the 30 day inventory for the plant sites;
2. determined the cost of leasing storage tanks;
3. determining the various parameters for the economic analyses, e.g., interest rate, cost of diesel fuel in inventory
4. estimating the amount of diesel fuel to be used annually (to spread the cost of the 30 day inventory costs)

GPA determined the 30 day security inventory at three plant sites based on our experience after Typhoon Pongsona:

Combustion turbine plants & Dededo Diesel plant	24,000 barrels
Tenjo Vista	5,000 barrels
Fast Track Diesels, TEMES, Baseload Plants	15,000 barrels

After determining the "acceptable differential cost" for the three sites, we amended the bid documents to advise how we would perform the evaluation and what the award would be based on.

GPA will evaluate the bids received for diesel fuel supply as described in the following:

a. GPA will review bids received for the basic supply (no security inventory requirement) and for the supply with the guaranteed minimum thirty day inventory.

b. GPA will identify and select the lowest priced basic supply bid and compare against the lowest priced bid providing for the guaranteed thirty day minimum inventory.

c. If the per barrel price difference between the basic bid and the option bid is less than the acceptable differential cost the award will be made to the vendor with lowest price option bid.

d. If the price difference is greater than the acceptable differential cost, the award will be made to the vendor with the lowest price basic bid.

For the purposes of these bids, the acceptable differential costs are:

- **$0.10 per gallon** for the Fast Track Generators, the TEMES CT, and the Baseload Plants.
- **$0.13 per gallon** for the Tenjo Vista Diesel Plant.
- **$0.20 per gallon** for the Dededo, Macheche, and Yigo CTs and the Dededo Diesel Plants.

EXHIBIT C: ATTACHED SPREADSHEET PROVIDING DETAILED, ANNOTATED CALCULATION OF EVALUATION CRITERIA DESCRIBED IN EXHIBIT B

The Authority offers as Exhibit C the MS EXCEL spreadsheet: **Cost of 30-day Security Inventory.xls**, tab **Sheet1**

ATTACHMENT B

ASSUMPTIONS AND COST CALCULATIONS FOR DFO 30 DAY INVENTORY SECURITY
16-Oct-06
FOR IFB GPA 34-06, DEDEDO, MACHECHE, YIGO CT PLANTS AND DEDEDO DIESEL PLANT

These costs are an estimate of the opportunity costs of not contracting for a 30-day set aside from fuel suppliers. GPA would have to borrow money to purchase the commodity, and spend for storage of this additional inventory out of revenues.

COSTS OF PURCHASING COMMODITY			
interest rate of TECP	5.3%		1.053 interest rate factor
amount of 30 day inventory in bbl	24,000		
cost of leasing storage tank per bbl per month	$0.25		based on existing leases of Shell storage tanks
cost of DFO per bbl	$80		
cost of 30 day inventory	$1,920,000		
projected DFO annual purchase in bbls	71,429		
1st year principal plus interest	$2,021,760.000		
2nd year principal plus interest	$2,128,913.280		
3rd year principal plus interest	$2,241,745.684		
interest at end of 3rd year		$321,745.684	
additional cost per bbl for interest expense		$4.504	
COSTS FOR STORAGE			
monthly cost of tank lease	$6,000.000		
cost of 3 year tank lease	$216,000.000		
tank lease cost per bbl	$3.024		
cost per bbl for inventory security		$7.528	
cost per gal for inventory security		**$0.179**	**Rounded up to $0.20 per gallon**

COMMENTS:

1 THE COST OF DFO PER BBL FROM FUELS MGMT
2 THE MONTHLY LEASE COST FROM FUELS MGMT
3 THE INTEREST RATE OF 5.3 % IS FROM Asst CFO;

ATTACHMENT B

ASSUMPTIONS AND COST CALCULATIONS FOR DFO 30 DAY INVENTORY SECURITY
16-Oct-06
FOR IFB GPA 37-06 TENJO VISTA SITE

These costs are an estimate of the opportunity costs of not contracting for a 30-day set aside from fuel suppliers. GPA would have to borrow money to purchase the commodity, and spend for storage of this additional inventory out of revenues.

COSTS OF PURCHASING COMMODITY			
interest rate of TECP	5.3%		1.053 interest rate factor
amount of 30 day inventory in bbl	5000		
cost of leasing storage tank per bbl per month	$0.25		based on existing leases of Shell storage tanks
cost of DFO per bbl	$84		
cost of 30 day inventory	$420,000		
projected .3% DFO annual purchase in bbls	$33,333		
1st year principal plus interest	$442,260.000		
2nd year principal plus interest	$465,699.780		
3rd year principal plus interest	$490,381.868		
interest at end of 3rd year		$70,381.868	
additional cost per bbl for interest expense		$2.111	
COSTS FOR STORAGE			
monthly cost of tank lease	$1,250.000		
cost of 3 year tank lease	$45,000.000		
tank lease cost per bbl	$1.350		
cost per bbl for .3% inventory security		$3.461	
cost per gal for .3% inventory security		**$0.082**	**Rounded up to $0.10 per gallon**

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May 4, 2007

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

Re: GPA LEAC and TCP Interest Docket 02-04

Dear Harry,

In this letter we provide additional information to assist in a better understanding of our 4/20/07 letter that you required on this subject.

The history and interrelationship between the various credit facilities that GPA has used and that we refer to was explained in GPA's petition and is copied immediately below for convenience. It is our understanding that the "before conversion" line of credit was used for general working capital purposes. In the "after conversion" situation the fuel letter of credit was used to pay for the fuel when shipped and the $20 million TECP was used for general working capital including fuel and the funding of accounts payable, primarily for GovGuam. It is also important to remember that the price of fuel at that time was at levels significantly below what they are today. The TECP sources and uses of funds in Exhibit I below is also from GPS's petition.

In 1994 the Guam Power Authority initiated a process to take over the day to day responsibilities of operating the GPA Fuel Tank Farm. In April 1995, GPA established a letter of credit facility with Hong Kong Shanghai Banking Corporation to allow GPA to time its payments for fuel more closely with the collection of billings received for the cost of the fuel through GPA's fuel clause. GPA also established a line of credit facility with Hong Kong Shanghai Banking Corporation in the amount of $15 million.

In 1998, the Guam Power Authority established a tax exempt commercial paper program to replace portions of the existing credit facilities with Hong Kong Shanghai Banking Corporation (Exhibit 1). The commercial paper program was divided into two segments: $20 million for working capital and $45 million for projects. The amount drawn for projects was later refunded by GPA's 1999 bond issuance. The following table details how the working capital facilities were altered by the conversion:

Facility	**Before Conversion**	**After Conversion**
Fuel Letter of Credit	$15,000,000	$10,000,000
Line of Credit	$15,000,000	$0
Tax Exempt Commercial Paper	$0	$20,000,000

The Tax Exempt Commercial Paper Program was fully drawn in the conversion process. The $15 million line of credit was completely transferred to the commercial paper as was $5 million of the fuel line of credit. The Tax Exempt Commercial Paper Program was later converted to a Taxable Commercial Paper Program

EXHIBIT I

DR 1-5

Guam Power Authority
TECP Sources and Uses of Funds

Source:	
Issuance Proceeds (Attachment I)	**$ 65,000,000**
Uses:	
Cost of Issuance Account (Attachment II)	$ 1,100,000
TECP Construction Account (Attachment III)	$ 45,000,000
Payoff HongKong & Shanghai (Attachment IV) Bank (Principal & Interest):	
Working Capital Line	$ 8,808,265
Fuel Credit Facility	$ 10,091,735
Total Uses	$ 65,000,000

GPA's specific request for interest expense to be included in the LEAC is responded to in a response to our request for information and is copied immediately below for convenience:

1. Indicate specifically what interest GPA is requesting that the PUC allow as a fuel expense in the LEAC.
   a. Interest as of what date? Provide the amount with supporting monthly figures. In the supporting data provide the monthly amount outstanding, interest rate and interest expense.

   GPA Response: Interest paid on TCP beginning 10/01/05. The principal amount of $20,000,000 remains constant and the interest rates range from 3.66 % to 5.3 %. Please see Attachment A.

   b. Indicate when GPA made the initial request to include TCP interest as a fuel expense in the LEAC.

   GPA Response: August 15, 2005 LEAC filing for the LEAC period October 1, 2005 through March 2006.

Because of insufficient cash flow, GPA has never been able to pay down the $20M principal amount on the TCP. It has simply rolled over the facility every year. By its petition, GPA is not requesting that any of the principal balance of $20 million be recovered through the LEAC – just the interest that accrues on it. The GPA argument is that the $20M is the working capital that GPA has to borrow in order to carry the accounts receivable from customers related to fuel before it receives the cash from customer payments for the LEAC. The amount borrowed remains constant at $20 million as indicated above and the interest expense immediately below (from GPA's Attachment A referred to in the above response to GCG's request for information).

GUAM POWER AUTHORITY
Interest on Taxable Commercial Paper

Date	Per Goldman & Sachs Invoices & Deutsche Bank Statements			
	Interest Rate	Days	Maturity Date	Interest
FY 2006				
10/31/05	3.6599998%	28	10/06/05	56,933.33
12/27/05	3.8399998%	25	10/31/05	53,333.33
01/24/06	4.0500000%	4	11/04/05	9,000.00
01/31/06	3.8399998%	34	11/09/05	72,533.33
02/23/06	4.0699998%	39	12/13/05	88,183.33
02/28/06	4.3300002%	30	01/12/06	72,166.67
03/31/06	4.3600003%	21	02/02/06	50,866.67
04/30/06	4.5800000%	61	04/04/06	155,211.11
05/15/06	4.8200000%	30	05/04/06	80,333.33
05/31/06	5.0199998%	33	06/06/06	92,033.33
06/22/06	5.1000000%	36	07/12/06	102,000.00
07/31/06	5.2999999%	34	08/15/06	100,111.11
08/28/06	5.2999997%	28	09/12/06	82,444.44
09/29/06	5.2800003%	20	10/02/06	58,666.67
				1,073,816.65
FY 2007				
10/03/06	5.2999999%	32	11/03/06	94,222.22
10/13/06	5.3000002%	33	12/06/06	97,166.67
11/13/06	5.2700000%	9	12/15/06	26,350.00
12/28/06	5.2999980%	3	12/18/06	8,833.34
12/31/06	5.3200000%	1	12/19/06	2,955.56
01/19/07	5.3200000%	20	01/08/07	59,111.11
01/19/07	5.2999920%	1	01/09/07	2,944.44
01/31/07	5.3000003%	24	02/02/07	70,666.67
02/28/07	5.3000001%	62	04/05/07	182,555.56
				544,805.57

It is GCG's position that GPA has not provided convincing evidence that the TCP interest is directly tied to fuel. GCG reaches this conclusion for two reasons. First, GPA's responses as set forth immediately below (copied from GPA's petition) do not provide sufficient evidence of a direct link. Second, while GPA does attempt to make a "practical effect" case that the TCP line of $20 million and the attendant interest must be linked to fuel due to the fact that GPA had to borrow money when GovGuam ran up (and continues) an accounts payable to GPA of $40 million, half of which was fuel – or $20 million, this simply means that GPA has an overall cash flow problem of $40 million. The $20 million borrowed through TCP could just as easily represent the other half of the accounts payable of $40 million as it could the fuel half of the $40 million

Documentation

GPA's documentation, which is attached (Exhibit 2), reflects three fuel purchases in 1998 for which GPA was unable to payoff. These purchases were rolled into the line of credit. The total for these purchases totals $9,971,601 plus interest. GPA also has records indicating other fuel payments were made directly to GPA's fuel supplier – Daxin Petroleum - from the line of credit; however, GPA has been unable to locate the supporting documents for these transactions. The total of these other links is $8,782,826.

Practical Effect

GPA recognizes there can be issues related to the fungibility of cash, however, the practical effect is that as of September 30, 2006, GPA had a balance outstanding from the Government of Guam in the amount of nearly $40,000,000. During the period in which the balance in the line of credit was growing, fuel costs represented approximately 50% of GPA billings. Therefore, it is easily explainable that one-half or approximately $20 million of the government receivable is due to fuel costs. This matches the amount of the outstanding commercial paper balance for which GPA is seeking recovery through the Levelized Energy Adjustment Clause.

Finally, we believe that the notes established by GPA to recover the $40 million accounts payable referred to above by GPA from GovGuam is the proper method for recovering TCP interest and principal which should therefore not be recovered through the LEAC. Since GPA has taken the position that half of this $40 million payable by GovGuam is directly connected to the $20 million of TCP outstanding, as indicated in their petition above, the principal and interest which GovGuam is obligated to pay under the notes, which evidence this debt, provide for eventual full recovery of both the interest and principal. Accordingly, it would be inappropriate for this payable to be recovered once through the notes and a second time through LEAC. Moreover, GPA has in effect chosen its remedy regarding this payable by entering into promissory notes. If Gov Guam defaults under the notes, GPA should pursue remedies established in the notes rather than seeking recovery from LEAC.

As another policy matter, GPA has attributed the cash shortfall to GovGuam's failure to pay its obligations to GPA (a many year problem). If GPA were allowed to recover through the LEAC the interest on a credit facility that GPA has been unable to pay down due solely to GovGuam, then all GPA ratepayers would be affected, not just GovGuam. This would not be just and reasonable.

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

Cordially,

Jim Madan

Jamshed K. Madan

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

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April 11, 2007

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

Re: GPA LEAC and TCP Interest Docket 02-04

Dear Harry,

This letter is being provided to you in response to the Public Utilities Commission's ("PUC" or "Commission") decision of February 1, 2007 related to the Guam Power Authority's ("GPA") request to include the interest accrued on the balance of Tax Commercial Paper ("TCP") as a component of the cost of fuel recoverable through the Levelized Energy Adjustment Clause (LEAC). Specifically, the Commission found that:

> *In its petition, GPA request that it be permitted to recover its TCP interest expense as a fuel related cost under the LEAC. By ruling Dated January 21, 2007, PUC's administrative law judge found that GPA failed to adequately petition and document this request. Accordingly, he ruled that the interest expense would not be allowed as a recoverable LEAC expense in this proceeding. In making this ruling, ALJ referenced PUC's October 24, 2004 LEAC Order in which PUC cautioned that it would closely examine any cost which GPA seeks to recover under the LEAC as the inclusion of such costs is an exception to traditional rate regulation. Moreover, PUC's October 25, 2005 LEAC Order informed GPA that it would bear the burden of providing convincing evidence why a proposed cost should be allowed as a LEAC expense. Within the context of these requirements, GPA may in due course file a properly documented petition for PUC review of the allowability of this expense.*[1]

Subsequent to the Commission Order, you distributed a letter to GPA and me indicating that:

---

[1] PUC Regulatory Order, February 1, 2007, ¶ 1.b.

In the event that GPA wants the allowability of TCP interest expense under the LEAC adjudicated during the May regulatory session, it should file a petition with supporting testimony and analysis with the PUC not later than February 23, 2007. After reviewing the filing, I will establish a schedule for GCG's review and report on the petition.[2]

GPA submitted a petition to the Commission dated February 23, 2007 on this matter. In that petition GPA presents several new arguments regarding the reasons GPA believes that interest on TCP should be includable in the costs that are recovered through the LEAC. We issued discovery on these issues and GPA has responded. This letter is prepared using the information from the LEAC filing in November 2006, the TCP interest filing in February 2007 and GPA's responses.

The issue of TCP interest as a component of the fuel recovery factor first arose in the LEAC filing of January 2006. GPA did not provide much support for its position at that time. GCG did not believe that inclusion of TCP interest was appropriate, and the resulting PUC Order was silent on the issue. We stated in our March 2006 LEAC report:

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.[3]

In support of its November 2006 filing, GPA included photocopies of page after page of receipts and drawdown documents dating back to the late 1990's as support for inclusion of TCP interest expense in fuel costs.

In our January 5, 2007 response to GPA's November LEAC filing, we highlighted the fact that GPA charged $1.1 million of TCP interest expense[4] to fuel in the twelve months ending September 2006. GPA's proposed budget for Fiscal 2007 also included an additional $1.05 million of TCP interest

[2] GPA Regulatory Letter, February 5, 2007, ¶ 1.d.

[3] GCG Letter to the ALJ on the GPA LEAC, March 28, 2006.

[4] Includes $386 thousand of fees for the TCP

expense as a fuel expense and assumes that this cost is recovered through the LEAC. Prior to Fiscal 2006, GPA recorded the TCP interest expense to interest and not fuel. GPA actually included $1.8 million of interest expense for Fiscal 2006 and $2.3 million of interest expense for Fiscal 2007 in its LEAC costs proposed in its November 2006 filing. The additional interest above the TCP interest amount is related to interest and commitment charges associated with the Letter of Credit referred to by GPA as the "fuel credit facility." This additional interest and fees have always been included in the cost of fuel and recoverable through the LEAC, since the letter of credit is specifically targeted to fuel purchases. In support of its position regarding inclusion of TCP interest in GPA's November 2006 filing, GPA alleged that it could specifically identify draw downs of the working capital line of credit,[5] TECP (Tax Exempt Commercial Paper) and TCP with fuel payments.

In its February 2007 filing, GPA basically submits the same arguments and support as it did in the November 2006 filing. However, GPA now concedes that cash (and the underlying debt supporting the cash) is a fungible asset and it is essentially impossible to identify the specific cause or causes that lead to the management decision to incur debt.[6]

In an attempt to support the link between the total current TCP balance of $20 million and related $1 million of interest expense, GPA has only been able to "identify" $10 million of actual fuel purchases in 1998 that it claims in its February 2007 filing has not been paid off over the last nine years. GPA then leaps to the conclusion that the interest on $20 million of TCP should be recovered through the LEAC

To make this leap, GPA presents to the PUC a new rationale for inclusion of interest expenses related to TCP in the LEAC. GPA now argues that the $40 million balance owed to it by GovGuam contains $20 million of un-recovered fuel expense, since fuel is "about" 50% of the total bill to its customers. With this logic, GPA believes that there is a clear link between the fuel portion of these arrearages of various GovGuam Authorities and Agencies and the interest on the TCP. Assuming that GPA's logic is correct, we would point out that GPA is already accruing and receiving interest on these arrearages in its recovery of past due amounts from various GovGuam entities. For Fiscal 2006, the amount of interest accrued exceeds the TCP interest expense ($1.1 million) and the amount actually collected is very close to the amount of interest actually paid as shown in the following table:

Table 1

	Accrued	Paid
Department of Education	$ 609,210	$ 561,430
Guam Memorial Hospital	44,854	42,038

[5] Prior to the TECP program, GPA had a working capital LOC that was replaced by the TECP program.

[6] GPA Letter to HMB, February 2, 2007, page 2.

Department of Public Works	463,623	-
Guam Waterworks Authority	473,503	473,503
	$ 1,591,190	$ 1,076,970

We would observe from the table above that GPA appears to have collection problems related to the notes with DOE, DPW and to a lesser degree GMH perhaps due to GPA ignoring the PUC-approved collection protocol. These problems and issues would be best addressed within the context of a base rate or specific proceeding and not during the limited investigation of a LEAC. We would also note that the interest rates for the notes for each of the entities listed are lower than the interest rates on the TCP instruments. GCG would not be opposed to GPA renegotiating the terms and conditions of the notes so GPA is at least made whole on its carrying costs of capital required for those entities in apparent violation of the existing terms and conditions of their notes. Again this would be best handled in a separate or base rate proceeding. In this proceeding GPA argues that only half of the above interest amount is fuel related and that GPA needs the capital from the accrued interest for other purposes, since money is tight. GPA suggests that certain non-fuel items are causing the squeeze in GPA's money, but all of these items are base rate items and would be investigated within the context of a base rate proceeding and not in a LEAC proceeding.

Another proposed rationale for inclusion of interest on the TCP into the LEAC rate is the level of fuel inventory that has coincidentally risen to $20 million due to increased fuel prices. This implies a need for working capital. Again working capital is a function of many items and is reviewed in a base rate proceeding and not a LEAC proceeding. In response to discovery issued as a result of the February 2007 filing, GPA indicated that it did not believe that in the last base rate case (1997) the fuel inventories and deliveries were included in the derivation of working capital.[7] We reviewed the proceeding to which GPA refers and note that in the attachments to the PUC decision in Docket 96-004 there is an allowance for a source of working capital of $2.9 million.[8] Along with many other items used in the derivation of this working capital source are allowances for AR (including fuel), fuel oil inventory, accounts payable-fuel, interest payable-operations and the fuel credit facility. All of these items (as well as the other items used in the derivation of working capital) have changed and should not be reviewed in the context of a LEAC proceeding,

Despite GPA's many arguments presented in the February 23, 2007 filing, GCG still believes that interest expense associated with TCP should not be included in fuel expense and not be recovered through the LEAC. We would be remiss to not remind you that should the PUC agree with GCG's recommendation to exclude TCP interest from the LEAC, GPA will be required to make earnings adjustments for Fiscal 2006 and Fiscal 2007. For Fiscal 2006 GPA assumed a favorable PUC decision to included TCP interest in fuel expense. For Fiscal 2006 GPA was projecting a DSCR of

[7] GPA Response to Item 1-3.

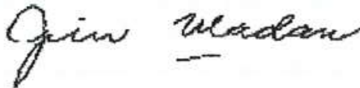
[8] See attached pages from PUC Decision.

2.2x using the methodology approved by the bond trustee (1.36x using the PUC methodology). The debt service for Fiscal 2006 was $27.5 million. Therefore a reclassification of interest expense of $1.1 million would lower the DSCR from 2.20x to 2.16x. On a PUC basis, the ratio would drop to 1.32x. GPA is also forecasting that it will achieve a coverage of 2.28x on a covenant basis and 1.44x on a PUC basis. If the PUC rules that TCP should not be included in the LEAC as a cost of fuel, these forecasts would reduce each of these ratios by 0.04x. As with all of the above "issues," debt service and coverage should be reviewed only in the context of a base rate proceeding.

Finally, we would note that GPA has suggested that the PUC denial of the inclusion of interest expense in the LEAC recovery would be damaging to GPA. This is a similar argument made regarding the inclusion of lubricant. We would suggest that it is not the PUC decisions that have the greatest impact on the cash flow and financial results of GPA, but rather management decisions regarding collections from GovGuam agencies, a poor selection of fuel hedging contracts and perhaps the required political will to file a rate case.

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

Cordially,



Jamshed K. Madan

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

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GUAM POWER AUTHORITY

ATURIDÅT ILEKTRESEDÅT GUAHAN
P.O. BOX 2977 HAGÅTÑA, GUAM U.S.A. 96932-2977

09 May 2007

Harry Boertzel, Esq
Administrative Law Judge
Public Utilities Commission
414 W. Soledad Avenue
GCIC Building Suite 207
Hagatna, Guam 96929

**REF: GPA Response to GCG TCP Comments
– Docket 02-04**

Dear Mr. Boertzel:

When the current management team was put into place, the island was recovering from a major natural disaster. The economy was in a slump resulting from the 9/11 attacks, the poor Japanese economy, and the SARS epidemic. Additionally, the United States was on the verge of entering into a war with Iraq. Tourists were very reluctant to travel to Guam with all of these factors at play.

This economic slowdown was having an impact on the Guam Power Authority as well. GPA believed that there was great potential for heightened military activity on the island and therefore, there was a good chance that the Authority could grow its way out of its financial constraints. Increased sales to the U.S. Navy without any additional capital investment would benefit the Authority and its ratepayers. The alternative would be for GPA to raise rates and thereby stifle the economic recovery that was beginning to take place.

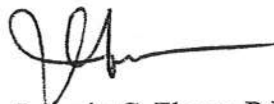
GPA chose to allow the economy to continue its recovery and forestall a rate increase in favor of waiting for the military buildup to take effect. Georgetown faults GPA for its desire to avoid a full blown base rate petition. GPA stands by its decision.

Unfortunately, GPA did not foresee the increase in fuel prices that has taken place in the last few years. GPA developed some internal scenarios for future costs of fuel and the current fuel prices are more than 25% greater than GPA's worst case scenario. This cost increase has heightened the pressure on GPA's working capital. GPA has been seeking opportunities think differently about certain items in an attempt to get through this period without a base rate increase.

GPA believes it has provided sufficient evidence of a link between the outstanding government receivable and the taxable commercial paper liability and fuel costs to enable the PUC to make a finding in GPA's favor on this matter. It has become clear that GCG is not sympathetic to GPA's position and desires to force GPA into filing a base rate petition.

We look forward to working with the Commission to bring this matter to resolution.

Yours truly,



Joaquin C. Flores, P.E.
General Manager

Cc: R. Wiegand, CFO
C. Montellano, Asst. CFO
G. Botha, Staff Attorney

GUAM POWER AUTHORITY

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BEFORE THE
PUBLIC UTILITIES COMMISSION OF GUAM

APPLICATION OF GUAM POWER AUTHORITY TO RATIFY AWARD OF DIESEL FUEL SUPPLY CONTRACT TO SHELL GUAM, INC.	)	**DOCKET 94-04** **STIPULATION**

GEORGETOWN CONSULTING GROUP, INC. ("GCG"), the independent rate consultant to the **GUAM PUBLIC UTILITIES COMMISSION** ("PUC"), and the **GUAM POWER AUTHORITY** ("GPA"), through their counsel of record, stipulate and agree as follows:

1. GPA has filed a petition for expedited review and approval of a diesel fuel contract awarded to Shell Guam, Inc. ("Shell") for supply of diesel fuel to certain of GPA's generation facilities (GPA Contract GPA-037-06) (the "contract"). The validity of the contract was called into question due to GPA's failure to have complied with the conditions established by the PUC in a September 28, 2006 order approving GPA's petition for approval of the procurement giving rise to the contract.

2. In a report filed on April 24, 2007, GCG recommended that the PUC disapprove GPA's petition for ratification for the reasons set forth therein.

3. In response to GCG's report, GPA has negotiated Shell's agreement to modify certain aspects of the contract to which GCG raised concerns.

4. GCG and GPA hereby jointly recommend to the PUC that the award of the contract be ratified, subject to the following conditions:

(a) The contract be amended, effective June 1, 2007, as follows:

(i) The premium added to the price of diesel fuel supplied to GPA's Fast Track Diesels, TEMES and Baseload Plants in consideration for Shell's obligation to maintain a 30-day emergency supply be reduced from $0.06 to $0.05 per gallon.

(ii) The premium added to the price of diesel fuel supplied to GPA's Tenjo Vista site in consideration for Shell's obligation to maintain a 30-day emergency supply be reduced from $0.10 to $0.085.

The form of the amendment should be submitted to the PUC's Administrative Law Judge for his review and approval.

(b) GPA should only be allowed to recover through the LEAC $0.065 per gallon for the premium for the Tenjo Vista plant. The balance of the premium shall not be recoverable through the LEAC.

(c) Notwithstanding the foregoing, GPA should be entitled to recover the full amount of the premium paid on diesel supplied under contract prior to the date of the amendment.

(d) The PUC should approve the attached amendment to the GPA Contract Approval Protocol dealing with single-bid procurements. In addition, in the event GPA determines to award a contract after receiving only a single bid, GPA shall provide the PUC with the determination made by GPA pursuant to Section 3102(c)(1) of Chapter 2, Division 4, Title 2 of the Guam Administrative Rules and Regulations, relating to single-bid procurements.

GEORGETOWN CONSULTING GROUP, INC.

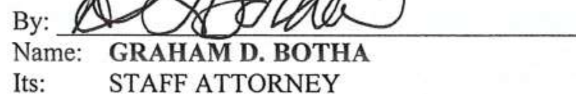
By: **BLAIR STERLING JOHNSON MARTINEZ & LEON GUERRERO**
A PROFESSIONAL CORPORATION

DATED: MAY 24, 2007

By: **WILLIAM J. BLAIR**
Attorneys for Georgetown Consulting Group, Inc.

GUAM POWER AUTHORITY

DATED: MAY 24, 2007



By:
Name: **GRAHAM D. BOTHA**
Its: STAFF ATTORNEY

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___. In the event GPA receives only one bid for a procurement, which is subject to this contract review protocol, GPA shall obtain prior CCU approval of the prudence of accepting the single bid. GPA shall file with PUC the documentation regarding this CCU prudence review within ten days of CCU action. PUC reserves the authority, after monitoring this prudence review process to reconsider the need for additional regulatory oversight over single bid procurements.

ATTACHMENT B

ASSUMPTIONS AND COST CALCULATIONS FOR DFO 30 DAY INVENTORY SECURITY
16-Oct-06
FOR IFB GPA 37-06, FAST TRACKS, BASELOADS AND TEMES CT

These costs are an estimate of the opportunity costs of not contracting for a 30-day set aside from fuel suppliers. GPA would have to borrow money to purchase the commodity, and spend for storage of this additional inventory out of revenues.

COSTS OF PURCHASING COMMODITY			
interest rate of TECP	5.3%		1.053 interest rate factor
amount of 30 day inventory in bbl	15000		
cost of leasing storage tank per bbl per month	$0.25		based on existing leases of Shell storage tanks
cost of DFO per bbl	$80		
cost of 30 day inventory	$1,200,000		
projected .5% DFO annual purchase in bbls	$70,952		
1st year principal plus interest	$1,263,600.000		
2nd year principal plus interest	$1,330,570.800		
3rd year principal plus interest	$1,401,091.052		
interest at end of 3rd year		$201,091.052	
additional cost per bbl for interest expense		$2.834	
COSTS FOR STORAGE			
monthly cost of tank lease	$3,750.000		
cost of 3 year tank lease	$135,000.000		
tank lease cost per bbl	$1.903		
cost per bbl for .5% inventory security		$4.737	
cost per gal for .5% inventory security		**$0.113**	**Rounded up to $0.13 per gallon**

EXHIBIT D: THE RESULTS OF IFB GPA 34-06 AND IFB GPA 37-06

This Exhibit presents the results of the bid process for IFB GPA 37-06. Table 2 shows the base bid costs versus the option bid costs with the 30-day set aside. The Authority exercised the option bid only for IFB GPA 37-06. This option was not bid by proponents for IFB GPA 34-06. The annual additional costs for this option are $318,800 or 2.94% over the base bid. The Authority awarded the contract to Shell Guam Inc.

The impact on the rate payer base is largely insignificant based on an approved FY 2007 fuel budget of $192 million. If GPA used the amounts for diesel fuel contracted, the impact would account for only 0.166 % of the total fuel budget. This scenario is likely the maximum cost exposure for choosing the higher cost option for a 30-day set-aside over the base bid.

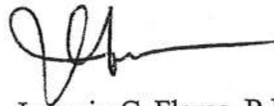
Table 2, IFB GPA 34-06 and IFB GPA 37-06 Results

Plants	Base Bid ($/gallon)	Option Bid (Contract) ($/gallon)	Cost Difference ($/gallon)	Gallons Per Contract Year	% Increase From Base Bid	Cost Difference From Base Bid ($)
IFB GPA 37-06 - Awarded to Shell Guam Inc. (Option Bid Accepted)						
Fast Track	$ 2.904	$ 2.964	$ 0.06	280,000	2.07%	$ 16,800
Baseload	$ 2.944	$ 3.004	$ 0.06	200,000	2.04%	$ 12,000
TEMES CT	$ 2.379	$ 2.439	$ 0.06	2,500,000	2.52%	$ 150,000
Tenjo Vista Diesels	$ 2.495	$ 2.595	$ 0.10	1,400,000	4.01%	$ 140,000
Total Dollar Increase From Base Bid						$ 318,800
Total % Increase From Base Bid						2.94%
IFB GPA 34-06 - Awarded to Shell Guam Inc. (Proponents Did Not Bid on Option)						
Total Dollar Increase From Base Bid						$ -
Total % Increase From Base Bid						0.00%

GPA believes it has provided sufficient evidence of a link between the outstanding government receivable and the taxable commercial paper liability and fuel costs to enable the PUC to make a finding in GPA's favor on this matter. It has become clear that GCG is not sympathetic to GPA's position and desires to force GPA into filing a base rate petition.

We look forward to working with the Commission to bring this matter to resolution.

Yours truly,



Joaquin C. Flores, P.E.
General Manager

Cc: R. Wiegand, CFO
C. Montellano, Asst. CFO
G. Botha, Staff Attorney

GEORGETOWN CONSULTING GROUP, INC.
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jkmadan@gmail.com

April 27, 2007

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

Re: GPA Regulatory Asset – Docket 02-04 GPA General Matters

Dear Harry,

This letter is in response to your scheduling letters of February 5, 2007 and March 29, 2007. In particular, this letter addresses the issue of the regulatory asset that GPA has requested. In response to your February 5, 2007 letter Guam Power Authority (GPA) made a filing on March 2, 2007 seeking a Public Utility Commission (PUC or Commission) order to record a $12 million regulatory asset under the provisions of FAS71 and amortize this asset through the recovery of $12 million in funds for a indeterminate period of time[1] using proceeds from the insurance surcharge established by this Commission in Docket 92-001 and amended in Docket 94-001. The value of the asset was estimated by GPA by measuring the un-reimbursed payments made by GPA for reconstruction of plant assets after various typhoons and earthquakes. This amount GPA alleges was not reimbursed by insurance, the Federal Emergency Management Administration (FEMA) or through the proceeds of the insurance surcharge. Before discussing the March 2007 filing, some historic background discuss on the evolution of this request is important to understand our conclusions.

Docket 92-01GPA Base Rate Case

Docket 92-01 was a rate case that was resolved through PUC approval of a stipulation between GPA and Georgetown Consulting Group (GCG). In addition to consensus on other items within the rate case, the stipulation also agreed to establish an interest bearing and restricted bank account funded by the ratepayers. Specifically, the stipulation stated that:[2]

[1] The period of time would be dependent upon circumstance. GPA states that once the reserve reaches $2.5 million, it would access the reserve for $0.5 million. This process would continue until the asset is fully amortized. Assuming no intervening events that would require access, it would take roughly 5-6 years to fully amortize the asset.

[2] Stipulation, December 21, 1992, ¶ 4.

GPA should establish an interest bearing self-insurance reserve account subject to the following conditions:

a The charge to rate payers in order to fund this account should be $0.00145 cents per kilowatt hour for all civilian classes and $.00035 cents per kilowatt hour for Navy, as computed pursuant to the applicable provisions of the Customer Service Agreement. The charge should be applied to bills rendered on or after January 1, 1993.

b The charge should abate at the first billing cycle after the $2.5 million account balance is reached and will reactivate at the first full billing cycle after the account balance drops below $2.0 million, until the 2.5 million account balance is reestablished.

c Account proceeds, included (sic) accrued interest, should only be used to cover the costs (including labor) [of] replacing or of repairing uninsured damage to transmission and distribution property assets which exceeds $50,000.00 per occurrence. Any federal or territorial funds or other recovery against third parties which may be received by GPA on account of such losses be deposited into the account.

<u>Docket 94-01 GPA Base Rate Case</u>

In Docket 94-01 the above limitation to provide funds for only replacement and restoration of transmission and distribution plant was removed by Commission order dated March 3, 1995. Specifically, the Order stated:[3]

Paragraph [4](c) of the Commission's December 30, 1992 order in Docket 92-001 is amended to read:

*c Account proceeds, including accrued interest, shall be used to cover the costs (including labor) or [sic] replacing or of repairing uninsured damage to transmission and distribution and **other plant assets** which exceeds $50,000.00 per occurrence. [**emphasis added**]*

From 1995 to date, the surcharge has remained in place and has covered millions of dollars of un-reimbursed damages incurred by GPA and not reimbursed by insurance or FEMA. GPA has at times removed the surcharge from ratepayer bills when the balance of the insurance reserve reached $2.5 million, while returning the surcharge to the customer bills once the proceeds in the reserve dropped below the $2 million level. Until the recent petitions by GPA to the PUC on the uses of the surcharge and the reserve fund, the transactions related to the fund have never been thoroughly reviewed by the PUC. When the surcharge was first established and later amended, GPA was never required to provide a formal reconciliation to the PUC of the disbursements from the fund, underlying uses of the fund and replenishment of the fund. As a result, the use and success (or failure) of the reserve to cover the costs to restore the system were never tested until now.

[3] PUC Order, March 3, 1995, Docket 94-01, ¶ 9.

Docket 02-04 GPA 2005 Request to Adjust the Self-Insurance Fund

The first indication that there may have been problems in recovery of damage costs came when GPA filed a request to adjust the maximum fund balance from $2.5 million to $6.5 million. With that filing, GPA first informed the PUC of a shortfall of $13.0 million on Transmission and Distribution Property since the inception of the surcharge.[4] In the petition, GPA did not request recovery of un-reimbursed sums related to a catastrophic event. Instead, GPA requested adjustments to the restriction on the uses of the fund and an increase in the maximum amount of the fund. In summary GPA requested that the PUC issue an order that would:

- Increase the self-insurance cap to $6.5 million
- Allow use of self-insurance funds towards reimbursements associated with losses falling within the deductible of GPA's Property Plant and Machinery Insurance
- Allow use of self-insurance funds towards GPA's cost share for projects funded with FEMA grants within the time period that these projects are under construction
- Allow use of self-insurance funds for underground projects associated with FEMA grants within the time period that these grant-funded projects are under construction.[5]

The filing was silent regarding whether GPA believed that the process legislated by GovGuam known as the Ratepayers Bill of Rights (PL26-23) would come into play, since GPA had not requested a change in the surcharge rate per Kilowatt Hour (kWh).

GPA indicates in the supplemental filing of 2007 that the issue of changes in the self-insurance protocol, the regulatory asset and additional cash receipts was first discussed at the status conference of July 2005. At that conference, GPA explained that it had interpreted the PUC Orders regarding the self-insurance surcharge to not only "cap" the fund at $2.5 million, but to also cap the use of the proceeds to $2.5 million for each event. GCG indicated that it did not believe that the intent of the order was to limit recovery for each disaster to $2.5 million, but rather the intent was to make GPA whole for damages not recovered by FEMA or insurance.[6].On August 9, 2005, GCG indicated to you that we believed that the un-recovered damages (at that time quantified for only Typhoons Pongsonga and Chata'an) were in excess of $11 million and GPA would be able to draw down the reserve in our opinion at that time. According to GPA's 2006 filing, after the regulatory session GPA took $2.8 million from the fund with this new understanding and reduced the level of the fund to $0 as of September 30, 2005.

At the October 2005 PUC meeting, the PUC directed you to oversee the preparation of four procurement requests for PUC consideration, including the self-insurance fund amendments. You

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[4] GPA Insurance Surcharge Filing, October 7, 2005, ¶ 5.

[5] Subsequently, GPA has requested the use of a line of credit to fund similar projects and/or the use of excess bond funds.

[6] There was no indication at that time of the significant amount of restoration costs that FEMA had rejected.

requested a legal opinion from GPA and GCG regarding whether the parties believed that this filing required notice and hearings as set forth in PL26-43. In our opinion letter of January 4, 2006, GCG counsel indicated that he concluded that the Ratepayer Bill of Rights would apply.[7] Moreover, he noted that the original surcharge and amendment thereto were both adjudicated within the context of a base rate proceeding.

There is no further action taken by GPA, the PUC or GPA on this matter until September 2006.

Docket 02-04 GPA 2006 Request to Access the Self-Insurance Fund

On September 22, 2006, GPA filed another request regarding the insurance surcharge. Rather than a formal request to adjust the maximum of the insurance reserve fund or to extend the uses of the funds to other than those approved by the PUC in base rate Dockets 92-01 and 94-01, GPA requested that the PUC provide the regulatory approvals for recording a $13.7 million regulatory asset under the provisions of Financial Accounting Standard #71. That standard permits a regulated utility to record an asset that would normally not be recorded as an asset and amortize the asset over a specific period, if appropriate regulatory approvals are provided. This accounting standard is permitted as long its regulatory body orders such an asset and specifically provides an identifiable revenue stream for the recovery of the amortization of the asset over a reasonable period of time.

GCG had also suggested to GPA at the regulatory meeting of July 2005 that a revised listing of losses be prepared that listed the disaster costs that had not been recovered and that it limit such listing to more recent events and not include events such as Typhoons Paka and Dale. GPA had concurred and the $13.7 million asset request was limited to events after 2000. GPA suggested draw downs related to prior disasters be limited to $500 thousand, while leaving at least $2 million in the reserve for possible new disasters. GPA indicated that the auditor would record the asset once PUC approval had been obtained. If the PUC had approved GPA's request to record a $13.7 million regulatory asset, GPA would have recorded this asset at the end of Fiscal 2006 and would have begun to recover the cash associated with this asset in Fiscal 2007. GPA stated that since the recovery of the asset would be "below the line" transaction, there would be no impact on the Debt Service Coverage Ratio for 2006 would result from the PUC order.

Due to the late timing of the 2006 filing and the need to issue discovery for analysis related to the filing, the regulatory asset issue was deferred pending further analysis by GCG.[8] GCG issued requests for information and GPA responded. In that process, GCG determined that there were significant issues related to the nature of the costs for which GPA now sought recovery through the self-insurance reserve fund that were never described or discussed in previous filings or meetings. In addition to the fact that the amount being requested appeared to be fluctuating, a significant amount of the disaster costs had been disallowed by FEMA. In our response to GPA's September 2006

[7] William Blair letter to Harry M. Boertzel, January 4, 2006.

[8] PUC Order, September 28, 2006, ¶ 6.

filing, we also noted the changes in the dollars being requested and suggested that new issues had been raised during the discovery process.

The most important new fact was the implication that there was a large amount of costs that had not been settled and were also subject to significant FEMA disallowance. The following question and response is indicative of the problem.

Set 1-4: Q. Please provide copies any correspondence between FEMA and GPA that closes further reimbursement claims for the various events, if applicable. Are there any amounts pending from FEMA that are being contested by GPA or FEMA?

GPA: We have not closed any of these events (Chata'an, Pongsona & Tingting). We are still waiting for the Recovery Coordination office to provide us the closing documents, although we have closed all the projects for Chata'an, Tingting and Earthquake, and have received all the reimbursements except for the sub grantee amounts which are immaterial. Typhoon Pongsona is the only one we have not closed 100%, we are still working with FEMA on the materials reimbursement which we think we can get them to agree with us.

In our report to you after our initial review, we concluded:[9]

Given the significance of the amounts involved we believe that there is a clear duty to perform due diligence of the GPA claims before imposing the burden of reimbursement on ratepayers. We recommend the following procedure going forward:

- *The PUC should determine as a threshold issue whether the total cost for reimbursement related for {to} uninsured damage should be limited to the FEMA determined amounts or some other amount. If the amount is not the FEMA determined amount then the effort and expense in determining the prudent amount for reimbursement from ratepayers will be significant.*

- *GPA should make a filing on its position on the first point above. In the event that GPA recommends that a GPA determined amount of the estimate of cost damage is appropriate then GPA should provide a complete filing with the necessary computation and workpapers supporting the difference in amount between that determined by FEMA and that determined by GPA. We recommend that such a filing be made by April 1, 2007. Upon receipt of the filing a determination should then be made of the appropriate response time for GCG.*

[9] Letter to HMB, January 24, 2007, page 3.

- *GPA should not be permitted any further access to self insurance reserve funds for the events under review as the amounts already withdrawn exceed the FEMA determined cost cap.*

- *We note that there does not currently exist any requirement for GPA to notify and request from the PUC permission to access the self insurance reserve and to make periodic reports. A protocol for this process should be proposed in the April 1, 2007 filing.*

- *GCG also believes that the caps set for the self insurance reserve and the funding rate should be reviewed and updated if necessary. GPA should address this issue in the April 1. 2007 filing.*

The Commission deferred further consideration of this matter in its Regulatory Order in February 2007 and prohibited GPA from using any of the proceeds in the self-insurance reserve for the costs under investigation until the PUC authorizes such use.[10] In your regulatory letter subsequent to the PUC Order you requested that GPA file an amended petition, with testimony and evidentiary support regarding its request that PUC approve its $17.3 million dollar natural disaster claim as a regulatory asset. A schedule would then be established leading to a hearing before the PUC in May 2007.[11]

Docket 02-04 GPA 2007 Regulatory Asset Supplemental Filing

On March 2, 2007, GPA filed a supplemental request seeking a PUC order to establish a regulatory asset of $12 million. Once again the amount sought by GPA had changed. In this filing, GPA attempted to provide sufficient evidence to support the claim that it is entitled to reimbursement from the self-insurance fund. Since the nature of the data that would support GPA's claim is very voluminous the filing focused only on Typhoon Pongsonga, the major portion of the regulatory asset claim. GPA indicated in response to discovery that it would take four weeks or more to quantify and identify costs that were rejected by FEMA and those that were not for the other events in the request. As of the date of this report, GPA is still trying to assemble this data. GPA's filing did not propose a protocol to access the self-insurance fund (as required by the ALJ).

A threshold issue we believe is whether the self-insurance reserve should be essentially used as business interruption insurance, i.e. to cover all of the costs of restoration during a period when base revenues are not being recovered for the embedded GPA labor, including overheads. We come to this conclusion because GPA has requested reimbursement from FEMA for costs other than direct costs of losses (such as overheads, etc.) that have been refused by FEMA. Having received a refusal from FEMA GPA now turns to the PUC to permit recovery of these "costs" based on the notion that GPA is receiving little or no base revenues as a result of a typhoon. The concept of business

[10] PUC Order, February 1, 2007, ¶ 2.

[11] Regulatory Letter of the ALJ, February 5, 2007, 1.d.

interruption type expenses (typhoon cost normalization, etc.) or rates that anticipate some interruption are not inappropriate, but can only be reviewed within the context of a base rate proceeding.

Reviewing the data provided to us indicates that the majority of the requested $12 million asset is related to FEMA filing, disallowances and GPA accounting. In the filing and subsequent accounts, GPA indicates that it can determine that FEMA disallowed a total of $7.8 million of costs. In its testimony, GPA indicates that while it does not have any correspondence with FEMA that it can share with GCG it has reviewed project work orders (PW) and other data for on-premise and off-premise damages resulting from Typhoon Pongsonga.[12]

GPA concedes that it also is having a very difficult time trying to fully reconcile its regulatory asset request amount and the details it has supplied with the filing or in response to discovery. As indicated earlier, most of the information relates to Typhoon Pongsonga and neither GPA nor GCG can reconcile the amounts provided. GPA explains that much of the disallowance relates to overheads that FEMA will not allow and GPA labor that GPA calculated at actual GPA labor costs as opposed to the FEMA allowance for lineman repair per hour wage of $13 per hour. There also are issues such as repayment of the cost of meals and certain contracts. The following table is a summary of the disallowed costs that GPA was able to identify for Pongsonga only:

Table 1a
FEMA Disallowance
Typhoon Pongsonga

Pongsona	On Premise ($000'S)	Off Premise ($000'S)	TOTAL ($000'S)
Overheads	$ 1,196	$ -	$ 1,196
GPA Labor	2,238	2,514	4,752
Other	528	1,316	1,844
FEMA Disallowance	$ 3,962	$ 3,830	$ 7,792

Moreover, there appeared to be a problem related to the full reconciliation of Pongsonga. GPA is aware this reconciliation problem and has worked diligently to resolve this discrepancy. The total damages from Pongsonga less reimbursements from FEMA and the SI fund, less the cost disallowance by FEMA less the 10% GPA requirement should equal $0 and it did not, until informal discovery and discussion followed.

[12] The term on-premise damages are those within 1,000 feet of generation facilities and off-premise are everything else (mostly T&D).

After reviewing the information in the March 2007 filing, GPA discovered that there were three errors in the information regarding Pongsonga. This included an understatement of the Total Cost of the recovery costs, an understatement of the FEMA payments shown in the March 2007 filing and an understatement of the costs disallowed by FEMA. Regarding the disallowance, GPA has provided a new matrix similar to the one summarized in **Table 1.** The following table shows the revised summary of disallowed costs:

Table 1b
FEMA Disallowance (Updated)
Typhoon Pongonga

Pongsona (*Revised)*	On Premise ($000'S)	Off Premise ($000'S)	TOTAL ($000'S)
Overheads	$ 1,196	$ 1,314	$ 2,510
GPA Labor	2,238	2,514	4,752
Other	528	1,279	1,807
FEMA Disallowance	$ 3,962	$ 5,107	$ 9,069

As indicated earlier, GPA also increased the amount of money contributed by FEMA for costs related to Typhoon Pongsonga. The reason for the change in the amounts reported in the March 2007 filing is the fact that the filing inadvertently omitted reimbursement related to on-premise plant. Once the corrections are made to the initial filing the discrepancy is insignificant.

Table 2
Pongsonga Reconciliation
($000's)

	Pongsonga ($000's)
Total Cost of Reconstruction and Replacement	$ 27,816
Quantified Disallowance	(9069)
FEMA Approved Costs	18,747
GPA Cost Responsibility (10% of approved costs)	(1,875)

FEMA Receipts and Receivables	**(16,813)**
Unexplained Difference	**$ 59**

In addition to changes made to Pongsonga data, GPA in its update has included additional events into the proposed regulatory asset that were not in the March 2007 filing, but were in the September 2006. GPA has also increased the total restoration costs related to Pongsonga in its updated data. With these changes, the regulatory asset request decreases from $12 million to about $10 million. A summary of the proposed regulatory asset and the requested asset if updated information and additional events are included is attached to this letter as **Attachment A**.

The PUC must reach a conclusion of the threshold issue on whether or not the ratepayers should reimburse GPA through the self insurance surcharge for all the costs of restoration both for past events and future events. GPA is still working on identifying the disallowed costs associated with the other three FEMA disasters since CY2000 (Chata'an, Tingting and the 2001 earthquake) and indicates in response to discovery that this make take several weeks. With the information in hand, it now seems likely that all of the recovery through the asset will be related to the disallowed costs. On **Attachment B,** we show the summary of events that were filed with the March petition and the updated Pongsonga information and show the costs as gross and net of FEMA disallowances. When you apply the percentages of responsibility for each event after removing the FEMA disallowances, the resulting amount of un-reimbursed approved costs is slightly more than $3 million. Since GPA has already taken $3 million from the SI reserve, there is no need to record a regulatory asset, if the PUC does not authorize recovery of the disallowed cost.

In addition to the types of disallowances that GPA describes in its March 2007 filing, there is also the restrictive nature of the FEMA contributions under the provisions of CFR §206.253. FEMA will not pay claims for property which has previously been destroyed or damaged in a prior disaster unless the claim is for more than was claimed for the previous disaster. Even though FEMA will pay for the new claim, it will only pay for the amount in excess of the prior claim. As an example: If an asset of $100 is destroyed and FEMA repays $90 in disaster #1, when disaster #2 occurs and the same asset is destroyed, FEMA will subtract $90 from the net payment to GPA. To determine the amount relevant to GPA under this section of the Federal Code is difficult and time consuming. We have attached the relevant portion of the Federal Code to this letter as **Attachment C.**

In the March 2007 filing, GPA explains the disallowed cost and rationalizes recovery stating that it should be entitled to collect the disallowed costs (such as overheads), since these would normally be recovered through base rates and since revenues were interrupted during these events no recovery of these costs occurred. In effect, GPA is requesting the insurance surcharge and related reserve be used as a form of business interruption insurance. GCG does not feel that this logic should be accepted by the PUC. In general, we believe that costs disallowed by FEMA should not be eligible for recovery through the surcharge. If the PUC were to rule that these costs should be eligible, then there will be a significant regulatory effort to determine which of these costs would be eligible. We do not rule out that GPA should be permitted to petition the PUC for recovery for certain types of exceptions to this rule that could be heard on a case by case basis. The PUC should establish a clear

protocol of how GPA will access the reserve when necessary and what reporting requirements would be necessary once the reserve were accessed.

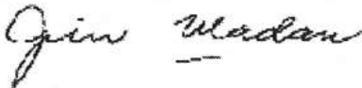
GPA was requested to include a protocol in this March 2007 filing, but responded that it has not fully prepared such a protocol.[13] To provide some assurance to ratepayers, it will be necessary for the PUC to establish a protocol for the eligibility of the funds and the accounting that will be required of GPA regarding reporting uses of the fund. There is some merit to the argument made by GPA that all employees contributed to the restoration of power and therefore should be compensated. It is also necessary to discuss with GPA the type of accounting that is required to seek recovery from the fund, especially since restoration of the system becomes the priority and accounting for this restoration of necessity lags behind.

CONCLUSION:

1. **The PUC should defer consideration of GPA's request at this time to the next regulatory session.**
2. **GPA should reconsider whether it wishes to re-file the request, once it is able to reconcile the amounts for <u>all</u> of the events for which it seeks to recover all costs.**
3. **The PUC should continue its prohibition of using the existing funds to repay for the events prior to this date. Prospective use of the funds is permitted as long as the reimbursement is for the types of costs that are permitted by FEMA.**
4. **The ALJ should oversee an administrative proceeding to establish a protocol for use of the SI reserve and the reporting requirements related to this protocol.**

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

Cordially,



Jamshed K. Madan

cc: Bill Blair, Esq.
Lou Palomo, PUC
Terry Brooks, PUC
Randall Wiegand, CFO – GPA
Cora Montellano, ACFO - GPA
Kin Flores, GM-GPA

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[13] GPA response to set 1-4.

Graham Boetha, Esq.

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§ 206.253 Insurance requirements for facilities damaged by disasters other than flood.

(a) Prior to approval of a Federal grant for the restoration of a facility and its contents which were damaged by a disaster other than flood, the Grantee shall notify the Regional Director of any entitlement to insurance settlement or recovery for such facility and its contents. The Regional Director shall reduce the eligible costs by the actual amount of insurance proceeds relating to the eligible costs.

(b)(1) Assistance under section 406 of the Stafford Act will be approved only on the condition that the grantee obtain and maintain such types and amounts of insurance as are reasonable and necessary to protect against future loss to such property from the types of hazard which caused the major disaster. The extent of insurance to be required will be based on the eligible damage that was incurred to the damaged facility as a result of the major disaster. The Regional Director shall not require greater types and extent of insurance than are certified as reasonable by the State Insurance Commissioner.

(2) Due to the high cost of insurance, some applicants may request to insure the damaged facilities under a blanket insurance policy covering all their facilities, an insurance pool arrangement, or some combination of these options. Such an arrangement may be accepted for other than flood damages. **However, if the same facility is damaged in a similar future disaster, eligible costs will be reduced by the amount of eligible damage sustained on the previous disaster.**

(c) The Regional Director shall notify the Grantee of the type and amount of insurance required. The grantee may request that the State Insurance Commissioner review the type and extent of insurance required to protect against future loss to a disaster-damaged facility, the Regional Director shall not require greater types and extent of insurance than are certified as reasonable by the State Insurance Commissioner.

(d) The requirements of section 311 of the Stafford Act are waived when eligible costs for an insurable facility do not exceed $5,000. The Regional Director may establish a higher waiver amount based on hazard mitigation initiatives which reduce the risk of future damages by a disaster similar to the one which resulted in the major disaster declaration which is the basis for the application for disaster assistance.

(e) The Grantee shall provide assurances that the required insurance coverage will be maintained for the anticipated life of the restorative work or the insured facility, whichever is the lesser.

(f) No assistance shall be provided under section 406 of the Stafford Act for any facility for which assistance was provided as a result of a previous major disaster unless all insurance required by FEMA as a condition of the previous assistance has been obtained and maintained.

Lou Palomo

From: "Jamshed K. Madan" <jkmadan@gmail.com>
To: "Palomo, Lourdes" <lpalomo@guampuc.com>; "Boertzel, Harry" <hboertzel@hotmail.com>; "Brooks, Terry" <tmb@guamlaw.net>
Cc: "Graham Botha" <gbotha@guampowerauthority.com>; "Flores, Kin" <jflores@gpagwa.com>; "Wiegand, Randy" <rwiegand@ccuguam.com>; "Montellano, Cora" <cmontellano@ccuguam.com>; "Sanchez, Simon" <gdcmgr@ite.net>; "Blair, Bill" <wjblair@kbsjlaw.com>; "Margerison, Ed" <emargerison@snet.net>; "Gawlik, Larry" <Lrgawlik@aol.com>
Sent: Thursday, April 26, 2007 10:09 AM
Attach: 07 04 27 GCG_Report_on_Regulatory_Asset_FINAL.doc; 07 04 27 GCG Attachments for Report on Regulatory Asset.pdf
Subject: GCG Report on Regulatory Asset

Plerase see the attached.

Jim

CONFIRMATION

FAXED 9-12 @ 1:[illegible]

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September 10, 2002

VIA HAND DELIVERY

Harry M. Boertzel, Esq.
Administrative Law Judge
PUBLIC UTILITIES
COMMISSION OF GUAM
Suite 207, GCIC Building
West Soledad Avenue
Hagåtña, Guam 96910

RECEIVED
HORECKY & ASSOCIATES
Date: 9/10/02
Time: 3:04pm
By: KBM (H/D)

RE: DOCKET 89-002A [CSA AMENDMENT III]

Dear Harry:

Attached hereto is a report prepared by Larry R. Gawlik for Jim Madan of Georgetown Consulting Group, Inc. Mr. Gawlik was requested by Mr. Madan to provide a recommendation with respect to Amendment III to the GPA-Navy Customer Service Agreement. Mr. Gawlik has recommended approval, subject to certain procedural conditions.

Mr. Madan endorses Mr. Gawlik's report and recommendation and has instructed me to submit it to the PUC on GCG's behalf.

Please be advised that I do not know who is the current legal representative of the U.S. Navy in connection with CSA matters, so I have not served the Navy with the report.

Very truly yours,

KLEMM, BLAIR, STERLING & JOHNSON
A Professional Corporation

WILLIAM J. BLAIR

Attachment: As stated

cc: Frederick J. Horecky, Esq. (via h/del)
Mr. Jamshed K. Madan (via email)
Mr. Larry Gawlik (via email)
Mr. Edward R. Margerison (via e-mail)

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RE GPA -- CSA AMENDMENT III.DOC

Memo

To: Jim Madan
Georgetown Consulting Group

From: Larry Gawlik

Date: September 6, 2002

Re: Customer Service Agreement—Amendment III

Guam Power Authority ("GPA") has requested the approval by the Public Utilities Commission of Guam ("Commission") of Amendment III to the Customer Service Agreement ("CSA") between it and the U.S. Navy. We've had an opportunity to review the summary information attached by GPA to its request to the Commission. Public Law 21-112, Section 4, requires GPA to obtain approval from the Commission of any amendment to the CSA or any changes to the terms, conditions, or provisions of the agreement. This report has been prepared in connection with the GPA regulatory session to be held in Guam in September 2002.

GPA and Navy have reached agreement on the transfer of additional properties owned by the United States government to GPA. These properties are considered by the Navy to be excess to its needs and GPA considers the properties to be useful to its customers. Accordingly, GPA and Navy are proposing that the CSA be modified to include the transfer of the following properties to GPA:

1. Agana power plant containing approximately six (6) acres
2. Transmission line easement for the Tenjo Vista 34.5 kV transmission line
3. Breakers and feeder lines at Agana (P27 and P30)
4. Breaker at Agana (P31)
5. Breakers at Harmon (P46, P111, P112)
6. Feeder line P-54 from pole number MC-143/PQ178 to Potts Junction
7. Any line section on feeder line P-54 from pole MC-29 to MC143/PQ178 not previously transferred.

It is proposed that Table 4 of the CSA, entitled "Navy 13.8 kV Distribution and 34.5 kV Assets to be Transferred to GPA," be modified to include the transfer of the above assets, together with all improvements to the assets and all rights and interest of the United States and Navy to such property. All of the other terms and conditions of the CSA are to remain unchanged and in full force and effect.

Many aspects of Amendment III are similar in nature to Amendment II, which was approved by the Commission in Docket 89-002 on August 5, 1996. As such, the concerns expressed in the ALJ Report and the Commission Order in that proceeding are, therefore, applicable to this proceeding. Copies are attached as an exhibit to this report.

Our investigation has been limited to reviewing the summary information provided by GPA with its request for approval. However, transfer of the additional assets appears to be consistent with GPA's obligation to operate the Island Wide Power System. We do note that Amendment III includes the transfer of real property (i.e., approximately six (6) acres associated with the old Agana power plant site). CERCLA §120(h) (42 USC 9620(h)) governs the transfer of any real property by the United States. It will require that Navy undertake an environmental assessment and perform remediation if the assessment finds that the property contains environmental contaminants. A copy of this statute is attached for your convenient reference. GPA in its CSA Amendment III filing was silent as to of any previous environmental assessments conducted on this property, so we are not aware of what problems, if any, may have been previously identified or how any such problems may have been dealt with.

It is important that no transfer of assets to GPA expose it and its ratepayers to any potential liabilities that may exist now or in the future as a result of past uses. Therefore, we would recommend that approval of Amendment III be conditioned upon the following:

1. GPA provide the Commission with a copy of the third-party environmental assessment conducted for the United States and Navy, which should include an assessment of the soil and related conditions of the property and also identify any mitigation measures which have already been implemented or will be need to be implemented prior to the actual transfer to GPA.
2. GPA provide the Commission with a covenant executed by the United States and Navy warranting that the mitigation measures identified in the environmental assessment have been successfully completed or that no mitigation measures were necessary as a result of the third-party environmental assessment. (We believe this is already a requirement of CERCLA §120(h)). (Such a covenant may be included in the deed of transfer of other transfer documents.)
3. GPA obtains from the United States and Navy a survey of the property, which clearly identifies the property and any easements or infringements. If this survey is not included as an exhibit to the deed transferring the real property identified in Table 4 of the CSA, a copy should be provided to the Commission.
4. CERCLA §120(h) requires that the United States and Navy include certain specific disclosures in any deed transferring real property. The deed and all its enclosures including the disclosures required under CERCLA §120(h) should be submitted for ALJ's technical review and determination of compliance with the CSA, in the same manner as was required with regard to the assets transferred under Amendment II.
5. The instruments transferring legal title for all assets to be transferred to GPA under Amendment III should be submitted for the ALJ's technical review.
6. Navy's approval and execution of Amendment III.

Subject to the above recommended conditions, which are designed to ensure that GPA and its ratepayers are not unreasonably assuming any risk of liability, GCG should recommend Amendment III to the CSA be approved by the Commission.

GPA has been opm. the APP under lic. agree.

BEFORE THE PUBLIC UTILITIES COMMISSION

FOR THE TERRITORY OF GUAM

MATTERS PERTAINING TO THE CUSTOMER SERVICE AGREEMENT BETWEEN GUAM POWER AUTHORITY AND THE U.S. NAVY) DOCKET NO. 89-002

DECISION AND ORDER

On November 20, 1995, GPA petitioned the Commission in this ongoing docket to review and approve a transition plan under the terms of the June 1, 1992 customer service agreement [CSA] between Guam Power Authority [GPA] and Navy. The CSA provides that it will terminate on the fifth anniversary of its effective date unless the parties implement a transition plan, subject to Commission approval, by which Navy's joint use power system assets are transferred to GPA. On March 1, 1995, the Commission approved a proposed CSA Amendment II, which would authorize an expedited transition under the CSA. Amendment II was approved by the Government of Guam on September 29, 1995 by P.L. 23-40. Amendment II still awaits formal Navy approval. A "determination of transfer" by GPA and Navy under CSA §7.4 is an unsatisfied CSA precondition to transition.

As recounted by the August 2, 1996 administrative law judge's [ALJ] report, Georgetown Consulting Group, serving as regulatory consultant to the Commission, GPA and Navy have undertaken a collaborative review of the complex arrangements by which the Navy assets would be transferred to GPA. The Commission's record of this review, which includes independent studies of the condition and environmental status of the assets and the documents of transfer, are scheduled in Appendix D to the ALJ report. GPA and Navy recommend that the transition plan be approved by the Commission. Georgetown also recommends approval, but subject to conditions.

The Commission emphasizes ALJ's observation [ALJ report page 2] that regulatory review is not a surrogate for an independent examination by the GPA board of directors of the business decisions reflected in negotiated transition documents.

The Commission, having carefully reviewed the ALJ report and the documents of record, after discussion at a meeting called and convened for that purpose, and for good cause shown, **ORDERS THAT:**

Pursuant to the authority vested by CSA § 3.10.1, the Commission approves the transition plan, subject to the following conditions:

1. Navy approves, executes and files CSA Amendment II with the Commission.

2. Navy and GPA execute and file with the Commission a determination of transfer pursuant to CSA §7.4.

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3. The July 30, 1996 Navy letter to Ms. Baird [see Appendix B to the ALJ report] represents a Navy commitment as to the intent and meaning of certain provisions of the transition lease agreement, notwithstanding Navy's curious categorization of its letter as "unofficial" and "non-binding".

4. The transition lease and deed, in final form with all enclosures and exhibits attached, are submitted for ALJ's technical review and determination of compliance with CSA §3.10.

5. GPA files with the Commission a certificate from its insurance company that it is ready, willing and able to issue the insurance required by transition lease § 12.

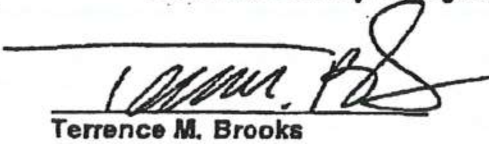
6. The draft joint condition report on generation assets is amended, in form acceptable to the ALJ, regarding the current condition and status of the Piti Power Plant.

7. The report on asbestos containing material [ACM], as required by transition lease § 8.14, is filed with the Commission for staff review and the ALJ, after comment from Navy, GPA and Georgetown, determines that lease §§ 8.13 and 8.14 do not contravene CSA § 3.10.4.

8. The Commission's ALJ certifies that the above 7 conditions have been satisfied.

All rulings and orders of the ALJ during the course of this docket are confirmed and ratified. All motions not heretofore granted or denied are denied. No other matters require discussion. GPA shall pay for the Commission's expenses in this proceeding.

Dated this 5th day of August, 1996.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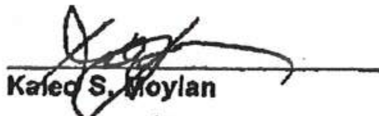
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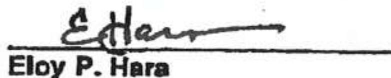
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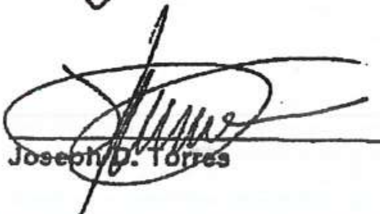
Joseph D. Torres

BEFORE THE PUBLIC UTILITIES COMMISSION

FOR THE TERRITORY OF GUAM

MATTERS PERTAINING TO THE)
CUSTOMER SERVICE AGREEMENT)
BETWEEN GUAM POWER AUTHORITY) DOCKET NO. 89-002
AND THE U.S. NAVY)

ADMINISTRATIVE LAW JUDGE REPORT

Background

The Customer Service Agreement [CSA] between Guam Power Authority [GPA] and the U.S. Navy [effective June 1, 1992 per P.L. 21-111], mandated that within five years of the effective date either the CSA would be terminated or the parties would implement a CSA transition plan for transferring Navy's joint use power system assets to GPA [the "transition"]. On March 1, 1995 the Commission approved a proposed CSA Amendment II, which would authorize an expedited transition under the CSA. Amendment II was approved by the Government of Guam on September 29, 1995 by P.L.23-40. Amendment II still awaits formal Navy approval as well as a Navy "determination of transfer" under CSA §7.4, which is a CSA precondition to transition.

On November 20, 1995, GPA petitioned the Commission to begin its review of draft elements of a transition plan, the principal components of which are documents of property transfer, reports on the condition and environmental status of the transfer property and protocols for GPA's assumption of Navy's joint use generation and transmission services. A copy of the testimony of GPA consultant Greg Tarasar, which accompanied the November GPA petition and which provides a useful overview of the transition plan, is enclosed as **Appendix A.** CSA § 3.10.1 provides that the transition plan will not be effective until approved by the Commission.

As a result of administrative proceedings and conferences over the past seven months, GPA and Navy have amended the proposed transition plan documents to address concerns of the Georgetown consulting team. GPA, Navy and Georgetown [with reservations] now jointly recommend Commission approval of the transition plan. Recent correspondence, which recounts the development of this consensus, is attached as **Appendix B**. The Georgetown reservations, which are stated in the Blair July 31, 1996 letter [see Appendix B] are discussed below.

The purpose of this administrative law judge [ALJ] report is to review the transition plan and to propose a Commission order, by which it would be approved with conditions. For convenient reference, copies of significant CSA background documents, including the CSA Amendments, public laws, and Commission Orders, are enclosed as **Appendix C.**

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The appropriate scope and standard of review, which the Commission should apply in evaluating the transition plan, was stated in the ALJ's April 24, 1990 report on CSA [at p. 4-5]:

> This review should include an evaluation of the reasonableness, necessity and prudent business judgment reflected by the CSA [transition plan] and whether its terms are in compliance with law. The review should involve an analysis not only of the CSA [transition plan] as a whole, but also of issues, as raised by the parties or the Commission, which present concerns about its component parts.
>
> In conducting this review, the Commission should be mindful of the legitimate managerial discretion which GPA has exercised in negotiating the CSA [transition plan]. This deference is shown by a rebuttable presumption that the decisions and determinations of GPA management in negotiating the CSA are reasonable and prudent. This presumption shall remain in force until the introduction of evidence which, in the Commission's judgment, challenges the presumption, whereupon it shall cease to exist. GPA has the obligation in this proceeding of persuading the Commission by a preponderance of the evidence [i.e., evidence which is of greater weight or more convincing than evidence which is offered in opposition to it] that the CSA [transition plan] and its terms are reasonable, necessary, prudent and in compliance with law. Accordingly, GPA's risk of non-persuasion arises from those specific challenges to the CSA [transition plan], which have been raised by evidence in the record which overcome the threshold presumption in GPA's favor.

Although the parties are in substantial agreement that the transition plan should receive Commission approval, the above standard of review is relevant to several concerns about the transition lease agreement, which are discussed below. It is worth emphasis that regulatory review is not a substitute for an independent examination by GPA's board of directors regarding the business prudence of the transition arrangements, which have been negotiated by the GPA management team. In many instances during the regulatory review process, Commission staff deferred to the business judgment of the GPA negotiation team, notwithstanding material concerns about such judgment. A record of these concerns is contained in filed correspondence.

The Transition Plan

The Commission has, in earlier proceedings in this docket, identified two principal areas of regulatory interest regarding the transition plan: i] personnel transfers; and ii] property transfers including environmental risk. Georgetown's review of the transition plan has been substantially focused on these two areas. The documents which comprise the Commission record regarding the transition plan are listed in **Appendix D.**

1. Navy Personnel.

CSA §3.9.2 provides 56 Navy PWC employees a right to GPA employment upon the transfer of the Piti power plant [see **Appendix E**]. 51 Navy employees have exercised this right. There is a consensus that these trained employees will be a useful

addition to the GPA generation staff. These employees must be formally transferred to GPA in advance of September 30, 1996 or risk loss of early retirement benefits. This deadline now drives the transition timetable.

2. Property transfers.

a. Overview.

It is the intent of the CSA that the transition plan will cause the transfer of all Navy joint use assets to GPA. Federal law prohibits Navy from transferring title to any environmentally contaminated asset prior to remediation, unless the cause of contamination is GPA. Accordingly, Navy transfer assets can be divided into three baskets:

i] assets which are not contaminated and will be transferred to GPA in fee;

ii] assets which were contaminated by Navy and will be provisionally transferred to GPA by lease, with title to follow when contamination is remediated by Navy; and

iii] assets which were contaminated by GPA, title to which will be transferred to GPA, with GPA assuming the responsibility for cleanup.

The allocation of Navy assets into these three groups is the result of the Environmental Baseline Survey [EBS], the Finding of Suitability to Lease [FOSL] and the Finding of Suitability to Transfer [FOST], all of which have been prepared by the independent environmental consulting firm of Ogden Environmental and Energy Services Co. **Appendix F** shows the allocation of the Navy transfer assets into these three baskets. Georgetown has reviewed the EBS, the FOSL and the FOST and has expressed comfort about the appropriateness of this categorization of Navy assets and about GPA's responsibility under Federal law to remediate environmental hazards in category "iii" assets for which it has been "sole operator".

b. The Deed.

The deed form, by which assets in categories "i" and "iii" will be transferred to GPA, has not yet been filed with the Commission for review. In accordance with CSA Amendment I [§3.10.2], the deed, regarding category "i" assets, should contain the covenant "All remedial action necessary to protect human health and the environment with respect to any hazardous substance remaining on the property has been taken before the date of transfer". The Commission should direct the ALJ to confirm that the deed satisfies this CSA requirement.

c. The Lease.

The lease form, by which the assets in category "ii" will be leased to GPA, is enclosed in **Appendix G.** It is the intention of GPA and Navy that the 50 year lease be terminated as soon as Navy remediation efforts are completed. Navy has pledged that it will undertake these efforts in an expeditious manner [see July 30, 1996 Navy letter at page 2 in Appendix B].

The principal focus of Georgetown's review of the transition plan has been on the lease. Mr. Blair's July 31, 1996 letter [Appendix B] recounts these efforts and raises the following concerns, which deserve discussion:

i. Adequate property descriptions of the transfer assets have not yet been prepared. Navy is now in the process of surveying the assets. The parties have agreed that survey maps will eventually replace the interim general descriptions. Commission staff should be directed to monitor this process.

ii. Georgetown expressed concern that the lease might be construed as contractually limiting Navy's responsibility for remediating environmental problems, which occurred during its watch. Navy's July 30, 1996 letter [Appendix B] provides comfort that this is not the intent of the lease. However, the Navy letter limits its comfort as being "non binding". The Commission should insist that Navy stand behind its representation.

iii. Georgetown expressed concern [see Blair letters dated 7/26/96 and 7/31/96 in Appendix B] that GPA has agreed in lease §11.1 & .2 to indemnify Navy for its comparative negligent activities on the transferred property unless Navy is 100% responsible for the negligence. For example, if negligent injury occurs while Navy is conducting clean up on transition leased property and it is determined that GPA is 5% responsible and Navy is 95% responsible, GPA has agreed under the lease to assume full responsibility for Navy's share of the liability. The reasonableness of this provision is suspect and is ameliorated only by the fact that GPA is required under the lease [§12] to maintain comprehensive general liability coverage for both GPA and Navy, which would cover this risk. The Commission should condition its approval of the lease upon GPA filing a certificate from its insurer, which confirms the availability of this insurance.

iv. The JCR [joint condition report] is a significant document in that it benchmarks the condition of the transition assets upon transfer. Navy expects that if GPA is required to return the assets under the terms of the lease, that they be in at least the same condition. Georgetown expressed concern that the JCR was deficient in its description of the current condition of the Piti power plant. Navy, GPA and Georgetown have been working on revised language which would resolve this concern. The Commission should condition its approval of the plan upon ALJ's certification that the JCR has satisfactorily addressed the Georgetown concern.

v. A matter briefly addressed in Mr. Blair's July 31, 1996 letter [at page 4 in Appendix B] is the report on asbestos containing material [ACM]. The ACM report has not yet been filed with the Commission for review. GPA is prepared to agree under the lease [§8.14] to assume all risk for asbestos contamination, even though caused by Navy, which is not identified in the ACM report. GPA is also prepared under the lease to assume the responsibility for asbestos remediation due to deterioration of asbestos installed and left in place by Navy. These are very troubling lease provisions, create a presently unquantified economic risk to GPA and appear to conflict with CSA Amendment I §3.10.4, which provides that "any additional remedial action found to be necessary after the date of such transfer shall be conducted by Navy". Guam law is quite clear that no deviation from the CSA, as amended, can occur without statutory sanction [see P.L. 21-112:4 in Appendix C]. The Commission should condition its approval of the transition plan upon Georgetown's review and comment on the ACM and further upon further expedited proceedings under ALJ oversight to examine the validity of GPA assuming the responsibility for asbestos, which subsequently deteriorates.

Recommendation

For the reasons stated above, the undersigned recommends that the Commission consider and adopt the Decision and Order, attached as **Appendix H.**

Respectfully submitted on August 2, 1996

Harry M. Boertzel
Administrative Law Judge

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

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Michael D. Dirmeier

Edward R. Margerison
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April 16, 2007

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

Re: FY 2006 Contract Review Underground FEMA Projects – Docket 94-04

Dear Harry:

In your regulatory letter of March 29, 2007 you required both GPA & GCG to provide further information with regard to the Airport & GMHA underground projects as follows:

> **5. Airport and GMHA Underground Projects.**
>
> By letter dated February 28, 2007, GCG outlined the additional information *[represented by outstanding discovery requests]*, which it required to issue a report on this petition. GPA should respond to this letter not later than April 6, 2007. GCG's report should be filed not later than April 27, 2007. GPA may file responsive comments on or before May 7, 2007.

GPA did respond to our letter and provide the requested information. We have reviewed the responses and reach the following conclusions:

1. The overall costs of the projects have not changed from our last review and the portion to be financed by FEMA is still the same as shown below. The remaining portion to be funded by GPA is identified as being funded by excess bond funds rather than the $10 million line of credit that GPA had intended to establish. It is our understanding that GPA has not yet secured the $10 Million line of credit.

	Project	Total Cost	FEMA Funded	Excess Bond Funds	Short Term Debt
1.	Macheche to San Vitores 34.5 kV Underground Lines Conversion	5,482,101	3,596,465	1,885,636	0
2.	Macheche to GAA 34.5 kV Underground Line Conversion	3,670,796	1,356,753	2,314,043	0

2. The start and completion dates for the projects are stated to be as follows:

	Project	Anticipated Start Date	Anticipated Completion
1.	Macheche to San Vitores 34.5 kV Underground Lines Conversion	08/07	09/08
2.	Macheche to GAA 34.5 kV Underground Line Conversion	09/07	10/08

3. We have reviewed the most recent reconciliation of excess bond funds that has been provided to us by GPA and we are satisfied that the $4.2 Million required above to be funded by GPA can indeed be funded through excess bond funds that are available. The most recent reconciliation that we have received from GPA on the available bond proceeds shows that as of January 31, 2007 GPA only had $657 thousand of "excess" bond funds. In a recent response to your request regarding funding of the under-recovery LEAC balance (due in large part to the delay in implementation of the LEAC factor, as well as significant costs related to the fuel hedging that was in place) GPA notes that it used $4.5 million of the excess proceeds. This is slightly below the level approved by the PUC in its February 2007 order. GPA should be in the process of repaying that fund at the rate of $382 thousand per month starting in February 2007. At that rate, there should be sufficient funds to begin payments on the projects with further contributions from LEAC revenues to the excess bond fund restoring sufficient funds to meet the current cost estimates.

4. GPA has represented that FEMA consultants have conducted an on-site review of the projects in January 2007 and are preparing revised benefit cost analyses (BCA) for the projects. While it is not clear whether the table below is the latest BCA results, FEMA BCA calculations are as follows:

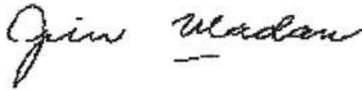
	Project	BCA
1.	Macheche to San Vitores 34.5 kV Underground Lines Conversion	13.01
2.	Macheche to GAA 34.5 kV Underground Line Conversion	37.94

5. GPA expects the Notice to Proceed (NTP) from FEMA to be granted shortly.

Based on the above, we recommend that the PUC approve the projects subject to GPA receiving the FEMA funding in the amount indicated and receiving the Notice to Proceed. GPA should notify the PUC of receipt of the funding and the NTP. In addition, GPA should advise the PUC on whether it is continuing to seek the $10 million line of credit and notify the Commission once the line of credit has been obtained. Should the Line of Credit never be obtained, GPA should come back to the PUC on how it is to finance the other items for which line of credit funding was needed and approved.

If you wish to discuss the above, please do not hesitate to call.

Cordially,



Jamshed K. Madan

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

BEFORE THE GUAM PUBLIC UTLITIES COMMISSION

GUAM POWER AUTHORITY
REGULATORY REVIEW DOCKET 02-4

ORDER

[Shell fuel contract ratification, TCP interest, Regulatory asset, CSA amendment, Macheche underground projects]

The Guam Public Utilities Commission *[PUC]* having carefully reviewed and discussed the May 21, 2007 report of its administrative law judge *[ALJ]* regarding five Guam Power Authority *[GPA]* petitions for regulatory relief, for good cause shown and on motion duly made, seconded and carried by the affirmative vote of the undersigned commissioners **HEREBY ORDERS THAT:**

1. GPA's petition for ratification of its diesel fuel contract with Shell Guam, Inc. dated November 29, 2006 is approved, subject to the following conditions, which are contained in the May 24 2007 stipulation between GPA and Georgetown Consulting Group *[GCG}:*

   a. The contract shall be amended, effective June 1, 2007, pursuant to section 4 of the stipulation. The form of the amendment shall be submitted for ALJ's review and approval.

   b. GPA shall be permitted to recover through the LEAC $0.065 per gallon for the premium for the Tenjo Vista plant. The balance of this premium shall not be recoverable through the LEAC; provided, however, that GPA may recover through the LEAC the full amount of the Tenjo premium until June 1, 2007.

   c. The GPA contract review protocol is hereby amended in form attached to this order. In addition, GPA shall provide PUC with a determination pursuant to section 3102(c)(1) of Chapter 2, Division 4, Title 2 of the *Guam Administrative Rules and Regulations* in each event that it determines to award a contract after receiving only a single bid.

2. GPA's February 23, 2007 petition for authorization to recover $1.61 million dollars in taxable commercial paper interest expense under the LEAC is denied.

3. The May 24, 2007 stipulation between GPA and GCG, which proposes settlement terms for GPA's March 2, 2007 petition for a regulatory asset is approved. PUC hereby establishes a $4.5 million dollar regulatory asset under Financial Accounting Standard 71 and authorizes GPA to recover the asset, subject to the terms of the stipulation, from the self-insurance fund established by PUC orders dated December 21, 1992 and March 3, 1995. The establishment of this regulatory asset is in full discharge of any and all uninsured GPA loss claims through August 2004. The restriction established by PUC's February 1, 2007 order on GPA accessing the self-insurance fund is rescinded.

4. GPA's April 5, 2007 petition for regulatory approval of amendment # 3 to the Customer Service agreement between GPA and the United States Navy is approved. GPA shall comply with the conditions set forth in GCG's September 10, 2002 report on the subject of this amendment.

5. GPA's September 14, 2006 petition for regulatory approval to convert the Macheche to San Vitores and Macheche to Guam Airport 34 kV transmission lines to underground facilities is approved. GPA is authorized to use up to $4.12 million in excess bond funds to supplement FEMA funds for these projects.

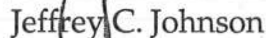
Dated this 24th day of May 2007.

Terrence M. Brooks

Joseph M. McDonald

Edward C. Crisostomo

Filomena M. Cantoria



Rowena E. Perez

Jeffrey C. Johnson

BEFORE THE
PUBLIC UTILITIES COMMISSION OF GUAM

IN THE MATTER OF:	DOCKET 02-04
THE PETITION OF THE GUAM POWER AUTHORITY TO ESTABLISH A REGULATORY ASSET	STIPULATION RE ESTABLISHMENT OF REGULATORY ASSET FOR RECOVERY OF UNREIMBURSED COSTS FROM PRIOR NATURAL DISASTERS

GEORGETOWN CONSULTING GROUP, INC. ("GCG"), the independent rate consultant to the **GUAM PUBLIC UTILITIES COMMISSION** ("PUC"), and the **GUAM POWER AUTHORITY** ("GPA"), through their counsel of record, stipulate and agree as follows:

1. GPA filed a petition with the PUC to establish a regulatory asset under Financial Accounting Standard ("FAS") 71 to allow GPA to recover from its self-insurance surcharge fund losses from natural disasters that have been determined to be ineligible by the Federal Emergency Management Authority ("FEMA"). FAS allows a regulatory body such as the PUC to establish a balance sheet account for cost items which the regulatory body will allow a utility to recover over time.

2. GPA initially sought a regulatory asset in the amount of $13,724,243. The amount of the unreimbursed costs claimed by GPA was subsequently reduced to $11,969,563. As the result of discovery and ongoing discussions between GCG and GPA, the amount of the unreimbursed costs claimed by GPA was further reduced to $10,916,997.68, as set forth on the spreadsheet attached hereto as Attachment A.

3. GCG filed a report with the PUC recommending that the PUC defer consideration of GPA's petition pending further investigation.

4. GCG and GPA have been unable to reach agreement as to which of the unreimbursed costs claimed by GPA should be recoverable from the self-insurance reserve fund. GCG has taken the position that GPA should not be allowed to recover costs in excess of the FEMA approved damage assessment until further review by the PUC. GPA maintains it should be allowed to recover costs disallowed by FEMA or not eligible for reimbursement under FEMA regulations or policies, as well as costs incurred from disasters for which no FEMA claim was made.

5. Notwithstanding GCG's and GPA's lack of agreement, following further discussion under the supervision of the PUC's Administrative Law Judge, GPA and GCG have reached agreement as set forth below.

6. GPA and GCG hereby agree and jointly recommend that the PUC take the following actions:

(a) The PUC should immediately rescind its February 2007 order prohibiting GPA from using any of the funds in GPA's self-insurance reserve fund.

(b) The PUC should establish a regulatory asset under FAS 71 in the amount of Four Million Five Hundred Thousand Dollars ($4,500,000) for recovery of unreimbursed and uninsured costs and expenses claimed by GPA for all prior natural disasters listed or reflected on Attachment A, up to and including Typhoon Chaba. No additional recovery for such prior natural disasters should be allowed.

(c) The source of payment for the regulatory asset should be the self-insurance reserve fund. GPA should be allowed to withdraw funds from the self-insurance reserve provided, however, that the amount in the fund should not be drawn down for this purpose to less than $2,000,000, as is the current protocol. The current protocol for implementing and suspending the insurance surcharge should remain in effect.

(d) GPA should be directed in its next base rate proceeding to include in its rate petition a proposal to increase the limit of the self-insurance reserve fund to reflect the greater exposure GPA now faces due to uninsured or uninsurable losses and changes in FEMA reimbursement policies.

(e) As part of its rate petition, GPA should be directed to propose detailed and specific guidelines for determining what types and categories of costs and expenses should be eligible for reimbursement from the self-insurance reserve fund. GPA's proposed guidelines will be subject to review and comment by GCG in the rate case and should be decided upon by the PUC in its rate order.

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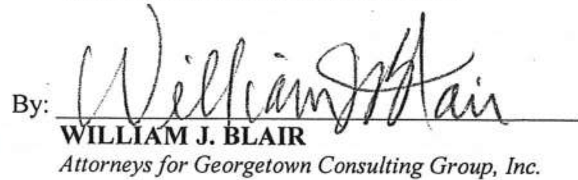
(f) Pending approval by the PUC of specific guidelines governing reimbursement from the self-insurance reserve fund, GPA should be allowed to recover from the fund unreimbursed and uninsured costs for natural disasters subsequent to Typhoon Chaba, as well as any new events that may occur prior to the establishment of such guidelines. Any interim withdrawals from the fund for such events shall be subject to review and adjustment by the PUC in accordance with the approved guidelines.

GEORGETOWN CONSULTING GROUP, INC.

By: **BLAIR STERLING JOHNSON MARTINEZ & LEON GUERRERO**
A PROFESSIONAL CORPORATION

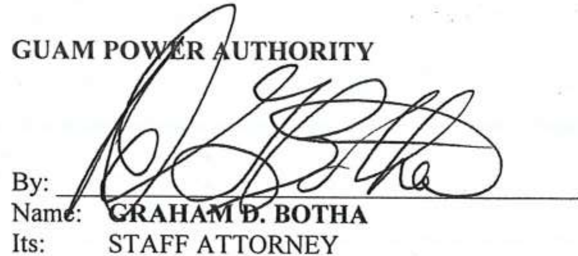
DATED: MAY 24, 2007



By: ______________________
WILLIAM J. BLAIR
Attorneys for Georgetown Consulting Group, Inc.

GUAM POWER AUTHORITY

DATED: MAY 24, 2007



By: ______________________
Name: **GRAHAM D. BOTHA**
Its: STAFF ATTORNEY

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G:\WORDDOC\GCG\PLD\132-STIPULATION RE ESTABLISHMENT OF REGULATORY ASSET FOR RECOVERY OF UNREIMBURSED COSTS FROM PRIOR NATURAL DISASTERS (DOCKET 02-04)(V2).DOC

ATTACHMENT A

GUAM POWER AUTHORITY
ANALYSIS OF TYPHOON CHARGES

Description	Chataan Amount	Chaba Amount	Halong Amount	Nockten Amount	Tingting Amount	Earthquake 2002 Amount	Earthquake 2001 Amount	Total Other Events	Pongsona Amount	Grand Total
Labor	$ 3,661,258.78	$ 381,839.70	$ 339,380.85	$ 99,471.04	$ 194,517.06	$ 80,844.90	$ 175,130.58	$ 4,932,442.91	$ 7,947,841.41	$ 12,880,284.32
Materials	743,667.61	52,586.37			45,734.95	9,366.23	16,704.59	$ 868,059.75	$ 6,967,711.74	$ 7,835,771.49
Vehicle Usage	489,386.00	18,713.00	2,472.00		39,503.00	945.00	1,616.00	$ 552,635.00	$ 185,904.00	$ 738,539.00
Contracts/Purchases	4,963,365.65	39,142.50			56,750.64	9,455.00	120,722.62	$ 5,189,436.41	$ 10,204,560.69	$ 15,393,997.10
Overhead/Other Journal entries	412,060.92	45,523.64	23,804.60	1,922.49	42,954.56	21,676.36	46,825.14	$ 594,767.71	$ 2,509,754.42	$ 3,104,522.13
Total Charges	$ 10,269,738.96	$ 537,805.21	$ 365,657.45	$ 101,393.53	$ 379,460.21	$ 122,287.49	$ 360,998.93	$ 12,137,341.78	$ 27,815,772.26	$ 39,953,114.04
Less: Overhead Charges disallowed by FEMA ✓ Overhead includes clearing accounts allocation such as store, garage, T&D Admin, Engineering Admin & A&G capitalized → ?	809,766.19	-	-	-	82,457.56	-	48,441.14	$ 940,664.89	2,509,754.42	$ 3,450,419.31
Capitalized costs Includes transformers purchased but were not installed	970,910.08							$ 970,910.08	-	$ 970,910.08
Excess Inventory items that were directly charged to Typhoon Chataan and subsequently reclassified to inventory	1,625,818.74							$ 1,625,818.74		$ 1,625,818.74
Total FEMA claim (handwritten: Proj Worksheets)	$ 6,863,243.95				$ 297,002.65	$ 122,287.49	$ 312,557.79	$ 8,599,948.07	$ 25,306,017.84	$ 33,905,965.91
Less: Disallowed costs ✓ Ineligible costs on various PW FEMA Claim	861,570.66				15,877.33		-	$ 877,447.99	2,714,479.12	$ 3,591,927.11 ✓
✓ Admin. Direct Labor Costs deemed ineligible by FEMA	1,269,961.72				38,943.36		44,063.94	$ 1,352,969.02	3,843,870.71	$ 5,196,839.73 ✓
Unaccounted for difference	26,191.61						(5,182.76)	$ 21,008.85	65,610.62	$ 86,619.47
Total FEMA Eligible Amount	$ 4,705,519.96				$ 242,181.96	$ 122,287.49	$ 273,676.61	$ 6,348,522.21	$ 18,682,057.39	$ 25,030,579.60
Less: GPA Share	470,552.00	$ 537,805.21	$ 365,657.45	$ 101,393.53	60,545.49	122,287.49	68,419.15	$ 1,726,660.32	1,868,205.74	$ 3,594,866.06
Total FEMA share	$ 4,234,967.96				$ 181,636.47	$ -	$ 205,257.46	$ 4,621,861.89	$ 16,813,851.65	$ 21,435,713.54
Amount Collected from FEMA	$ 4,412,507.70	$ -			$ 181,636.47		$ 205,257.46	$ 4,799,401.63	16,287,900.23	$ 21,087,301.86
Receivable from FEMA	(177,539.74)	0	0	0	0	0	0	$ (177,539.74)	525,951.42	$ 348,411.68
Total FEMA share	$ 4,234,967.96	$ -	$ -	$ -	$ 181,636.47	$ -	$ 205,257.46	$ 4,621,861.89	$ 16,813,851.65	$ 21,435,713.54
Difference	0.00	-	-	-	-	-	(0.00)	0.00	0.00	0.00
Regulatory Asset:										
Other Events with no FEMA Claim		$ 537,805.21	$ 365,657.45	$ 101,393.53		122,287.49		$ 1,127,143.68		$ - 1,127,143.68
Total FEMA Claim	$ 6,863,243.95				$ 297,002.65		$ 312,557.79	$ 7,472,804.39	$ 25,306,017.84	$ 32,778,822.23
Less: FEMA Reimbursement	$ 4,234,967.96	0	0	0	$ 181,636.47	0	$ 205,257.46	$ 4,621,861.89	$ 16,813,851.65	$ 21,435,713.54
GPA Responsibility	$ 2,628,275.99	$ 537,805.21	$ 365,657.45	$ 101,393.53	$ 115,366.18	$ 122,287.49	$ 107,300.33	$ 3,978,086.18	$ 8,492,166.19	$ 12,470,252.37
Add: Overhead Charges disallowed by FEMA Overhead includes clearing accounts allocation such as store, garage, T&D Admin, Engineering Admin & A&G capitalized	$ 809,766.19	0	0	0	$ 82,457.56	0	$ 48,441.14	$ 940,664.89	$ 2,509,754.42	$ 3,450,419.31 ✓
Less: Self Insurance Fund	$ 2,503,674.00	$ -	$ -	$ -	$ -	$ -	$ -	$ 2,503,674.00	$ 2,500,000.00	$ 5,003,674.00
Total Regulatory Asset	$ 934,368.18	$ 537,805.21	$ 365,657.45	$ 101,393.53	$ 197,823.74	$ 122,287.49	$ 155,741.47	$ 2,415,077.07	$ 8,501,920.61	$ 10,916,997.68

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

CONTRACT REVIEW PROTOCOL FOR GUAM POWER AUTHORITY))) ADMINISTRATIVE) DOCKET

ORDER

Pursuant to its authority under 12 GCG 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; provided, however, that no regulatory review shall be required for blanket job orders and line extensions.
   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, etc. in the excess of $1,500,000 and any use of said funds;
   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 l(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. In the event GPA receives only one bid for a procurement, which is subject to this contract review protocol, GPA shall obtain prior CCU approval of the prudence of accepting the single bid. GPA shall file with PUC the documentation regarding this CCU prudence review within ten days of CCU action. PUC reserves the authority, after monitoring this prudence review process to reconsider the need for additional regulatory oversight over single bid procurements. In addition, in the event GPA determines to award a contract after receiving only a single bid, GPA shall provide PUC with the determination made by GPA pursuant to section 3102(c) (1) of Chapter 2, Division 4, Title 2 of the Guam Administrative Rules and Regulations, relating to single bid procurements.

6. 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.

7. 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 the Consolidated Commission on Utilities [CCU], which confirms that after careful review of the documentation described in subparagragh (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.

8. 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.

9. 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.

10. GPA shall not incur expenses for PUC approved contracts and obligations in excess of 20% over the amount authorized by the Commission 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.

11. GPA shall file with PUC monthly financial reports within five working days of presentation of monthly financial reports to it governing body.

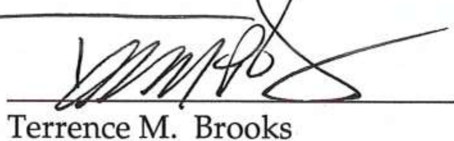
12. To the extent GPA submits a filing to PUC under this order which PUC staff believes in incomplete or deficient, it shall notify GPA and the PUC with in 15 calendar days thereof with specific indication of the alleged incompleteness or deficiency.

13. 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.

14. 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.

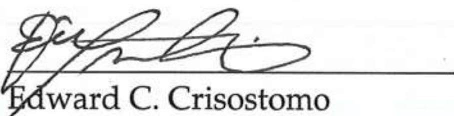
15. PUC's administrative law judge is authorized to interpret the meaning of any provision of this order, in furtherance of the contract review process.

Dated this 26th day of May, 2007.



Terrence M. Brooks

Joseph M. McDonald



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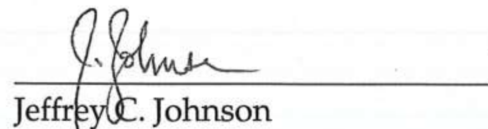

Jeffrey C. Johnson

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April 13, 2007

Harry M. Boertzel, Esq.
Administrative Law Judge
The Guam Public Utilities Commission
Suite 207, GCIC Building
Hagatña, Guam 96932

Re: Docket No. 05-1: Implementation Standards

Dear Judge Boertzel:

As requested in your e-mail message dated March 23, 2007, this is the report of Georgetown Consulting Group proposing standards for implementation of interconnection agreements (ICA). These standards may be used by the Commission in facilitating future ICA proceedings and evaluating whether or not good faith efforts have been made by the parties under such agreements.

Regulatory background

Under both the Guam Telecommunications Act of 2004 and the FCC orders implementing the federal Telecommunications Act of 1996, the provisions of an ICA are to be implemented in good faith. Of necessity, this would include expeditious implementation and nondiscriminatory behavior on the part of the incumbent.

To prevent discriminatory behavior, the FCC adopted general rules while relying on the state regulatory agencies to develop more specific requirements:

> We expect that the states will implement the general nondiscrimination rules set forth herein by adopting, *inter alia*, specific rules determining the timing in which incumbent LECs must provision certain elements, and any other specific conditions they deem necessary to provide new entrants, including small competitors, with a meaningful opportunity to compete in local exchange markets. The states will continue to gain expertise in connection with issues relating to just, reasonable, and nondiscriminatory access and provision of unbundled network

elements. We expect to turn to the states, and rely on the expertise they develop in this area, when we review and revise our rules as necessary."[1]

We have reviewed the websites of most of the Public Utilities Commissions (PUCs) in the US to find specific standards on implementation of ICAs. In general, we found that the majority of PUCs did not post such standards within their regulatory rules. Instead, they developed specific standards during their reviews of interconnection agreements or within the context of Section 271 applications by the Regional Bell Operating Companies (RBOCs). As you know, Section 271 contained a checklist of requirements that the RBOCs had to meet in order to receive permission to enter the long distance market. The RBOC proceedings involved large volumes of documents and regulatory orders and spanned several years. Due to the relative size of the RBOCs and the complexity of issues they faced, we did not examine any of these documents in depth to extract rules that might be applicable in Guam. Nonetheless, we did find useful documentation on several PUC websites, notably Arizona, Hawaii, Oklahoma, Texas and Utah. Although the majority of PUCs did not post their standards in their regulatory rules, we urge the Guam PUC to do so. The Commission has arbitrated only one ICA and questions and issues, including allegations of bad faith, are still being raised by the party requesting interconnection. The experience gained through this arbitration supports having a clear set of standards in place for use in settling future disputes.

Attachment 1 lists proposed rules regarding ICA implementation standards. The Appendix to Attachment 1 contains definitions of terms used in the proposed rules. These definitions were obtained primarily from the Utah Administrative Code and were supplemented with definitions from the rules of other PUCs. Attachment 2 is a cross-reference of each of the rules we propose to the source rule from which it was adopted.

Proposed Rules – Description and Rationale

Rule 1 is a general statement of purpose and was based on our understanding of the objectives you envisioned for these implementation standards.

Rule 2(a) is a broad statement of interconnection requirements under the federal Telecommunications Act of 1996 and serves as an introduction. Rule 2(b) brings in the FCC's interconnection rules by reference. This is a common practice in most jurisdictions although some PUCs such as Arizona and Oklahoma, paraphrase the FCC rules at length. In some cases, these PUCs greatly expand on the federal rules. Rule 2(b) also establishes the order of precedence of federal and local rules. Rule 2(c) requires the cooperation of all parties to the ICA in developing a process for handling inter-carrier operations support functions.

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[1] *In the Matter of Implementation of the Local Competitive Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order (First Local Competition Order), FCC 96-325 at ¶ 310 (released November 5, 1999)

Rule 3 establishes the relationship between these standards and any standards contained within the ICA. Its intent was to reduce the possibility of conflict between these documents.

Rule 4 covers resolution of any dispute that cannot be settled under the dispute resolution clauses in the ICA, which specify that one remedy to a dispute is to request an appropriate proceeding before the Commission. The language in this rule was adapted from the Oklahoma PUC rules. Very similar language was also found in Texas rules.

Rule 5 was patterned on the Administrative Rules of Hawaii. It requires both parties to an ICA to implement its provisions in good faith and prohibits certain acts which are clear examples of failure to act in good faith. Texas has a similar rule. These examples do not limit the scope of the rule. Violation of other rules may also constitute failure to act in good faith.

Rule 6 provides technical standards for interconnection services. Most of the standards provide for interoperability between the interconnected carriers and were adapted from the Utah Code. Sub-rules 6(h) through (j) provide standards for reserving central office floor space and dark fiber facilities and were based on FCC orders. It should be noted that GTA has already assigned some of the strands identified in GCG's May, 2006 review of fiber availability according to a short range projection. This left some routes without spare capacity or with projected deficits. GTA has no current plan for augmenting existing fiber strands even where such deficits were projected.[2] Accordingly, we believe the Commission should regard GTA as having no current plan for future use of any available strands.

Rule 7 provides service quality standards for interconnection services including Unbundled Network Elements (UNEs) and resold regulated retail services. The intent of this rule is to provide service guidelines to ensure that interconnecting carriers, individually and jointly, will engineer, design, equip and provision an efficient public telecommunications network with attendant operational support functions and joint network planning processes. The rule will also ensure that each incumbent local exchange carrier provides essential interconnection facilities and services to other telecommunications carriers in a timely and nondiscriminatory manner and establishes specific network monitoring and reporting obligations for the incumbent local exchange carrier. The proposed language was adapted from the Utah rules but has been streamlined to reduce the administrative burden and to recognize the smaller ILEC operations in Guam.

Rule 8 requires the parties to all ICAs to meet and jointly plan for and forecast their future needs for facilities and services. The intent of this rule, which was adapted from the Utah Administrative Code, is to safeguard the ILEC against the possibility it would

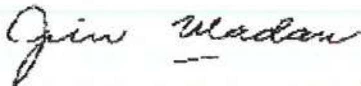
[2] Conference call between representatives of GTA and GCG. The attendees were Dick Metzger, Carl Leon Guerrero, and Lucia Perez representing GTA and Walt Schweikert and Glenn Deuchler representing GCG. Also, E-mail message from Dick Metzger to GCG dated January 1, 2007.

be required to provision excessive facilities to the requesting carrier. This could result in economic losses or undue restrictions on the ILEC's provisioning of services to its own customers. At the same time, joint planning and forecasting will identify any network upgrades that may be needed to accommodate the needs of the CLEC or CMRS operator.

Rule 9 establishes a process for regulatory oversight of the ILEC's construction programs to ensure that the needs of interconnecting carriers are taken into account when building new network facilities. In large part, this process will use the plans and forecasts developed under Rule 8 as inputs. The states that still regulate at least some of their ILECs under a rate base-rate of return regime typically have a review process for approval of large capital improvement projects but their focus is more in line with protecting the ratepayer from the effects of imprudent expenditures than on promoting competition. Given the differences of position expressed by the parties to the recent arbitration and mediation between GTA and PDS and the paucity of FCC guidance on reservation of network facilities, especially dark fiber, GCG believes a different oversight process is needed to encourage market entry by new competitors. We suggest that the monitoring program remain in effect for at least the next three years. Thereafter, it can be scaled back if experience shows that the frequency of planning meetings and reports can be relaxed without adverse consequences to emerging competition.

If you have any questions concerning this report or require any additional information, please let us know.

Cordially,



Jamshed K. Madan

Cc: John Ingram
Walt Schweikert
Dick Metzger
John Day

Attachment 1

Proposed Implementation Rules
In Connection With
Interconnection Agreements
Between
GTA and Competing Local Exchange Carriers and CMRS Operators

Rule 1: Purpose:

These rules are intended to provide guidance on implementation of interconnection agreements between the incumbent local exchange carrier (ILEC) and competing local exchange carriers (CLECs) or Commercial Mobile Radio Services (CMRS) providers. They also provide standards that may be used by the Commission in evaluating whether or not good faith efforts have been made by the parties to implement such agreements.

Rule 2: Interconnection Requirements

a) All ILECs must provide appropriate interconnection arrangements with other telecommunications carriers at reasonable prices and under reasonable terms and conditions that do not discriminate against or in favor of any provider, including the local exchange carrier. Appropriate interconnection arrangements shall provide access on an unbundled, nondiscriminatory basis to physical, administrative and database network components. ILECs shall provide appropriate interconnection arrangements within six months of receiving a bona fide request for interconnection.
b) The interconnection requirements contained in Part 51 of Title 47 of the Code of Federal Regulations, as amended from time to time by the Federal Communications Commission (FCC), are adopted by the Commission and are incorporated herein by reference.
c) All local exchange carriers shall cooperate in the development of a process to handle inter-carrier service ordering, provisioning and repair service referrals.

Rule 3: Relationship of Rules to Interconnection Agreement

All implementation matters except those covered by Rule 2(b) shall be handled in accordance with these rules. Unless otherwise stated herein, in the event of any actual conflict between a technical standard contained in Rule 6 and a technical standard contained in an ICA approved by the Commission, the technical standard contained in the ICA shall take precedence. An ICA approved by the Commission may contain service quality standards stricter than those contained in Rule 7, and any such stricter service quality standards shall take precedence over the minimum service quality standards contained in Rule 7. The dispute resolution procedures in Rule 4 do not prohibit the use of other dispute resolution procedures and forums, including the FCC or courts, set forth in an ICA; provided, nothing in an ICA shall abrogate the right of either party to pursue the dispute resolution procedures in Rule 4.

Rule 4: Dispute Resolution

a) This rule establishes administrative procedures for Commission resolution of disputed issues arising under or pertaining to ICAs approved by the Commission pursuant to its authority under the Federal Telecommunications Act of 1996 and the Guam Telecommunications Act.

b) The dispute resolution procedures set forth in this rule are intended to resolve disputes concerning:

1) Proper interpretation of terms and conditions in the ICA;
2) Implementation of activities explicitly provided for, or implicitly contemplated in, the ICA;
3) Enforcement of terms and conditions in such ICA; and
4) Any issue not explicitly addressed in the ICA that the parties agree to resolve pursuant to this rule; provided the resolution of the issue would facilitate the provisioning of service pursuant to the ICA.

c) The procedures described in this rule are not intended to prohibit the use of other dispute resolution procedures set forth in the ICA between the parties. However, nothing in the ICA shall abrogate the right of either party to pursue the dispute resolution procedures in this rule.

d) As a prerequisite to utilizing this rule, a party must be able to demonstrate that it has exhausted any dispute resolution procedures that, by the terms of the ICA, are required to be exhausted before filing any petition or complaint with the Commission under these rules. Nothing in these rules shall require the exhaustion of dispute resolution procedures set forth in the ICA for the filing of any petition or complaint within the Commission's jurisdiction that is not the subject of a dispute under Rule 4(b) above, including, without limitation, any claim for a violation of a Commission order.

e) All parties participating in dispute resolution under this rule have a duty to participate in good faith. Good faith participation means both parties meet and confer with minds open to persuasion and with an eye toward reaching agreement on the disputed issues.

f) The processes for resolution of disputes include facilitation and formal arbitration. The party requesting dispute resolution under formal arbitration may also request interim relief. Interim relief is not available under facilitation.

g) Facilitation is an informal, voluntary process wherein the Commission conducts settlement conferences with the parties to attempt to reach a mutually acceptable resolution of any dispute. The Commission's Administrative Law Judge (ALJ) will act as facilitator.

1) A request for an informal facilitation conference may be made by either party by filing a written request with the Commission and the other party to the ICA. The written request should include:
    i) The name, address, telephone number and facsimile number of each party to the ICA and the requesting party's designated representative;
    ii) A description of the parties' efforts to resolve their differences by negotiation;
    iii) A list of the narrow issues in dispute, with a cross-reference to the area of the ICA applicable or pertaining to the issues in dispute; and
    iv) The requesting party's proposed solution to the dispute.

2) Upon receipt of any request for facilitation, the other party to the ICA shall promptly appoint a designated representative for the facilitation conference and may propose an alternative solution to the dispute.
3) The facilitator shall be responsible for scheduling and notifying the parties of the time, date, and location of the facilitation conference which shall be held no later than ten (10) business days from the date the request was filed. The parties shall provide the appropriate personnel with settlement authority to discuss and to resolve the disputes at the facilitation conference. The parties shall seek to resolve the dispute in good faith.
4) The facilitation conference shall be conducted as an informal meeting. Discovery will not be allowed and notice will not be provided concerning the facilitation. At any time during the facilitation, either party may request that the dispute resolution be moved to formal arbitration as set forth in this rule.
5) The informal facilitation conference shall be concluded within thirty (30) days from the written request for facilitation unless otherwise mutually agreed by the parties.

h) Arbitration is a formal proceeding for dispute resolution and will commence when a party (complainant) files a complaint with the Commission and, on the same day, delivers a copy of the to the other party (respondent) to the ICA from which the dispute arises.
1) Unless otherwise ordered by the arbitrator, parties shall file with the Commission the same information listed above for the facilitation process plus an identification of pertinent background facts and relevant law or rules applicable to each disputed issue.
2) The Commission's ALJ shall act as arbitrator.
3) The respondent shall file a response to the complaint within twenty (20) days after the filing of the complaint and shall serve a copy of the response on the complainant, the arbitrator and the Commission's consultants. The response shall specifically affirm or deny each allegation in the complaint. The response shall include the respondent's position on each issue in dispute, a cross-reference to the area or areas of the ICA applicable or pertaining to the issue in dispute, and the respondent's proposed solution on each issue in dispute. In addition, the response shall stipulate to any undisputed facts and identify relevant law or rules applicable to each disputed issue.
4) The complainant may file a reply within five (5) business days after the filing of the response to the complaint and serve a copy to the parties listed above. The reply shall be limited solely to new issues raised in the response to the complaint.
5) As soon as possible after the complaint has been filed with the Commission, the arbitrator shall schedule a prehearing conference with the parties to the arbitration. The arbitrator shall make arrangements for the hearing to address the complaint, which shall commence no later than 50 days after filing of the complaint. The arbitrator shall notify the parties, not less than 15 days before the hearing of the date, time, and location of the hearing.
6) The arbitrator has broad discretion in conducting the dispute resolution proceeding. The arbitrator shall have the authority to award remedies or relief

deemed necessary by the arbitrator to resolve a dispute subject to the procedures established under this rule.

7) Parties may obtain discovery by submitting a discovery request to the arbitrator. Discovery may include requests for inspection and production of documents, requests for admissions, and depositions by oral examination, as allowed within the discretion of the arbitrator.
8) The arbitrator may require the parties to file a direct case, under the same deadline, and a joint issues list on or before the commencement of the hearing and may direct a party or witness to provide additional information as needed to fully develop the record of the proceeding. If a party fails to present information requested by the arbitrator, the arbitrator shall render a recommendation on the basis of the best information available from whatever source derived.
9) The written recommendation of the arbitrator shall be filed with the Commission within fifteen (15) days after the close of the hearing and shall be distributed to all parties of record in the dispute resolution proceeding. The recommendation of the arbitrator shall be based upon the record of the dispute resolution hearing, and shall include a specific ruling on each of the disputed issues presented for resolution by the parties. The recommendation shall include a narrative report explaining the arbitrator's rationale for each of the rulings included in the final decision.

i) Expedited dispute resolution may be requested when the dispute directly affects the ability of a party to provide uninterrupted service to its customers or precludes the provisioning of any service, functionality or network element. The arbitrator has the discretion to determine whether the resolution of the complaint may be expedited based on the complexity of the issues or other factors deemed relevant. The provisions and procedures relating to arbitration apply, except as otherwise specifically set forth in this sub-rule.

1) The complaint shall also state specific circumstances that make the dispute eligible for an expedited ruling.
2) The respondent shall file a response to the complaint within five business days after the filing of a complaint. The response shall specifically affirm or deny each allegation in the complaint.
3) After reviewing the complaint and the response, the arbitrator will determine whether the complaint warrants an expedited ruling. If so, the arbitrator shall schedule a prehearing conference with the parties to the arbitration. The arbitrator shall make arrangements for the hearing to address the complaint, which shall commence no later than seventeen days after filing of the complaint. The arbitrator shall notify the parties of the date, time, and location of the hearing not less than three days before the hearing. If the arbitrator determines that the complaint is not eligible for an expedited ruling, the arbitrator shall so notify the parties within five days of the filing of the response.
4) The oral recommendation of the arbitrator shall be filed with the Commission within three days after the close of the hearing and shall be distributed to all parties of record in the dispute resolution proceeding. The recommendation of the arbitrator shall be based upon the record of the dispute resolution hearing, and

shall include a specific ruling on each of the disputed issues presented for resolution by the parties.

j) A party who requests dispute resolution may also request an interim ruling on whether the party is entitled to relief pending the resolution of the merits of the dispute. This relief is intended to provide an interim remedy when the dispute compromises the ability of a party to provide uninterrupted service or precludes the provisioning of scheduled service.
   1) Within three business days, if feasible, of the filing of a complaint and request for interim ruling, the arbitrator shall conduct a hearing to determine whether interim relief should be granted during the pendency of the dispute resolution process. The arbitrator will notify the parties of the date and time of the hearing by facsimile within one business day of the filing of a complaint and request for interim ruling. The parties should be prepared to present their positions and evidence on factors including but not limited to: the type of service requested; the economic and technical feasibility of providing that service; and the potential harm in providing or not providing the service.
   2) Based upon the evidence provided at the hearing, the arbitrator shall issue a written ruling on the request within 24 hours of the close of the hearing and will notify the parties of the ruling. The interim ruling will be effective throughout the dispute resolution proceeding until a final order is issued. The interim ruling shall have no precedential impact.

Rule 5: Good Faith Implementation of ICA

a) Both parties to the ICA are obligated to implement its provisions in good faith. The parties are expected to comply with the provisions of the ICA with the highest standards of professionalism, decency and honesty.
b) The Commission is authorized under Section 12108 of the Guam Telecommunications Act to assess penalties for failure to act in good faith in implementing the ICA in accordance with these rules. In determining the amount of penalty, the Commission will consider the appropriateness of the penalty relative to the size of the violating party, the gravity of the violation, and the actual harm incurred by the complaining party.
c) The following prohibited acts are examples of failure to act in good faith. This list is not intended to be all inclusive. Violations of other Commission rules or of commercial law may also constitute failure to act in good faith.
   1) No telecommunications carrier shall:
      i) File, submit, or present to the Commission an any document related to interconnection that contains false or misleading information, facts, or materials, or that omits material information, facts, or materials;
      ii) Refuse to use its commercially reasonable efforts in implementing the ICA;
      iii) Engage in acts, conduct, or behavior with the sole purpose of delaying implementation of the ICA;
      iv) Fail to respect the privacy of personally identifiable customer information;

v) Upon bona fide request, unreasonably refuse to fully disclose in a timely manner all information necessary to achieve interconnection; or

vi) Engage in any other anti-competitive action, conduct, or behavior.

2) The ILEC shall not:

i) Unreasonably refuse or delay access to its exchange by the other party to the ICA;

ii) Unreasonably delay interconnection under the ICA;

iii) Provide inferior interconnections to the other party to the ICA

iv) Degrade the quality of access provided to the other telecommunications carrier;

v) Impair the speed, quality, or efficiency of access lines used by the other telecommunications carrier;

vi) Sell services or products, extend credit, or offer other terms and conditions on more favorable terms to its affiliates or to the carrier's retail department, than to the other party to the ICA; or

vii) Unreasonably reserve capacity in any existing network facility in order to prevent the other telecommunications carrier from obtaining access to interconnection services including buildings, dark fiber cable and any Unbundled Network Elements (UNEs).

3) The failure of the ILEC to meet the Quality of Service intervals specified in the ICA or in Rule 7 shall not be deemed to be evidence of failure to implement the ICA in good faith unless the intervals for services provided to the requesting carrier are usually worse than those to the ILEC's own customers or customers of the ILEC's affiliates.

Rule 6: Technical Standards

a) Interconnection between the ILEC and CLEC or CMRS operator shall be established in a manner that is seamless, interoperable, technically and economically efficient and transparent to the end-user customer.

b) The ILEC shall provide interconnection facilities and access to UNEs that is at least equal in type and quality to that provided to itself or its affiliates.

c) Interconnection between carriers shall utilize nationally accepted telecommunications industry standards and/or mutually acceptable standards for construction, operation, testing and maintenance of networks, such that the integrity of the networks is not impaired.

d) Interconnecting carriers shall make a good-faith effort to accommodate each other's technical requests, provided that the technical requests are consistent with national industry standards and implementation of the requests would not cause unreasonable inefficiencies, unreasonable costs, or other detriment to the network of the ILEC receiving the requests.

e) Interconnecting carriers shall establish joint procedures for troubleshooting the portions of their networks that are jointly used. Each carrier shall be responsible for maintaining and monitoring its own network such that the overall integrity of the interconnected network is maintained with service quality that is consistent with industry standards and rule 7.

f) Each interconnecting carrier shall be responsible for ensuring that traffic is properly routed to the other carrier and jurisdictionally identified by percent usage factors or in a manner agreed upon by the interconnecting carriers.

g) Interconnecting carriers shall allow each other non-discriminatory access to all facility rights-of-way, conduits, pole attachments, building entrance facilities, and other pathways, provided that the requesting carrier has obtained all required authorizations from the property owner and/or appropriate governmental authority.

h) The ILEC shall provide physical interconnection to other carriers in a nondiscriminatory manner. Physical collocation for the transmission of local exchange traffic shall be provided upon request, unless the ILEC demonstrates that technical or space limitations make physical collocation impractical. Virtual collocation for the transmission of local exchange traffic shall be implemented if physical collocation is not feasible or at the option of the carrier requesting the interconnection.

i) In determining whether space is available for physical collocation, the ILEC may retain a limited amount of central office floor space for its own specific future uses, provided, however, that neither the ILEC nor any of its affiliates may reserve space for future use on terms more favorable than those that apply to other telecommunications carriers seeking to reserve collocation space for their own future use.

   1) The ILEC is permitted to reserve central office floor space for future use only if such use is in accordance with a written plan that includes floor plans that show any space that is reserved for future use, and the ILEC must describe in detail the specific future uses for which the space has been reserved and the length of time for each reservation. Central office floor space may not be reserved in the absence of a written plan for use.

   2) Space may not be reserved for longer than 3 years from the date the reservation plan was first approved by ILEC management.

j) The ILEC is permitted to reserve up to two fiber strands on each fiber cable route for maintenance purposes. This reservation addresses the possibility that a fiber could become defective and require emergency or immediate resolution. The ILEC is permitted to reserve the remaining existing dark fiber facilities for future use only if such use is in accordance with a written utilization plan that describes in detail the specific future uses for which the dark fiber has been reserved and the length of time for each reservation. Dark fiber may not be reserved for future use for longer than 18 months from the date the reservation plan was first approved by ILEC management. If no written utilization plan is in place, existing dark fibers shall be assigned in a nondiscriminatory manner between the ILEC and any requesting carrier.

k) Each interconnecting carrier shall be responsible for contacting the North American Numbering Plan (NANP) administrator for its own NXX codes and for initiating NXX assignment requests.

Rule 7: Service Quality

a) This rule provides minimum overall service quality standards. If an interconnection agreement is adopted pursuant to negotiation or arbitration under the Federal Act, the

ICA may contain obligations and performance standards for network facilities and services that are stricter than the guidelines contained in this rule.

b) Each ILEC shall provide essential facilities and associated services in accordance with the following provisioning intervals and shall separately measure each provisioning interval for commonly used circuit or facility types. The provisioning interval is the elapsed time measured in hours from the ILEC's receipt of a service order to return of an OCN. The percentage of service orders completed on time will be determined by the number of orders completed within the installation interval or the committed due date specified in a FOC. The cumulative elapsed time for each circuit or facility type is divided by the total number of corresponding completed service orders for each circuit or facility type to derive measures of service order flow-through. The ILEC shall return a FOC within two business days of receipt of a service order from another telecommunications carrier.

c) Pursuant to forecasting requirements established in Rule 8 below, forecasted trunk, routing and switching facilities shall be provisioned to any requesting carrier within 30 days of receipt of a service order, unless otherwise agreed to by the requesting carrier.

d) The ILEC shall provide either interim number portability or permanent number portability to a requesting carrier. The installation interval for interim number portability shall not exceed three business days following receipt of a service order. Permanent number portability shall be provided pursuant to Federal Communications Commission requirements.

e) The ILEC shall provide for the receipt of trouble reports 24 hours a day, seven days a week and shall investigate and respond to each trouble report.

   1) Provisions shall be made to clear emergency out-of-service trouble at all hours, consistent with the public interest and the personal safety of ILEC personnel. Emergency or alternative service shall be provided local law enforcement and public safety agencies during the period of any network interruption.

   2) If unusual repairs preclude prompt disposition of a reported trouble, the ILEC shall notify all affected telecommunications carriers. If service must be interrupted for purposes of rearranging facilities or equipment, all affected telecommunications carriers shall be notified and the work shall be completed in the least disruptive manner in order to minimize public inconvenience.

f) The ILEC shall clear out-of-service trouble reports received from another telecommunications carrier within the following intervals, unless other repair intervals have been agreed to in the ICA:

REPAIR INTERVAL TABLE	
DS - 3, OC - 3 and higher	2 hours
DS - 1, Fractional DS - 1, Design DS - 0, and Local Interconnection Trunks	4 hours
Residential and Business Resale POTS	24 hours

The repair interval for clearing a trouble between telecommunications carriers is the elapsed time measured in hours and tenths of hours from the time a trouble report is received by a telecommunications corporation to the time the telecommunications

corporation returns a valid trouble resolution notification. Elapsed time shall be measured by common circuit or facility types and trouble disposition and closure shall be recorded.

g) The ILEC shall undertake all commercially reasonable efforts to facilitate parity of access to operational support functionality the incumbent local exchange carrier uses to store and retrieve information related to network engineering and administration.

h) The ILEC shall provision essential network facilities and services in accordance with the following intervals and shall measure provisioning intervals for each of the following loop facilities and services:

1) Provisioning intervals for an unbundled loop will vary by circuit and facility type, the number of loops requested on a service order, availability of facilities and whether or not a dispatch of ILEC personnel must occur. The following essential facilities will be provisioned for telecommunications carriers within the specified intervals.

PROVISIONING INTERVAL TABLE		
Facility Type	Quantity	Interval
DSO or analog equivalent, dispatch, facilities available	1 - 24 24 - n	5 days negotiated
DSO or voice grade equivalent, no dispatch	1 – 24 24 - n	3 days 7-10 days
DS1 -- Facilities provisioned and available		5 days
ISDN -- Facilities provisioned and available		7 days
XDSL -- Facilities provisioned and available		7 days
DS3 -- Facilities provisioned and available		7 days
OC3 -- Facilities provisioned and available		15 days
OC4 and Higher -- Facilities provisioned and available		15 days or negotiated due date.

2) Installation intervals for wholesale (resold) services shall vary depending upon whether an existing end user service provided by the ILEC is transferred to another telecommunications carrier, or, is a new service installation.

i) The ILEC shall transfer wholesale services without changes for an existing end user served by the ILEC within one business day following receipt of a service order from the requesting carrier.

ii) The ILEC shall transfer wholesale service with changes for an existing end user served by the ILEC within three business days following receipt of a service order from the requesting carrier.

iii) The ILEC shall install new wholesale service to a new end user, if facilities are available, within three days following receipt of a service order from the requesting carrier

3) The following provisioning intervals and optional arrangements are common to both virtual and physical collocation:

i) Upon receipt by the ILEC of a request for collocation, the ILEC shall within 15 days notify the telecommunications corporation whether sufficient space exists. If the requesting carrier disputes the ILECs denial of a request for collocation, and the carriers cannot negotiate a mutually satisfactory resolution, the requesting carrier may petition the Commission pursuant to Rule 4 for an expedited hearing and resolution of the dispute. The burden shall be on the ILEC to demonstrate to the Commission that collocation is not practical due to space limitations or is technically infeasible.

ii) If collocation is available, the ILEC shall within 25 days following receipt of a request for collocation provide a written quotation containing all non-recurring charges for construction of the telecommunications corporation's requested collocation arrangement.

iii) The requesting carrier shall within 30 days following receipt of the ILEC's quotation, by written notice to the ILEC: 1) accept the quotation; 2) withdraw the request for collocation; or, 3) provide the ILEC an independent contractor quotation for construction of the requested collocation arrangement.

iv) If the requesting carrier accepts the quotation from the ILEC, collocation equipment shall be installed on the ILEC's premises in accordance with the following provisioning intervals: 1) For physical collocation arrangements, the ILEC shall within 45 days of the requesting carrier's acceptance of the ILEC's quotation complete construction of the collocation space necessary and sufficient for installation of the requesting carrier 's collocated interconnection facilities. The ILEC shall grant the requesting carrier access to the collocation space to install network elements therein. 2) For virtual collocation arrangements, the ILEC shall within 45 days after delivery of the requesting carrier 's collocation equipment complete provisioning of all network facilities ordered by the requesting carrier.

v) If the requesting carrier provides the ILEC an independent contractor quotation for construction associated with a collocation arrangement, the ILEC shall within 15 days of receipt of the quotation: 1) accept the proposal and grant to the independent contractor access to the ILEC's premises to complete construction of the collocation space and installation of the collocated interconnection facilities; 2) amend the ILEC's own quotation to perform on substantially similar terms, including, without limitation, price, the services specified in the independent contractor's quotation; or, 3) reject the proposal. If the requesting carrier accepts the ILEC's amended quotation, construction of the collocation space shall proceed. If the ILEC refuses to accept an independent contractor quotation or amend its own quotation, the requesting carrier may petition the Commission for an expedited hearing and resolution of the dispute.

i) The ILEC shall maintain network engineering and administrative records related to interconnection services provided to other carriers.

1) The ILEC shall make these records available for inspection by the Commission or its designee.

2) All information required by this rule shall be preserved for at least 36 months after the date of entry.

3) The ILEC shall maintain records of its network engineering and administrative operations in sufficient detail to permit review of network performance, provisioning intervals and general service quality provided other carriers.
4) Within 30 days of a request by the Commission, the ILEC shall file a study with the Division of Public Utilities evidencing actual provisioning intervals for network facilities and services or actual repair intervals for services provided to another carrier, to an affiliate, or, aggregated for its ten largest customers.
5) The ILEC shall monitor the use of its network so as to:
   i) issue the reports required by this Rule; and
   ii) monitor the use of all trunk groups and other interconnection facilities and equipment on its own side of the point of interconnection between its network and the network of each interconnecting telecommunications corporation.
6) The ILEC shall maintain a daily record, by wire center, of call blocking. The record shall indicate the percentage of calls blocked by trunk group utilized by each interconnecting telecommunications carrier. The ILEC shall notify each interconnecting telecommunications carrier immediately if call blocking on any trunk group within in any wire center exceeds standard industry levels.
7) The ILEC shall maintain a record, by wire center, of each instance when it fails to supply essential facilities and services to an interconnecting telecommunications carrier in accordance with the provisioning intervals established in this Rule. The record shall provide the following data:
   i) the name and address of the telecommunications corporation;
   ii) the circuit or facility type requested in the service order;
   iii) the date and hour the service order was received;
   iv) the reason for the delay;
   v) the number of days the order has been delayed;
   vi) the expected order completion date for each service order;
   vii) whether an initial service order was supplemented by the requesting telecommunications corporation and, if so, the date and time the supplement was approved by the providing carrier;
   viii) a copy of the FOC provided the requesting telecommunications carriers.
8) The ILEC shall maintain a record, by wire center, of trouble reports received from another telecommunications carrier. The record shall identify the telecommunications carrier experiencing trouble; the affected services; the time, date and nature of the report; the cause and action taken to clear the trouble and its recorded disposition; and the date and time of trouble clearance.

j) The ILEC will provide to the Commission performance monitoring reports detailing the ILEC's provisioning of:
   i) services to the ILEC's retail customers in the aggregate;
   ii) essential facilities and services provided to itself or any retail affiliate purchasing interconnection or access;
   iii) essential facilities and services provided in the aggregate to other telecommunications carriers purchasing interconnection; and
   iv) essential facilities and services provided to individual telecommunications carriers purchasing interconnection.

k) Performance monitoring reports shall include the following metrics:

1) Firm Order Confirmation Interval – This metric is the average interval from receipt of a service order to distribution of a firm order confirmation notice
2) Delayed Order Ratio -This metric measures uncompleted orders where the committed due date on a firm confirmation order has passed. It is calculated as the number of delayed orders divided by the number of orders pending including those past due.
3) Average Completion Interval - This metric measures the average time from the date and time of the ILEC's receipt of a service order to the completion date and time provided on an order completion notification (OCN).
4) Percentage of Orders Completed On Time - This metric measures the percentage of total orders completed on or before the completion date provided on an OCN.
5) Trouble Report Rate - This report measures the frequency of direct or referred trouble report incidents across a universe of facilities where the cause is determined to be in network facilities. It is measured as a percentile of lines or circuit types in service. The ILEC shall exclude from its count of trouble reports queries made to the ILEC from another telecommunications carrier's end- user customers who are not served by the ILEC.
6) Mean Time to Restore - This metric measures the interval for resolution of maintenance and repair troubles. It measures the elapsed time from receipt of a trouble report to the time the reported trouble is cleared.

l) The Commission may request from the ILEC a report on a specific basis rather than on an average basis with respect to any of the information described in the foregoing performance monitoring metrics.
m) The reports required under this Rule are due monthly.

Rule 8: Joint Planning and Forecasting

a) The ILEC shall meet with each of the other telecommunications carriers currently interconnected or planning to interconnect within the next calendar quarter, to participate in joint forecasting and planning as necessary to accommodate the design and provisioning responsibilities of both telecommunications carriers. At a minimum, the telecommunications carriers shall meet once every calendar quarter to plan for the next quarter.
b) Forecasting is the joint responsibility of the telecommunications carriers. A forecast of interconnecting trunk group and other facilities and equipment required by the telecommunications carriers shall be prepared by the ILEC on a quarterly basis. The quarterly forecast shall project requirements for the following time intervals: four months; one year; and three years. To the extent practical, the one-year and three-year forecasts will be supplemented with historical data from time to time as necessary to improve the accuracy of the forecasts.
c) The forecasts shall include, for tandem-switched traffic, the quantity of the tandem-switched traffic forecasted for each end office.
d) The forecasts shall include a description of major network projects anticipated for the following year that could affect the other party to the forecast. Major network projects include trunking or network rearrangements, shifts in anticipated traffic patterns, or

other activities that are reflected by a significant increase or decrease in trunking demand for the succeeding forecasting period.

e) The forecasts shall also describe anticipated network capacity limitations, including any trunk groups when usage exceeds 80 percent of the trunk group capacity, and the procedure for eliminating capacity problems before any trunk group experiences blocking in excess of standard industry practices.
f) The forecasts of cable and wire needs shall be route specific showing the A and Z end points of each cable and the numbers of pairs or fiber strands assigned and available.
g) Unless otherwise agreed, forecasting information exchanged between interconnecting carriers, or disclosed by one interconnecting carrier to the other, and the quarterly forecast report pursuant to Rule 8(b), shall be deemed confidential and proprietary.
h) If the telecommunications carriers cannot agree on the terms of the quarterly four-month forecast, either carrier may commence an expedited dispute resolution proceeding before the Commission. In that proceeding, the burden of persuasion shall be on the ILEC to demonstrate that a four- month quarterly forecast submitted by a CLEC is unreasonable. To the extent the telecommunications carriers agree to the terms of a forecast, the terms shall be deemed approved for purposes of this Rule, and only those portions of a quarterly forecast actually in dispute shall be subject to the expedited dispute resolution proceeding.
i) If the telecommunications carriers agree on a four-month quarterly forecast, or, to the extent a forecast is approved by the Commission pursuant to the expedited dispute resolution proceeding, the ILEC shall be obligated to satisfy all service order requests made by the ordering telecommunications corporation that are consistent with the four-month projections contained in the approved forecast.
j) If a CLEC or CMRS provider desires to order trunk groups, equipment, or facilities beyond the four-month forecast, but consistent with the one-year and three-year forecast, it may order the additional quantity if it pays a capacity reservation charge to the ILEC.
k) If a trunk group is under 60 percent of centum call seconds (ccs) capacity on a monthly average basis for each month of any three-month period, either carrier may request to resize the trunk group, which resizing will not be unreasonably withheld. If the resizing occurs, the trunk group shall not be left with less than 25 percent excess capacity. If the telecommunications carriers cannot agree to a resizing, either of them may file a petition with the Commission for an expedited dispute resolution proceeding.
l) The quarterly forecast report required under Rule 8(b) shall be submitted to the Commission not later than the first day of that quarter.

Rule 9: Monitoring of Construction Program

a) In accordance with Rules 6(i) and 6(j), the ILEC is permitted to reserve central office space and dark fiber for a limited amount of time under a written plan for specific use. However, the ILEC is required to take into account the needs of current or anticipated interconnected carriers when constructing new facilities. These needs shall be determined in accordance with Rule 8.

b) The ILEC shall include an affirmative statement in the cover letter to each quarterly report prepared pursuant to Rule 8(b) stating whether or not new central office building space, switch capacity upgrades or inter-office cable and wire facilities including fiber cables are planned. The report cover letter shall also contain an affirmative statement that the needs of current or anticipated interconnected carriers were taken into account in the forecast. The report shall contain a narrative detailing how the forecast took these needs into account.

Appendix

Definitions

The meaning of terms used in these rules shall be consistent with their general usage in the telecommunications industry unless modified in the context of a specific rule.

"Affiliate" -- means, with respect to any telecommunications corporation, a person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of these rules, the term "own" means to own an equity interest, or the equivalent, of more than ten percent.
"Blocking" -- means the occurrence of insufficient capacity between the end office or tandem of a telecommunications corporation and the end office or tandem of another telecommunications corporation, and includes a call not completed because of insufficient capacity usually evidenced by a fast busy signal or message that circuits are busy.
"Busy Hour" -- means the uninterrupted period of 60 minutes during the day when the traffic is at its maximum.
"Business Day" -- means any day other than Saturday, Sunday or other day on which commercial banks in Utah are authorized or required to close.
"Carrier" – means the ILEC, CLEC or CMRS operator collectively.
"CFR" -- means the Code of Federal Regulations.
"Commission" -- means the Public Service Commission of Guam.
"Competitive Local Exchange Carrier" (CLEC) -- means an entity certificated to provide local exchange services that does not otherwise qualify as an incumbent local exchange carrier.
"Commercial Mobile Radio Service" (CMRS) – means a mobile wireless telecommunications service provided by a cellular, Personal Communications Service, paging or other wireless network operator to the general public. Does not include private wireless network operators such as taxi dispatch operators.
"Delayed Service Order" -- means a written or electronic order for an essential interconnection service or facility that is not filled on or before the standard installation interval or the date specified in a FOC, whichever occurs first.
"End User" -- means the person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency purchasing the telecommunications service for its own use, and not for resale.
"Essential Services" -- means Unbundled Network Elements as defined by the FCC, access to 911 or E911 emergency call networks, interoffice transmission facilities and OSS functionality
"FCC" -- means the Federal Communications Commission..
"Federal Act" -- means the Federal Telecommunications Act of 1996
"Firm Order Confirmation" (FOC) -- means notice provided by one telecommunications corporation to another in electronic or manual form of acceptance of a service order and the date that the service order will be completed.

"Incumbent Local Exchange Carrier" (ILEC) -- the local exchange carrier that provided telephone exchange services prior to enactment of the federal Telecommunications Act of 1996. GTA has been defined as the ILEC for Guam by the FCC.

"Interoffice Trunk Facilities" -- means the facilities, including transport, switching and cross-connect facilities, necessary for the transmission and routing of telephone exchange service between two end offices, or an end office and a tandem office.

"Local Exchange Carrier" -- means a telecommunications provider, authorized by the Commission, that provides local exchange service in a defined geographic service territory.

"Network Element" or "Network Facility" -- means the features, functions and capabilities of network equipment used to transmit route, or otherwise provide public telecommunications services.

"Order Completion Notification" (OCN) -- means notice provided by one telecommunications corporation to another in electronic or manual form that a service order has been completed.

"OSS Functionality" -- means the functions used by the ILEC in preordering, ordering, provisioning, maintenance and repair telecommunications services. These functions may involve manual or mechanized processes or system.

"Service Order" -- means a written or electronic request for essential facilities or services.

"Trouble Report" -- means an oral, written or electronic report received by a telecommunications corporation from an end user of public telecommunications service, or, an oral, written or electronic report received by one telecommunications corporation from another who purchases essential facilities or services from the former. In either case, a Trouble Report communicates improper functioning of facilities over which the providing telecommunications corporation exercises control. A trouble report is used by telecommunications carriers to monitor repair and maintenance actions required for disposition of out-of-service or substandard service conditions.

"Wholesale Services" -- means essential services available to telecommunications carriers for the purpose of resale to end users.

"Wire Center" -- means a building that contains the necessary telecommunications facilities and functions to terminate, switch, route and interconnect local exchange, interoffice, and interexchange public telecommunication services.

Attachment 2

Sources of Proposed Implementation Rules

Rule	Issue	State	Adapted From Document
1	Purpose		
2(a)	Interconnection Requirements	AZ	Arizona Administrative Code, Title 14, Section 14-2-1112
2(b)	Incorporation of federal rules by reference		Common practice for most PUCs
2(c)	Cooperation on operations support functions	AZ	Arizona Administrative Code, Title 14, Section 14-2-1306
3	Relationship of Rules to ICA		Found in most interconnection implementation rules.
4	Dispute Resolution	OK	OAC 165.55 Subchapter 22. Rule 4(e) was based on AZ Sections 14-2-1502(C) and 1504(E).
5	Good Faith Implementation	HI UT	Hawaii Administrative Rules Chapter 6-80-129. Rule 5(b) was based on Utah Code Section 54-8b-17
6	Technical standards	TX FCC	Chapter 26 Substantive Rules Applicable to Telecommunications Providers Subchapter L Section 26.272(d). Rule 6(h) was based on Parts 51. 321 and 323 and FCC 00-297, released 8/10/2000
7	Quality of Service	UT	Utah Administrative Code Rule R746-365
8	Joint Planning and Forecasting	UT	Utah Administrative Code Rule R746-365-6
9	Monitoring of Construction Program		GCG Recommendation

May 16, 2007

Harry M. Boertzel, Esq.
Administrative Law Judge
The Guam Public Utilities Commission
Suite 207, GCIC Building
Hagatña, Guam 96932

Re: Docket No. 05-1: Implementation Standards

Dear Judge Boertzel:

We welcome this opportunity to provide public comment on the proposed Implementation Standards being considered by the Guam Public Utility Commission. As the only Competitive Local Exchange Carrier (CLEC) that has a PUC approved ICA, I can not think of any company that is more qualified to provide comments on this issue and the proposed rules than PDS.

My first comment regarding the proposed rules would be, WHAT TOOK YOU SO LONG? As the GPUC is aware, in 2005 PDS suggested that GPUC adapt rules regarding the implementation of the ICA process. The GPUC decided to wait and took no action. As PDS went through the ICA negotiations and subsequent implementation process with the Incumbent Local Exchange Carrier (ILEC), GTA Telecom (GTA), it should have become abundantly clear to the GPUC that these rules are absolutely essential in order to create the competitive environment that the Guam Telecom Act of 2004 envisions and mandates.

The problems that PDS has faced with GTA Telecom during the ICA negotiations and implementation are well documented as part of the record for Docket 05-11 and clearly shows GTA's lack of cooperation, bad faith, and discriminatory actions. Without clear rules and structure from the GPUC, PDS has literally had to fight an uphill battle from day one. A battle that PDS continues to fight even today, almost 8 months after the GPUC approved the PDS-GTA ICA agreement. It should be noted that, more than 1 year and 9 months after being granted a Certificate of Authority by the GPUC to provide local services and, 1 year and 8 months after requesting Interconnection with GTA, and 8 months after having a ratified Agreement, PDS is **STILL NOT ABLE TO PROVIDE COMPETITIVE SERVICES** to the subscribers of Guam as envisioned by the Guam Telecommunications Act of 2004.

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The lack of rules and structure from the GPUC has resulted in the regulatory costs of the PDS-GTA ICA docket to sky rocket to almost $200K, not to mention the additional costs of PDS' legal fees. Not only has the process become expensive, it has become protracted since GTA has been allowed by the GPUC to contest almost every issue regardless of how ridiculous the position and to do so without consequences other than to delay the process and make it more expensive to the new entrant that is attempting to offer competitive services.

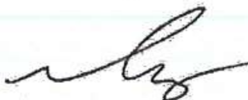
I have had an opportunity to read GTA's response to this proposed rulemaking and I find their comments totally without merit and bordering on the absurd. As noted by Georgetown Consulting Group (GCG) in their memo to the ALJ on January 4, 2007 and quoting from the FCC in its first competitive order:

"incumbent LECs have little incentive to facilitate the ability of new entrants, including small entitites, to compete against them and, thus, have little incentive to provision unbundled elements in a manner that would provide efficient competitiors with a meaningful opportunity to compete".

We feel GTA's comments must be viewed in this light; they do want competition and will do everything possible to thwart a new entrant.

In summary, PDS endorses the proposed rulemaking and encourages the GPUC to adopt these rules at the earliest possible opportunity. We also encourage the GPUC to act more aggressively in the fulfillment of its mandate as defined in the Guam Telecommunications Act of 2004.

Sincerely,



John Day
President

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Richard J. Metzger
Vice President-Regulatory

May 10, 2007

Honorable Harry M. Boertzel
Administrative Law Judge
Guam Public Utilities Commission
Suite 207, GCIC Building
Hagatña, Guam 96932

Re: Interconnection Implementation Standards; Docket 05-1

Dear Judge Boertzel:

Pursuant to your email dated March 23, 2007, and also the public notice in this docket, GTA Telecom, LLC ("GTA") hereby comments on the draft interconnection implementation rules proposed by Georgetown Consulting Group ("GCG").

The Proposed Rules Are Not Reasonably Linked to the Facts about Interconnection Implementation on Guam

GTA assumed that the interconnection rules to be proposed by GCG would be reasonably linked to particular issues raised in the GTA-PDS interconnection implementation process, and also reflect GTA's limitations based on its size and systems.

Unfortunately, the proposed rules appear to be unconnected to any facts about interconnection implementation as it actually exists on Guam. For example, GTA is only mentioned twice by GCG (in GCG's discussion of Rules 6 and 9), and PDS is mentioned only in an aside on Rule 9.

The absence of any meaningful link to the manner in which interconnection has actually been implemented on Guam is exacerbated by the absence of any explanation as to why the proposed rules are even desirable for Guam. As GCG admits in its cover letter: "In general, we found that the majority of PUCs did not post such standards within their regulatory rules" (April 13, 2007, GCG letter at p. 2). This fact should have ended GCG's quest. But GCG has proceeded to urge the Commission to adopt such rules because: "The Commission has arbitrated only one ICA and questions and issues, including allegations of bad faith, are still being raised by the party requesting interconnection" (id.).

GCG's eagerness to adopt rules based on one interconnection experience is both unexplained and unfounded. Two additional interconnection proceedings currently underway on

Guam involving GTA -- with GuamCell and IT&E -- will be completed long before any rules adopted in this proceeding become effective, and appear to be progressing appropriately without any interconnection implementation rules. Given the unlikelihood that numerous additional local competitors will ever seek to interconnect with GTA on Guam, there seems to be little practical need for GCG to be urging the Commission to buck the trend on the mainland by now adopting interconnection implementation rules.

And even if there were any likelihood of additional interconnection requests following adoption of the proposed rules, the "allegations of bad faith" in the PDS interconnection relied upon by GCG certainly fail to show any need for rulemaking. Indeed, GCG has already provided a comprehensive assessment of these very allegations. While GCG concluded that GTA should dedicate additional resources to implementation of the ICA (which GTA has since addressed), GCG determined that *"we have not found convincing evidence that GTA did not act in good faith in implementing the ICA."*[1] GCG also made clear that *"PDS may have contributed to the delays by its own actions."*[2] (see GCG's January 4, 2007, Report). Furthermore, when PDS subsequently renewed its allegations of bad faith in a subsequent complaint, that complaint was also denied. GTA obviously cannot rest the perceived need for interconnection rules on allegations of bad faith when none of those allegations has been upheld.

The Proposed Rules Are Not Reasonably Linked to GTA

In addition to the fact that GCG's proposed rules bear no connection to the actual facts about interconnection implementation on Guam, GCG makes no effort to show why the proposed rules are appropriate for a Local Exchange Provider ("LEC") such as GTA. The absence of any such explanation is significant. The number of total LEC loops in the jurisdictions utilized by GCG range from 10 times the number of loops in Guam (Hawaii) to almost 200 times that number (Texas). The largest LECs in these jurisdictions are similarly many times the size of GTA. See Trends in Telephone Service, Industry Analysis and Technology Division, Wireline Competitive Pricing Bureau, Federal Communications Commission, February 2007; Table 7.2.

Furthermore, GCG does not explain which of its proposed rules have actually been applied to small rural LECs like GTA by these other jurisdictions, nor does it explain why any of these jurisdictions adopted these rules in the first place, nor whether those reasons have any application to GTA.

The complete disconnect between the proposed rules and the real world of GTA is starkly revealed by the wholesale service standards proposed in Rule 7. GTA does not provide any of its

[1] GCG January 7 Report, at p. 14.

[2] Id.

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customers -- wholesale or retail -- with the level of service set forth in Rule 7, nor is it clear it could do so in the immediate future even with the expenditure of appreciable resources. GTA does not know which LECs were intended to be governed by proposed Rule 7, but they most certainly were not LECs like GTA.

GCG also makes no attempt to find any underlying statutory authority for ordering such a substantial upgrade in wholesale service by GTA, nor does it try to point to any particular policy concern involved. GCG simply announces that these are the proper wholesale service standards, and the fact that PDS has accepted less demanding standards is of no consequence -- GCG is content to disregard what the parties themselves have agreed to, and to set the wholesale service bar where GCG deems best.

Even if it were the case that GCG's expertise exceeds that of the interconnecting parties on Guam, there is no public policy need for specific wholesale standards independent of those agreed to by interconnection parties themselves. Competitive Local Exchange providers ("CLECs") use wholesale LEC facilities to compete with the LEC for end user business. What is important to a CLEC is not the particular service standards for wholesale facilities, but rather that those standards not be inferior to those provided to the LEC itself, or to its affiliate, a result which would impair a CLEC's ability to compete fairly. Non-discrimination is thus the touchstone public policy in wholesale provisioning, and not the particular wholesale provisioning standards that may happen to apply by agreement.[3]

*　　　　*　　　　*

Based on the foregoing arguments, GTA respectfully requests that the interconnection implementation rules proposed by GCG not be adopted. In addition, GTA also adds the following comments on the individual proposed rules.

Rule 1

No objection to Rule 1 in the event the Commission decides to adopt rules.

Rule 2

Rule 2 simply recapitulates federal law and FCC regulations that apply to interconnection. It serves no purpose and need not be adopted.

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[3] See also the FCC's Local Competition Order, FCC 96-325, para. 224: "We conclude that the equal in quality standard of section 251(c)(2)(C) requires an incumbent LEC to provide interconnection between its network and that of a requesting carrier at a level of quality that is at least indistinguishable from that which the incumbent provides itself, a subsidiary, an affiliate, or any other party."

Rule 3

GTA objects to Rule 3 because it is internally inconsistent:

"Unless otherwise stated herein, in the event of any actual conflict between a technical standard contained in Rule 6 and a technical standard contained in an ICA approved by the Commission, the technical standard contained in the ICA shall take precedence. An ICA approved by the Commission may contain service quality standards stricter than those contained in Rule 7, and any such stricter service quality standards shall take precedence over the minimum service quality standards contained in Rule 7."

The above proposed language first appears to provide that ICA technical standards always control over Rule standards, but subsequently it seems to imply that standards less strict would not control.

Rule 4

There would be nothing inherently amiss about the dispute resolution approach of Rule 4 if it were mandatory and interconnecting parties had to employ it exclusively. However, Rule 4c) makes these procedures duplicative of differing dispute resolution mechanisms in ICAs. This is a recipe for chaos and game playing If Rule 4 were a provision that either interconnecting Party could insist upon in lieu of any proposed ICA provisions, it might be unobjectionable. But as an overlay, it would inject immense confusion, time, and unnecessary resources into the dispute resolution process.

Rule 5

Rule 5 bears no resemblance to rulemaking as it is ordinarily understood in administrative law. Rather, it consists of a restatement of the requirement of good faith negotiations in federal law (47 U.S.C. §251(c)(1)); a self-evident observation about the legal authority of the Commission to impose penalties; and a non-binding list of examples of failures to act in good faith. GCG's inability to its draft proposals in the form of rules underscores the inappropriateness of rules in the present context.

Rule 6

Addressing specific errors, Rule 6e) should end with the phrase: "such that the overall integrity of the interconnected network is maintained with service quality", rather than reimport the service standard problems of Rule 7 discussed elsewhere.

Proposed Rule 6g) purports to create wide-ranging rights of access to "all facility rights-of-way" provided that any property owner involved has issued the proper authorization. There is certainly an appealing simplicity to CGC's proposal, and if local telecom competition were being

GTA

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created with a clean blackboard, the proposed rule might not be a bad start. Unfortunately, there are several blackboards covered with detail on this topic, most prominently the Pole Attachment Act. This is not an area the Commission should now try to occupy.

Rules 6h) and 6i) attempt to wade into the details of collocation. GTA appreciates CGC's efforts to address various collo issues and strike an even-handed approach. But the requirement for written plans raises the question of whether competitors will be able to review those plans, and thereby discover confidential information. Accordingly, GTA requests that any such written plans be treated as confidential

Rule 6j)'s limitation to two spare fiber strands is also not workable because GTA's multiple fiber rings ride within the same fiber cable routes. For example, GTA's C and D fiber rings are on the same physical cable.[4] In such a case, GTA would need a minimum of four fiber strands in reserve for maintenance purposes. Rule 6j) should be thus deleted or changed to reflect the reservation of two fiber strands for each fiber ring/network in service.

Rule 7

GTA has already stated above that there is no statutory authority to adopt the wholesale service standards of proposed Rule 7, nor is there any public policy need, as discussed by the FCC, and those points will not be repeated here.

Beyond the current inability of GTA to comply with Rule 7 lies a more fundamental issue. There is no reason for GTA to assemble the massive reporting required by Rule 7 unless and until a CLEC believes it is being discriminated against. At such a time that CLEC can file a complaint and obtain all the information required by Rule 7, assuming GTA has implemented the capacity to produce it. There simply is no reason to require such onerous data production when it can be proffered in complaint proceedings.

If there is any concern that such data might be destroyed by GTA to conceal improper activity, then the remedy is to adopt a data retention rule, not to compel to the production of needless reports that have no function except to bury the desks of GCG.

Rules 8 and 9

Rules 8 and 9 tie together and will be discussed together. Once again, there is no sound basis for the Commission to adopt GCG's views about appropriate facilities forecasting over the decisions of the interconnecting parties. If any CLEC felt that GTA were being unreasonable about joint forecasting, it can bring that issue before the Commission, where GCG would

[4] Similarly, GTA's Ring A (Tumon and its remotes) rides on fiber that feeds the core ring (Agana, Tumon, Dededo).

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certainly be asked to offer its opinion. The cart is being put way before the horse when GCG seeks to dictate joint forecasting from the very beginning.

The core defect of Rule 9a) is that it compels GTA to build facilities for CLECs based on the joint forecasting process, but it provides no accountability if the CLEC's input proves wrong. It is easy to forecast the result of such a process. CLECs would always maximize their forecasts, knowing that the ILEC would have to pay the freight for any CLEC traffic shortfall. This is a sure way to sabotage accurate joint forecasting. The rule should be eliminated, or else appropriate penalties for misforecasting (such as exist in the PDS interconnection agreement) should be authorized.

Respectfully submitted,

for Richard J. Metzger

cc: J. Madan
J. Ingram

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May 18, 2007

VIA ELECTRONIC MAIL

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

Re: PUC Docket No. 05-1: Implementation Standards

Dear Judge Boertzel:

This letter will present the comments of Guam Cellular & Paging, Inc. d/b/a Guamcell ("Guamcell") in response to the comments of GTA Telecom, LLC ("GTA") on the proposed rules to govern the implementation of interconnection agreements ("ICA"). *See* Letter from Richard J. Metzger to Administrative Law Judge Harry M. Boertzel, Docket No. 05-1 (May 10, 2007) ("GTA Comments"). Guamcell appreciates the opportunity to express its views on the proposed rules.

Guamcell has reviewed the proposed rules and found nothing to fault. It appears to us that Georgetown Consulting Group ("GCG") did a remarkable job in selecting the best of the rules adopted by other regulatory agencies and melding them into a consistent and comprehensive set of standards. GCG is to be congratulated.

As you know, Guamcell is in the process of obtaining an ICA with GTA and it hopes to be in the process of implementing that agreement in the relatively near future. However, the fact that the two currently ongoing arbitration proceedings with GTA may be completed "long before" ICA implementation rules are adopted is no reason not to adopt them. GTA Comments, at 1-2. ICA implementation rules only apply after the arbitration process is completed. Moreover, based on the difficulties and delays that Pacific Data Systems ("PDS") is apparently enduring in implementing its ICA with GTA, the ICA implementation rules may go into effect in time to safeguard Guamcell's interests in seeing that the terms of its ICA are implemented expeditiously and in good faith.

It is an accepted tenet of administrative law that the adoption of new rules prospectively through the exercise of an agency's rule-making powers is favored over formulating and retroactively applying standards of conduct *ad hoc* in adjudications. Adopting ICA implementation standards by rulemaking comports with due process by allowing parties to implement their agreement with notice of the standards with which the PUC expects them to conform. Guamcell would prefer to implement its ICA secure in the knowledge that GTA must abide by published standards and that it will not have to return to the PUC for an *ad hoc* determination as to whether GTA is acting in good faith.

Guamcell's experience in negotiating with GTA does not give it confidence that GTA will proceed in good faith to put its ICA into effect in the absence of implementation rules. Throughout the negotiation and arbitration process, GTA was under the statutory duty to negotiate in good faith with Guamcell. *See* 47 U.S.C. §§ 251(c)(1), 252(b)(5). Thus, GTA was prohibited from intentionally misleading Guamcell or refusing to provide information to Guamcell that was necessary to reach an agreement. *See* 47 C.F.R. § 51.301(c). Yet, it appears that GTA attempted both to mislead Guamcell and to withhold material information.

Having been interconnected successfully for over 15 years, Guamcell did not need to negotiate the manner by which its wireless system would interconnect with GTA's network. It wanted to negotiate the rates under which it would continue to be interconnected with GTA in order to bring those rates into compliance with the rules of the Federal Communications Commission ("FCC"). In particular, Guamcell wanted its interconnection and reciprocal compensation arrangements to conform to the *T-Mobile Declaratory Ruling*, 20 FCC Rcd 4855 (2005) and 47 C.F.R. §§ 20.11 and 51.709(b). It was particularly interested in negotiating the rate under which it leased the transmission facilities ("Entrance Facilities") that linked its wireless system to GTA's tandem switch and were dedicated to the transmission of traffic between their networks.

Contending that GTA could only recover the costs of the trunk capacity that it uses, Guamcell had been disputing the exorbitant rates it was paying GTA for Entrance Facilities at least since September 19, 2006. *See* Petition for Arbitration of an Interconnection Agreement Between Guamcell and GTA, Docket No. 07-5, Ex. 4 at 2-3, Ex. 9 at 2-3 (Mar. 7, 2007). GTA insisted that Guamcell was "obligated to pay the tariffed rates for the facilities" and was expected to "comply with its tariffed payment obligations." *Id.*, at Ex. 1. However, Guamcell could not find tariffed rates for the Entrance Facilities.

Beginning on March 5, 2007, Guamcell repeatedly asked GTA for cites to the provisions of its General Exchange Tariff No. 1 that set forth its rates for the Entrance Facilities and authorized its charges to Guamcell. GTA never provided Guamcell with that information.

On May 7, 2007, GTA made its final offer as to the rate it would charge Guamcell for the Entrance Facilities under the ICA. GTA's offer was set forth in § 5.4 of its proposed ICA:

> The Entrance Facilities rates recover the cost of the transmission facilities of the proportion of that trunk capacity used by Guamcell. * * * * GTA shall prepare

> and file with the Public Utilities Commission of Guam a tariff establishing the monthly rates for Entrance Facilities. The rates for Entrance Facilities shall be no more than $49.00 per channelized trunk per month or $1176.00 per T-1 per month for the term of this Agreement.

The language of GTA's proposed § 5.4 obviously suggests that its tariff currently does not establish the monthly rate of $1,176.00 for T-1 Entrance Facilities. Yet, on May 15, 2007, GTA represented the following:

> The T-1 rate charged by GTA is based upon the rate of 24 business lines. The business line rate of $49 per month is contained in GTA's tariffs. 24 × $49 = $1176 per month. Tariffs are deemed lawful upon filing, and thus the filed rate doctrine applies. GTA sells T-1s to numerous enterprise customers at this tariffed rate. If it were to sell an identical facility to Guamcell at a lower rate, that would constitute discrimination in violation of the filed rate doctrine.

During the mediation session on May 17, 2007, Guamcell once again asked GTA to identify the tariff provision that specified the $49 per month rate. The next day GTA finally disclosed that the $49 charge for a business trunk could be found in § 2 of GTA's tariff at page 5.

Attached hereto are copies of pages 2 and 3 of § 2 of GTA's General Exchange Tariff No. 1. The tariff provides at § 2.II.B that the $49 business monthly local exchange access line rate is for "basic local exchange services and facilities only." The Entrance Facilities provided Guamcell are not "basic local exchange service" facilities.

Local exchange service is commonly understood simply to be "the practice of providing local telephone service to customers using the ILEC's local network." *SBC Communications Inc. v. FCC*, 373 F.3d 140, 144 (D.C. Cir. 2004). In contrast, GTA was billing Guamcell for Entrance Facilities that gave Guamcell's wireless customers "access" to GTA's local network. Thus, GTA was providing the Entrance Facilities in connection with providing "exchange access service" to Guamcell. Exchange access service provides "'access' to the users physically connected to the ILECs local loops and switches, so that they can send and receive calls to and from *other networks*." *Id.* (emphasis added).

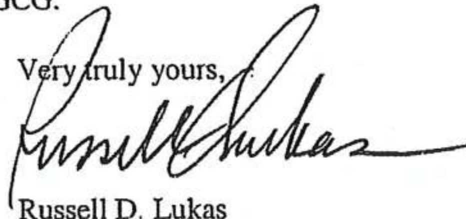
GTA obviously knew that the Entrance Facilities were dedicated to the transmission of traffic between its network and Guamcell's system. It was aware that Guamcell uses the Entrance Facilities to transport traffic that originated on its wireless system anywhere in the Guam MTA for termination on GTA's wireline network anywhere within the Guam MTA. It also knew that Guamcell uses the Entrance Facilities to transport wireless traffic for termination by third-party carriers. In short, GTA knew that Guamcell does not use the Entrance Facilities to provide local telephone service to GTA's customers using GTA's local exchange network.

GTA's $49 business monthly local exchange access line rate does not apply to the Entrance Facilities used by Guamcell and its monthly $1,176 per T-1 rate is not the tariffed rate for the facilities. GTA's statements to the contrary in the arbitration proceeding were

intentionally misleading. And GTA withheld material information when it refused to candidly respond to Guamcell's repeated inquiries by disclosing that it was charging Guamcell its business line rate of $49 per month per channelized trunk under § 2 of its tariff.

Guamcell submits that GTA's conduct in the course of the negotiation/arbitration process fell short of the standard of conduct that would be required of it under proposed implementation Rule 5. Sadly, Guamcell believes that GTA's conduct in the arbitration of the ICA foretells its conduct in the implementation of the ICA. That being the case, the PUC should adopt the ICA implementation rules as drafted by GCG.

Very truly yours,



Russell D. Lukas

cc: Richard Metzger
Elliot J. Greenwald
Eric J. Branfman
Jamshed K. Madan
John Day

II. APPLICATION OF RATES

A. The rates and charges listed in this section apply to the Local Exchange Service provided by GTA in its authorized service area.

The telecommunications services described in this section are subject to the other rates, charges, rules and regulation of the General Exchange Tariff in its current form or as it may be revised in the future.

B. The Local Exchange Service rates and charges specified in this section are for basic local exchange service and facilities only except as noted in II.E below. The rates for other ancillary services or facilities not specifically shown in this section are presented in other sections of this tariff.

C. Unless otherwise specified, the rates and charges quoted in this section are for a minimum period of one month, payable in advance and provide unlimited flat rate calling within the exchange area.

D. Trunks are required for local access connections terminating in, or for use with, customer-provided premises equipment with switching capability (Private Branch Exchange or PBX).

E. Effective July 1, 1994, ownership of telephone sets previously furnished and maintained by GTA for all straight line customers shall be transferred to the customers, who shall be responsible for the repair and maintenance of telephone sets connected with GTA's local exchange lines.

III. SCHEDULE OF RATES AND CHARGES

A. Residence Monthly Local Exchange Access Line Rates

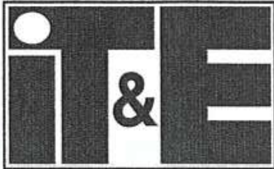
	Basic ([1])
All Exchanges	$14.00 per line

B. Business Monthly Local Exchange Access Line Rates: All Exchanges

Basic 1-Line ([1])	Key System Line ([1])	PBX Trunk ([2])	DID/DOD Trunk ([2])
$36.00	$36.00	$49.00	$49.00

1 The charge for maintenance of inside wiring beyond the interface with GTA's network is not covered by the tariff

2 Ground Start or Answer Supervision configured Trunks will be furnished for an additional charge of $10.00 (ten dollars) per trunk.



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May 16, 2007

VIA HAND-DELIVERY AND ELECTRONIC TRANSMISSION

Harry M. Boertzel
Administrative Law Judge
Public Utilities Commission of Guam
Suite 207 GCIC Building
414 West Soledad Avenue
Hagatna, Guam 96910

Re: Proposed Implementation Rules In Connection With Interconnection Agreements [Docket 05-01]

Dear Mr. Boertzel:

IT&E Overseas, Inc. hereby submits its comments on the proposed standards for implementation of Interconnection Agreements prepared by Georgetown Consulting Group. Please do not hesitate to contact me if you have any questions concerning this matter.

Sincerely,

JOHN M. BORLAS, P.E.
President

cc: Veronica M. Ahern

Attachments

BEFORE THE
GUAM PUBLIC UTILITIES COMMISSION

In the Matter of **Standards for Implementation of Interconnection Agreements (ICA)**	Docket No. 05-1

COMMENTS
OF
IT&E OVERSEAS INC.

IT&E Overseas Inc, ("IT&E") a Competitive Local Exchange Carrier ("CLEC") certificated by the Guam Public Utilities Commission ("GPUC" or "Commission"), hereby submits these comments on proposed standards for implementation of Interconnection Agreements ("ICAs"). The proposed standards were prepared by Georgetown Consulting Group ("GCG") to be used by the Commission in facilitating future ICA proceedings and evaluating whether good faith efforts have been made by the parties under ICAs.

As a general matter, IT&E supports the Commission's efforts to be sure that ICAs are implemented under "good faith" standards. As GCG and the proposed rules recognize, Incumbent Local Exchange Carriers ("ILECs") have an affirmative duty to provide new entrants, such as IT&E, a meaningful opportunity to compete. IT&E is currently negotiating an ICA with GTA Telecom LLC ('GTA"). We believe that the proposed rules will help to assure that the ICA will be implemented according to the federal and local "good faith" standards.

However, it should be noted that the proposed rules appear to deal only with the *implementation* of ICAs, not with the negotiation and arbitration of ICAs. In other words, questions of good faith arising before the Effective Date of an ICA would not be covered by

these rules. The GCG letter transmitting the proposed rules mentions an arbitration in which questions of good faith arose and offers as a rationale for these rules:

> The experience gained through this arbitration supports having a clear set of standards in place for use in settling future disputes.[1]

Yet, these rules would not provide any guidance in dealing with allegations of bad faith occurring during the negotiation and arbitration phases. We assume that the Commission will undertake to develop rules for these phases of the process in the near future.

On the whole, IT&E agrees with the idea that implementation rules should be adopted and, except where specifically noted in the Section-by-Section Analysis below, supports these rules. We are also providing a "red-line" version of the rules, offering minor editorial corrections and suggested edits.

Section-By-Section Analysis

Rule: Rule 1: Purpose

General Comment: *This section makes clear that the rules are intended to assist in evaluating whether or not good faith efforts have been made to implement ICAs. While IT&E agrees that implementation is important, the negotiation and arbitration phases should not be overlooked.*

Rule: Rule 2: Interconnection Requirements

Specific Language: **ILECS shall provide appropriate interconnection arrangements within six months of receiving a *bona fide* request for interconnection.**

Specific Comment: *This provision appears to be in conflict with Section 252(b)(4)(C) of the federal Communications Act which provides that, for agreements arrived at through compulsory arbitration, the State Commission must act not later than nine months after the bona fide request for interconnection. The federal Act does not provide a timeline for ICAs not arrived at through compulsory arbitration. To the extent that the rule is suggesting that interconnection "arrangements" should be*

[1] April 13, 2007 GCG Letter to Harry M. Boertzel, Esq. at 2.

provided before the "agreements" are finalized IT&E believes this is a matter that can be considered by the ILEC and the CLEC on a case by case basis.

Specific Language: **(b) The interconnection requirements contained in Part 51 of Title 47 of the Code of Federal Regulations, as amended from time to time by the Federal Communications Commission ("FCC") is adopted by the Commission and are incorporated herein by reference.**

Specific Comment: *It might be helpful to make it clear that, in the event of a conflict between Part 51 and these rules, the federal rules would prevail. The GCG letter states that this Rule 2(b) establishes the "order of precedence" of federal and state rules, but it is not clear where such order is established.*

Rule: Rule 3: Relationship of Rules to Interconnection Agreement

Specific Language: **The dispute resolution procedures in Rule 4 do not prohibit the use of other dispute resolution procedures and forums, including the FCC or courts, set forth in an ICA; provided, nothing in an ICA shall abrogate the right of either party to pursue the dispute resolution procedures in Rule 4.**

Specific Comment: *We appreciate that this Rule 3 is generally intended to reduce any areas of conflict between the rules and an ICA. But with specific regard to dispute resolution, it is difficult to see how this approach would work as a practical matter. Suppose the ILEC and the CLEC agree in the ICA to submit disputes to the American Arbitration Association. This provision would render that provision meaningless so long as one party sought to take advantage of Rule 4 Dispute Resolution. The purpose of deciding in advance whatever procedure should be used for dispute resolution is to avoid forum shopping. This provision might encourage such behavior. Our concern with this problem may be offset by Rule 4(d) which requires that parties exhaust dispute resolution procedures which must be exhausted before calling upon the Commission. Thus, the Commission's dispute resolution procedures could only be used as a last resort if the ICA required that the parties exhaust other remedies. However, by that time, another forum may have made a ruling and resort to the Commission would be a way of forestalling or avoiding that ruling. Further, ICAs do not always require that parties exhaust their dispute resolution remedies. For example, the ICA between GTA and PDS, approved by the Commission, does not require exhaustion of other remedies. So, under that ICA, after a 45-day period of negotiation to resolve a dispute, either party may pursue any remedy available to it: the FCC, the court or the Commission. It is conceivable that the 46th day might bring a "race to the courthouse" mentality. We think further discussion of the practical aspects of this rule would be helpful.*

Rule: Rule 4: Dispute Resolution

General Comments

This section does not make clear what the parties' rights of appeal are after a formal arbitration, if any. Under Rule 4(h)(9), the Arbitrator submits a "recommendation" to the Commission, but there is no reference to appealable Commission action, nor to a time frame in which the Commission must act on the "recommendation." It seems important that specific provision should be made for the right to review dispute resolutions, particularly since the stakes may be quite high, i.e. significant lost revenue for failure to perform or loss of business opportunity. Further, the rule should make clear whether an appeal must be made to the Superior Court of Guam, as required of "every order" made by the Commission under Section 12018, or whether appeals should be taken to the federal district court, as is the case with Section 252 arbitrations.

We also question whether the timeframes provided in Rule 4 are realistic, given that the Arbitrator is often away from Guam and the Commission meets only quarterly. It may be helpful to specifically provide that telephone conferences are acceptable. Further, the very short timeframes contemplated in Rules 4(h) and (j) (5 and 3 business days respectively) do not take into consideration the possible need to consult with off-island counsel.

With regard to the Rule 4(i) Expedited Dispute Resolution ("EDR")procedure, it is our understanding that this is intended to be available only in very limited circumstances, i.e. when the dispute affects the ability of a party to provide uninterrupted service. In that case, it might be helpful to include in the rules some sort of automatic "stay" so that if the EDR procedure were used, there would be no question as to interruption of service during the pendency of the case. The "interim ruling" approach in Rule 4(j) may be intended to accomplish this but does not. Perhaps an automatic stay pending the result of the hearing on the interim ruling would be appropriate.

There are other aspects of Rule 4(i) which are not clear. For example, it is not clear whether the hearing contemplated in Rule 4(i)(3) would be before the Arbitrator or the Commission. Nor is it clear whether the hearing would be a trial-type hearing with witnesses and testimony under oath or whether it is intended to be less formal. Similarly, Rule 4(i)(4) provides for an "oral" recommendation to be "filed" with the Commission and "distributed to the parties."

Rule: Rule 5: Good Faith Implementation of ICA

Specific Language: **The Commission is authorized by Section 12108 of the Guam Telecommunications Act to assess penalties for failure to act in good faith in implementing the ICA in accordance with these rules.**

Specific Comment: *Section 12108 gives the Commission authority, after a hearing on not less than thirty days notice, to impose a penalty upon any telecommunications company which willfully violates any Commission regulation.. To the extent that Rule 5(a) requires a telecommunications company to act in good faith, and there is a "willful" violation thereof, Section 12108 would allow imposition of a penalty, after a hearing. However, there is little experience with the term "willful" as used in the statute, it may be appropriate to provide guidance as to what "willful" means in these circumstances.*

Specific Language: **The failure of the ILEC to meet Quality of Service intervals specified in the ICA or in Rule 7 shall not be deemed to be evidence of failure to implement the ICA in good faith unless the intervals for services provided to the requesting carrier are usually worse than those to the ILECs own customers or customers of the ILEC's affiliates.**

Specific Comment: *We interpret this section to mean that a company could be considered to be acting in bad faith if it met service intervals to a requesting carrier 49% of the time, and met service intervals to itself 51% of the time.*

Rule Rule 7: Service Quality

General Comment: *The service quality standards provided in Rule 7 are intended to set a floor for service quality below which no ICA can go. However, this rule constrains the negotiating ability of the two carriers. For example, a CLEC may be willing to forego specific service quality standards, opting instead for "parity" language and lower prices. Under Rule 7, this option is foreclosed. As a policy matter, the Commission may wish to set minimum standards, but it should recognize that, in doing so, it is inhibiting commercially reasonable practices.*

Rule Rule 8: Joint Planning and Forecasting

General Comment: *We are concerned about joint planning and forecasting in a competitive environment. In a small environment like Guam, describing "major network projects" for the following year could be seen as an opportunity for competitors to swarm around a contemplated new hotel or shopping complex. It is not enough to declare (as in Rule 8(g)) that such forecasting information shall be deemed "confidential and proprietary." So long as forecasting information is exchanged between representatives of a CLEC and an ILEC, that information can be used for anti-competitive practices.*

The obvious advantage to a CLEC of joint planning is that the four-month forecast can be used to require the ILEC to satisfy service order requests that are consistent with the forecast. However, that is a high price to pay for having to reveal one's major network plans for the next year. The incentives for CLECs may be to over-forecast, providing proposed network configurations that are purely hypothetical. This would be inconsistent with the stated purpose of the rule which is to "safeguard the ILEC against the possibility it would be required to provision excessive facilities."[2]

In sum, IT&E supports the adoption of rules governing the "good-faith" implementation of Interconnection Agreements, subject to the Comments provided herein. In these Comments we offer some suggestions for greater clarity and conformity with the federal Communications Act. We look forward to working with the Commission on development of the rules.

Respectfully submitted

JOHN M. BORLAS, P.E.
President

May 16, 2007

[2] GCG Letter at 4.

Proposed Implementation Rules
In Connection With
Interconnection Agreements
Between
GTA and Competing Local Exchange Carriers and CMRS Operators

Rule 1: Purpose:

These rules are intended to provide guidance on implementation of interconnection agreements between the incumbent local exchange carrier (ILEC) and competing local exchange carriers (CLECs) or Commercial Mobile Radio Services (CMRS) providers. They also provide standards that may be used by the Commission in evaluating whether or not good faith efforts have been made by the parties to implement such agreements.

Rule 2: Interconnection Requirements

a) All ILECs must provide appropriate interconnection arrangements with other telecommunications carriers at reasonable prices and under reasonable terms and conditions that do not discriminate against or in favor of any provider, including the local exchange carrier. Appropriate interconnection arrangements shall provide access on an unbundled, nondiscriminatory basis to physical, administrative and database network components. ILECs shall provide appropriate interconnection arrangements within six months of receiving a bona fide request for interconnection.
b) The interconnection requirements contained in Part 51 of Title 47 of the Code of Federal Regulations, as amended from time to time by the Federal Communications Commission (FCC), are adopted by the Commission and are incorporated herein by reference. In the event of a conflict between the rules of the Commission and the rules of the FCC, rules of the FCC shall prevail.
c) All local exchange carriers shall cooperate in the development of a process to handle inter-carrier service ordering, provisioning and repair service referrals.

Rule 3: Relationship of Rules to Interconnection Agreement

All implementation matters except those covered by Rule 2(b) shall be handled in accordance with these rules. Unless otherwise stated herein, in the event of any actual conflict between a technical standard contained in Rule 6 and a technical standard contained in an ICA approved by the Commission, the technical standard contained in the ICA shall take precedence. An ICA approved by the Commission may contain service quality standards stricter than those contained in Rule 7, and any such stricter service quality standards shall take precedence over the minimum service quality standards contained in Rule 7. The dispute resolution procedures in Rule 4 do not prohibit the use of other dispute resolution procedures and forums, including the FCC or courts, set forth in an ICA; provided, nothing in an ICA shall abrogate the right of either party to pursue the dispute resolution procedures in Rule 4.

Rule 4: Dispute Resolution

a) This rule establishes administrative procedures for Commission resolution of disputed issues arising under or pertaining to ICAs approved by the Commission pursuant to its authority under the Federal Telecommunications Act of 1996 and the Guam Telecommunications Act.
b) The dispute resolution procedures set forth in this rule are intended to resolve disputes concerning:
   1) Proper interpretation of terms and conditions in the ICA;
   2) Implementation of activities explicitly provided for, or implicitly contemplated in, the ICA;
   3) Enforcement of terms and conditions in such ICA; and
   4) Any issue not explicitly addressed in the ICA that the parties agree to resolve pursuant to this rule; provided the resolution of the issue would facilitate the provisioning of service pursuant to the ICA.
c) The procedures described in this rule are not intended to prohibit the use of other dispute resolution procedures set forth in the ICA between the parties. However, nothing in the ICA shall abrogate the right of either party to pursue the dispute resolution procedures in this rule.
d) As a prerequisite to utilizing this rule, a party must be able to demonstrate that it has exhausted any dispute resolution procedures that, by the terms of the ICA, are required to be exhausted before filing any petition or complaint with the Commission under these rules. Nothing in these rules shall require the exhaustion of dispute resolution procedures set forth in the ICA for the filing of any petition or complaint within the Commission's jurisdiction that is not the subject of a dispute under Rule 4(b) above, including, without limitation, any claim for a violation of a Commission order.
e) All parties participating in dispute resolution under this rule have a duty to participate in good faith. Good faith participation means both parties meet and confer with minds open to persuasion and with an eye toward reaching agreement on the disputed issues.
f) The processes for resolution of disputes include facilitation and formal arbitration. The party requesting dispute resolution under formal arbitration may also request interim relief. Interim relief is not available under facilitation.
g) Facilitation is an informal, voluntary process wherein the Commission conducts settlement conferences with the parties to attempt to reach a mutually acceptable resolution of any dispute. The Commission's Administrative Law Judge (ALJ) will act as facilitator.
   1) A request for an informal facilitation conference may be made by either party by filing a written request with the Commission and the other party to the ICA. The written request should include:
      i) The name, address, telephone number and facsimile number of each party to the ICA and the requesting party's designated representative;
      ii) A description of the parties' efforts to resolve their differences by negotiation;
      iii) A list of the narrow issues in dispute, with a cross-reference to the area of the ICA applicable or pertaining to the issues in dispute; and

iv) The requesting party's proposed solution to the dispute.

2) Upon receipt of any request for facilitation, the other party to the ICA shall promptly appoint a designated representative for the facilitation conference and may propose an alternative solution to the dispute.
3) The facilitator shall be responsible for scheduling and notifying the parties of the time, date, and location of the facilitation conference which shall be held no later than ten (10) business days from the date the request was filed. The parties shall provide the appropriate personnel with settlement authority to discuss and to resolve the disputes at the facilitation conference. The parties shall seek to resolve the dispute in good faith.
4) The facilitation conference shall be conducted as an informal meeting. Discovery will not be allowed and notice will not be provided concerning the facilitation. At any time during the facilitation, either party may request that the dispute resolution be moved to formal arbitration as set forth in this rule.
5) The informal facilitation conference shall be concluded within thirty (30) days from the written request for facilitation unless otherwise mutually agreed by the parties.

h) Arbitration is a formal proceeding for dispute resolution and will commence when a party (complainant) files a complaint with the Commission and, on the same day, delivers a copy of the complaint to the other party (respondent) to the ICA from which the dispute arises.

1) Unless otherwise ordered by the arbitrator, parties shall file with the Commission the same information listed above for the facilitation process plus an identification of pertinent background facts and relevant law or rules applicable to each disputed issue.
2) The Commission's ALJ shall act as arbitrator.
3) The respondent shall file a response to the complaint within twenty (20) days after the filing of the complaint and shall serve a copy of the response on the complainant, the arbitrator and the Commission's consultants. The response shall specifically affirm or deny each allegation in the complaint. The response shall include the respondent's position on each issue in dispute, a cross-reference to the area or areas of the ICA applicable or pertaining to the issue in dispute, and the respondent's proposed solution on each issue in dispute. In addition, the response shall stipulate to any undisputed facts and identify relevant law or rules applicable to each disputed issue.
4) The complainant may file a reply within five (5) business days after the filing of the response to the complaint and serve a copy to the parties listed above. The reply shall be limited solely to arguments issues raised in the response to the complaint.
5) As soon as possible after the complaint has been filed with the Commission, the arbitrator shall schedule a prehearing conference with the parties to the arbitration. The arbitrator shall make arrangements for the hearing to address the complaint, which shall commence no later than 50 days after filing of the complaint. The arbitrator shall notify the parties, not less than 15 days before the hearing of the date, time, and location of the hearing.

6) The arbitrator has broad discretion in conducting the dispute resolution proceeding. The arbitrator shall have the authority to award remedies or relief deemed necessary by the arbitrator to resolve a dispute subject to the procedures established under this rule.
7) Parties may obtain discovery by submitting a discovery request to the arbitrator. Discovery may include requests for inspection and production of documents, requests for admissions, and depositions by oral examination, as allowed within the discretion of the arbitrator.
8) The arbitrator may require the parties to file a direct case, under the same deadline, and a joint issues list on or before the commencement of the hearing and may direct a party or witness to provide additional information as needed to fully develop the record of the proceeding. If a party fails to present information requested by the arbitrator, the arbitrator shall render a recommendation on the basis of the best information available from whatever source derived.
9) The written recommendation of the arbitrator shall be filed with the Commission within fifteen (15) days after the close of the hearing and shall be distributed to all parties of record in the dispute resolution proceeding. The recommendation of the arbitrator shall be based upon the record of the dispute resolution hearing, and shall include a specific ruling on each of the disputed issues presented for resolution by the parties. The recommendation shall include a narrative report explaining the arbitrator's rationale for each of the rulings included in the final decision.
10) The Commission shall accept or reject, in whole or in part, the recommendation of the arbitrator within ten (10) days after the recommendation has been filed.

i) Expedited dispute resolution may be requested when the dispute directly affects the ability of a party to provide uninterrupted service to its customers or precludes the provisioning of any service, functionality or network element. The arbitrator has the discretion to determine whether the resolution of the complaint may be expedited based on the complexity of the issues or other factors deemed relevant. The provisions and procedures relating to arbitration apply, except as otherwise specifically set forth in this sub-rule.
1) The complaint shall also state specific circumstances that make the dispute eligible for an expedited ruling.
2) The respondent shall file a response to the complaint within five business days after the filing of a complaint. The response shall specifically affirm or deny each allegation in the complaint.
3) After reviewing the complaint and the response, the arbitrator will determine whether the complaint warrants an expedited ruling. If so, the arbitrator shall schedule a prehearing conference with the parties to the arbitration. The arbitrator shall make arrangements for the hearing to address the complaint, which shall commence no later than seventeen days after filing of the complaint. The arbitrator shall notify the parties of the date, time, and location of the hearing not less than three days before the hearing. If the arbitrator determines that the complaint is not eligible for an expedited ruling, the arbitrator shall so notify the parties within five days of the filing of the response.

4) The oral recommendation of the arbitrator shall be filed with the Commission within three days after the close of the hearing and shall be distributed to all parties of record in the dispute resolution proceeding. The recommendation of the arbitrator shall be based upon the record of the dispute resolution hearing, and shall include a specific ruling on each of the disputed issues presented for resolution by the parties.

j) A party who requests dispute resolution may also request an interim ruling on whether the party is entitled to relief pending the resolution of the merits of the dispute. This relief is intended to provide an interim remedy when the dispute compromises the ability of a party to provide uninterrupted service or precludes the provisioning of scheduled service.

1) Within three business days, if feasible, of the filing of a complaint and request for interim ruling, the arbitrator shall conduct a hearing to determine whether interim relief should be granted during the pendency of the dispute resolution process. The arbitrator will notify the parties of the date and time of the hearing by facsimile within one business day of the filing of a complaint and request for interim ruling. The parties should be prepared to present their positions and evidence on factors including but not limited to: the type of service requested; the economic and technical feasibility of providing that service; and the potential harm in providing or not providing the service.

2) Based upon the evidence provided at the hearing, the arbitrator shall issue a written ruling on the request within 24 hours of the close of the hearing and will notify the parties of the ruling. The interim ruling will be effective throughout the dispute resolution proceeding until a final order is issued. The interim ruling shall have no precedential impact.

Rule 5: Good Faith Implementation of ICA

a) Both parties to the ICA are obligated to implement its provisions in good faith. The parties are expected to comply with the provisions of the ICA with the highest standards of professionalism, decency and honesty.

b) The Commission is authorized under Section 12108 of the Guam Telecommunications Act to assess penalties for failure to act in good faith in implementing the ICA in accordance with these rules. In determining the amount of penalty, the Commission will consider the appropriateness of the penalty relative to the size of the violating party, the gravity of the violation, and the actual harm incurred by the complaining party.

c) The following prohibited acts are examples of failure to act in good faith. This list is not intended to be all inclusive. Violations of other Commission rules or of commercial law may also constitute failure to act in good faith.

1) No telecommunications carrier shall:

i) File, submit, or present to the Commission an any document related to interconnection that contains false or misleading information, facts, or materials, or that omits material information, facts, or materials;

ii) Refuse to use its commercially reasonable efforts in implementing the ICA;

iii) Engage in acts, conduct, or behavior with the sole purpose of delaying implementation of the ICA;
iv) Fail to respect the privacy of personally identifiable customer information;
v) Upon bona fide request, unreasonably refuse to fully disclose in a timely manner all information necessary to achieve interconnection; or
vi) Engage in any other anti-competitive action, conduct, or behavior.

2) The ILEC shall not:
   i) Unreasonably refuse or delay access to its exchange by the other party to the ICA;
   ii) Unreasonably delay interconnection under the ICA;
   iii) Provide inferior interconnections to the other party to the ICA
   iv) Degrade the quality of access provided to the other telecommunications carrier;
   v) Impair the speed, quality, or efficiency of access lines used by the other telecommunications carrier;
   vi) Sell services or products, extend credit, or offer other terms and conditions on more favorable terms to its affiliates or to the carrier's retail department, than to the other party to the ICA; or
   vii) Unreasonably reserve capacity in any existing network facility in order to prevent the other telecommunications carrier from obtaining access to interconnection services including buildings, dark fiber cable and any Unbundled Network Elements (UNEs).

3) The failure of the ILEC to meet the Quality of Service intervals specified in the ICA or in Rule 7 shall not be deemed to be evidence of failure to implement the ICA in good faith unless the intervals for services provided to the requesting carrier are usually worse than those to the ILEC's own customers or customers of the ILEC's affiliates.

Rule 6: Technical Standards

a) Interconnection between the ILEC and CLEC or CMRS operator shall be established in a manner that is seamless, interoperable, technically and economically efficient and transparent to the end-user customer.
b) The ILEC shall provide interconnection facilities and access to UNEs that is at least equal in type and quality to that provided to itself or its affiliates.
c) Interconnection between carriers shall utilize nationally accepted telecommunications industry standards and/or mutually acceptable standards for construction, operation, testing and maintenance of networks, such that the integrity of the networks is not impaired.
d) Interconnecting carriers shall make a good-faith effort to accommodate each other's technical requests, provided that the technical requests are consistent with national industry standards and implementation of the requests would not cause unreasonable inefficiencies, unreasonable costs, or other detriment to the network of the ILEC receiving the requests.
e) Interconnecting carriers shall establish joint procedures for troubleshooting the portions of their networks that are jointly used. Each carrier shall be responsible for

maintaining and monitoring its own network such that the overall integrity of the interconnected network is maintained with service quality that is consistent with industry standards and rule 7.

f) Each interconnecting carrier shall be responsible for ensuring that traffic is properly routed to the other carrier and jurisdictionally identified by percent usage factors or in a manner agreed upon by the interconnecting carriers.

g) Interconnecting carriers shall allow each other non-discriminatory access to all facility rights-of-way, conduits, pole attachments, building entrance facilities, and other pathways, provided that the requesting carrier has obtained all required authorizations from the property owner and/or appropriate governmental authority.

h) The ILEC shall provide physical interconnection to other carriers in a nondiscriminatory manner. Physical collocation for the transmission of local exchange traffic shall be provided upon request, unless the ILEC demonstrates that technical or space limitations make physical collocation impractical. Virtual collocation for the transmission of local exchange traffic shall be implemented if physical collocation is not feasible or at the option of the carrier requesting the interconnection.

i) In determining whether space is available for physical collocation, the ILEC may retain a limited amount of central office floor space for its own specific future uses, provided, however, that neither the ILEC nor any of its affiliates may reserve space for future use on terms more favorable than those that apply to other telecommunications carriers seeking to reserve collocation space for their own future use.
    1) The ILEC is permitted to reserve central office floor space for future use only if such use is in accordance with a written plan that includes floor plans that show any space that is reserved for future use, and the ILEC must describe in detail the specific future uses for which the space has been reserved and the length of time for each reservation. Central office floor space may not be reserved in the absence of a written plan for use.
    2) Space may not be reserved for longer than 3 years from the date the reservation plan was first approved by ILEC management.

j) The ILEC is permitted to reserve up to two fiber strands on each fiber cable route for maintenance purposes. This reservation addresses the possibility that a fiber could become defective and require emergency or immediate resolution. The ILEC is permitted to reserve the remaining existing dark fiber facilities for future use only if such use is in accordance with a written utilization plan that describes in detail the specific future uses for which the dark fiber has been reserved and the length of time for each reservation. Dark fiber may not be reserved for future use for longer than 18 months from the date the reservation plan was first approved by ILEC management. If no written utilization plan is in place, existing dark fibers shall be assigned in a nondiscriminatory manner between the ILEC and any requesting carrier.

k) Each interconnecting carrier shall be responsible for contacting the North American Numbering Plan (NANP) administrator for its own NXX codes and for initiating NXX assignment requests.

Rule 7: Service Quality

a) This rule provides minimum overall service quality standards. If an interconnection agreement is adopted pursuant to negotiation or arbitration under the Federal Act, the ICA may contain obligations and performance standards for network facilities and services that are stricter than the guidelines contained in this rule.
b) Each ILEC shall provide essential facilities and associated services in accordance with the following provisioning intervals and shall separately measure each provisioning interval for commonly used circuit or facility types. The provisioning interval is the elapsed time measured in hours from the ILEC's receipt of a service order to return of an OCN. The percentage of service orders completed on time will be determined by the number of orders completed within the installation interval or the committed due date specified in a FOC. The cumulative elapsed time for each circuit or facility type is divided by the total number of corresponding completed service orders for each circuit or facility type to derive measures of service order flow-through. The ILEC shall return a FOC within two business days of receipt of a service order from another telecommunications carrier.
c) Pursuant to forecasting requirements established in Rule 8 below, forecasted trunk, routing and switching facilities shall be provisioned to any requesting carrier within 30 days of receipt of a service order, unless otherwise agreed to by the requesting carrier.
d) The ILEC shall provide either interim number portability or permanent number portability to a requesting carrier. The installation interval for interim number portability shall not exceed three business days following receipt of a service order. Permanent number portability shall be provided pursuant to Federal Communications Commission requirements.
e) The ILEC shall provide for the receipt of trouble reports 24 hours a day, seven days a week and shall investigate and respond to each trouble report.
    1) Provisions shall be made to clear emergency out-of-service trouble at all hours, consistent with the public interest and the personal safety of ILEC personnel. Emergency or alternative service shall be provided local law enforcement and public safety agencies during the period of any network interruption.
    2) If unusual repairs preclude prompt disposition of a reported trouble, the ILEC shall notify all affected telecommunications carriers. If service must be interrupted for purposes of rearranging facilities or equipment, all affected telecommunications carriers shall be notified and the work shall be completed in the least disruptive manner in order to minimize public inconvenience.
f) The ILEC shall clear out-of-service trouble reports received from another telecommunications carrier within the following intervals, unless other repair intervals have been agreed to in the ICA:

REPAIR INTERVAL TABLE	
DS - 3, OC - 3 and higher	2 hours
DS - 1, Fractional DS - 1, Design DS - 0, and Local Interconnection Trunks	4 hours
Residential and Business Resale POTS	24 hours

The repair interval for clearing a trouble between telecommunications carriers is the elapsed time measured in hours and tenths of hours from the time a trouble report is received by a telecommunications corporation to the time the telecommunications corporation returns a valid trouble resolution notification. Elapsed time shall be measured by common circuit or facility types and trouble disposition and closure shall be recorded.

g) The ILEC shall undertake all commercially reasonable efforts to facilitate parity of access to operational support functionality the incumbent local exchange carrier uses to store and retrieve information related to network engineering and administration.

h) The ILEC shall provision essential network facilities and services in accordance with the following intervals and shall measure provisioning intervals for each of the following loop facilities and services:

1) Provisioning intervals for an unbundled loop will vary by circuit and facility type, the number of loops requested on a service order, availability of facilities and whether or not a dispatch of ILEC personnel must occur. The following essential facilities will be provisioned for telecommunications carriers within the specified intervals.

PROVISIONING INTERVAL TABLE		
Facility Type	Quantity	Interval
DSO or analog equivalent, dispatch, facilities available	1 - 24 24 - n	5 days negotiated
DSO or voice grade equivalent, no dispatch	1 – 24 24 - n	3 days 7-10 days
DS1 -- Facilities provisioned and available		5 days
ISDN -- Facilities provisioned and available		7 days
XDSL -- Facilities provisioned and available		7 days
DS3 -- Facilities provisioned and available		7 days
OC3 -- Facilities provisioned and available		15 days
OC4 and Higher -- Facilities provisioned and available		15 days or negotiated due date.

2) Installation intervals for wholesale (resold) services shall vary depending upon whether an existing end user service provided by the ILEC is transferred to another telecommunications carrier, or, is a new service installation.

i) The ILEC shall transfer wholesale services without changes for an existing end user served by the ILEC within one business day following receipt of a service order from the requesting carrier.

ii) The ILEC shall transfer wholesale service with changes for an existing end user served by the ILEC within three business days following receipt of a service order from the requesting carrier.

iii) The ILEC shall install new wholesale service to a new end user, if facilities are available, within three days following receipt of a service order from the requesting carrier

3) The following provisioning intervals and optional arrangements are common to both virtual and physical collocation:
   i) Upon receipt by the ILEC of a request for collocation, the ILEC shall within 15 days notify the requesting carrier whether sufficient space exists. If the requesting carrier disputes the ILECs denial of a request for collocation, and the carriers cannot negotiate a mutually satisfactory resolution, the requesting carrier may petition the Commission pursuant to Rule 4 for an expedited hearing and resolution of the dispute. The burden shall be on the ILEC to demonstrate to the Commission that collocation is not practical due to space limitations or is technically infeasible.
   ii) If collocation is available, the ILEC shall within 25 days following receipt of a request for collocation provide a written quotation containing all non-recurring charges for construction of the requesting carrier's requested collocation arrangement.
   iii) The requesting carrier shall within 30 days following receipt of the ILEC's quotation, by written notice to the ILEC: 1) accept the quotation; 2) withdraw the request for collocation; or, 3) provide the ILEC an independent contractor quotation for construction of the requested collocation arrangement.
   iv) If the requesting carrier accepts the quotation from the ILEC, collocation equipment shall be installed on the ILEC's premises in accordance with the following provisioning intervals: 1) For physical collocation arrangements, the ILEC shall within 45 days of the requesting carrier's acceptance of the ILEC's quotation complete construction of the collocation space necessary and sufficient for installation of the requesting carrier 's collocated interconnection facilities. The ILEC shall grant the requesting carrier access to the collocation space to install network elements therein. 2) For virtual collocation arrangements, the ILEC shall within 45 days after delivery of the requesting carrier 's collocation equipment complete provisioning of all network facilities ordered by the requesting carrier.
   v) If the requesting carrier provides the ILEC an independent contractor quotation for construction associated with a collocation arrangement, the ILEC shall within 15 days of receipt of the quotation: 1) accept the proposal and grant to the independent contractor access to the ILEC's premises to complete construction of the collocation space and installation of the collocated interconnection facilities; 2) amend the ILEC's own quotation to perform on substantially similar terms, including, without limitation, price, the services specified in the independent contractor's quotation; or, 3) reject the proposal. If the requesting carrier accepts the ILEC's amended quotation, construction of the collocation space shall proceed. If the ILEC rejects an independent contractor quotation or refuses to amend its own quotation, or if the ILEC takes no action within the specified timeframe, the requesting carrier may petition the Commission for an expedited hearing and resolution of the dispute.

i) The ILEC shall maintain network engineering and administrative records related to interconnection services provided to other carriers.

1) The ILEC shall make these records available for inspection by the Commission or its designee.
2) All information required by this rule shall be preserved for at least 36 months after the date of entry.
3) The ILEC shall maintain records of its network engineering and administrative operations in sufficient detail to permit review of network performance, provisioning intervals and general service quality provided other carriers.
4) Within 30 days of a request by the Commission, the ILEC shall file a study with the Division of Public Utilities evidencing actual provisioning intervals for network facilities and services or actual repair intervals for services provided to another carrier, to an affiliate, or, aggregated for its ten largest customers.
5) The ILEC shall monitor the use of its network so as to:
   i) issue the reports required by this Rule; and
   ii) monitor the use of all trunk groups and other interconnection facilities and equipment on its own side of the point of interconnection between its network and the network of each interconnecting telecommunications corporation.
6) The ILEC shall maintain a daily record, by wire center, of call blocking. The record shall indicate the percentage of calls blocked by trunk group utilized by each interconnecting telecommunications carrier. The ILEC shall notify each interconnecting telecommunications carrier immediately if call blocking on any trunk group within in any wire center exceeds standard industry levels.
7) The ILEC shall maintain a record, by wire center, of each instance when it fails to supply essential facilities and services to an interconnecting telecommunications carrier in accordance with the provisioning intervals established in this Rule. The record shall provide the following data:
   i) the name and address of the telecommunications corporation;
   ii) the circuit or facility type requested in the service order;
   iii) the date and hour the service order was received;
   iv) the reason for the delay;
   v) the number of days the order has been delayed;
   vi) the expected order completion date for each service order;
   vii) whether an initial service order was supplemented by the requesting telecommunications corporation and, if so, the date and time the supplement was approved by the providing carrier;
   viii) a copy of the FOC provided the requesting telecommunications carriers.
8) The ILEC shall maintain a record, by wire center, of trouble reports received from another telecommunications carrier. The record shall identify the telecommunications carrier experiencing trouble; the affected services; the time, date and nature of the report; the cause and action taken to clear the trouble and its recorded disposition; and the date and time of trouble clearance.

j) The ILEC will provide to the Commission performance monitoring reports detailing the ILEC's provisioning of:
   i) services to the ILEC's retail customers in the aggregate;
   ii) essential facilities and services provided to itself or any retail affiliate purchasing interconnection or access;

iii) essential facilities and services provided in the aggregate to other telecommunications carriers purchasing interconnection; and

iv) essential facilities and services provided to individual telecommunications carriers purchasing interconnection.

k) Performance monitoring reports shall include the following metrics:

1) Firm Order Confirmation Interval – This metric is the average interval from receipt of a service order to distribution of a firm order confirmation notice

2) Delayed Order Ratio -This metric measures uncompleted orders where the committed due date on a firm confirmation order has passed. It is calculated as the number of delayed orders divided by the number of orders pending including those past due.

3) Average Completion Interval - This metric measures the average time from the date and time of the ILEC's receipt of a service order to the completion date and time provided on an order completion notification (OCN).

4) Percentage of Orders Completed On Time - This metric measures the percentage of total orders completed on or before the completion date provided on an OCN.

5) Trouble Report Rate - This report measures the frequency of direct or referred trouble report incidents across a universe of facilities where the cause is determined to be in network facilities. It is measured as a percentile of lines or circuit types in service. The ILEC shall exclude from its count of trouble reports queries made to the ILEC from another telecommunications carrier's end- user customers who are not served by the ILEC.

6) Mean Time to Restore - This metric measures the interval for resolution of maintenance and repair troubles. It measures the elapsed time from receipt of a trouble report to the time the reported trouble is cleared.

l) The Commission may request from the ILEC a report on a specific basis rather than on an average basis with respect to any of the information described in the foregoing performance monitoring metrics.

m) The reports required under this Rule are due monthly.

Rule 8: Joint Planning and Forecasting

a) The ILEC shall meet with each of the other telecommunications carriers currently interconnected or planning to interconnect within the next calendar quarter, to participate in joint forecasting and planning as necessary to accommodate the design and provisioning responsibilities of both telecommunications carriers. At a minimum, the telecommunications carriers shall meet once every calendar quarter to plan for the next quarter.

b) Forecasting is the joint responsibility of the telecommunications carriers. A forecast of interconnecting trunk group and other facilities and equipment required by the telecommunications carriers shall be prepared by the ILEC on a quarterly basis. The quarterly forecast shall project requirements for the following time intervals: four months; one year; and three years. To the extent practical, the one-year and three-year forecasts will be supplemented with historical data from time to time as necessary to improve the accuracy of the forecasts.

c) The forecasts shall include, for tandem-switched traffic, the quantity of the tandem-switched traffic forecasted for each end office.
d) The forecasts shall include a description of major network projects anticipated for the following year that could affect the other party to the forecast. Major network projects include trunking or network rearrangements, shifts in anticipated traffic patterns, or other activities that are reflected by a significant increase or decrease in trunking demand for the succeeding forecasting period.
e) The forecasts shall also describe anticipated network capacity limitations, including any trunk groups when usage exceeds 80 percent of the trunk group capacity, and the procedure for eliminating capacity problems before any trunk group experiences blocking in excess of standard industry practices.
f) The forecasts of cable and wire needs shall be route specific showing the A and Z end points of each cable and the numbers of pairs or fiber strands assigned and available.
g) Unless otherwise agreed, forecasting information exchanged between interconnecting carriers, or disclosed by one interconnecting carrier to the other, and the quarterly forecast report pursuant to Rule 8(b), shall be deemed confidential and proprietary.
h) If the telecommunications carriers cannot agree on the terms of the quarterly four-month forecast, either carrier may commence an expedited dispute resolution proceeding before the Commission. In that proceeding, the burden of persuasion shall be on the ILEC to demonstrate that a four- month quarterly forecast submitted by a CLEC is unreasonable. To the extent the telecommunications carriers agree to the terms of a forecast, the terms shall be deemed approved for purposes of this Rule, and only those portions of a quarterly forecast actually in dispute shall be subject to the expedited dispute resolution proceeding.
i) If the telecommunications carriers agree on a four-month quarterly forecast, or, to the extent a forecast is approved by the Commission pursuant to the expedited dispute resolution proceeding, the ILEC shall be obligated to satisfy all service order requests made by the ordering telecommunications corporation that are consistent with the four-month projections contained in the approved forecast.
j) If a CLEC or CMRS provider desires to order trunk groups, equipment, or facilities beyond the four-month forecast, but consistent with the one-year and three-year forecast, it may order the additional quantity if it pays a capacity reservation charge to the ILEC.
k) If a trunk group is under 60 percent of centum call seconds (ccs) capacity on a monthly average basis for each month of any three-month period, either carrier may request to resize the trunk group, which resizing will not be unreasonably withheld. If the resizing occurs, the trunk group shall not be left with less than 25 percent excess capacity. If the telecommunications carriers cannot agree to a resizing, either of them may file a petition with the Commission for an expedited dispute resolution proceeding.
l) The quarterly forecast report required under Rule 8(b) shall be submitted to the Commission not later than the first day of that quarter.

Rule 9: Monitoring of Construction Program

a) In accordance with Rules 6(i) and 6(j), the ILEC is permitted to reserve central office space and dark fiber for a limited amount of time under a written plan for specific use. However, the ILEC is required to take into account the needs of current or anticipated interconnected carriers when constructing new facilities. These needs shall be determined in accordance with Rule 8.

b) The ILEC shall include an affirmative statement in the cover letter to each quarterly report prepared pursuant to Rule 8(b) stating whether or not new central office building space, switch capacity upgrades or inter-office cable and wire facilities including fiber cables are planned. The report cover letter shall also contain an affirmative statement that the needs of current or anticipated interconnected carriers were taken into account in the forecast. The report shall contain a narrative detailing how the forecast took these needs into account.

Appendix

Definitions

The meaning of terms used in these rules shall be consistent with their general usage in the telecommunications industry unless modified in the context of a specific rule.

"Affiliate" -- means, with respect to any telecommunications corporation, a person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of these rules, the term "own" means to own an equity interest, or the equivalent, of more than ten percent.

"Blocking" -- means the occurrence of insufficient capacity between the end office or tandem of a telecommunications corporation and the end office or tandem of another telecommunications corporation, and includes a call not completed because of insufficient capacity usually evidenced by a fast busy signal or message that circuits are busy.

"Busy Hour" -- means the uninterrupted period of 60 minutes during the day when the traffic is at its maximum.

"Business Day" -- means any day other than Saturday, Sunday or other day on which commercial banks in Utah are authorized or required to close.

"Carrier" – means the ILEC, CLEC or CMRS operator collectively.

"CFR" -- means the Code of Federal Regulations.

"Commission" -- means the Public Service Commission of Guam.

"Competitive Local Exchange Carrier" (CLEC) -- means an entity certificated to provide local exchange services that does not otherwise qualify as an incumbent local exchange carrier.

"Commercial Mobile Radio Service" (CMRS) – means a mobile wireless telecommunications service provided by a cellular, Personal Communications Service, paging or other wireless network operator to the general public. Does not include private wireless network operators such as taxi dispatch operators.

"Delayed Service Order" -- means a written or electronic order for an essential interconnection service or facility that is not filled on or before the standard installation interval or the date specified in a FOC, whichever occurs first.

"End User" -- means the person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency purchasing the telecommunications service for its own use, and not for resale.

"Essential Services" -- means Unbundled Network Elements as defined by the FCC, access to 911 or E911 emergency call networks, interoffice transmission facilities and OSS functionality

"FCC" -- means the Federal Communications Commission..

"Federal Act" -- means the Federal Telecommunications Act of 1996

"Firm Order Confirmation" (FOC) -- means notice provided by one telecommunications corporation to another in electronic or manual form of acceptance of a service order and the date that the service order will be completed.

"Incumbent Local Exchange Carrier" (ILEC) -- the local exchange carrier that provided telephone exchange services prior to enactment of the federal Telecommunications Act of 1996. GTA has been defined as the ILEC for Guam by the FCC.

"Interoffice Trunk Facilities" -- means the facilities, including transport, switching and cross-connect facilities, necessary for the transmission and routing of telephone exchange service between two end offices, or an end office and a tandem office.

"Local Exchange Carrier" -- means a telecommunications provider, authorized by the Commission, that provides local exchange service in a defined geographic service territory.

"Network Element" or "Network Facility" -- means the features, functions and capabilities of network equipment used to transmit route, or otherwise provide public telecommunications services.

"Order Completion Notification" (OCN) -- means notice provided by one telecommunications corporation to another in electronic or manual form that a service order has been completed.

"OSS Functionality" -- means the functions used by the ILEC in preordering, ordering, provisioning, maintenance and repair telecommunications services. These functions may involve manual or mechanized processes or system.

"Service Order" -- means a written or electronic request for essential facilities or services.

"Trouble Report" -- means an oral, written or electronic report received by a telecommunications corporation from an end user of public telecommunications service, or, an oral, written or electronic report received by one telecommunications corporation from another who purchases essential facilities or services from the former. In either case, a Trouble Report communicates improper functioning of facilities over which the providing telecommunications corporation exercises control. A trouble report is used by telecommunications carriers to monitor repair and maintenance actions required for disposition of out-of-service or substandard service conditions.

"Wholesale Services" -- means essential services available to telecommunications carriers for the purpose of resale to end users.

"Wire Center" -- means a building that contains the necessary telecommunications facilities and functions to terminate, switch, route and interconnect local exchange, interoffice, and interexchange public telecommunication services.

Attachment 2

Sources of Proposed Implementation Rules

Rule	Issue	State	Adapted From Document
1	Purpose		
2(a)	Interconnection Requirements	AZ	Arizona Administrative Code, Title 14, Section 14-2-1112
2(b)	Incorporation of federal rules by reference		Common practice for most PUCs
2(c)	Cooperation on operations support functions	AZ	Arizona Administrative Code, Title 14, Section 14-2-1306
3	Relationship of Rules to ICA		Found in most interconnection implementation rules.
4	Dispute Resolution	OK	OAC 165.55 Subchapter 22. Rule 4(e) was based on AZ Sections 14-2-1502(C) and 1504(E).
5	Good Faith Implementation	HI UT	Hawaii Administrative Rules Chapter 6-80-129. Rule 5(b) was based on Utah Code Section 54-8b-17
6	Technical standards	TX FCC	Chapter 26 Substantive Rules Applicable to Telecommunications Providers Subchapter L Section 26.272(d). Rule 6(h) was based on Parts 51. 321 and 323 and FCC 00-297, released 8/10/2000
7	Quality of Service	UT	Utah Administrative Code Rule R746-365
8	Joint Planning and Forecasting	UT	Utah Administrative Code Rule R746-365-6
9	Monitoring of Construction Program		GCG Recommendation

BEFORE THE PUBLIC UTILITIES COMMISSION OF GUAM

Guam Cellular & Paging, Inc. d/b/a GuamCell, Petitioner, v. TeleGuam Holdings, LLC d/b/a GTA, Respondent.	)	Docket No. 07-05

STIPULATION FOR MODIFICATION OF ARBITRATION DEADLINE AND JOINT MOTION TO MODIFY SCHEDULE

Guam Cellular & Paging, Inc. d/b/a Guamcell ("Guamcell") and TeleGuam Holdings, LLC d/b/a GTA ("GTA"), by their respective attorneys, bring this Stipulation for Modification of Arbitration Deadline and Joint Motion to Modify Schedule. In support of this Stipulation and Motion, Guamcell and GTA state as follows:

1. Guamcell filed its arbitration petition on September 28, 2006. A final order must be issued in this matter on or before June 28, 2007.

2. During the pendency of this arbitration, and with the assistance of the Administrative Law Judge ("ALJ"), Guamcell and GTA explored settlement. Although the parties did resolve some issues, Guamcell and GTA were unable to resolve all issues raised.

3. As a consequence of discussing the issues during the course of settlement negotiations, Guamcell and GTA each desire an opportunity to file briefs commenting on the arbitration issues prior to the Commission's regulatory consultant Georgetown Consulting Group ("GCG") issuing its comments in the proceeding. However, the current deadline of June 28, 2007 for a final order does not allow sufficient time within the schedule for the parties to file briefs.

4. Guamcell and GTA seek to stipulate to a new Negotiation Request date of October 12, 2006. Accordingly, the date by which a final order must be issued is July 12, 2007.

5. In accordance with the ALJ's memorandum dated May 20, 2007, Guamcell and GTA propose modifying dates in accordance with the following chart:

Task	Prior Deadline (Guam time)	Revised Deadline (Guam time)
Final party comments and briefs on arbitration issues	Not applicable	June 1, 2007
GCG comments on the parties' positions	Not applicable	June 8, 2007
Party responses to GCG comments	Not applicable	June 13, 2007
ALJ report	May 21, 2007	June 19, 2007
Party objections to ALJ report	June 1, 2007	June 29, 2007
Commission decision	June 15, 2007	July 6, 2007
Section 252 deadline	June 28, 2007	July 12, 2007

6. Neither Guamcell nor GTA will be prejudiced by the foregoing schedule. Guamcell and GTA agree that the adjustment provides them with an opportunity to file briefs and comments as appropriate.

WHEREFORE, Guamcell and GTA respectfully request that the Administrative Law Judge enter the Stipulation as to the Revised Negotiation Date and grant Guamcell's and GTA's motion to modify the schedule as set forth above in this motion.

Respectfully submitted,

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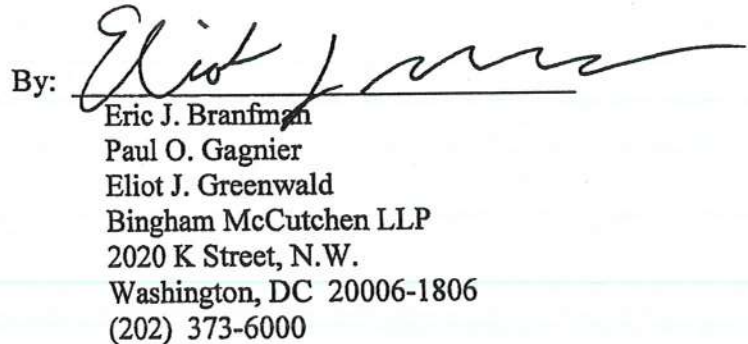
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May 22, 2007

*Signatures authorized by Mr. Lukas.

Attachment 1

Proposed Implementation Rules
In Connection With
Interconnection Agreements
Between
GTA and Competing Local Exchange Carriers and CMRS Operators

Rule 1: Purpose:

These rules are intended to provide guidance on implementation of interconnection agreements between the incumbent local exchange carrier (ILEC) and competing local exchange carriers (CLECs) or Commercial Mobile Radio Services (CMRS) providers. They also provide standards that may be used by the Commission in evaluating whether or not good faith efforts have been made by the parties to implement such agreements.

Rule 2: Interconnection Requirements

a) All ILECs must provide appropriate interconnection arrangements with other telecommunications carriers at reasonable prices and under reasonable terms and conditions that do not discriminate against or in favor of any provider, including the incumbent local exchange carrier. Appropriate interconnection arrangements shall provide access on an unbundled, nondiscriminatory basis to physical, administrative and database network elements. ILECs shall provide appropriate interconnection arrangements within six months of receiving a bona fide request for interconnection.
b) The interconnection requirements contained in Part 51 of Title 47 of the Code of Federal Regulations, as amended from time to time by the Federal Communications Commission (FCC), are adopted by the Commission and are incorporated herein by reference. In the event of a conflict between the rules of the Commission and the rules of the FCC, the rules of the FCC shall prevail.
c) All local exchange carriers shall cooperate in the development of a process to handle inter-carrier service ordering, provisioning and repair service referrals.

Rule 3: Relationship of Rules to Interconnection Agreement

All implementation matters except those covered by Rule 2(b) shall be handled in accordance with these rules. Unless otherwise stated herein, in the event of any actual conflict between a technical standard contained in Rule 6 and a technical standard contained in an ICA approved by the Commission, the technical standard contained in the ICA shall take precedence. An ICA approved by the Commission may contain service quality standards stricter than those contained in Rule 7, and any such stricter service quality standards shall take precedence over the minimum service quality standards contained in Rule 7. The dispute resolution procedures in Rule 4 do not prohibit the use of other dispute resolution procedures and forums, including the FCC or courts, set forth in an ICA; provided, nothing in an ICA shall abrogate the right of either party to pursue the dispute resolution procedures in Rule 4.

Rule 4: Dispute Resolution

a) This rule establishes administrative procedures for Commission resolution of disputed issues arising under or pertaining to ICAs approved by the Commission pursuant to its authority under the Federal Telecommunications Act of 1996 and the Guam Telecommunications Act.

b) The dispute resolution procedures set forth in this rule are intended to resolve disputes concerning:
   1) Proper interpretation of terms and conditions in the ICA;
   2) Implementation of activities explicitly provided for, or implicitly contemplated in, the ICA;
   3) Enforcement of terms and conditions in such ICA; and
   4) Any issue not explicitly addressed in the ICA that the parties agree to resolve pursuant to this rule; provided the resolution of the issue would facilitate the provisioning of service pursuant to the ICA.

c) The procedures described in this rule are not intended to prohibit the use of other dispute resolution procedures set forth in the ICA between the parties. However, nothing in the ICA shall abrogate the right of either party to pursue the dispute resolution procedures in this rule.

d) As a prerequisite to utilizing this rule, a party must be able to demonstrate that it has exhausted any dispute resolution procedures that, by the terms of the ICA, are required to be exhausted before filing any petition or complaint with the Commission under these rules. Nothing in these rules shall require the exhaustion of dispute resolution procedures set forth in the ICA for the filing of any petition or complaint within the Commission's jurisdiction that is not the subject of a dispute under Rule 4(b) above, including, without limitation, any claim for a violation of a Commission order.

e) All parties participating in dispute resolution under this rule have a duty to participate in good faith. Good faith participation means both parties meet and confer with minds open to persuasion and with an eye toward reaching agreement on the disputed issues.

f) The processes for resolution of disputes include facilitation and formal arbitration. The party requesting dispute resolution under formal arbitration may also request interim relief. Interim relief is not available under facilitation.

g) Facilitation is an informal, voluntary process wherein the Commission conducts settlement conferences with the parties to attempt to reach a mutually acceptable resolution of any dispute. The Commission's Administrative Law Judge (ALJ) will act as facilitator.
   1) A request for an informal facilitation conference may be made by either party by filing a written request with the Commission and the other party to the ICA. The written request should include:
      i) The name, address, telephone number, email address and facsimile number of each party to the ICA and the requesting party's designated representative;
      ii) A description of the parties' efforts to resolve their differences by negotiation;
      iii) A list of the narrow issues in dispute, with a cross-reference to the area of the ICA applicable or pertaining to the issues in dispute; and

iv) The requesting party's proposed solution to the dispute.

2) Upon receipt of any request for facilitation, the other party to the ICA shall promptly appoint a designated representative for the facilitation conference and may propose an alternative solution to the dispute.
3) The facilitator shall be responsible for scheduling and notifying the parties of the time, date, and location of the facilitation conference which shall be held no later than ten (10) business days from the date the request was filed. The parties shall provide the appropriate personnel with settlement authority to discuss and to resolve the disputes at the facilitation conference. The parties shall seek to resolve the dispute in good faith.
4) The facilitation conference shall be conducted as an informal meeting. Discovery will not be allowed and notice will not be provided concerning the facilitation. At any time during the facilitation, either party may request that the dispute resolution be moved to formal arbitration as set forth in this rule.
5) The informal facilitation conference shall be concluded within thirty (30) days from the written request for facilitation unless otherwise mutually agreed by the parties.

h) Arbitration is a formal proceeding for dispute resolution and will commence when a party (complainant) files a complaint with the Commission and, on the same day, delivers a copy of the complaint to the other party (respondent) to the ICA from which the dispute arises.
1) Unless otherwise ordered by the arbitrator, parties shall file with the Commission the same information listed above for the facilitation process plus an identification of pertinent background facts and relevant law or rules applicable to each disputed issue.
2) The Commission's ALJ shall act as arbitrator.
3) The respondent shall file a response to the complaint within twenty (20) days after the filing of the complaint and shall serve a copy of the response on the complainant, the arbitrator and the Commission's consultants. The response shall specifically affirm or deny each allegation in the complaint. The response shall include the respondent's position on each issue in dispute, a cross-reference to the area or areas of the ICA applicable or pertaining to the issue in dispute, and the respondent's proposed solution to each issue in dispute. In addition, the response shall stipulate to any undisputed facts and identify relevant law or rules applicable to each disputed issue.
4) The complainant may file a reply within five (5) business days after the filing of the response to the complaint and serve a copy to the parties listed above. The reply shall be limited solely to ~~new issues~~ arguments raised in the response to the complaint.
5) As soon as possible after the complaint has been filed with the Commission, the arbitrator shall schedule a prehearing conference with the parties to the arbitration. The arbitrator shall make arrangements for the hearing to address the complaint, which shall commence no later than 50 days after filing of the complaint. The arbitrator shall notify the parties, not less than 15 days before the hearing of the date, time, and location of the hearing.

6) The arbitrator has broad discretion in conducting the dispute resolution proceeding. The arbitrator shall have the authority to award remedies or relief deemed necessary by the arbitrator to resolve a dispute subject to the procedures established under this rule.
7) Parties may obtain discovery by submitting a discovery request to the arbitrator. Discovery may include requests for inspection and production of documents, requests for admissions, and depositions by oral examination, as allowed within the discretion of the arbitrator.
8) The arbitrator may require the parties to file a direct case, under the same deadline, and a joint issues list on or before the commencement of the hearing and may direct a party or witness to provide additional information as needed to fully develop the record of the proceeding. If a party fails to present information requested by the arbitrator, the arbitrator shall render a recommendation on the basis of the best information available from whatever source derived.
9) The written recommendation of the arbitrator shall be filed with the Commission within fifteen (15) days after the close of the hearing and shall be distributed to all parties of record in the dispute resolution proceeding. The recommendation of the arbitrator shall be based upon the record of the dispute resolution hearing, and shall include a specific ruling on each of the disputed issues presented for resolution by the parties. The recommendation shall include a narrative report explaining the arbitrator's rationale for each of the rulings included in the final decision.
10) The Commission shall accept or reject, in whole or in part, the recommendation of the arbitrator within ten (10) days after the recommendation has been filed.

i) Expedited dispute resolution may be requested when the dispute directly affects the ability of a party to provide uninterrupted service to its customers or precludes the provisioning of any service, functionality or network element. The arbitrator has the discretion to determine whether the resolution of the complaint may be expedited based on the complexity of the issues or other factors deemed relevant. The provisions and procedures relating to arbitration apply, except as otherwise specifically set forth in this sub-rule.
   1) The complaint shall also state specific circumstances that make the dispute eligible for an expedited ruling.
   2) The respondent shall file a response to the complaint within five business days after the filing of a complaint. The response shall specifically affirm or deny each allegation in the complaint.
   3) After reviewing the complaint and the response, the arbitrator will determine whether the complaint warrants an expedited ruling. If so, the arbitrator shall schedule a prehearing conference with the parties to the arbitration. The arbitrator shall make arrangements for the hearing to address the complaint, which shall commence no later than seventeen days after filing of the complaint. The arbitrator shall notify the parties of the date, time, and location of the hearing not less than three days before the hearing, If the arbitrator determines that the complaint is not eligible for an expedited ruling, the arbitrator shall so notify the parties within five days of the filing of the response.
   4) The written recommendation of the arbitrator shall be filed with the Commission

within three days after the close of the hearing and shall be distributed to all parties of record in the dispute resolution proceeding. The recommendation of the arbitrator shall be based upon the record of the dispute resolution hearing, and shall include a specific ruling on each of the disputed issues presented for resolution by the parties.

j) A party who requests dispute resolution may also request an interim ruling on whether the party is entitled to relief pending the resolution of the merits of the dispute. This relief is intended to provide an interim remedy when the dispute compromises the ability of a party to provide uninterrupted service or precludes the provisioning of scheduled service.
   1) Within three business days, if feasible, of the filing of a complaint and request for interim ruling, the arbitrator shall conduct a hearing to determine whether interim relief should be granted during the pendency of the dispute resolution process. The arbitrator will notify the parties of the date and time of the hearing by facsimile or email within one business day of the filing of a complaint and request for interim ruling. The parties should be prepared to present their positions and evidence on factors including but not limited to: the type of service requested; the economic and technical feasibility of providing that service; and the potential harm in providing or not providing the service.
   2) Based upon the evidence provided at the hearing, the arbitrator shall issue a written ruling on the request within 24 hours of the close of the hearing and will notify the parties of the ruling. The interim ruling will be effective throughout the dispute resolution proceeding until a final order is issued. The interim ruling shall have no precedential impact.

Rule 5: Good Faith Implementation of ICA

a) Both parties to the ICA are obligated to implement its provisions in good faith. The parties are expected to comply with the provisions of the ICA with the highest standards of professionalism, decency and honesty.
b) The Commission is authorized under Section 12108 of the Guam Telecommunications Act to assess penalties for failure to act in good faith in implementing the ICA in accordance with these rules. In determining the amount of penalty, the Commission will consider the appropriateness of the penalty relative to the size of the violating party, the gravity of the violation, and the actual harm incurred by the complaining party.
c) The following prohibited acts are examples of failure to act in good faith. This list is not intended to be all inclusive. Violations of other Commission rules or of commercial law may also constitute failure to act in good faith.
   1) No telecommunications carrier shall:
      i) File, submit, or present to the Commission any document related to interconnection that contains false or misleading information, facts, or materials, or that omits material information, facts, or materials;
      ii) Refuse to use its commercially reasonable efforts in implementing the ICA;
      iii) Engage in acts, conduct, or behavior with the sole purpose of delaying implementation of the, ICA;

iv) Fail to respect the privacy of personally identifiable customer information;
v) Upon bona fide request, unreasonably refuse to fully disclose in a timely manner all information necessary to achieve interconnection; or
vi) Engage in any other anti-competitive action, conduct, or behavior.

2) The ILEC shall not:
   i) Unreasonably refuse or delay access to its exchange by the other party to the ICA;
   ii) Unreasonably delay interconnection under the ICA;
   iii) Provide inferior interconnections to the other party to the ICA
   iv) Degrade the quality of access provided to the other telecommunications carrier;
   v) Impair the speed, quality, or efficiency of access lines used by the other telecommunications carrier;
   vi) Sell services or products, extend credit, or offer other terms and conditions on more favorable terms to its affiliates or to the carrier's retail department, than to the other party to the ICA; or
   vii) Unreasonably reserve capacity in any existing network facility in order to prevent the other telecommunications carrier from obtaining access to interconnection services including buildings, dark fiber cable and any Unbundled Network Elements (UNEs).
3) The failure of the ILEC to meet the Quality of Service intervals specified in the ICA or in Rule 7 shall not be deemed to be evidence of failure to implement the ICA in good faith unless the intervals for services provided to the requesting carrier are usually worse than those to the ILEC's own customers or customers of the ILEC's affiliates.

Rule 6: Technical Standards

a) Interconnection between the ILEC and CLEC or CMRS operator shall be established in a manner that is seamless, interoperable, technically and economically efficient and transparent to the end-user customer.
b) The ILEC shall provide interconnection facilities and access to UNEs that is at least equal in type and quality to that provided to itself or its affiliates.
c) Interconnection between carriers shall utilize nationally accepted telecommunications industry standards and/or mutually acceptable standards for construction, operation, testing and maintenance of networks, such that the integrity of the networks is not impaired.
d) Interconnecting carriers shall make a good-faith effort to accommodate each other's technical requests, provided that the technical requests are consistent with national industry standards and implementation of the requests would not cause unreasonable inefficiencies, unreasonable costs, or other detriment to the network of the ILEC receiving the requests.
e) Interconnecting carriers shall establish joint procedures for troubleshooting the portions of their networks that are jointly used. Each carrier shall be responsible for maintaining and monitoring its own network such that the overall integrity of the interconnected network is maintained with service quality that is consistent with

industry standards and rule 7.

f) Each interconnecting carrier shall be responsible for ensuring that traffic is properly routed to the other carrier and jurisdictionally identified by percent usage factors or in a manner agreed upon by the interconnecting carriers.
g) Interconnecting carriers shall allow each other non-discriminatory access to all facility rights-of-way, conduits, pole attachments, building entrance facilities, and other pathways, provided that the requesting carrier has obtained all required authorizations from the property owner and/or appropriate governmental authority.
h) The ILEC shall provide physical interconnection to other carriers in a nondiscriminatory manner. Physical collocation for the transmission of local exchange traffic shall be provided upon request, unless the ILEC demonstrates that technical or space limitations make physical collocation impractical. Virtual collocation for the transmission of local exchange traffic shall be implemented if physical collocation is not feasible or at the option of the carrier requesting the interconnection.
i) In determining whether space is available for physical collocation, the ILEC may retain a limited amount of central office floor space for its own specific future uses, provided, however, that neither the ILEC nor any of its affiliates may reserve space for future use on terms more favorable than those that apply to other telecommunications carriers seeking to reserve collocation space for their own future use.
    1) The ILEC is permitted to reserve central office floor space for future use only if such use is in accordance with a written plan that includes floor plans that show any space that is reserved for future use, and the ILEC must describe in detail the specific future uses for which the space has been reserved and the length of time for each reservation. Central office floor space may not be reserved in the absence of a written plan for use.
    2) Space may not be reserved for longer than 3 years from the date the reservation plan was first approved by ILEC management.
j) The ILEC is permitted to reserve up to two fiber strands on each fiber cable route for maintenance purposes. This reservation addresses the possibility that a fiber could become defective and require emergency or immediate resolution. The ILEC is permitted to reserve the remaining existing dark fiber facilities for future use only if such use is in accordance with a written utilization plan that describes in detail the specific future uses for which the dark fiber has been reserved and the length of time for each reservation. Dark fiber may not be reserved for future use for longer than 18 months from the date the reservation plan was first approved by ILEC management. If no written utilization plan is in place, existing dark fibers shall be assigned in a nondiscriminatory manner between the ILEC and any requesting carrier.
k) Each interconnecting carrier shall be responsible for contacting the North American Numbering Plan (NANP) administrator for its own NXX codes and for initiating NXX assignment requests.

Rule 7: Service Quality

a) This rule provides minimum overall service quality standards. If an interconnection

agreement is adopted pursuant to negotiation or arbitration under the Federal Act, the ICA may contain obligations and performance standards for network facilities and services that are stricter than the guidelines contained in this rule.

b) Each ILEC shall provide essential facilities and associated services in accordance with the following provisioning intervals and shall separately measure each provisioning interval for commonly used circuit or facility types. The provisioning interval is the elapsed time measured in hours from the ILEC's receipt of a service order to return of an OCN. The percentage of service orders completed on time will be determined by the number of orders completed within the installation interval or the committed due date specified in a FOC. The cumulative elapsed time for each circuit or facility type is divided by the total number of corresponding completed service orders for each circuit or facility type to derive measures of service order flow-through. The ILEC shall return a FOC within two business days of receipt of a service order from another telecommunications carrier.

c) Pursuant to forecasting requirements established in Rule 8 below, forecasted trunk, routing and switching facilities shall be provisioned to any requesting carrier within 30 days of receipt of a service order, unless otherwise agreed to by the requesting carrier.

d) The ILEC shall provide either interim number portability or permanent number portability to a requesting carrier. The installation interval for interim number portability shall not exceed three business days following receipt of a service order. Permanent number portability shall be provided pursuant to Federal Communications Commission requirements.

e) The ILEC shall provide for the receipt of trouble reports 24 hours a day, seven days a week and shall investigate and respond to each trouble report.
   1) Provisions shall be made to clear emergency out-of-service trouble at all hours, consistent with the public interest and the personal safety of ILEC personnel. Emergency or alternative service shall be provided local law enforcement and public safety agencies during the period of any network interruption.
   2) If unusual repairs preclude prompt disposition of a reported trouble, the ILEC shall notify all affected telecommunications carriers, if service must be interrupted for purposes of rearranging facilities or equipment, all affected telecommunications carriers shall be notified and the work shall be completed in the least disruptive manner in order to minimize public inconvenience.

f) The ILEC shall clear out-of-service trouble reports received from another telecommunications carrier within the following intervals, unless other repair intervals have been agreed to in the ICA:

REPAIR INTERVAL TABLE	
DS-3, OC-3 and higher	2hours
DS-1, Fractional DS-1, Design DS-0, and Local Interconnection Trunks	4 hours
Residential and Business Resale POTS	24 hours

The repair interval for clearing a trouble between telecommunications carriers is the elapsed time measured in hours and tenths of hours from the time a trouble report is received by a telecommunications corporation to the time the telecommunications

corporation returns a valid trouble resolution notification. Elapsed time shall be measured by common circuit or facility types and trouble disposition and closure shall be recorded.

g) The ILEC shall undertake all commercially reasonable efforts to facilitate parity of access to operational support functionality the incumbent local exchange carrier uses to store and retrieve information related to network engineering and administration.

h) The ILEC shall provision essential network facilities and services in accordance with the following intervals and shall measure provisioning intervals for each of the following loop facilities and services:

   1) Provisioning intervals for an unbundled loop will vary by circuit and facility type, the number of loops requested on a service order, availability of facilities and whether or not a dispatch of ILEC personnel must occur. The following essential facilities will be provisioned for telecommunications carriers within the specified intervals.

PROVISIONING INTERVAL TABLE

Facility Type	Quantity	Interval
DSO or analog equivalent, dispatch, facilities available	1 - 24 24 - n	5 days negotiated
DSO or voice grade equivalent, no dispatch	1 - 24 24 - n	3 days 7-10 days
DS 1 -- Facilities provisioned and available		5 days
ISDN -- Facilities provisioned and available		7 days
XDSL -- Facilities provisioned and available		7 days
DS3 -- Facilities provisioned and available		7 days
OC3 -- Facilities provisioned and available		15 days
OC4 and Higher -- Facilities provisioned and available		15 days or negotiated due date.

   2) Installation intervals for wholesale (resold) services shall vary depending upon whether an existing end user service provided by the ILEC is transferred to another telecommunications carrier, or, is a new service installation.

      i) The ILEC shall transfer wholesale services without changes for an existing end user served by the ILEC within one business day following receipt of a service order from the requesting carrier.

      ii) The ILEC shall transfer wholesale service with changes for an existing end user served by the ILEC within three business days following receipt of a service order from the requesting carrier.

      iii) The ILEC shall install new wholesale service to a new end user, if facilities are available, within three days following receipt of a service order from the requesting carrier

   3) The following provisioning intervals and optional arrangements are common to both virtual and physical collocation:

      i) Upon receipt by the ILEC of a request for collocation, the ILEC shall within

15 days notify the ~~telecommunications corporation~~ requesting carrier whether sufficient space exists. If the requesting carrier disputes the ILECs denial of a request for collocation, and the carriers cannot negotiate a mutually satisfactory resolution, the requesting carrier may petition the Commission pursuant to Rule 4 for an expedited hearing and resolution of the dispute. The burden shall be on the ILEC to demonstrate to the Commission that collocation is not practical due to space limitations or is technically infeasible.

ii) If collocation is available, the ILEC shall within 25 days following receipt of a request for collocation provide a written quotation containing all nonrecurring charges for construction of the ~~telecommunications corporation's~~ requesting carrier's requested collocation arrangement.

iii) The requesting carrier shall within 30 days following receipt of the ILEC's quotation, by written notice to the ILEC: 1) accept the quotation; 2) withdraw the request for collocation; or, 3) provide the ILEC an independent contractor quotation for construction of the requested collocation arrangement.

iv) If the requesting carrier accepts the quotation from the ILEC, collocation equipment shall be installed on the ILEC's premises in accordance with the following provisioning intervals: 1) For physical collocation arrangements, the ILEC shall within 45 days of the requesting carrier's acceptance of the ILEC's quotation complete construction of the collocation space necessary and sufficient for installation of the requesting carrier's collocated interconnection facilities. The ILEC shall grant the requesting carrier access to the collocation space to install network elements therein. 2) For virtual collocation arrangements, the ILEC shall within 45 days after delivery of the requesting carrier's collocation equipment complete provisioning of all network facilities ordered by the requesting carrier.

v) If the requesting carrier provides the ILEC an independent contractor quotation for construction associated with a collocation arrangement, the ILEC shall within 15 days of receipt of the quotation: 1) accept the proposal and grant to the independent contractor access to the ILEC's premises to complete construction of the collocation space and installation of the collocated interconnection facilities; 2) amend the ILEC's own quotation to perform on substantially similar terms, including, without limitation, price, the services specified in the independent contractor's quotation; or, 3) reject the proposal. If the requesting carrier accepts the ILEC's amended quotation, construction of the collocation space shall proceed. If the ILEC ~~refuses to accept~~rejects an independent contractor quotation or refuses to amend its own quotation, or if the ILEC takes no action within the specified timeframe, the requesting carrier may petition the Commission for an expedited hearing and resolution of the dispute.

i) The ILEC shall maintain network engineering and administrative records related to interconnection services provided to other carriers.

1) The ILEC shall make these records available for inspection by the Commission or its designee.

2) All information required by this rule shall be preserved for at least 36 months after the date of entry.

3) The ILEC shall maintain records of its network engineering and administrative operations in sufficient detail to permit review of network performance, provisioning intervals and general service quality provided other carriers.
4) Within 30 days of a request by the Commission, the ILEC shall file a study with the Public Utilities Commission evidencing actual provisioning intervals for network facilities and services or actual repair intervals for services provided to another carrier, to an affiliate, or, aggregated for its ten largest customers.
5) The ILEC shall monitor the use of its network so as to:
   i) issue the reports required by this Rule; and
   ii) monitor the use of all trunk groups and other interconnection facilities and equipment on its own side of the point of interconnection between its network and the network of each interconnecting telecommunications corporation.
6) The ILEC shall maintain a daily record, by wire center, of call blocking. The record shall indicate the percentage of calls blocked by trunk group utilized by each interconnecting telecommunications carrier. The ILEC shall notify each interconnecting telecommunications carrier immediately if call blocking on any trunk group within in any wire center exceeds standard industry levels.
7) The IILEC shall maintain a record, by wire center, of each instance when it fails to supply essential facilities and services to an interconnecting telecommunications carrier in accordance with the provisioning intervals established in this Rule. The record shall provide the following data:
   i) the name and address of the telecommunications corporation; ii) the circuit or facility type requested in the service order; iii) the date and hour the service order was received;
   iv) the reason for the delay;
   v) the number of days the order has been delayed;
   vi) the expected order completion date for each service order;
   vii) whether an initial service order was supplemented by the requesting telecommunications corporation and, if so, the date and time the supplement was approved by the providing carrier;
   viii) a copy of the FOC provided the requesting telecommunications carriers.
8) The ILEC shall maintain a record, by wire center, of trouble reports received from another telecommunications carrier. The record shall identify the telecommunications carrier experiencing trouble; the affected services; the time, date and nature of the report; the cause and action taken to clear the trouble and its recorded disposition; and the date and time of trouble clearance.

j) The ILEC will provide to the Commission performance monitoring reports detailing the ILEC's provisioning of:
   i) services to the ILEC's retail customers in the aggregate;
   ii) essential facilities and services provided to itself or any retail affiliate purchasing interconnection or access;
   iii) essential facilities and services provided in the aggregate to other telecommunications carriers purchasing interconnection; and
   iv) essential facilities and services provided to individual telecommunications carriers purchasing interconnection.

k) Performance monitoring reports shall include the following metrics:

1) Firm Order Confirmation Interval — This metric is the average interval from receipt of a service order to distribution of a firm order confirmation notice
2) Delayed Order Ratio -This metric measures uncompleted orders where the committed due date on a firm confirmation order has passed. It is calculated as the number of delayed orders divided by the number of orders pending including those past due.
3) Average Completion Interval - This metric measures the average time from the date and time of the ILEC' s receipt of a service order to the completion date and time provided on an order completion notification (OCN).
4) Percentage of Orders Completed On Time - This metric measures the percentage of total orders completed on or before the completion date provided on an OCN.
5) Trouble Report Rate - This report measures the frequency of direct or referred trouble report incidents across a universe of facilities where the cause is determined to be in network facilities. It is measured as a percentile of lines or circuit types in service. The ILEC shall exclude from its count of trouble reports queries made to the ILEC from another telecommunications carrier's end- user customers who are not served by the ILEC.
6) Mean Time to Restore - This metric measures the interval for resolution of maintenance and repair troubles. It measures the elapsed time from receipt of a trouble report to the time the reported trouble is cleared.

l) The Commission may request from the ILEC a report on a specific basis rather than on an average basis with respect to any of the information described in the foregoing performance monitoring metrics.
m) The reports required under this Rule are due monthly.

Rule 8: Joint Planning and Forecasting

a) The ILEC shall meet with each of the other telecommunications carriers currently interconnected or planning to interconnect within the next calendar quarter, to participate in joint forecasting and planning as necessary to accommodate the design and provisioning responsibilities of both telecommunications carriers. At a minimum, the telecommunications carriers shall meet once every calendar quarter to plan for the next quarter.
b) Forecasting is the joint responsibility of the telecommunications carriers. A forecast of interconnecting trunk group and other facilities and equipment required by the telecommunications carriers shall be prepared by the IILEC on a quarterly basis. The quarterly forecast shall project requirements for the following time intervals: four months; one year; and three years. To the extent practical, the one-year and three-year forecasts will be supplemented with historical data from time to time as necessary to improve the accuracy of the forecasts.
c) The forecasts shall include, for tandem-switched traffic, the quantity of the tandem-switched traffic forecasted for each end office.
d) The forecasts shall include a description of major network projects anticipated for the following year that could affect the other party to the forecast. Major network projects include trunking or network rearrangements, shifts in anticipated traffic patterns, or other activities that are reflected by a significant increase or decrease in trunking

demand for the succeeding forecasting period.

e) The forecasts shall also describe anticipated network capacity limitations, including any trunk groups when usage exceeds 80 percent of the trunk group capacity, and the procedure for eliminating capacity problems before any trunk group experiences blocking in excess of standard industry practices.

f) The forecasts of cable and wire needs shall be route specific showing the A and Z end points of each cable and the numbers of pairs or fiber strands assigned and available.

g) Unless otherwise agreed, forecasting information exchanged between interconnecting carriers, or disclosed by one interconnecting carrier to the other, and the quarterly forecast report pursuant to Rule 8(b), shall be deemed confidential and proprietary.

h) If the telecommunications carriers cannot agree on the terms of the quarterly four-month forecast, either carrier may commence an expedited dispute resolution proceeding before the Commission. In that proceeding, the burden of persuasion shall be on the ILEC to demonstrate that a four- month quarterly forecast submitted by a CLEC is unreasonable. To the extent the telecommunications carriers agree to the terms of a forecast, the terms shall be deemed approved for purposes of this Rule, and only those portions of a quarterly forecast actually in dispute shall be subject to the expedited dispute resolution proceeding.

i) If the telecommunications carriers agree on a four-month quarterly forecast, or, to the extent a forecast is approved by the Commission pursuant to the expedited dispute resolution proceeding, the ILEC shall be obligated to satisfy all service order requests made by the ordering telecommunications corporation that are consistent with the four-month projections contained in the approved forecast.

j) If a CLEC or CMRS provider desires to order trunk groups, equipment, or facilities beyond the four-month forecast, but consistent with the one-year and three-year forecast, it may order the additional quantity if it pays a capacity reservation charge to the ILEC.

k) If a trunk group is under 60 percent of centum call seconds (ccs) capacity on a monthly average basis for each month of any three-month period, either carrier may request to resize the trunk group, which resizing will not be unreasonably withheld. If the resizing occurs, the trunk group shall not be left with less than 25 percent excess capacity. If the telecommunications carriers cannot agree to a resizing, either of them may file a petition with the Commission for an expedited dispute resolution proceeding.

l) The quarterly forecast report required under Rule 8(b) shall be submitted to the Commission not later than the first day of that quarter.

Rule 9: Monitoring of Construction Program

a) In accordance with Rules 6(i) and 6(j), the ILEC is permitted to reserve central office space and dark fiber for a limited amount of time under a written plan for specific use. However, the ILEC is required to take into account the needs of current or anticipated interconnected carriers when constructing new facilities. These needs shall be determined in accordance with Rule 8.

b) The ILEC shall include an affirmative statement in the cover letter to each quarterly report prepared pursuant to Rule 8(b) stating whether or not new central office

building space, switch capacity upgrades or inter-office cable and wire facilities including fiber cables are planned. The report cover letter shall also contain an affirmative statement that the needs of current or anticipated interconnected carriers were taken into account in the forecast. The report shall contain a narrative detailing how the forecast took these needs into account.

Appendix

Definitions

The meaning of terms used in these rules shall be consistent with their general usage in the telecommunications industry unless modified in the context of a specific rule.

"Affiliate" -- means, with respect to any telecommunications corporation, a person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of these rules, the term "own" means to own an equity interest, or the equivalent, of more than ten percent.
"Blocking" -- means the occurrence of insufficient capacity between the end office or tandem of a telecommunications corporation and the end office or tandem of another telecommunications corporation, and includes a call not completed because of insufficient capacity usually evidenced by a fast busy signal or message that circuits are busy.
"Busy Hour" -- means the uninterrupted period of 60 minutes during the day when the traffic is at its maximum.
"Business Day" -- means any day other than Saturday, Sunday or other day on which commercial banks in Utah are authorized or required to close.
"Carrier' — means the ILEC, CLEC or CMRS operator collectively.
"CFR" --means the Code of Federal Regulations.
"Commission" -- means the Public Utilities Commission of Guam.
"Competitive Local Exchange Carrier" (CLEC) -- means an entity certificated to provide local exchange services that does not otherwise qualify as an incumbent local exchange carrier.
"Commercial Mobile Radio Service" (CMRS) — means a mobile wireless telecommunications service provided by a cellular, Personal Communications Service, paging or other wireless network operator to the general public. Does not include private wireless network operators such as taxi dispatch operators.
"Delayed Service Order" -- means a written or electronic order for an essential interconnection service or facility that is not filled on or before the standard installation interval or the date specified in a FOC, whichever occurs first.
"End User" -- means the person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency purchasing the telecommunications service for its own use, and not for resale.
"Essential Services" -- means Unbundled Network Elements as defined by the FCC, access to 911 or E911 emergency call networks, interoffice transmission facilities and OSS functionality.
"FCC" -- means the Federal Communications Commission.
"Federal Act" -- means the Federal Telecommunications Act of 1996
"Firm Order Confirmation" (FOC) -- means notice provided by one telecommunications corporation to another in electronic or manual form of acceptance of a service order and the date that the service order will be completed.
"Incumbent Local Exchange Carrier" (ILEC) -- the local exchange carrier that provided telephone exchange services prior to enactment of the federal Telecommunications Act of

1996. GTA has been defined as the ILEC for Guam by the FCC.

"Interoffice Trunk Facilities" -- means the facilities, including transport, switching and cross-connect facilities, necessary for the transmission and routing of telephone exchange service between two end offices, or an end office and a tandem office.

"Local Exchange Carrier" -- means a telecommunications provider, authorized by the Commission, that provides local exchange service in a defined geographic service territory.

"Network Element" or "Network Facility" -- means the features, functions and capabilities of network equipment used to transmit route, or otherwise provide public telecommunications services.

"Order Completion Notification" (OCN) -- means notice provided by one telecommunications corporation to another in electronic or manual form that a service order has been completed.

"OSS Functionality" -- means the functions used by the ILEC in preordering, ordering, provisioning, maintenance and repair telecommunications services. These functions may involve manual or mechanized processes or system.

"Service Order" -- means a written or electronic request for essential facilities or services.

"Trouble Report" -- means an oral, written or electronic report received by a telecommunications corporation from an end user of public telecommunications service, or, an oral, written or electronic report received by one telecommunications corporation from another who purchases essential facilities or services from the former. In either case, a Trouble Report communicates improper functioning of facilities over which the providing telecommunications corporation exercises control. A trouble report is used by telecommunications carriers to monitor repair and maintenance actions required for disposition of out-of-service or substandard service conditions.

"Wholesale Services" -- means services available to telecommunications carriers for the purpose of resale to end users.

"Wire Center" -- means a building that contains the necessary telecommunications facilities and functions to terminate, switch, route and interconnect local exchange, interoffice, and interexchange public telecommunication services.

Attachment 2

Sources of Proposed Implementation Rules

Rule	Issue	State	Adapted From Document
1	Purpose		
2(a)	Interconnection Requirements	AZ	Arizona Administrative Code, Title 14, Section 14-2-1112
2(b)	Incorporation of federal rules by reference		Common practice for most PUCs
2(c)	Cooperation on operations support functions	AZ	Arizona Administrative Code, Title 14, Section 14-2-1306
3	Relationship of Rules to ICA		Found in most interconnection implementation rules.
4	Dispute Resolution	OK	OAC 165.55 Subchapter 22. Rule 4(e) was based on AZ Sections 14-2-1502(C) and 1504(E).
5	Good Faith Implementation	HI UT	Hawaii Administrative Rules Chapter 6-80-129. Rule 5(b) was based on Utah Code Section 54-8b-17
6	Technical standards	TX FCC	Chapter 26 Substantive Rules Applicable to Telecommunications Providers Subchapter L Section 26.272(d). Rule 6(h) was based on Parts 51. 321 and 323 and FCC 00-297, released 8/10/2000
7	Quality of Service	UT	Utah Administrative Code Rule R746-365
8	Joint Planning and Forecasting	UT	Utah Administrative Code Rule R746-365-6
9	Monitoring of Construction Program		GCG Recommendation

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

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

DOCKET 06-2

ORDER

By its February 1, 2007 Order in this docket *[Order]*, the Guam Public Utilities Commission *[PUC]* made findings and recommendations for institutional change, which in its judgment is essential to empower the Government of Guam's *[GovGuam]* compliance with the Federal District Court's *[Court]* Consent Decree *[Decree]*[1]. The Order was issued during a perceived sense of urgency, given a pending status hearing before the Court regarding GovGuam's chronic violation of the Decree.

During the 113 days since the Order, PUC has observed a further deterioration of events and circumstances, which obstruct GovGuam's ability to comply with the Decree[2]. Moreover, the statutory framework for PUC regulation of solid waste management has been compromised. The following determinations support this conclusion.

1. PUC's regulation of solid waste management is grounded on the mandate in 12 GCA section 5118(f) that:

> All tipping, user and other fees authorized under this Section and collected based on duly established rules and regulations or on a PUC order shall be deposited in a special fund designated and hereby established as the Solid Waste Operations Fund. All tipping/user fees in the Fund shall be used *solely* for solid waste management practices and pursuant to PUC order, for the payment of regulatory costs and expenses as may be incurred
> by PUC in performing its regulatory duties under subsection (e).

The integrity of the Solid Waste Operations Fund [Fund] is

[1] Consent Decree dated February 2, 2004 in Federal District Court of Guam Civil Case 02-22 *[USA v. Government of Guam]*.

[2] *See* Georgetown Consulting Group's March 16, 2007 and May 4, 2007 reports – made **Attachment A** to this Order.

essential for several reasons: a] it creates a dedicated revenue stream, which would support revenue bond financing for Decree mandated projects; b] it establishes the basis for PUC to regulate procurements and obligations, which would be funded by ratepayer revenues; and c] it underlies the regulatory principle that ratepayer revenues from regulated services should not subsidize nonregulated services[3].

2. The enactment and implementation of Public Law 29-150 has compromised the Fund's integrity[4] and the logic for PUC regulation. Section 5 of Chapter IV of this law empowers the Governor to transfer into the General Fund any cash available from any special fund or revolving fund to finance the general appropriations authorized in the public law. As a result, solid waste rate revenues are now subject to being commingled with general funds for such uses and priorities as the Executive Branch deems appropriate. Accordingly, the regulatory principle, upon which PUC regulation of solid waste rates and charges is grounded no longer exists.

3. The compromise of the Fund as a dedicated "locked box" for solid waste rate revenues makes PUC's regulation of solid waste management contracts and obligations without purpose. The regulatory purpose for contract regulation is to assure that contracts, which will be funded through ratepayer-sourced revenues, are reasonable and prudent. As the General Fund will henceforth be the funding source for solid waste procurements, no further useful purpose is served by PUC's regulation of these procurements and obligations as they are no longer linked to rate revenues.

After due consideration of the above determinations, for good cause shown and on motion duly made, seconded and carried by the undersigned commissioners, **IT IS HEREBY ORDERED THAT:**

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[3]In its October 27, 2005 Rate Order, PUC increased solid waste rates as a first step in creating the rate revenue stream necessary to support the anticipated $90 million financing required to comply with the Consent Decree. The rate order requires that the revenues produced by the increase be escrowed in the Fund as *debt service related* and remain untouched unless authorized by PUC. Had PUC known that its regulatory authority in section 51118(f) *[the integrity of the Solid Waste Management Fund]* would be compromised by Executive transfer authority, the 2005 rate increase would not have been awarded.

[4] *See* the January 19, 2007 *Memorandum Opinion* on this subject, made **Attachment B** hereto.

1. Unless otherwise authorized by PUC's chairman, PUC shall suspend all regulatory activities regarding solid waste rates, contracts and obligations until the Fund's integrity is restored.

2. PUC renews its pledge that upon the issuance of a Court mandate regarding Consent Decree compliance, it stands ready to discharge any duties and responsibilities assigned to it under the mandate. A continuation of the status quo will only cause a further deterioration of; a] the quality of service to solid waste customers; b] the general public health and welfare; and c] the Government's ability to comply with the Consent Decree.

3. A copy of this Order shall be transmitted to the Governor of Guam, to Speaker of the 29th Guam Legislature and to the Director of Public Works.

Dated this ___ day of May 2007.

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Terrence M. Brooks

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Joseph M. McDonald

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Edward C. Crisostomo

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Filomena M. Cantoria

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March 16, 2007

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Re: DPW Petition for PUC Review and Approval of the Pay As You Throw Program

Dear Harry:

This letter is in response to your instructions that GCG proceed with an initial review of the Pay As You Throw (PAYT) petition filed by DPW for PUC review and approval on January 23, 2007. As you know, DPW along with GovGuam are involved in court proceedings regarding an action filed on behalf of the USEPA seeking an enforcement of the Consent Order entered into by the Government of Guam in 2003. A final ruling has not been entered in this proceeding and we believe that such a ruling would have a direct impact on the PAYT proposal. We therefore recommend that at this time we identify the basis upon which we recommend that the PUC evaluate the proposal and to indicate how this evaluation could be impacted by the impending Court decision.

OVERALL CONTEXT

We believe that in order to appropriately evaluate the petition presented by DPW it would be helpful to review the current context of DPW operations. In this regard GCG has prepared and presented to the PUC two Management audit reports. While it is not necessary to repeat all of the findings here, we identified the following major problems and conditions:

- Residential collection operations were in disarray. Collections were missed and the required equipment for operations were inadequate and in need of repair.
- Collection of billings for residential customers were abysmal (less than 50% collection ratio) – a fact conceded by DPW. Customer data bases were inadequate and the billing and collection systems did not appear to operate.
- Commercial haulers had substantial payables to DPW based on allegedly having not received timely bills from DPW or not having received payment from their customers.
- The required privatization of at least tow thirds of the residential collection routes had not been implemented as required by law (due 2002). As of this date no petition has been received for this by the PUC.
- The existing landfill was operating without a functioning scale and the Director of DPW continually complains that his budget does not have adequate funds to operate the landfill efficiently and safely.
- Transfer stations for Household Hazard Waste Materials are not available.

- DPW was and continues to be in gross violation of all of the major deadlines contained in the Consent Decree.
- DPW has put on hold it plans to proceed with an initial bond issue to fund the critical initial phases of the closure of the existing landfill and to construct a new landfill. Contrary to the advice of its financial Advisors DPW now states that it believes that investigation into private financing might provide the optimal way to proceed. In light of this development there does not exist currently a Financial Plan to proceed that has been reviewed and approved by DPW's financial advisors.

It is within this broader context that the DPW petition must be reviewed. While many of the above points relate directly to evaluation of the decal program others are presented to suggest that DPW's future is subject to a host of considerations such as possible legislation, court rulings and organizational changes.

We believe that the decision of the court in the current proceeding would have a major impact on dictating the future course of DPW actions. The evaluation of this petition must be made in the context of this impending decision. Our recommendations are contained below.

DPW's petition attempts to deal with a small portion of the problems above –namely improving cash collections and perhaps reducing the need for residential billing and accounts receivable systems. DPW represents that it believes its approach is based on the successful experience of other communities and represents that it will have the following advantages without fully explaining how the benefits would be achieved:

- improve residential collection; many issues of affordability and efficient collection of residential waste remain to be dealt with;
- create a targeted lifeline rate; the definition of lifeline eligibility has not been completed yet.
- result in a complete database of residential customers; the creation of a complete residential database is suggested by DPW as perhaps a precursor to mandatory residential fees and charges. In order for residential collection to be mandatory for all potential residential customers (perhaps with certain exemptions for condos, etc.) there will need to be an evaluation whether legislation is required.
- Improve DPW cash flow.

EVALUATION OF THE PETITION

In evaluating the proposed petition we recommend that the following framework be used:

The overall goals for evaluation of DPW proposals should be twofold:

- a **public health interest** in collecting and properly disposing of all residential waste; and
- **an economic interest** in maximizing *just and reasonable* residential collection revenues to fund Consent Decree compliance.

The benefits claimed by DPW for their proposal as listed above appear to be focused on improving cash flow and perhaps reducing the need for billing systems. It appears to be a selective recommendation that may have merit but with significant implementation hurdles. For one issue, the proposal requires legislation to even permit the concept of prebilling for the decals that are to be used

as a fundamental tool. Our attendance at prior legislative hearings indicated many questions and doubts by legislators on the recommendation of implementing the decal program. In addition, as stated before, the impending court decision and any resulting operational and organizational changes could have a major impact on DPW and its petition. Therefore, even assuming that the decal program was found to be the best platform for billing and collection, legislative approval for prebilling would be a necessary condition for implementation.

We would recommend that the following approach to the evaluation of the petition:

- Evaluate whether any current circumstance in any way changes the statutory requirement that DPW privatize residential collection by October 2002. PUC still awaits a petition from DPW for this mandated procurement. Within the context of privatization the PUC and DPW should explore and study whether the privatization process should be implemented by management contract or by awarding a franchise. The PAYT program will impact the requirements of privatization. The elements of what should be included within the context of privatization and its relationship to PAYT should also be studied and determined:
    - Equipment;
    - Personnel;
    - Billing and collection responsibility;
    - Customer of DPW or private manager.
- Given the scope and importance of the progress needed to comply with the Consent Decree, should the participation of all customers be required in the collection process as DPW has recommended to the PUC on several occasions orally at regulatory conferences? Many issues are raised by this question and we recommend that GCG provide both a legal and policy analysis of the issues raised:
    - Would a mandatory program be organic? If collection is mandated for residential customers, must it also be mandated for commercial customers? Should businesses be required as a condition for obtaining/renewing a business license, to certify that they have commercial collection service?
    - Would a mandatory residential decal system be feasible?[1] How many current residential waste customers are there? How many customers would there be if a mandatory program were established?[2]
    - Would a mandatory system mean that residential customers would no longer have the option to self-haul their trash to either a transfer point or to the landfill? This issue should be evaluated in conjunction with the determination of the implementation of the life line program. Should self-haul be expanded as a simple lifeline alternative to curbside service and perhaps made free for an extended grace period to get residential trash where it belongs into the landfill?

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[1] Concern has been raised about: (a) public acceptance of the program; (b) administrative complexities and barriers; (c) theft of decals and bags; and (d) whether it would be counterproductive to the public health goal of maximizing residential collection. These concerns be surfaced and reviewed .

[2] As a point in comparison, we note that the program to require GWA customers to hook up to sewers has met great resistance despite legislation.

- Should residential condo, gated communities and apartments, which use commercial collection service, receive a waiver? What about military residences, both on and off military installations?
- Who would enforce mandatory residential collection? In prior regulatory meetings GEPA's GM has pleaded lack of funds to enforce solid waste laws.
- What, if any, role does the Solid Waste Management Plan, prepared by GEPA pursuant to 10 GCA 51119 play in the process of fixing residential collection? Does such a plan exist as the legislature did not approve the filed plan?

- GCG should evaluate the "other options" for billing and collection platforms referred to by DPW but not discussed in detail. We believe that this is a reference to other means yet of billing and collecting for the residential collection process.[3] The decal program must be evaluated in light of these alternatives proposed by DPW for consideration. An initial review of these alternatives should be undertaken by GCG in its evaluation of the decal program. GCG should access resources already under contract by DPW to assist in this analysis as needed.[4]
- GCG should explore the important linkage between: (a) the privatization of residential collection; and (b) the creation of an island-wide customer base and a workable process for billing and collecting for this service. We have been told by DPW that unless this linkage is established, existing commercial waste collectors will be reluctant to take over residential collection. In addition, enlarging the customer base and increasing the collection rate is essential to access the bond market. Evaluation of the potential financial rewards for the collection of government waste should also be evaluated.

Finally, we point out that the petition filed by DPW does not contain the materials required by the Contract Review Protocol. As such it will require GCG to undertake analysis from ground zero. The petition is an attempt by DPW to address a serious cash flow and billing and collection problem. This situation is further complicated by the various external events such as the critical court proceeding currently in progress. We recommend that GCG be given the authorization to proceed with our review and to have a report to you by May 10, 2007 for review at the next regulatory session.

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[3] Such as a surcharge on property taxes as an alternative to the decal program. Choosing between such alternatives is largely a legislative prerogative although this engagement could identify the relative benefits and potential drawbacks of each program.

[4] This role is appropriate given that PUC's review of the petition is based both on its contract review protocol and on its section 51118(e) audit powers. For example, under HRD's contract, is it available for consultations with GCG regarding other options to the decal system and regarding how residential collection should be privatized.

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

Cordially,

Jamshed K. Madan

Cc: Larry Perez, Director, DPW
Jim Baldwin, Esq.

Jamshed K. Madan
Michael D. Dirmeier

Edward R. Margerison
Jean Dorrell

Telephone (203) 431-0231
Facsimile (203) 438-8420
jkmadan@gmail.com

May 4, 2007

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

Re: DPW Petition for PUC Review and Approval of the Pay As You Throw Program

Dear Harry:

This letter is written you to indicate that the current uncertainty related to organizational, operational and legal issues continue without resolution and therefore we have not been able to proceed as proposed to you in our letter of March 16, 2007.

This brief letter provides an update to our March 16, 2007 letter report concerning Department of Public Works (DPW) petition filed on January 23, 2007 to approve its proposed Pay As You Throw (PAYT) program for solid waste collection.

In our March 16 report we indicated that a final ruling in the enforcement proceeding filed by the USEPA requiring GovGuam and DPW to comply with provisions of the Consent Order would have significant implications on the proposed PAYT petition of DPW. As of this date no final action has been taken by the courts. We continue to believe that final action by the courts will have a major impact on dictating the future actions of DPW in collection and proper disposal of solid waste and in any evaluation of the proposed PAYT program.

Although we have not had direct contact with DPW through any formal process, articles in the local press indicate that the external and internal factors associated with DPW's operating environment have not changed notably. DPW collection operations continue to be in disarray, its collection of revenues from residential consumers poor, its accounts payable from commercial haulers excessive and questionable, and its operations impacted by inadequate equipment, resources, and capital. Not surprisingly it continues to be in gross violation of the Consent Decree with USEPA and has been unable to attract capital funds at any cost. Although, DPW has completed landfill option studies, reviewed collection alternatives, prepared various revenue and financial projections, no definitive course of action has yet to emerge. Further it has not taken any actions to privatize residential disposal collection as required by legislation dating back to 2002 or any other actions to properly collect and dispose of residential solid waste. The situation could also be caused by DPW waiting to see how the court decision would impact its future organization, operation legal requirements.

There is no question that DPW must improve both the level of revenues collected from residential customers as well as its collection of revenue (billing) from the customers it actually provides service. Otherwise, it simply will never have the necessary funds to meet the requirements of the Consent Decree. In its petition it has focused on improving revenues and revenue collection, and has presented a single alternative that it believes will allow it to accomplish this goal and improve the accuracy of its customer database. As mentioned in our March 16 report there are significant implementation hurdles associated with this single alternative as presented by DPW, such as, the need for legislation to permit pre-billing for the decals that would be used in the PAYT program.

DPW must move forward with a viable program for solid waste collection and improvements to its cash flow position. It has no other option. Consistent with our March 16 report, we recommend that:

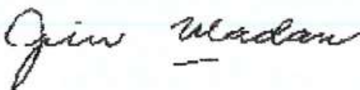
- No PUC action on the DPW proposal for the PAYT program be taken. Evaluation will be subject to substantial uncertainties that include:
    - Court imposed mandates;
    - Financial Plan consistent with the Court mandate;
    - Organizational requirements. Recommendations to a new agency under the CCU has not been acted on and remains an issue in dispute.
    - New legislation required to permit the PAYT program as recommended by DPW has not been drafted and we are not able to assess the probability that such legislation would be enacted.
    - Privatization of collection is not yet in the RFP stage.
- The PUC closely monitor the court proceedings and the privatization RFP.
- Monitor any proposals to fund Consent Order requirements.
- Monitor DPW actions relative to the Focused Management Audit PUC requirements.

The PAYT program may have been developed in response to DPW's weak financial position, operational problems and the need to develop a program that DPW could implement at the lowest out-of-pocket cost to DPW. This is not the optimal criteria that should be used for selecting a long term collection program. The final collection method should receive input from the outsourced or franchise provider of collection services to DPW. The collection method should be based upon adequate consideration of all reasonable methods available when all or sufficient certainty has been removed to allow for such decision making.

Whether an outsourced, franchise, or DPW solution is implemented for solid waste collection it is necessary that an island-wide customer data base exist. The GPA residential customer data base would be an excellent start.

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

Cordially,



Jamshed K. Madan

MEMORANDUM

TO: **GEORGETOWN CONSULTING GROUP**

FROM: **JAMES F. BALDWIN, ESQ.**

SUBJECT: **EFFECT OF 2007 BUDGET BILL ON INTEGRITY OF SOLID WASTE OPERATING FUND**

DATE: **JANUARY 19, 2007**

ISSUE PRESENTED

Whether the government of Guam 2007 budget bill ("PL 28-150") adversely affects the integrity of the Solid Waste Operating Fund ("SWOF") and is in conflict with stated intention in PL 28-56 to limit the use of the SWOF to solid waste management operations and regulatory costs.

ANALYSIS

Section 1(g)-Chapter IV of PL 28-150 provides two lump sum appropriations to the Department of Public Works ("DPW"), one of which appropriates $5,822,582[16] to the SWOF. Section 5-Chapter IV of this same public law provides:

> **Special Fund Transfer.** *I Maga'lahen Guåhan* is authorized to transfer to the General Fund any cash available from any Special Fund or Revolving Fund to fund the appropriations authorized in this Act, provided that such authority shall *not* extend to Trust Funds; the Historic Preservation Trust Fund; the Tourist Attraction Fund; the Customs, Agriculture and Quarantine Inspection Services Fund; the Healthy Futures Fund; the Wildlife Conservation Fund; Special Funds under the purview of the Guam Environmental Protection Agency; and funds under the purview and administration of *I Liheslaturan Guåhan*, the Judiciary, the Guam Memorial Hospital Authority, the Guam Public School System and those departments

[16] The level of the Fiscal 2007 budget for Solid Waste Management

> and agencies exempted in this Act from the Governor of Guam's transfer authority.
> All cash from Special Funds or Revolving Funds transferred to cover the appropriations authorized by this Act shall be reimbursed to the Special or Revolving Fund from which it was transferred promptly as cash becomes available.
> *I Maga'lahen Guåhan* shall submit a report to the Speaker of *I Liheslaturan Guåhan* on the fifth (5th) day of every month on all transfers made pursuant to this Section. Said report shall include detailed information on the amount of such transfers and identify the fund from which the transfers were made and the purposes of the transfers.[emphasis added]

The SWOF is not among the various special funds specifically exempted from the Governor of Guam's transfer authority. As a result, the Governor of Guam may transfer funds from the SWOF and need only restore funds so transferred "as cash becomes available" in his sole discretion.

DPW has announced plans to pursue a revenue bond to fund the solid waste management projects required of the government of Guam pursuant to the Consent Decree in District Court of Guam Case No. 02-00022. Any such bond offering would need to be approved by the Guam Legislature. Since the legislation approving of the bond offering would presumably include authorization to pledge the revenue of the SWOF as the source of funds for repayment of the bond, this subsequent legislation would supersede the Governor of Guam's authority to borrow funds from the SWOF granted in PL28-150 since the funds would already be encumbered. Thus, the integrity of the SWOF would presumably be restored once this pledge of SWOF revenue is authorized by the Guam Legislature and effectuated by issuance of the revenue bond.

The key problem caused by granting the Governor of Guam an unrestricted ability to borrow funds from the SWOF is the effect it will have short-term ability of DPW to convince potential bidders for upcoming solid waste management projects (such as residential trash collection) that there will be sufficient funds available in the SWOF for payment of services rendered. Should DPW abandon or delay its bond borrowing plans, then these problems will extend beyond the short-term horizon because the legislation authorizing the pledge of

revenues that are required to be deposited in the SWOF will not have been enacted.

In simple terms, the Governor of Guam has the ability to remove cash from the SWOF and replace it with an IOU that only need be honored "as cash becomes available." Such an open-ended obligation is likely to cause great uncertainty among potential bidders as to whether the SWOF will have sufficient cash on deposit to pay their invoices should they be awarded contracts. If the potential bidders instead are convinced that the SWOF will soon have on deposit more open-ended IOUs from the Governor of Guam than cash and that vendors will need to wait for payment "as cash becomes available" in the Governor of Guam's sole discretion, these potential bidders are likely to increase their bid prices if they decide to bid at all.

The ability to borrow from the SWOF also undermines the October 27, 2005 PUC regulatory order restricting the use of the additional tipping fees authorized by this order to regulatory expenses and other uses authorized by subsequent PUC order, as these earmarked funds are also subject to the Governor of Guam's transfer authority notwithstanding the October 27, 2006 PUC order. If the Governor has the ability to withdraw funds that the PUC has ordered to be segregated and reserved for specific purposes authorized by PUC order, it makes it difficult for the PUC to enforce its orders concerning these segregated funds because there may not be cash on deposit for these necessary expenditures once they have been authorized by the PUC.

CONCLUSION

Section 5-Chapter IV of PL 28-150 completely destroys the "lock box" concept for the SWOF that was set forth in Public Law 28-56. The reason is that this section permits the Governor of Guam to borrow funds on deposit in the SWOF, with the only requirement to repay said funds being the vague condition "as cash becomes available" in the Governor of Guam's sole discretion. This unfettered ability to tap into the SWOF for purposes other than solid waste management operations is likely to undermine the confidence of potential bidders in the upcoming Invitation for Bids for residential trash collection services. Section 5-Chapter IV of PL 28-150 would also permit the Governor of Guam to drain off the current balance of the escrow account established by the October 27, 2005 PUC order that was earmarked for the payment

of regulatory and other PUC approved expenses. These problems can easily be solved by adding the SWOF to the list of special funds identified in Section 1(g)-Chapter IV of PL28-150 that are exempt from the Governor of Guam's transfer authority.

JFB

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Revision Date:Mon 5/7/07

Integrated Solid Waste Letting
May 3, 2007

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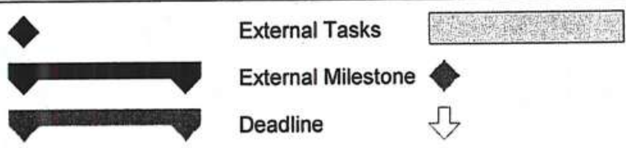
ID	Task Name	Duration (5 Day Work Week)	Start	Finish
1	**Ordot Dump Closure**	**1092 days**	**Tue 10/9/07**	**Wed 12/14/11**
2	**Procurement Process and PUC Review**	**400 days**	**Tue 10/9/07**	**Mon 4/20/09**
3	Bid packaging (Ordot closure, HHW, New landfill)	65 days	Tue 10/9/07	Mon 1/7/08
4	PUC review prior to advertisment	65 days	Tue 1/8/08	Mon 4/7/08
5	Government Bid Advertisement / Bid Period	80 days	Tue 4/8/08	Mon 7/28/08
6	Bid Evaluation	20 days	Tue 7/29/08	Mon 8/25/08
7	Construction Contract Processing	60 days	Tue 8/26/08	Mon 11/17/08
8	PUC Review of bid evaluation and contract agreement	22 days	Tue 11/18/08	Wed 12/17/08
9	Award Contract	1 day	Thu 12/18/08	Thu 12/18/08
10	Bond financing completion	86 days	Fri 12/19/08	Fri 4/17/09
11	Issue NTP	1 day	Mon 4/20/09	Mon 4/20/09
12	**Construction - dump closure**	**692 days**	**Tue 4/21/09**	**Wed 12/14/11**
16	**Layon Landfill (FBO)**	**1167 days**	**Tue 12/19/06**	**Tue 6/7/11**
17	**Permitting**	**375 days**	**Tue 12/19/06**	**Fri 5/23/08**
18	Assume Land Acquisition Phase	150 days	Tue 12/19/06	Mon 7/16/07
19	GLUC Zone Variance	225 days	Tue 7/17/07	Fri 5/23/08
20	GEPA MSW Landfill Permit	225 days	Tue 7/17/07	Fri 5/23/08
21	**Procurement Process and PUC Review**	**164 days**	**Mon 5/7/07**	**Wed 12/19/07**
22	Prepare Solicitation Letter of Interest	10 days	Mon 5/7/07	Fri 5/18/07
23	1st Advertisement Solicitation Letter of Interest	1 day	Mon 5/21/07	Mon 5/21/07
24	2nd Advertisement Solicitation Letter of Interest	1 day	Tue 5/22/07	Tue 5/22/07
25	Solicitation Period	20 days	Mon 5/21/07	Fri 6/15/07
26	Pre-Qualification Conference	1 day	Fri 6/1/07	Fri 6/1/07
27	Solicitation Close, Review and Approval Process	10 days	Mon 6/18/07	Fri 6/29/07
28	ITB Preparation	30 days	Mon 5/21/07	Fri 6/29/07
29	ITB Review and Approval Process	10 days	Mon 7/2/07	Fri 7/13/07
30	Bid Period (Issue Feb. 2006 100% Design)	65 days	Tue 7/17/07	Fri 10/12/07



Project: Update Integrated Solid waste
Date: Mon 5/7/07

Legend: Task; Split; Progress; Milestone; Summary; Project Summary; External Tasks; External Milestone; Deadline

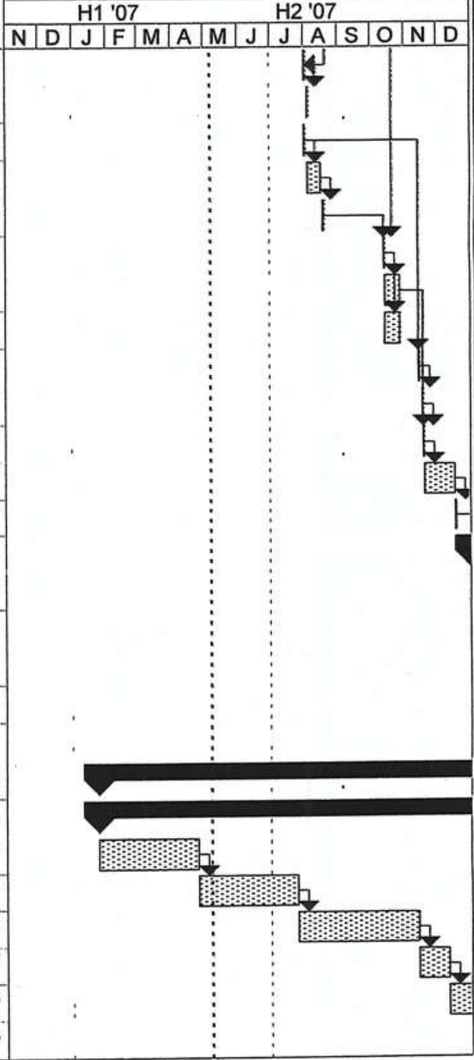
Integrated Solid Waste Letting

May 3, 2007

DRAFT

Revision Date:Mon 5/7/07

ID	Task Name	Duration (5 Day Work Week)	Start	Finish
31	Site Visit	1 day	Fri 8/3/07	Fri 8/3/07
32	Pre-Bid Conference	1 day	Mon 8/6/07	Mon 8/6/07
33	40% Design Submittal of VE Alternatives	1 day	Fri 8/3/07	Fri 8/3/07
34	Prepare Addendum	10 days	Mon 8/6/07	Fri 8/17/07
35	Issue Addendum (Updated Design) → 10/8/07	1 day	Mon 8/20/07	Mon 8/20/07
36	Bid Opening	1 day	Mon 10/15/07	Mon 10/15/07
37	Bid Evaluation → Qual./Rank/Neg.	10 days	Tue 10/16/07	Mon 10/29/07
38	PUC Review of Bid Evaluation	10 days	Tue 10/16/07	Mon 10/29/07
39	100% Design Submittal of VE Alternatives	1 day	Fri 11/16/07	Fri 11/16/07
40	Issue Final Design	1 day	Mon 11/19/07	Mon 11/19/07
41	Notice of Intent to Award	1 day	Tue 11/20/07	Tue 11/20/07
42	Review/Award Contract	20 days	Wed 11/21/07	Tue 12/18/07
43	Issue NTP	1 day	Wed 12/19/07	Wed 12/19/07
44	**Construction**	**896 days**	**Tue 1/1/08**	**Tue 6/7/11**
45	Monitoring Well Network	90 days	Tue 1/1/08	Mon 5/5/08
46	Clear and Grub (C&G)- Building Permit	35 days	Tue 5/6/08	Mon 6/23/08
47	Construction	550 days	Wed 4/29/09	Tue 6/7/11
48	Cell 1 & Road - Open	0 days	Wed 7/28/10	Wed 7/28/10
49	Cell 2 - Open	0 days	Tue 6/7/11	Tue 6/7/11
50	**Household Hazardous Waste Facility**	**400 days**	**Thu 1/25/07**	**Tue 8/5/08**
51	**Procurement Process and PUC Review**	**400 days**	**Thu 1/25/07**	**Tue 8/5/08**
52	Bid packaging (Ordot closure, HHW, New landfill)	65 days	Thu 1/25/07	Wed 4/25/07
53	PUC review prior to advertisment	65 days	Thu 4/26/07	Wed 7/25/07
54	Government Bid Advertisement / Bid Period	80 days	Thu 7/26/07	Tue 11/13/07
55	Bid Evaluation	20 days	Wed 11/14/07	Tue 12/11/07
56	Construction Contract Processing	60 days	Wed 12/12/07	Tue 3/4/08
57	PUC Review of bid evaluation and contract agreement	22 days	Wed 3/5/08	Thu 4/3/08



Project: Update Integrated Solid waste
Date: Mon 5/7/07

Task | Split | Progress | Milestone | Summary | Project Summary | External Tasks | External Milestone | Deadline

Integrated Solid Waste Letting
May 3, 2007
DRAFT

ID	Task Name	Duration (5 Day Work Week)	Start	Finish
58	Award Contract	1 day	Fri 4/4/08	Fri 4/4/08
59	Bond financing completion	86 days	Mon 4/7/08	Mon 8/4/08
60	Issue NTP	1 day	Tue 8/5/08	Tue 8/5/08
61	**Account Receivable Collection Services**	**64 days**	**Fri 4/27/07**	**Wed 7/25/07**
62	**Procurement Process**	**64 days**	**Fri 4/27/07**	**Wed 7/25/07**
63	RFP Approved for Procurement	10 days	Fri 4/27/07	Thu 5/10/07
64	RFP Advertisment	10 days	Fri 5/11/07	Thu 5/24/07
65	Mandatory Pre- Conference	1 day	Fri 6/1/07	Fri 6/1/07
66	RFP Opened/Due Submission (10 days after Pre- Conference)	1 day	Mon 6/11/07	Mon 6/11/07
67	Bid Evaluation	10 days	Tue 6/12/07	Mon 6/25/07
68	PUC Review of Bid Evaluation	10 days	Tue 6/26/07	Mon 7/9/07
69	Notice of Intent to Award	1 day	Tue 7/10/07	Tue 7/10/07
70	Review/Award of Contract	10 days	Wed 7/11/07	Tue 7/24/07
71	Issue NTP	1 day	Wed 7/25/07	Wed 7/25/07
72	**Contract Term for Account Receivable Collection Services**	**262 days**	**Wed 8/1/07**	**Thu 7/31/08**
73	Contract Term (1 year)	262 days	Wed 8/1/07	Thu 7/31/08
74	**Islandwide Residential Waste Collection (PAYT System)**	**97 days**	**Fri 4/27/07**	**Fri 9/7/07**
75	**Procurement Process**	**97 days**	**Fri 4/27/07**	**Fri 9/7/07**
76	IFB Approved for Procurement	10 days	Fri 4/27/07	Thu 5/10/07
77	IFB Advertisment	10 days	Fri 5/11/07	Thu 5/24/07
78	Mandatory Pre- Conference	1 day	Mon 6/4/07	Mon 6/4/07
79	Site Inspection	2 days	Wed 6/6/07	Thu 6/7/07
80	IFB Opened/Due Submission (14 days after site inspection)	1 day	Wed 6/27/07	Wed 6/27/07
81	Bid Evaluation	7 days	Thu 6/28/07	Fri 7/6/07
82	PUC Review of Bid Evaluation	10 days	Mon 7/9/07	Fri 7/20/07
83	Rate Increase Petition	15 days	Mon 7/23/07	Thu 8/9/07
84	Notice of Intent to Award/Performance Bond	10 days	Fri 8/10/07	Thu 8/23/07

H1 '07 / H2 '07: N D J F M A M J J A S O N D

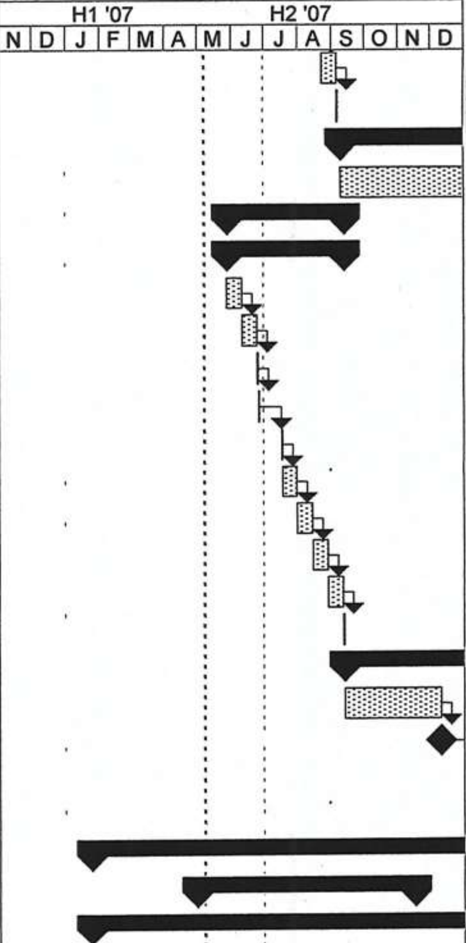
Project: Update Integrated Solid waste
Date: Mon 5/7/07

Legend: Task, Split, Progress, Milestone, Summary, Project Summary, External Tasks, External Milestone, Deadline

Integrated Solid Waste Letting
May 3, 2007
DRAFT

Revision Date:Mon 5/7/07

ID	Task Name	Duration (5 Day Work Week)	Start	Finish
85	Review/Award of Contract	10 days	Fri 8/24/07	Thu 9/6/07
86	Issue NTP and Kick-off	1 day	Fri 9/7/07	Fri 9/7/07
87	**Contract Term for Residential Waste Collection**	**1305 days**	**Mon 9/10/07**	**Sun 9/9/12**
88	Contract Duaration (5 years + 2 annual renewals)	1305 days	Mon 9/10/07	Sun 9/9/12
89	**Scale and Scalehouse Survey Services and Construction (BOD)**	**78 days**	**Tue 5/29/07**	**Wed 9/12/07**
90	**Procurement Process**	**78 days**	**Tue 5/29/07**	**Wed 9/12/07**
91	IFB Review and Approval for Procurement	10 days	Tue 5/29/07	Mon 6/11/07
92	IFB Advertisment	10 days	Tue 6/12/07	Mon 6/25/07
93	Mandatory Pre- Conference	1 day	Tue 6/26/07	Tue 6/26/07
94	Site Inspection	1 day	Wed 6/27/07	Wed 6/27/07
95	IFB Opened/Due Submission (15 days after site inspection)	1 day	Wed 7/18/07	Wed 7/18/07
96	Bid Evaluation	10 days	Thu 7/19/07	Tue 7/31/07
97	PUC Review of Bid Evaluation	10 days	Wed 8/1/07	Tue 8/14/07
98	Notice of Intent/Bid Bond	10 days	Wed 8/15/07	Tue 8/28/07
99	Review/Award of Contract	10 days	Wed 8/29/07	Tue 9/11/07
100	Issue NTP and Kick-off	1 day	Wed 9/12/07	Wed 9/12/07
101	**Contract Term (Build -Operate-Dismantle) Until Closure**	**1012 days**	**Thu 9/13/07**	**Fri 7/29/11**
102	Survey Services	63 days	Thu 9/13/07	Mon 12/10/07
103	Construction Contract	0 days	Mon 12/10/07	Mon 12/10/07
104	Operate	0 days	Fri 7/29/11	Fri 7/29/11
105	Dismantle	0 days	Fri 7/29/11	Fri 7/29/11
106	**Materials Recovery Facility, and Transfer Stations (FDBO)**	**261 days**	**Thu 1/25/07**	**Wed 1/23/08**
107	**Procurement Process**	**145 days**	**Tue 5/1/07**	**Fri 11/16/07**
119	**Contract Term Operation**	**261 days**	**Thu 1/25/07**	**Wed 1/23/08**



Project: Update Integrated Solid waste
Date: Mon 5/7/07

Task | Split | Progress | Milestone | Summary | Project Summary | External Tasks | External Milestone | Deadline

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

PETITION OF GUAM WATERWORKS AUTHORITY FOR RATE RELIEF **DOCKET 07-5**

ORDER DISMISSING PETITION

By its March 30, 2007 petition, Guam Waterworks Authority [GWA] petitioned the Guam Public Utilities Commission [PUC] for rate relief. In its petition, GWA submitted that it *has complied with all public notice requirements required by law as a condition precedent to making such a request.* 12 GCA § 12001.2 provides that as a condition for filing a rate petition with PUC, GWA must comply with three prefiling notice requirements. GWA now concedes that it did not comply with the prefiling notice requirement in section 12001.2(c) that every ratepayer be provided with mailed notice of the rate change proposal at least one month prior to the filing of the petition. As GWA failed to comply with this mandatory prefiling notice requirement, PUC has no recourse other than to dismiss the petition, without prejudice. As a consequence, PUC has cancelled public hearings, which had been scheduled on May 17 and 18, 2007 to consider the petition.

GWA may refile the petition in this docket after it has fully complied with the prefiling notice requirements set forth in section 12001.2. The petition must be accompanied with an affidavit, which confirms and details GWA's compliance with these notice requirements. Georgetown Consulting Group's [GCG] May 4, 2007 testimony on the petition need not be refiled. GCG should, however, promptly file an averment of truth and accuracy for the testimony in conformance with PUC Rule 27(a). Upon receipt of the refiled petition, the undersigned will establish hearing dates for the petition.

By reason of the above, **IT IS HEREBY ORDERED THAT** GWA's March 30, 2997 petition for rate relief is dismissed without prejudice.

Dated this 11th day of May 2007.

Harry M. Boertzel
Administrative Law Judge