

GUAM PUBLIC UTILITIES COMMISSION
REGULAR MEETING
May 27, 2010
SUITE 202, GCIC BUILDING, HAGATNA



MINUTES

The Guam Public Utilities Commission [PUC] conducted a meeting commencing at 6:20 p.m. on May 27, 2010 pursuant to due and lawful notice. Commissioners Johnson, McDonald, Perez, and Pangelinan were in attendance. The following matters were considered at the meeting under the agenda made *Attachment "A"* hereto.

1. Approval of Minutes

The PUC deferred consideration of the minutes of April 29, 2010.

2. Port Authority of Guam

Counsel reported that the Port has requested that the Facility Maintenance Fee policy be changed. The PUC had previously approved the fee of \$25 per bill of lading. The problem presented by the Port is that the policy could encourage shippers to place multiple containers under one bill of lading, thereby potentially depriving the Port of the revenues sought from the fee (about \$1.2 Mil. annually). The purpose of the fee is to help the Port improve its facilities and maintenance. The Port proposes that the fee be changed from a per bill of lading charge to \$25 per container and \$1.35 by revenue ton for break bulk. PUC Consultant Slater Nakamura concurs with the proposed change and note that it results in a 12% reduction in the revenue that would be received by the Port. The change is just and reasonable, and other port authorities commonly have such charges. Counsel indicated that public notice was issued and published in the Pacific Daily News to give members of the public and the Port Users Group an opportunity to comment on the proposed policy. However no written testimony has been submitted as confirmed by the Administrator. The notice provided that the public could give oral testimony at this meeting. The Chair asked whether there were any members of the public who wanted to testify on the facility maintenance fee. The Chair indicated that there was none. Also, the Port had no further comment on the policy. Counsel stated that there being no further testimony, the Facility Maintenance Fee policy was now in a position to be ruled upon by the Commission. Counsel had submitted a proposed Order and provided the background for the policy. The Order would approve the revised policy, adopt the Consultant's recommendations, and find that the fees in the new policy were just and reasonable. Upon motion duly made, seconded and unanimously carried, the Commissioners voted to approve the Facility Maintenance Fee of \$25 per container and \$1.35 by revenue ton for break bulk. The form of the Order adopted by the Commission is made *Attachment "B"* hereto.

The Chairman indicated that the next matter for consideration by the PUC is Port Docket 09-01, PAG Contract for Tariff/Rate Consultant. There is a PAG request for expedited review of the contract with the rate consultant, and a request for authorization for the Chairman to approve the Rate Consultant Contract upon favorable recommendation by PUC Counsel, subject to ratification by PUC. Counsel indicated that the Port had requested that the Commission expedite approval of its contract with its proposed rate consultant. The Port is required by statute to hire a consultant, and there is a tight deadline to complete the rate study. After the Port had previously approved the Port's RFP to secure a rate consultant, the Port issued the RFP and there was only one response. The Port now proposes to enter into a contract with its rate consultant within a week or two. The Port indicates that there is urgency for expeditious action and for approval within one or two weeks. Counsel requested that the Commission authorize the Chairman to approve the contract upon Counsel's favorable recommendation, subject to ratification by the Commission at the next meeting. Upon motion duly made, seconded and unanimously carried, the Commissioners authorized the Chairman to approve the contract between the Port and its Rate Consultant, subject to ratification by the PUC at its next meeting.

3. Guam Telecom

The Chairman indicated that the next matter before the PUC for consideration is GT Docket 10-01, General Exchange Tariff No. 1; PUC Counsel Report and Proposed Order. Counsel indicated that the PUC had previously issued Guam Telecom a Certificate of Authority to provide resold and facilities based local exchange services in Guam. In its Certificate, GT was notified that it would need to provide a more detailed tariff before it began providing such services. In compliance with the Commission's prior Order, GT is submitting General Exchange Tariff No. 1. GT has purchased a carrier class soft switch to deliver VoIP Telephony service to subscribers, not over telephone lines, but the internet and cable. GT selected a form of tariff that already has been approved by the Commission. Its tariff has similar provisions to the IT&E tariff previously approved by the Commission. There is one difference. At present, GT will only be providing Exchange Access Service of "Basic Line Service" to residential customers; other business line services will not presently be offered. In Counsel's opinion, the proposed tariff appears to be adequate. It provides regulations governing the relationship between the company and customers, and each basic line has standard features such as Caller ID, Call Waiting, etc. With regard to pricing, the basic monthly recurring charge of \$24.99 is the same as that contained in the IT&E Tariff. GT's General Exchange Tariff No. 1 has been properly filed pursuant to 12 GCA §12106(a). Since this is a new tariff proposed by GT, under past Commission practice public notice is published to provide for public testimony. Here public notice was published to allow for interested parties to file comments regarding the tariff. To date no comments have been received by the PUC. The Chairman asked whether there were any parties present at the meeting who

wanted to comment on the proposed tariff; there were none. There being none, Counsel recommended that GT General Exchange Tariff No. 1 be approved. However, since a party filing a tariff must give thirty days prior notice to PUC by statute, Counsel recommends that the "effective date" of the tariff be changed to today's date, the date upon which the PUC approves the tariff. Counsel has submitted a proposed Order to the Commission which would indicate that the tariff was properly filed, and that the General Exchange Tariff would be approved and adopted effective as the date of this Order. GT would be required to post the Order on its website.

Commissioner Pangelinan indicated that he could not vote on this matter and would recuse himself, as GT is his firm's client (not on this matter, but on other matters). Counsel recommended that, in light of the exigent circumstances and need for quick approval, that the Commissioners authorize the Chairman to approve General Exchange Tariff No. 1. Commissioner Perez asked when the effective date would be. Counsel indicated that it would be effective now, upon approval. Commissioner Pangelinan indicated that he would be comfortable in authorizing the Chairman to approve the Tariff, as long as such authority was entirely within the Chairman's discretion and that such authorization would not be construed as approval by the Commissioners, but subject to their ratification. Commissioner Pangelinan's position was based upon the given exigent circumstances and the absence of Commissioner Cantoria. Upon motion duly made, seconded and unanimously carried, the Commissioners voted to authorize the Chairman to approve GT General Exchange Tariff No. 1 subject to ratification by the Commission at the next meeting.

4. Guam Waterworks Authority

The Chairman indicated that the next matter for PUC consideration was GWA Docket 10-01, Petition for Approval of Contract Documents relative to GWA's \$30 Million, Short-Term Loans. Counsel reported that, in July of last year, the Commission had authorized GWA to take out a \$30 Mil. loan as part of its bond issuance. The \$30 Million loan was determined to be necessary to allow GWA to fill certain bond reserve funds, which was a prerequisite to issuance of new bonds. GWA needs this loan before it can go to the bond market. The proposed uses of the loan were approved in the PUC Rate Order in GWA Docket 09-03, including funding the O&M reserve fund and the OMRRF fund, and for certain moratorium projects. Specific uses, including payment of accounts payable, were also authorized. Both the Legislative and Executive branches have authorized GWA to borrow \$30 Mil. Public Law 30-55 requires PUC approval of the loan documents. GWA has now procured a lender, the Bank of Guam. The proposed loan agreements and documentation has been submitted to the PUC with the GWA petition, including the pledge and assignment, loan agreements and government of Guam guaranty.

Pursuant to PL 30-55, the PUC must review the issuance, terms and conditions of the debt. The maturities and the interest rates for the GWA loans (one for \$5 Million and the other for \$25 Million) are within the law--five year maturities at the annual interest of 7.75%. Counsel's Report has described the documentation in detail; the Report recommends approval of the \$30 Million short term loans. In its prior Order in GWA Docket 09-03, the PUC ordered that GWA advise it if the interest rate was higher than the 12%. Thus, the interest rate of 7.75% on the loan seems to be within the realm of commercial reasonableness. It does not appear that the loans will impose any additional impact on rate payers--rates approved in the base rate case (GWA Docket 09-03) should cover the principal, interest and issuance costs of the loan. Those costs were already built in to the 5 year plan approved by the PUC. Although the loans involve substantial amounts of interest, GWA does not appear to have any other options at the present time. The loan funds will be used to fill the bond reserve funds, which is a prerequisite to issuance of new bonds.

Finally, Counsel has submitted a proposed Order which would approve the \$30 Million loan. The Order would also authorize GWA to use \$5 Million of the loan proceeds to pay up to \$5 Million in accounts payable due as of April 30, 2010. Thereafter, the Commissioners, upon their request, were given the opportunity to review the list of accounts payable. In response to Commissioner Perez's question, GWA's CFO Greg Sablan indicated that GWA would attempt to pay down the entire amount of the payables with loan proceeds. Commissioner Perez asked when the loan would be approved. GWA's Counsel Sam Taylor indicated that all approvals had been obtained, including a revenue and taxation opinion on non taxable status of the loan, GEDA, CCU, and the Legislature. The Office of the Attorney General had raised an issue about whether the government's sovereign immunity could be waived for attorneys fees. That issue is still being discussed. Counsel indicated that there is a provision in the Order that conditions its effectiveness upon approval of the Attorney General and the Governor. Commissioner Pangelinan noted that GWA's petition had requested an extension of its PMC with Veolia Water which did not relate to the \$30 Million loan. GWA's Counsel indicated that such reference was a mistake. For the record, Commissioner Pangelinan clarified that no issue concerning Veolia and the PMC Contract was being addressed by the PUC in this proceeding. Commissioner Perez clarified that rates in the five year plan are reviewed annually by the PUC, and that there is a true up provision. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the Order, made *Attachment "C"* hereto and gave contract review approval to the \$30 Mil. loan.

5. Guam Power Authority

The Chairman indicated that the next matter for consideration by the Commission was Docket 07-10, Phase III (WCF and COLA Settlement Surcharges). He indicated that an ALJ Report and Proposed Order had been filed. The Acting Administrative Law Judge

proceeded to give a Report. The PUC, in its Phase II Order, mandated that the parties develop a surcharge to fill GPA's Working Capital Fund. The parties were also requested to consider the possibility of a COLA surcharge. In Phase III proceedings, the parties worked with the Administrative Law Judge to develop the requested surcharges. On April 21, the parties filed their Phase III Stipulation. There, Georgetown, Navy and GPA agreed that the WCF should be fully funded. The deficiency as of March 1, 2010, was determined to be the amount of \$27,477,000. The parties recommended a WCF surcharge in the amount of \$.00968 per kWh on GPA civilian bills, and a flat fee of \$222,593 per month on Navy bills. The deficiency would be funded over an eighteen month period, minus \$2.4 Million, which amount was previously provided to GPA through base rate relief. The WCF surcharge would be effective August 1, 2010. However, if GPA is successful in issuing bonds, the WCF surcharge would be subject to revision.

With regard to a COLA surcharge, only GCG gave favorable recommendation. The proposed surcharge would be an amount of \$1.2 Million over a 1 year period. The PUC issued public notice, and three public hearings were held in Hagatna, Asan, and Dededo. Only the Dededo Mayor Melissa Savares testified and she indicated that residents in her village would be hard pressed to pay any power rate increases. Based upon the liquidity problems faced by GPA, the ALJ recommended that the PUC adopt the WCF surcharge. The surcharge should be filled to meet the requirements of the bond indenture. However, as a result of suggestions by Chairman Johnson and Commissioner Cantoria, the ALJ recommended that the PUC extend the amortization period to 24 months. Such an extension would reduce the increase in the charge on the total bill from 4.31% to 3.03%. As to the COLA surcharge, the ALJ recommended that it not be adopted at the present time. GCG had suggested that payment of the COLA could be illegal and unconstitutional. GPA took no position on the matter, and the Navy was opposed to the COLA surcharge. The ALJ recommended that PUC Legal Counsel should further research the legal issues concerning the COLA surcharge. Furthermore, GPA had no immediate obligation to pay the COLA surcharge, as it was due September 30, 2010. Counsel presented a draft Phase III Rate Decision for consideration by the Commissioners.

Commissioners clarified that the WCF would result in an impact of \$6.81 per month on the average customers bill, and \$157,744 per month to the Navy. Exhibit 1 to the Proposed Order provided for an amortization of the WCF over a 24 month period. Commissioner Perez clarified with GPA that since 2006, the WCF had not been fully funded. The fund was presently at \$0. Commissioner Perez also inquired as to what guarantee the PUC would have that the fund wouldn't be touched and whether GPA should be required to first come the PUC if they needed to withdraw funds. GPA's Legal Counsel Graham Botha indicated that the funds in the WCF would be used for some purposes such as payments for fuel. Bill Blair of GCG indicated that deposits and withdrawals from the WCF would, under the stipulation, have to be monitored by the

Commission. GPA further indicated that it does have a need to make fuel payments and other emergency payments from the WCF. The ALJ recommended against a requirement that GPA seek prior approval from the PUC before it could withdraw funds from the WCF. Such a procedure would be burdensome and might hinder GPA's ability to use funds for emergency payments or fuel. It would be difficult to set up a process whereby the Commission could act expeditiously to address requests for withdraw. The ALJ further recommended that to begin with, the Commission could monitor withdrawals through GPA's reporting requirements. If problems arise, more stringent measures could later be considered. Upon motion duly made, seconded and unanimously carried, the Commissioners voted to adopt the FY10 (Phase III) Rate Decision, made *Attachment "D"* hereto.

The Chairman indicated that the next matter for consideration by the Commission was GPA Docket 10-01 Contract Review Petition to authorize GPA to issue revenue bonds and subordinate revenue bond financing (\$210M); there is a Legal Counsel Report, Consultant Report and a Proposed Order. Initially there was a discussion concerning the amount of the bond issue: the Petition had initially indicated \$210 Million, but GPA now indicated that \$220 Million was the amount sought. Counsel indicated, that based upon the recent submissions, the bond issue could be around \$200 Million. Counsel indicated that since the Commissioners had received information concerning this bond issue at the last minute, the Commissioners might want to hear more from GPA before addressing the issue of the issuance of bonds. The Chairman stated that this meeting time would be a working session. The Commission would not take action this evening, but would obtain more information from GPA this evening. A special meeting would be scheduled for June 3rd to consider this bond issue. The Chair understood that there was a June 6 deadline. General Manager of GPA indicated that GPA could not meet with its underwriters concerning issuance of the bonds until there was final approval by the PUC. GM Flores gave a schedule of actions which were necessary for the issuance of the bonds. The Commissioners then entertained a presentation from various GPA officials concerning the bond issuance. Issues covered included the following: GPA's financial situation, bond ratings, Financial Management Plan and project sought to be funded through bond issuance (i.e. Smart Grid, transmission/distribution, office building, CIP projects, etc.) a lengthy discussion of the Smart Grid project also ensued. After the GPA presentation, the Chair indicated that this matter would be next considered at the June 3 Special Meeting of the Commission at 6 p.m.

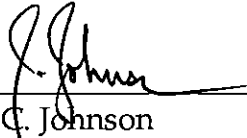
6. PUC Website

Counsel indicated that discussions had taken place between Commission personnel and AJ Rosario of ICON. Hopefully the website will be up in the near future. Commissioner Perez asked whether everything would be included in the website; Counsel and the Administrator indicated that the website would primarily include dockets and matters pending before the Commissioners.

7. Other Business

Counsel mentioned that there was a pending arbitration between PDS and GTA. It was contemplated that the Administrative Law Judge would issue his Decision on the arbitration matter in the near future. The Commission is obligated under its rules to act within ten days after the ALJ decision is issued. After some discussion, the Commissioners agree that they would meet on June 16, 2010 at 12 p.m. to consider such arbitration matter.

There being no further business, the Commissioners moved to adjourn the meeting.



Jeffrey C. Johnson
Chairman

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

**REGULAR MEETING
SUITE 202 GCIC BUILDING
414 W. SOLEDAD AVE. HAGATNA, GUAM
6:00 p.m. May 27, 2010**

1. **Approval of Minutes of the Meeting of April 29, 2010.**
2. **Port Authority of Guam**
 - Port Docket 09-02, Port Submission of the Policy for Implementation of Facility Maintenance Fees; Notice of Revised Facility Maintenance Fee Policy; Opportunity for Public Comment; Consultant's Report; and Proposed Order.
 - Port Docket 09-01, PAG Contract for Tariff/Rate Consultant; PAG Request for Expedited Review of Contract with Rate Consultant; Request for authorization for Chairman to approve Rate Consultant Contract upon favorable Recommendation by PUC Counsel, subject to Ratification by PUC.
3. **Guam Waterworks Authority**
 - GWA Docket 10-01, Petition for Approval of Contract Documents Relative to GWA's \$30M Short-Term Loans; PUC Counsel Report and Proposed Order.
4. **Guam Power Authority**
 - Docket 07-10, Phase III (WCF and COLA Settlement Surcharges); ALJ Report and Proposed Order.
 - GPA Docket 10-01, Contract Review Petition to Authorize GPA to issue revenue bonds and subordinate revenue bond financing (\$210 M); PUC Legal Counsel Report, GCG Consultant Report, and Proposed Order.
5. **Guam Telecom**
 - GT Docket 10-01, General Exchange Tariff No. 1; PUC Counsel Report and Proposed Order.
6. **Administrative Matters**
7. **PUC Website**
8. **Other Business**



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

The Port Authority Of Guam)
[PAG] Request For PUC Investigation)
of Rates and Tariffs)

Port Docket 09-02

ORDER APPROVING REVISED FACILITY MAINTENANCE FEE POLICY

Background

This matter comes before the Guam Public Utilities Commission [PUC] upon the request of the Port Authority of Guam [PAG] to revise its Facility Maintenance Fee Policy.

On January 29, 2010, the PUC authorized the Port Authority of Guam [PAG] to implement a proposed facility maintenance fee of \$25.00 for each bill of lading. The purpose of the fee is to provide funding for the maintenance, replacement, and repair of port facilities. The fee is assessed to port users utilizing the facilities in the receipt and delivery of cargo. Prior to implementation of the Facilities Maintenance Fee, the PAG was required to develop a process and policy for the implementation of the fee. Subsequently, on February 25, 2010, the PUC adopted the Facility Maintenance Fee and Implementation Policy. At present, the policy provides for a fee of \$25.00 per bill of lading, with certain exceptions.

On April 20, 2010, the Port Authority submitted a letter to the PUC requesting that the Facility Maintenance Fee Policy be revised. The PAG has recommended to the PUC that it change the fee from \$25.00 per bill of lading fee to \$25.00 for each container and \$1.35 by revenue ton for breakbulk. The Port includes projected revenue calculations and a Facility Maintenance Fee Policy and Guidelines with its Request.

On April 27, 2010, the Consultants to the PUC on Port Authority matters, Slater, Nakamura & Co. LLC, recommended that the PUC approve the Facility Maintenance Fee Policy and Guidelines proposed by the Port. The Consultants conclude that the proposed policy is "just and reasonable."

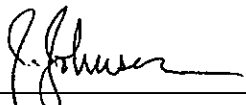
Order

Upon review of the proposed Revised Facility Maintenance Fee Policy submitted by the PAG on April 20, 2010, the Report of Slater, Nakamura & Co., LLC, for good cause


shown, and on motion duly made, seconded and carried by the undersigned Commissioners, the Guam Public Utilities Commission hereby ORDERS that:

1. The Revised Facility Maintenance Fee Policy submitted by the Port to PUC on April 20, 2010 is hereby approved.
2. The recommendations of Consultant Slater, Nakamura & Co., LLC, filed herein on April 27, 2010, are hereby adopted. The anticipated annual revenues which the Port will obtain from the Revised Facility Maintenance Fee Policy, based upon a container and revenue-ton-based levy fees, is approximately 12% less than the facility maintenance fees previously approved by the PUC in its Order dated January 29, 2010.
3. The fees charged in the Revised Facility Maintenance Fee Policy are "just and reasonable" pursuant to 12 GCA §§12015 and 12017.
4. PAG shall implement its Revised Facility Maintenance Fees in accordance with the Policy and Guidelines submitted by it to PUC on April 20, 2010.
5. PAG shall publish its revised Facility Maintenance Fee Policy and Guidelines on its website.


Dated this 27th day of May, 2010.



Jeffrey C. Johnson
Chairman




Joseph M. McDonald
Commissioner



Rowena E. Perez
Commissioner

Filomena M. Cantoria
Commissioner



Michael A. Pangelinan
Commissioner



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE: REQUEST BY THE GUAM)
WATERWORKS AUTHORITY FOR) GWA Docket 10-01
APPROVAL OF CONTRACT)
DOCUMENTS RELATIVE TO GWA'S)
\$30M SHORT-TERM LOANS)
_____)

ORDER APPROVING CONTRACT DOCUMENTATION
RELATIVE TO GWA'S \$30M SHORT-TERM LOANS
(PURSUANT TO THE CONTRACT REVIEW PROTOCOL)

Introduction

This matter comes before the Guam Public Utilities Commission [PUC] upon the Guam Waterworks Authority's [GWA] Petition for Approval of Contract Documents relative to its \$30M Short-Term Loans.¹ GWA seeks approval of its \$30M Short-Term Loans in accordance with the PUC's Contract Review Protocol, which requires prior PUC approval of all GWA externally funded loan obligations in excess of \$1,000,000, and any use of said funds.² In CCU Resolutions No. 18-FY2009 and 20-FY2009, the Consolidated Commission on Utilities [CCU] authorized GWA to issue a short-term credit facility (or facilities) in a total principal amount not to exceed \$30 Million for the following purposes:

- i. funding the O&M and OMRRF funds specified in the 2005 series Bond Indenture to their required limits; and
- ii. funding bridge financing for the Moratorium Project until GWA issues the additional bonds...³

GWA states that it needs approximately \$12.0 Million to fill the OMRRRF reserve, \$8.0 Million to fill the O&M 55 day reserve pursuant to its bond indenture, \$5.0M for the

¹ GWA's Petition for Approval of Contract Documents relative to GWA's \$30M Short-Term Loans, GWA Docket 10-01, filed May 18, 2010.

² Contract Review Protocol for Guam Waterworks Authority, Docket 00-04, issued October 27, 2005.

³ See CCU Resolution No. 20-FY2009, adopted July 1, 2009.

Moratorium Project, and \$5.0 for payment of outstanding liabilities.⁴ GWA indicates that it cannot issue bonds without the loan; otherwise it will be unable to fully fund its required bond reserves in the amounts necessary to come into compliance with the Indenture.⁵

Background

The necessity for authorizing GWA to obtain this \$30M loan was previously duly considered by the Public Utilities Commission. On July 27, 2009, the PUC issued its FY09 Rate Decision in GWA Docket 09-03, GWA Petition for Rate Relief.⁶ Therein, the Commission approved a five year plan of rate relief for GWA; PUC authorized GWA to issue "Moratorium" project bonds and revenue finance bonds in an approximate amount of \$114 Million.⁷ As a part of the rate relief package, PUC specifically authorized GWA to incur short term debt of up to \$30 Million for the following purposes:

"(a) provide bridge financing for the moratorium project; (b) fund the OMRRRF (this portion of the short term debt shall have a term of 5 years and provide for a level interest and principal payment); (c) fund the O&M Reserve Fund (this portion of the short term debt shall have a term of 5 years and provide for a level interest and principal payment); and (d) fund approximately \$5 Million in FY2009 accounts payables (this portion of the short term debt also having a term of 5 years and provide for a level interest and principal payments)."⁸

Through the enactment of various public laws, both the Executive and Legislative branches of the government of Guam have authorized GWA to borrow \$30M.⁹ In Public Law 30-055, enacted September 4, 2009, the Guam Legislature approved use of loan proceeds by GWA to fund GWA's required operating account and operating reserve account balances, to pay past due operating expenses incurred by GWA, to

⁴ Id. at Exhibit B.

⁵ GWA Petition for Approval of Contract Documents, p. 2.

⁶ PUC FY09 Rate Decision, GWA Docket 09-03, issued July 27, 2009.

⁷ Id. at p. 5.

⁸ Id.

⁹ See Public Laws No. 29-130, 30-55 (Section 28), enacted September 4, 2009, Public Law 30-101 (Sections 29-31), enacted March 12, 2010, and Public Law 30-146 (Section 29), enacted May 17, 2010.

provide interim financing for a portion of the costs of the moratorium project, and for costs of issuance of the loan.

After it had obtained authorization to obtain a \$30M loan from both the PUC and the Legislature, GWA, through the Guam Economic Development Authority, issued a Request for Proposals No. 09-011, for a \$30M loan to GWA for purposes indicated. Only one respondent supplied a responsible and conforming offer of finance, the Bank of Guam.¹⁰ By Resolution, the CCU authorized GWA to continue its negotiations with the lender as to the final terms and conditions of the agreement. The CCU determined that the proposed terms and conditions in the loan documentation from the lender are fair and reasonable, and that GWA was authorized to negotiate final terms and conditions for the final contract and to submit the documents to the Guam Public Utilities Commission for review.¹¹

Statutory Obligation of the PUC to review Terms and Conditions of the Loans

PUC Counsel filed his Report in this matter on May 25, 2010. He indicates that GWA has submitted various loan documents to PUC for its review and consideration, including Pledge and Assignment (Exhibit G), Loan Agreements (Exhibit H), Guaranty by the Government of Guam (Exhibit I), Promissory Notes (Exhibit J), and various draft legal opinions (Exhibit K). Under both the Contract Review Protocol, pursuant to 12 GCA §12004, and Public Law 30-055, the PUC is obligated to review and approve the issuance, terms and conditions of the debt, as well as the loan agreement. The final maturity of the debt cannot be more than ten (10) years after the date of its issuance, and the interest rate and price must also be determined by the PUC.¹²

Determinations

The PUC now has the above referenced documents before it. Based upon the review of PUC Counsel and the Commission, the PUC determines that the Loan Documents comply with the requirements of the statute and should be approved under the Contract Review Protocol. The issuance, terms and conditions of the loan documents comply with statute and should be approved. The purposes for which GWA seeks to utilize the proceeds of the loans have been approved by the PUC and the Legislature. The maturity date of the loans (five years), the interest rates on the borrowings (7.75%), and the payment terms for the loans are within the parameters previously established

¹⁰ Guam Consolidated Commission on Utilities Resolution No. 16-FY2010, enacted April 20, 2010.

¹¹ *Id.* at p. 2.

¹² 12 GCA §14235(2), as amended by Public Law 30-055.

by the PUC. The terms and conditions of the loan documents are commercially reasonable. Funds for the principal and interest payments which GWA will be required to make on the \$30M loans have already been included in the rates provided under the five year rate plan approved by the PUC in GWA Docket 09-03. Unless the PUC approves these loans, GWA will be unable to issue the bonds previously approved by the PUC.

Order

Having carefully considered the record herein, the PUC FY09 Rate Decision, the GWA Petition, the Loan Agreement, Promissory Notes, Guaranty, other documentation submitted, and the May 25, 2010 PUC Counsel Report, for good cause shown, on motion duly made, seconded and carried by the undersigned Commissioners, the Guam Public Utilities Commission hereby ORDERS that:

1. The prior rulings in par. 3 of the FY09 Rate Decision, issued July 27, 2009, which authorized GWA to incur short-term debt up to \$30 Million and approved the specific purposes for which GWA seeks to utilize the loan proceeds, is hereby ratified and affirmed.
2. GWA is authorized to fund the OMRRRF, the O&M Reserve Fund; to provide interim financing for a portion of the costs of the Moratorium Project; to pay expenses incurred in the issuance of the debt, and to pay any other expenses authorized pursuant to 12 GCA §14235.
3. The \$30M loan obligation which GWA seeks to enter into with the Bank of Guam is hereby approved pursuant to the Contract Review Protocol for Guam Waterworks Authority. These "externally funded loan obligations" are hereby approved.
4. The loan documentation for the \$30M Short-Term Loans is also approved pursuant to the Contract Review Protocol.
5. The issuance, terms and conditions of the \$30M debts, the loan agreement, Pledge and Assignment, the Guaranty by the Government of Guam, the Promissory Notes, are hereby approved in accordance with the requirements of 12 GCA §14235.
6. The maturity of the loans from the date of issuance (a period of five years), the interest rate of the loans (7.75% per annum), the amount of the debts,

and repayment structure are also approved pursuant to the requirements of 12 GCA §14235.

7. The specific purposes for which GWA may use loan proceeds, as set forth in 12 GCA §14235, are hereby approved; GWA is authorized to use the loan proceeds for any and all purposes set forth in 12 GCA §14235.
8. The effectiveness of this Order shall be conditioned upon the final approval of the Attorney General of Guam and the Governor of Guam of all loan documents required herein to effectuate the loans from Bank of Guam to GWA.

Dated this 27th day of May, 2010.

Jeffrey C. Johnson
Chairman

Joseph M. McDonald
Commissioner

Rowena E. Perez
Commissioner

Filomena M. Cantoria
Commissioner

Michael A. Pangelinan
Commissioner



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:

DOCKET 07-10

GUAM POWER AUTHORITY
PETITION FOR BASE RATE RELIEF

FY10 (PHASE III) RATE DECISION

Background

On February 25, 2010, the Public Utilities Commission [PUC] issued its FY10 (Phase II) Rate Decision.¹ There the Commission approved a \$10.6 Million base rate increase for the Guam Power Authority [GPA] for meters read on and after March 1, 2010. However, the Commission recognized that further action was necessary “to address the serious liquidity problem faced by GPA...”² The Commission ordered a “Phase III” of this docket to address issues concerning a proposed Working Capital Fund base rate surcharge, and further directed the Administrative Law Judge [ALJ] to undertake such further conferences or proceedings necessary to facilitate the creation and implementation of the WCF surcharge.³ In addition, the PUC requested that, in the Phase III proceedings, the parties also consider the establishment of a base rate surcharge with regard to certain cost of living adjustments and interest payments, made to Government of Guam employees, which the Legislature had required GPA to reimburse to the Government of Guam.⁴

On March 9, April 9 and March 26, 2010, the Administrative Law Judge conducted further proceedings with the parties concerning implementation of the base rate surcharges. On April 21, 2010, the Parties submitted their Phase III Stipulation, which is now before the PUC.⁵ Therein, the parties jointly recommended that the PUC establish the WCF Base Rate Surcharge.⁶

GCG further recommends that the PUC establish a surcharge on GPA’s bills, known as the “COLA Settlement Surcharge”, which would recover from ratepayers the legislatively mandated General fund “reimbursement” by GPA for cost of living

¹ PUC FY10 (Phase II) Rate Decision, Docket 07-10 issued February 25, 2010.

² Id. at p. 6.

³ PUC FY10 (Phase II) Rate Decision at p. 6.

⁴ Id.

⁵ Phase III Stipulation, Docket 07-10 filed April 21, 2010.

⁶ Id. at p. 2.

adjustments and interest payments made to Government of Guam employees⁷ DOD opposes this surcharge and GPA takes no position on it.⁸

After due and proper notice, the PUC conducted an evidentiary hearing in Hagatna during the evening of May 18, 2010, and Village hearings in Asan and Dededo during the evenings of May 19, 2010. The ALJ has now filed his Report concerning the proceedings, wherein he makes recommendations to the PUC.⁹

Determinations

After carefully considering the Stipulation of the parties, the record herein, and the May 24, 2010 Report of the Administrative Law Judge [ALJ], for good cause shown, on motion duly made, seconded and carried by the undersigned Commissioners, the Guam Public Utilities Commission hereby orders that:

1. All rulings and orders of the ALJ in this proceeding are confirmed and ratified.
2. The joint recommendation of GCG, GPA, and DOD that a WCF Base Rate Surcharge be adopted is approved. Such a surcharge is reasonable, prudent and necessary to fully fund the existing deficiency in the WCF, approximately \$27,477,000; less amounts that have been previously recognized by the PUC for working capital and that are currently imbedded in GPA's base rates.
3. Commencing on August 1, 2010, there shall be a WCF Base Rate Surcharge of \$.00681 per kWh (including the residential lifeline rate) on GPA's civilian bills. A flat fee of \$157,744 per month shall be charged to the DOD as the WCF Base Rate Surcharge.
4. The WCF Base Rate Surcharge shall be charged over a period of twenty-four (24) months (the "WCF surcharge amortization period"), after which time the surcharge shall automatically cease, unless extended or modified by PUC for good cause.
5. The calculation of the Working Capital Fund Surcharge, based upon a twenty four month amortization period, is set forth in Exhibit "1" attached hereto, which is incorporated herein by reference.

⁷ Id. at p. 4.

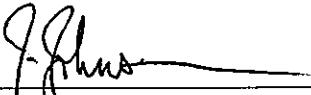
⁸ Id. at p. 5.

⁹ ALJ Report, Docket 07-10, filed May 24, 2010.


6. Beginning with GPA's LEAC filing for the period commencing February 1, 2011 and for each LEAC filing thereafter for the term of the WCF surcharge, the difference in the WCF requirement of the fuel portion only of the WCF from that determined in this proceeding should be calculated and treated as a flow-through (positive or negative) through the WCF surcharges. Any difference in GPA's WCF requirements resulting from a change in fuel prices will be amortized over the remainder of the WCF surcharge amortization period, with the allocation to DOD done in a manner that is consistent with the calculations and the methodology contained in the Stipulation of the parties.
7. As part of the LEAC proceedings, PUC will closely monitor any withdrawals and inflows from the WCF and review GPA's plan to restore the WCF as may be required. The interest earned in the WCF shall remain in the WCF until it is filled.
8. By a preponderance of the evidence, it has been established that the implementation and adoption of a WCF Base Rate Surcharge is necessary. The WCF base rate surcharge is "just" and "reasonable" pursuant to 12 GCA §§12015 and 12017.
9. In connection with a bond issuance contemplated by GPA, tentatively scheduled for sometime in summer of 2010, GPA has indicated its intention to borrow funds sufficient to fully fund the WCF as a portion of the bond issuance. In the event that GPA is able to fully fund the WCF through the borrowing of bond funds, then, in such event, the WCF surcharges ordered above shall be recalculated by the PUC to provide for the amortization of the WCF - related bond debt over the bond repayment period.
10. For the reasons set forth in the ALJ Report, PUC action on the proposed "COLA Settlement Surcharge" is hereby deferred. PUC Legal Counsel is hereby directed to address the issues and concerns raised regarding legality and validity of the COLA obligation imposed by Public Law 30-101. If warranted, the PUC can take subsequent action on or before the time when this "obligation" is due from GPA to the government of Guam (i.e. September 30, 2010).

11. GPA is ordered to pay the Commission's regulatory fees and expenses, including, without limitation, consulting and counsel fees and the fees and expenses of conducting the hearing proceedings. Assessment of PUC's regulatory fees and expenses is authorized pursuant to 12 GCA §12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.


Dated this 27th day of May, 2010.



Jeffrey C. Johnson
Chairman




Joseph M. McDonald
Commissioner



Rowena E. Perez
Commissioner

Filomena M. Cantoria
Commissioner



Michael A. Pangelinan
Commissioner

GPA
Working Capital Surcharge Calculation
Twenty-Four Month Amortization

		Base Rate	Srchg Rev.	24-month Surcharge
1 Navy Portion	\$ 4,669,157	\$ (883,294)	\$ 3,785,863	\$ 157,744 /Month
2 Civilian Portion	\$ 22,807,843	\$ (4,314,706)	\$ 18,493,137	0.00681 /kWh
	\$ 27,477,000			