GUAM PUBLIC UTILITIES COMMISSION
REGUALR MEETING
August 30, 2010
SUITE 202, GCIC BUILDING, HAGATNA

MINUTES

The Guam Public Utilities Commission [PUC] conducted a meeting commencing at 6:20 p.m. on August 30, 2010, pursuant to due and lawful notice. Commissioners Johnson, Cantoria, Perez, McDonald, 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 reviewed the minutes of the meeting conducted on August 30, 2010. Subject to certain technical corrections, upon motion duly made, seconded and unanimously carried, the minutes were approved.

2. **Guam Power Authority**

The Chairman announced that the first matter to be considered by the Commission was GPA Docket 10-01, Request to Reimburse Loan Principal Payments to GPA: GCG Report, ALJ Report, and Proposed Order. Counsel reported that in July, GPA had petitioned the PUC to allow it to use certain bond funds. GPA's requests have been resolved by the Commission, other than its request that it be authorized to drawdown $6M in excess bond funds that GPA did not need to use to payoff the Cathay Bank Loan. GPA had been authorized to expend $20M in Bond funds to payoff the Cathay Loan; however, only $13.9M was owed, such that there was an excess of $6.1M. GPA asks that it be authorized to drawdown that amount.

At its last meeting, the PUC had referred this matter to the Administrative Law Judge for resolution. Counsel pointed out that there are two issues that need to be resolved: first, the issued raised by Commissioner Pangelinan at the last meeting: if these funds are authorized for a specific purpose (i.e. payoff of the Cathay Bank Loan) can the PUC authorize the funds to be used for another purpose, or would such authorization violate the bond indenture? In response to the ALJ's request, GPA provided correspondence from Bond Counsel Stan Dirks which indicated that if the funds were "reimbursement" to GPA for costs or expenses relating to the payoff of the Cathay Bank Loan and the Commercial Paper Program, GPA could be reimbursed for those amounts. In accordance with Public Law 30-147, Bond fund proceeds can be used to pay the cost of refinancing GPA's outstanding obligations relating to its commercial paper program. Bond Counsel cited a provision in the bond indenture providing that bond proceeds can be disbursed to GPA for paying or reimbursing the Authority for project costs.

Bond Counsel and GPA characterized the $6M as "reimbursement" to GPA. GPA was scheduled to receive $2.9M in revenues for its 2010 test year budget. At that time GPA was trying to secure a private bank loan to payoff the Cathay Bank Loan; however, GPA was unable to obtain a private loan, yet the test year budget included revenues of $2.9M that GPA would have received if the Cathay Loan had been paid off with a private bank loan. Thus, GPA did not receive the expected $2.9M, and the excess bond funds could be used to "reimburse" amounts that GPA should have received for the 2010 test year budget.

In addition, a letter from the GPA General Manager stated that when Cathay Bank demanded that GPA restructure the loan, there were heavy principal payments due from GPA to Cathay. Over $6M was paid by GPA on the Cathay Bank Loan. Again, GPA characterizes the $6M excess bond funds as "reimbursement" for principal payments which GPA needed to make to Cathay Bank. It appears that some of the amounts paid by GPA were included in the test year revenues as debt service on the Cathay Bank loan. The question could be raised whether there is a "double recovery" if GPA is allowed to recover the principal payments twice. Counsel submits that any such issue can be resolved in a subsequent rate case. However, clearly reimbursement costs related to the commercial paper program are authorized. Thus, authorization by PUC for GPA to drawdown the $6M would not violate the bond indenture.

The Administrative Law Judge Report recommends that the PUC authorize GPA to drawdown the $6M. That being the case, the second question that arises is what uses the PUC should authorize for GPA with regard to the $6M. Possibilities include: (1) use of the excess bond funds for GPA's self insurance fund; (2) the establishment of a contingency reserve for cost overruns for bond projects; and (3) use of the $3M to offset the potential Working Capital Fund Surcharge that may go into effect in April of 2011. Counsel indicated that which use is better is a value judgment. With regard to the self insurance fund, when GPA paid off the Cathay Bank Loan, certain funds in the approximate amount of $5M as collateral were freed up for placement into the self insurance fund. In addition, there is currently a monthly surcharge paid by ratepayers that goes into the self insurance fund. Some funds are already available for the self insurance fund.

With regard to the Working Capital Fund Surcharge, there are questions about using excess bond funds to offset such a surcharge. GCG pointed out that there is debt service on the excess bond funds. If such excess bond funds were used as an offset to the WCF, there would still be additional debt service on the use of these funds. There could be a net zero gain for the ratepayers and thus not a big benefit to the ratepayers. Also, there is a concern whether the use of such funds would be consistent with law (i.e. use of bond funds to payoff the surcharge might not be legal). In the ALJ's opinion, the use of the $3M plus for bond project cost overrun seemed like the best use of the funds. It is clear that cost overruns are likely.

With regard to the proposed Order, GPA would be authorized to drawdown $3M for a use to be determined by it. However, before it could expend such funds, GPA would be required to come back to the PUC for review and approval. The additional $3.1M would be placed in a separate reserve fund for use for cost overruns on bond CIP projects. GPA would need to obtain prior approval for use of funds by the PUC.

Commissioner Perez asked how much the self insurance fund was supposed to have. The GPA CFO stated up to $10M, and that the fund was now at $6.5M. The CFO also indicated that approximately $300,000 per month was being paid into the fund as a result of the ratepayer surcharge. Commissioner Perez then asked what the monthly payment had been to the Cathay Bank. GPA's CFO indicated that the principal payment was $460,000 and interest $200,000 for a total of almost $700,000. Commissioner Perez questioned where the payments that were previously made to Cathay Bank would go now, and Commissioner Cantoria questioned whether GPA would be given money back because of its lost revenues. Counsel indicated that GPA was seeking reimbursement for lost revenues and principal payments that they had made. The $6M must be characterized as reimbursement to be lawful.

Commissioner Perez requested that the PUC consider the possibility of placing the $3.1M into the self insurance fund. She felt that bringing the self insurance fund up to the $10M cap would be a benefit to ratepayers because the surcharge would then stop. Counsel indicated that the PUC could authorize that use of the funds if it desired. GPA's CFO indicated that there was a problem. GPA is planning to petition the PUC to raise the cap before it is reached. If the $3.1M was placed in the self insurance fund now, the cap would be reached and the surcharge would have to be turned off. GPA's General Manager indicated that for the first $3M GPA would be looking at CIP projects not funded by bonds. GPA's CFO indicated that GPA was attempting to determine what the appropriate cap should be for the self insurance surcharge.

Commissioner Pangelinan asked whether Georgetown has taken a position on the various options for the use of the funds. Counsel indicated that GCG did not take a position, but raised procedural issues about applying the funds as an offset to the WCF. In response to Commissioner Perez's question, GPA indicated that there was currently $27.4M in the Working Capital Fund. Commissioner Perez also indicated that the self insurance fund would be close to $8M by January 2011. She asked whether the self insurance fund would get interest. GPA's CFO indicated that although interest was challenging right now, the self insurance funds were still in the Cathay Bank (at a higher rate than many banks offered). GPA was preparing a bid to obtain a new bank which would give a better interest rate. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the recommendations of the Administrative Law Judge and adopted the Order made *Attachment "B"* hereto.

3. Guam Waterworks Authority

The Chairman announced that the next matter for consideration by the PUC would be GWA Docket 09-03, Base Rate Case: True-up of Proposed FY2011 rate increase pursuant to par. 7 of the 2009 Rate Decision; GCG Report and Proposed Order. The Chairman indicated that there may be a need to continue this matter. Counsel reported that the Commission had received the GCG Report of 72 pages just a few days ago, and that the Commissioners may not have had a full opportunity to review it. In addition, GWA may wish to file a response, which would seem reasonable. GCG had recommended a reduction in the rate increase for FY2011 from 8% to 4%, with additional recommendations for reductions in upcoming years. Counsel asked GWA Counsel Sam Taylor how long GWA would like to file a response. GWA's Counsel indicated that there was an issue because GWA intends to approach the bond market and rating agencies by the end of September. Thus, the new rate needs to be put in effect no later than October 1st. The timing is difficult. PUC Counsel indicated that the PUC would conduct a hearing on September 15th to consider the GWA rate increase. Mr. Taylor indicated that there could be a response from GWA or a stipulation. PUC Counsel recommended the approach that GWA have at least a week to file its response to the GCG report with the PUC. No reply from GCG would be necessary. PUC would then make its final decision on September 15. Upon further discussion, GWA indicated that it could file a stipulation or response by September 10.

4. Port Authority

The Chairman indicated that the next matter to be addressed by the PUC was Port Docket 09-01: PAG Contract for Tariff/Rate Consultant; PUC Counsel Report: Contract Review and Proposed Order. Counsel reported that this matter concerning PAG's Rate Consultant Contract had previously been before the PUC. The PUC previously approved the procurement for the PAG rate/tariff Consultant. Under Public Law, the Port has no choice but to hire a rate/tariff consultant and to submit a rate study to the PUC by December 31 of this year. Public Law 30-52 also requires that the PUC approve the Contract between the Port and its rate consultant. After the PUC approved the PAG procurement for a rate consultant, the Port sought proposals. There was only one response to the RFP, by the Cornell Group. The Cornell Group filed a detailed response to the RFP, which had detailed a work plan, a series of meeting with the Port, the analysis of rates, and comparison of rates and tariffs to other port authorities.

In PUC Counsel's opinion, if the Cornell Group does what it says it will in its proposal, it should be able to provide the Port with a basis on which the rate and tariff study can be completed. Counsel also felt that the Port Cost Negotiation Committee had been successful in negotiating the final contract price down to a fee of $190,000 inclusive of all expenses. Therefore, Counsel had submitted a proposed Order which would approve the Consultant Agreement between the PAG and the Cornell Group Inc.

However, Counsel recommended that the effective date of the agreement be modified to provide that the contract would be effective upon the date of approval by the Commission. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the Rate/Tariff Consultant Agreement between PAG and the Cornell Group Inc., and adopted the Order made *Attachment "C"* hereto.

The Chairman announced that the next matter to come before the Commission is Port Docket 09-03, Contract Review of ANZ $3.5M Loan, Loan Documentation, Counsel Report and Proposed Order. Commissioner Pangelinan indicated that, due to his firm's representation of ANZ, he would not participate in this matter. Counsel indicated that PAG was seeking approval of its $3.5M loan with ANZ Bank. In 2007, PAG issued an RFP requesting proposals for a provision of a loan to purchase certain cargo handling equipment. ANZ was selected as the successful offeror. Originally the parties had hoped that the loan would be tax exempt; however, pursuant to an opinion of the Guam Attorney General, it was held that the interest earned by ANZ Bank is not tax exempt. Therefore, on August 17, 2010, the parties entered into a loan commitment letter whereby the loan would be at a fixed interest rate of 6.22%.

Counsel indicated that the PUC was required to review the loan pursuant to 12 GCA §12004, which provides that a utility [such as the Port] shall not enter into a contractual agreement or obligation which could increase rates and charges prior to the written approval of the Commission. The loan which the Port entered into would be secured by a Loan and Security Agreement. The Port purchased certain cargo handling equipment in 2009 and 2010, including top Lifters and Terminal Yard Tractors. The purpose of the loan was to reimburse PAG for its expenditures on the foregoing equipment. The Port had been required to expend operations funds for the purpose of such equipment and would be reimbursed by the loan proceeds. The loan is 90% guaranteed by the United States Department of Agriculture and would be repayable over a 15 year period. Monthly payments would be approximately $29,952.60.

Counsel believes that the Loan and Security Agreement, along with the terms in the Loan Commitment Letter, are reasonable. The interest rate of 6.22% compared favorably with other taxable loans recently negotiated by other government entities. PAG has demonstrated a need for the loan funds. Because of the purchase of the cargo handling equipment, it was required to defer other capital projects such as the repair of the fuel pipeline connecting to the Mobil Tanks. It does not appear that the monthly amount of the principal and interest payments, approximately $29,952.60, will increase PAG rates to consumers and the public. The $3.5M loan was included in the preliminary financial projection that was submitted to PUC for the 3.4% increase in interim tariff rates in the financial feasibility rate increase schedule. Thus, Counsel recommends that the PUC approve the terms and conditions set forth in the Loan Commitment Letter and the final loan documentation. However, such approval should be subject to submission of proof by PAG that the final loan documentation has been approved by the appropriate PAG officials. Counsel submitted a proposed Order for consideration by the Commission. Upon due consideration by the Commissioners, on motion duly made, seconded and unanimously carried, the Commissioners approved the Loan Agreement between ANZ Bank and PAG, and approved the Order made *Attachment "D"* hereto.

5. GTA Telecom LLC

The Chairman announced that the next matter to come before the Commission is GTA Docket 10-06, GTA Telecom LLC Petition for Annual USAC Certification, PUC Legal Counsel Report and Use Certification. Counsel reported that GTA has petitioned the PUC to issue a Certification that GTA will use federal universal services support funds for purposes in compliance with §254(e) of the Federal Communications Act. Counsel indicated that GTA receives monies from interstate universal service funds (USF) that are designated to support local services, build needed infrastructure and improve service quality. GTA's Petition contains the necessary certifications that the Universal Support Funds received by it are being used to support core services that are designated for USF support. GTA has been designated by the FCC as an Eligible Telecommunications Carrier. GTA's Petition further provides that it provides all of the nine core services that are designated for USF support.

The Petition indicates that GTA is in compliance with FCC requirements, such as detailed information on any outages lasting 30 minutes or more, unfulfilled requests for service from potential customers, the number of complaints per 1,000 handsets or lines, certification as to compliance with applicable service quality standards, ability to function in emergency situations, the offering of a local usage plan comparable to the incumbent LEC, and acknowledgment that the Commission may require it to provide equal access. GTA has also provided a five year service quality improvement plan, which lists construction projects designed to improve service quality, network reliability and enhanced capabilities. To the best of counsel's knowledge, the Universal Service Funds received by GTA in calendar year 2009 have been used for the intended purposes.

Counsel recommends that GTA's request for USAC Certification be granted; the Commission may reasonably certify that USF received in calendar year 2010 will be appropriately used. Counsel submitted a "Use Certification" for consideration by the PUC. Commissioner Perez asked whether the internet operates totally independent from the telecom cable or whether it was tied into the telephone lines. Eric Votaw of GTA indicated that the DSL can go over existing lines. Commissioner Pangelinan asked whether this matter required an Order approved by the Commission. Counsel stated that there is a "Use Certification" which provides that USF Funds will be used in accordance with law. The Commissioners' approval of the Use Certification would be noted in the minutes, but it would only be the Chairman that signs the Use

Certification. Upon motion duly made, seconded and unanimously carried, the Commissioners approved GTA's Request for USAC Certification and authorized the Chairman to sign such certification. Commissioner Perez asked whether GTA was paid up on balances for administrative and regulatory fees. The PUC Administrator indicated that there was still a balance owed on the amended billing. The Chairman requested that all previously billing should be caught up by the end of the fiscal year, and Mr. Votaw of GTA indicated that that would be done.

The Chairman indicated that the next matter to be considered is GTA Docket 10-07, Pulse Mobile LLC Petition for Annual USAC Certification, PUC Legal Counsel Report, and Use Certification. Counsel indicated that the Petition in this matter was similar to that submitted by GTA Telecom. The Pulse Petition indicated that it would use universal support funds for purposes in compliance with §254(e) of the Federal Act. Pulse receives USF to support local services, to build needed infrastructure and to improve service quality. PUC has previously certified Pulse as an eligible Telecommunications Carrier [ETC].

Pulse must provide annual certification material and a five year plan indicating that it is building out its GSM/3G network. The plan covers a five year period. In 2010 and 2011, it will expand its core island coverage and capacity by building out additional cell sites and increasing its coverage footprint as well as overall capacity for voice traffic. The rural coverage area in the southern part of the island will be expanded. In year five, Pulse will expand its high speed data network to include long term evolution, or the 4G network. Its build out of services on Guam is in compliance with the requirements of federal law. The Report filed sets out requirements that Pulse Mobile has complied with, including the following: no complaints on Pulse service filed with the PUC; E911 service is provided; a certification that the plan is comparable to that provided by the Incumbent Local Exchange Carrier; a certification that Pulse provides the nine core services designated for USF support; a certification that there is media advertising as to availability of supported services and low income discounts; and a certification that all federal high cost support will be used only for the provisioning upgrade and maintenance of services for which the support is intended. It appears that Pulse has met all of its filing requirements and it has been prompt in filing needed information.

Counsel recommends that Pulse has satisfied all criteria in the ETC order and FCC requirements. Pulse's five year plan has indicated a commitment to further build out its wireless networks; since the requirements have been met, Counsel recommends approval. Commissioner Perez asked what the toll limitation for low income consumers was. Eric Votaw of GTA indicated that there were discounts available to low income consumers based upon federal guidelines. The Chair questioned when the 4G would be build, and Mr. Votaw indicated it should be built out about five years from now. The Chair also asked whether the 2G, 3G and 4G use the same system. Mr.

Votaw explained that each uses some of the same system and switches. Upon motion duly made, seconded and unanimously carried, the Commissioners approved Pulse Mobile's Petition for USAC Certification and Authorized the Chairman to sign the Order made *Attachment "E"* hereto.

6. PUC Website

Administrator Palomo indicated that work on the website was still ongoing, and that she and A.J. Rosario continue to work on it. As soon as the telecom documents were downloaded to the website, the website could be launched, perhaps in mid September. The Administrator also indicated that the Pacific Telecommunications Conference would occur in Hawaii in January of 2011.

7. Deliberations Concerning Extension of PUC Contracts

The Chairman indicated that the next matter to be considered by the PUC is the extension of PUC contracts, including Legal Counsel, Administrative Law Judge, Consultant and Administrator. Draft Resolutions and proposed letters had been submitted to the Commission. Counsel indicated that this matter was technically before the Commission somewhat early, as the current contracts remain in effect into October 2010. The Chairman stated that this would be the third year of the five year contract period, because approval of the contracts is on an annual basis. Counsel recommended that the PUC, to handle this matter, could sign the two Resolutions offered. The first dealt with the professional services agreements for the Legal Counsel, the ALJ, and the Consultant GCG. Two one year terms out of the five year contract had previously been approved, but the contracts were renewable annually. The Commission could actually terminate any of the contracts upon 30 days notice. If the Commission wishes to renew the contracts, it must do so by October 11, 2010 or the agreements would lapse and no longer be in effect. This matter is completely within the Commission's discretion. The Resolution prepared would renew each of the three agreements for another year. But the Commission could terminate any of the agreements at any time.

One change is proposed in the agreements for Legal Counsel and ALJ. After discussions with the Chairman, the hourly rates for Legal Counsel and ALJ would be increased from $150 to $175. The Chairman indicated that this increase was his suggestion; Legal Counsel Horecky and ALJ Mair had saved the Commission lots of money over the last two years with their work and have helped reduce consultants expenses. Furthermore, the consultants serve at the same hourly rate now proposed for Legal Counsel and ALJ. fee is a standard and Commissioner Pangelinan agreed with the hourly increases, noting that the increased hourly rate is common among legal consultants for other government agencies.

PUC Counsel further stated that there was a matter of the contract with the Administrator. Although she had worked with the Commission prior to 2008, in 2008 she entered into a new contract with the Commission. That contract has now been in effect for nearly two years. Counsel indicated that the Commission could change the terms and conditions of the agreement, such as increasing the administrator's salary. Commissioner Perez indicated that she would like to look at the Administrator's contract in more detail. The Chairman suggested that a motion be made to approve the contractors' Resolution, and to take a further look at the Administrator's Contract in the next months meeting. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the Resolution extending the contracts of Legal Counsel, ALJ, and Consultant for an additional one year period. Such Resolution is made *Attachment "F"* hereto. The Commissioners agreed to take up the Administrator's Contract in the next months meeting.

8. Other Business

The Chairman indicated that there may be a need to put out other requests for proposals. Counsel stated that there may be a need to put out various consultant RFP's, one for Solid Waste and another for telecom issues including E911. Upon motion duly made, seconded and unanimously carried, the Commissioners moved to instruct Counsel that PUC Requests for Proposal should be put out to obtain PUC Consultants for Solid Waste and for Telecommunications issues including E911.

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

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Jeffrey C. Johnson
Chairman

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

REGULAR MEETING
SUITE 206 GCIC BUILDING
414 W. SOLEDAD AVE. HAGATNA, GUAM
6:00 p.m. August 30, 2010

Agenda

1. **Approval of the Minutes of the Meeting of July 27, 2010.**

2. **Guam Waterworks Authority**
   - GWA Docket 09-03, Base Rate Case: True-up of Proposed FY2011 rate increase pursuant to par. 7 of the 2009 Rate Decision; GCG Report, and Proposed Order.

3. **Port Authority of Guam**
   - Port Docket 09-01: PAG Contract for Tariff/Rate Consultant; PUC Counsel Report: Contract Review and Proposed Order.
   - Port Docket 09-03: Contract Review ANZ $3.5M Bank Loan, Loan Documentation, Counsel Report, and Proposed Order

4. **GTA Telecom LLC**
   - GTA Docket 10-06, GTA Telecom LLC Petition for Annual USAC Certification, PUC Legal Counsel Report, and Use Certification.
   - GTA Docket 10-07, Pulse Mobile LLC Petition for Annual USAC Certification, PUC Legal Counsel Report, and Use Certification.

5. **Guam Power Authority**
   - GPA Docket 10-01, Request to Reimburse Loan Principal Payments to GPA: GCG Report, ALJ Report, and Proposed Order.

6. **PUC Website**

7. **Administrative Matters**

8. **Deliberations concerning Extension of PUC Contracts:**
   - Legal Counsel
   - Administrative Law Judge
   - Consultant
   - Administrator
   - Draft Resolution and Proposed Letters

9. **Other Business**

ATTACHMENT A

BEFORE THE GUAM PUBLIC UTILITES COMMISSION

IN THE MATTER OF:	)	GPA Docket 10-01
GPA Petition for Use of 2010 Bond Funds	)	
[Request to drawdown $6M in excess	)	
bond funds]	)	

ORDER

This matter comes before the Guam Public Utilities Commission [PUC] upon the request of the Guam Power Authority [GPA] to drawdown $6M in excess bond funds.[1] GPA seeks authorization to drawdown $6M, funds in excess of the amounts used to payoff the Cathay Bank Loan.[2] GPA received $20M in bond funds to payoff the Cathay Bank Loan.[3] However, the actual payoff balance for the Loan was approximately $13.9M.[4] This matter was referred to the Administrative Law Judge for his consideration in the PUC Order dated July 27, 2010.[5] His Report addresses the issues of whether GPA should be authorized to drawdown such excess bond funds, and if so, what disposition should be made thereof.[6]

In the opinion of GPA Bond Counsel, Stan Dirks of the Orrick, Sutcliffe, and Harrington firm, the PUC does have the authority to authorize GPA to drawdown the $6M in excess bond funds: Under Public Law 30-147, the proceeds of the subordinate bonds are authorized to be applied "to pay the costs of refinancing GPA's outstanding obligations relating to its commercial paper program, subject in each case to approval by the GPUC."[7] Furthermore, the Indenture under which the subordinate bonds were issued provides that bond proceeds may be disbursed upon requisition of the Authority "for the purpose of paying, or reimbursing the Authority for the payment of, or

[1] GPA's Petition for Use of 2010 Bond Funds, GPA Docket 10-01, filed July 19, 2010.
[2] Id. at p. 1.
[3] PUC Order Approving Long-Term Debt, GPA Docket 10-01, June 3, 2010, at p. 1.
[4] Letter from GPA General Manager to PUC Legal Counsel, GPA Docket 10-01, dated July 19, 2010 at p. 1.
[5] PUC Order, GPA Docket 10-01, issued July 27, 2010.
[6] ALJ Report, GPA Docket 10-01, filed August 30, 2010.
[7] Id. at p. 1.

refinancing, the project costs and maintenance and operation expenses for which a series of bonds is issued pursuant to the Act."[8]

Bond Counsel further opined: "[G]iven that the Legislature knew the history of the Loan, its partial payoff, etc., and authorized an issue that included $20Million for the loan payoff, reimbursement of the Authority for the prior payments seems to also be consistent with the assumptions of the Legislature. Any reimbursement of the prior payments would be deposited in the fund that was the source of the prior payments, in this case, the Surplus Fund under the Senior Indenture." The PUC adopts the reasoning of Bond Counsel and finds that GPA may be authorized to drawdown $6M in excess bond funds as "reimbursement" and as "costs of refinancing" related to its commercial paper program.

In his Report, the ALJ recommends that GPA be able to drawdown $3M to use for such purposes as it deems appropriate, subject to prior approval of the PUC.[9] The PUC adopts such recommendation. However, GPA should petition the PUC for approval of the intended particular use of said funds, in accordance with the Contract Review Protocol.

With regard to the remaining amount of approximately $3.1M, the ALJ considers different possible uses to which GPA could put such funds: for the self insurance fund, as an offset of, or credit against, the amounts that ratepayers would be charged by virtue of the Working Capital Surcharge which GPA intends to put in place in April 2011, or as a contingency reserve fund for the payment of potential cost overruns on bond financed projects.[10]

The ALJ recommends that the best option for the use of the remaining funds is the creation of a contingency reserve for possible cost overruns of approved projects such as Smart Grid or other bond funded projects that may become priorities within the next few years. With bond funded projects, it is likely, if not inevitable, that there will be cost overruns. It will be useful for GPA to have a contingency fund from which to pay such cost overruns.[11] The excess bond funds of $3.1M should be created as a contingency reserve for possible cost overruns of approved projects. GPA would be required to come to the Commission to seek approval for any specific expenditure of such funds.

[8] Id.
[9] Id. at p.4.
[10] Id. at pgs. 4-5.
[11] Id. at p.5.

Upon consideration of the record herein, the Request of GPA for drawdown of $6M in excess bond funds, the Administrative Law Judge Report, and for good cause shown, upon motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby ORDERS that:

1. The request of GPA to drawdown $6M in excess of the bond funds used to payoff the Cathay Bank Loan is hereby authorized. In accordance with Public Law 30-147 and the Bond Indenture, said amounts properly constitute "reimbursement" to the Authority.

2. With regard to $3M of such excess bond funds, GPA shall determine the appropriate purpose or purposes for which it intends to use such funds. Prior to expending such funds, it shall petition the PUC for approval of the particular use of said funds, in accordance with the Contract Review Protocol.

3. With regard to the remaining excess bond funds related to the Cathay Bank Loan, which constitute approximately $3.1M, GPA shall create a contingency reserve fund for the payment of possible cost overruns with regard to the approved bond financed projects.

4. Should GPA intend to expend funds from the contingency reserve for cost overruns of the approved bond projects, it shall seek prior approval from the Commission for any such expenditure.

5. 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 30th day of August, 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 UTILITES COMMISSION

IN THE MATTER OF: GPA Petition for Use of 2010 Bond Funds [Request to drawdown $6M in excess bond funds]	GPA Docket 10-01

ADMINISTRATIVE LAW JUDGE REPORT

Background

On July 19, 2010, the Guam Power Authority [GPA] filed a Petition for Use of 2010 Bond Funds.[1] Therein, GPA had asked PUC to approve two specific uses of bond funds: first the drawdown of funds in conjunction with the "Smart Grid" Project; and second, authorization to drawdown $6Million, funds in excess of the amounts used to payoff the Cathay Bank Loan.[2] The PUC has already addressed the issue of the drawdown of funds in conjunction with the "Smart Grid" Project.[3]

With regard to the $6Million drawdown proposed by GPA, the PUC referred this matter to the Administrative Law Judge for further review and consideration. The ALJ was ordered to make such recommendations to the PUC as he deemed appropriate for the use of such funds.[4] This Report addresses the issues of whether GPA should be authorized to drawdown such excess bond funds, and if so, what disposition should be made thereof.

Paragraph 1 (D. of the Contract Review Protocol for Guam Power Authority requires that the PUC approve any use on bond funds.[5] GPA received $20Million in bond funds

[1] GPA's Petition for Use of 2010 Bond Funds, GPA Docket 10-01, filed July 19, 2010.
[2] Id. at p. 1.
[3] See PUC Order, GPA Docket 10-01, issued July 27, 2010.
[4] PUC Order, GPA Docket 10-01, issued July 27, 2010, at p. 2.
[5] Contract Review Protocol for Guam Power Authority, Administrative Docket, filed February 15, 2008 at p. 1.

to payoff the Cathay Bank Loan.[6] However, the actual payoff balance for the Loan was approximately $13.9Million.[7]

Analysis of Issues

The first issue is whether the PUC can lawfully authorize GPA to drawdown excess bond funds, or to "reimburse" itself for expenditures relative to the Cathay Bank Loan. Public Law 30-147 provides that "the proceeds of the subordinate bonds may be applied…to provide for reserves and to pay the costs of refinancing GPA's outstanding obligations relating to its commercial paper program, subject in each case to approval by the GPUC of such purpose in accordance with Chapter 12 of Title 12 of the Guam Code Annotated." At the PUC meeting on July 27, 2010, Commissioner Pangelinan asked whether the drawdown of the $6Million by GPA would be consistent with the purpose for which such bond funds were issued, i.e. to payoff the loan. If the bond funds are not needed for that purpose, then it must be determined whether the expenditure of such funds for a different purpose would constitute noncompliance with, or violation of, the bond covenants.[8]

On August 2, 2010, the ALJ wrote GPA to ask as to whether it could lawfully use the excess $6Million bond funds for a purpose other than the payoff of the Cathay Bank Loan.[9] Thereafter, the General Manager of GPA filed a response with the PUC that addressed the ALJ's question. The response, by Bond Counsel Stanley J. Dirks, Esq. of the Orrick, Herrington & Sutcliffe LLC law firm, pointed out that under Public Law 30-147, the proceeds of the subordinate bonds are authorized to be applied "to pay the costs of refinancing GPA's outstanding obligations relating to its commercial paper program, subject in each case to approval by the GPUC."[10] Furthermore, the Indenture under which the subordinate bonds were issued provides that bond proceeds may be disbursed upon requisition of the Authority "for the purpose of paying, or reimbursing the Authority for the payment of, or refinancing, the project costs and maintenance and operation expenses for which a series of bonds is issued pursuant to the Act."[11]

Bond Counsel opined that "[G]iven that the Legislature knew the history of the Loan, its partial payoff, etc., and authorized an issue that included $20Million for the loan

[6] PUC Order Approving Long-Term Debt, GPA Docket 10-01, June 3, 2010, at p. 1.
[7] Letter from GPA General Manager to PUC Legal Counsel, GPA Docket 10-01, dated July 19, 2010 at p. 1.
[8] Minutes of PUC Meeting of July 27, 2010 at p. 6.
[9] Email from ALJ Horecky to GPA Officials, GPA Docket 10-01, dated August 2, 2010.
[10] Id. at p. 1.
[11] Id.

payoff, reimbursement of the Authority for the prior payments seems to also be consistent with the assumptions of the Legislature. Any reimbursement of the prior payments would be deposited in the fund that was the source of the prior payments, in this case, the Surplus Fund under the Senior Indenture."

There are two possible grounds upon which drawdown by GPA of the $6M excess bond funds as "reimbursement" is justified. In GPA's 2010 Test Year Budget Revenues, the amount of $2.917M was included as "proceeds from $20M TCP Loan." In other words, GPA had anticipated that it would secure private bank loan financing to payoff the commercial paper loan. Since the loan was approximately $17M at that time, GPA anticipated that it would receive $2.917M as revenues for FY2010. However, since it did not secure private financing for the commercial paper loan, it did not receive the "revenues" that were approved by the PUC as part of the FY2010 budget. Essentially, GPA was $2.9M "short."[12] Therefore, $2.917M from the excess bond funds for the Cathay Bank Loan payoff could be seen as "reimbursement" to GPA for the revenues that it did not receive.

In addition, GPA was "forced to continue to absorb principal payments made on the loan without any offsetting source of revenues from which to make the loan payments…thus, GPA was forced to absorb principal payments of $6,250,000.05 during the period when GPA was first required to make principal payments on the loan and the time the principal balance was paid off by the proceeds of the bond issuance."[13] Thus, revenues "lost" by GPA, as well as amounts paid on principal to Cathay Bank, can be viewed as "the costs of refinancing GPA's outstanding obligations relating to its commercial paper loan" and as "reimbursement" to the Authority.

By authorizing GPA to drawdown the $6M, PUC will not be in violation of the bond covenants. It is appropriate to authorize GPA to drawdown such funds as "reimbursement" for revenues it did not receive from the anticipated Cathay Bank Loan Payoff, as well as for the principal payments it made on such loan. There may be an issue as to whether GPA already received revenues in its FY2010 Revenue Budget to cover at least a portion of the debt service on the Cathay Bank Loan. However, any issue of "double recovery" can more appropriately be addressed in the next rate proceeding.

[12] Letter from GPA General Manager to PUC Legal Counsel, GPA Docket 10-01, dated July 19, 2010 at p. 1.

[13] Id.

The second issue is whether, assuming the propriety of authorizing the drawdown to GPA, for what purpose should the funds be used? The funds do constitute "reimbursement" to GPA. However, the Contract Review Protocol requires PUC to approve any use of bond funds.[14] As to $3M of such funds, GPA should petition the PUC for approval for the use of such funds once it has determined how the funds will be used.

As to the remaining excess bond funds (approximately $3M to $3.1M), there had been different possible uses suggested for those funds. The GCG Report filed August 27, 2010, relative to GPA's Request to use Excess Bond Funds after payment to Cathay Bank, suggests two possible uses of the excess bond funds: (1) a contingency reserve for possible cost overruns of approved projects such as Smart Grid or other bond funded projects that may become priorities within the next few years with appropriate; and (2) transfer of the funds from the surplus fund into the self-insurance fund for possible mitigation against future catastrophes with appropriate PUC review and approval.[15] The third possible use of such funds suggested is as a possible "credit" or "offset" by GPA of $3.1M against the new Working Capital Fund Surcharge which it seeks to implement in April 2011. Under this scenario, the $3.1M would be deducted from the total amount of anticipated WCF surcharge (which surcharge would be in effect for approximately four and one half years). Ratepayers would possible derive a benefit from such "offset."[16]

As to a transfer of the funds from the surplus fund into the self-insurance fund for mitigation against "future catastrophes", the self-insurance fund already has a surcharge mechanism by which it is funded. In addition, since the Cathay Bank Loan has now already been paid off, GPA should be able to transfer back the funds (approximately $5M) to the self-insurance fund, which amount had previously been held in a Cathay Bank account as security for the bank loan obligation. Thus, there are other funding sources for the self-insurance fund, and the excess bond funds are not necessarily needed for the self-insurance fund at the present time.

[14] Contract Review Protocol for Guam Power Authority, Administrative Docket, filed February 15, 2008 at p. 1.

[15] GCG Report, GPA Docket 10-01, "GPA Request for a Surcharge to Fund Debt Service for its Working Capital Fund and to use excess bond funds after payment to Cathay Bank, filed August 27, 2010 at p. 5-6.
[16] PUC Counsel Report, GPA Docket 10-01, filed July 27, 2010 at p. 3.

As for "offsetting" or "crediting" the amount of the WCF surcharge projected in April 2010 for such excess funds, such a "solution" has certain possible procedural problems. The surplus funds also require payment thereon of the underlying debt service. One could question the utility of off-setting a WCF surcharge, which itself is designed to payoff debt service coverage on the bond funds, with other funds that also require the payment of debt service. This scenario could require funding through rates of the underlying debt service on the excess bond funds, which could result in no net gain to the ratepayers.[17] There may also be an issue as to the propriety of using bond funds to "offset" a customer surcharge.

In addition, the WCF surcharge is not presently established; there is a proceeding to address the same, and it is anticipated that the WCF surcharge may be effective in April 2010. But at present, there is no surcharge against which the excess bond funds could be credited. Any new WCF surcharge must go through the PUC review and approval process.

Recommendation

As to $3M of such funds, GPA should petition the PUC for approval for the use of such funds once it has determined how the funds will be used.

For the remainder of the funds (approximately $3.1M), it appears that the best option is the creation of a contingency reserve for possible cost overruns of approved projects such as Smart Grid or other bond funded projects that may become priorities within the next few years. With bond funded projects, it is likely, if not inevitable, that there will be cost overruns. It will be useful for GPA to have a contingency fund from which to pay such cost overruns. The ALJ recommends that $3.1M be created as a contingency reserve for possible cost overruns of approved projects. GPA would be required to come to the Commission to seek approval for any specific expenditure of such funds.

Dated this 30th day of August, 2010.

Frederick J. Horecky
Frederick J. Horecky
Administrative Law Judge

[17] Id. at p. 6.

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:	Port Docket 09-01
	GENERAL REGULATORY DOCKET
REQUEST OF THE PORT AUTHORITY OF GUAM [PAG] FOR APPROVAL OF TARIFF CONSULTANT CONTRACT	

ORDER

This matter comes before the Guam Public Utilities Commission [PUC] upon the request of the Port Authority of Guam [PAG] for approval of the Tariff Consultant Agreement between PAG and the Cornell Group, Inc., which was filed on August 24, 2010.[1] Therein, PAG requests that the PUC review such agreement and approve it at its meeting on August 30, 2010. On August 30, 2010, PUC Counsel filed his Report herein.[2] The Report details the background of the proceedings in this matter. On April 1, 2010, the PUC, through its Chairman, approved the request of the Port to issue RFP No. 010-005, Professional Services for Comprehensive Tariff Study, subject to inclusion of the changes recommended by PUC Counsel. Pursuant to Public Law 30-52, the Port is required to hire a rate consultant, and, by December 31, 2010, to submit to the PUC the results from a study of existing rates, charges and costs of services.[3]

There was only one bidder in response to the RFP, the Cornell Group Inc. ["Cornell"]. The Cornell Group [hereafter "Cornell"] filed a detailed proposal which included a "Work Plan and Schedule" (a true and correct copy thereof is attached to Counsel's Report as Exhibit "A"). Initially, Cornell had proposed a total cost for the project of $251,011, which consisted of both professional fees and estimated expenses.[4] However, the PAG Cost Negotiation Committee was successful in negotiating the final contract price down to a fee of $190,000, inclusive of all expenses.

[1] See e-mail dated August 24, 2010, from Jose B. Guevara, Financial Affairs Controller of PAG, to Frederick J. Horecky, PUC Legal Counsel, with Tariff Consultant Agreement attached.
[2] PUC Legal Counsel Report, Port Docket 09-01, filed August 30, 2010.
[3] Minutes of PUC Special Meeting of March 25, 2010, p. 2.
[4] Record of Fee Negotiations – RFP No. 010-005 [Memorandum from General Manager to Procurement and Supply Manager, dated May 24, 2010] filed in Docket 09-01 on August 24, 2010.

The Agreement adequately sets forth the plan by which the Cornell Group will prepare a study of existing rates, charges and costs of services. If the services are provided in accordance with the Agreement, the Port should be able to meet its statutory duty under Section 7 of Public Law 30-52 of submitting the study to the Commission no later than December 31, 2010. The cost of the proposal appears reasonable, given the comprehensive nature of the proposed tariff study; the cost of the study will not have any measurable impact upon Port rates or tariffs. The Consultant also agrees that it will provide consultation, advice and assistance to the PAG pertaining to the preparation of presentations and cases at public hearings before the PUC or other relevant government bodies.[5]

Upon consideration of the record herein, the Request of the Port, the PUC Legal Counsel Report, and for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby ORDERS that:

1. The Consultant Agreement between the Jose D. Leon Guerrero Commercial Port (Port Authority of Guam) and the Cornell Group, Inc. is hereby approved pursuant to Section 7 of Public Law 30-52.

2. In accordance with Section 7 of Public Law 30-52, the Consultant Agreement is effective as of this date (i.e., the date upon which the Commission has approved the Agreement).

3. The Scope of Services under the Consultant Agreement is reasonable and, if fully performed and carried out, should be sufficient to enable PAG to submit to the Commission results of its study of existing rates, charges and cost of services no later than December 31, 2010.

4. Section II, Term of the Consultant Agreement, must be modified as follows: "The effective date of this Agreement is the date upon which the agreement is approved by the Guam Public Utilities Commission." The contract is effective upon the date of approval by the Commission.

5. The Port 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

[5] Id. at p. 31.

§§12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

Dated this 30th day of August, 2010.

Jeffrey C. Johnson
Chairman

Joseph M. McDonald
Commissioner

Filomena M. Cantoria
Commissioner

Rowena E. Perez
Commissioner

Michael A. Pangelinan
Commissioner

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Public Utilities Commission of Guam

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:	Port Docket 09-01 GENERAL REGULATORY DOCKET
REQUEST OF THE PORT AUTHORITY OF GUAM [PAG] FOR APPROVAL OF TARIFF CONSULTANT CONTRACT	

PUC COUNSEL REPORT

Introduction

This matter comes before the Guam Public Utilities Commission [PUC] upon the request of the Port Authority of Guam [PAG] for approval of the Tariff Consultant Agreement between PAG and the Cornell Group, Inc., which was filed on August 24, 2010.[1] Therein, PAG requests that the PUC review such agreement and approve it at its meeting on August 30, 2010.

Background

On March 17, 2010, the Port filed a Procurement with the Commission seeking to hire a tariff/rate consultant. Pursuant to Public Law 30-52, the Port is required to hire a rate consultant and has no discretion in the matter. Furthermore, by law, it is mandated, by December 31, 2010 to submit to the PUC the results from a study of existing rates, charges and costs of services.[2] Due to the exigent need of the Port to complete its comprehensive tariff rate study within the legislatively mandated timeframe, the Commission authorized the Chairman to approve the Port's procurement for a Tariff/Rate Consultant, subject to ratification by the Commission.[3]

On March 31, 2010, PUC Legal Counsel filed his Report recommending that the Commission approve the Port's Request for Proposals for a rate consultant, subject to certain changes. Counsel recognized that the Port needed a rate/tariff consultant to

[1] See e-mail dated August 24, 2010, from Jose B. Guevara, Financial Affairs Controller of PAG, to Frederick J. Horecky, PUC Legal Counsel, with Tariff Consultant Agreement attached.
[2] Minutes of PUC Special Meeting of March 25, 2010, p. 2.
[3] Id. at p. 3.

assist it in preparing the mandated study of existing rates, charges and costs of services, as well as assisting the Port with the preparation and presentation of its tariff/rate case before the PUC.[4] Counsel also recommended that once the Port had selected a tariff consultant and entered into an agreement with such consultant, the Port must seek final approval of the agreement from the PUC.[5]

On April 1, 2010, the PUC, through its Chairman, approved the request of the Port to issue RFP No. 010-005, Professional Services for Comprehensive Tariff Study, subject to inclusion of the changes recommended by PUC Counsel. In accordance with Section 7 of Public Law 30-52, the Order required that once the Port had selected a contractor to perform its rate study, and had agreed upon a proposed contract with such contractor, the Port must seek the prior approval of the Commission before such contract is effective.[6] On April 29, 2010, the Commission ratified the Order signed by the Chairman of April 1, 2010, which authorized the Port to issue an RFP for Rate Consultant.[7]

Recent Developments

On or about April 7, 2010, PAG issued its RFP for rate/tariff consultant.[8] The Port only received a proposal from one qualified company, the Cornell Consulting Group, Inc.[9] The Cornell Group, Inc., USA, filed its Proposal in response to RFP No. PAG-10-05 on May 5, 2010. The Cornell Group [hereafter "Cornell"] filed a detailed proposal which included a "Work Plan and Schedule." A true and correct copy thereof is attached hereto as Exhibit "A". Initially, Cornell had proposed a total cost for the project of $251,011, which consisted of both professional fees and estimated expenses.[10] However, the PAG Cost Negotiation Committee was successful in negotiating the final contract price down to a fee of $190,000, inclusive of all expenses. The Committee's negotiations resulted in a total cost savings of $61,001 for the Port.[11]

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4 PUC Counsel Report, Port Docket 09-01, filed March 31, 2010, p. 2.
5 Id. at p. 3.
6 PUC Order, Port Docket 09-01, dated April 1, 2010.
7 Minutes of Special Meeting of the PUC on April 29, 2010, p. 3.
8 E-mail from Jose B. Guevara, PAG Financial Affairs Controller, to Frederick Horecky, PUC Counsel, dated April 5, 2010; see RFP No. 010-005, Professional Services for Comprehensive Tariff Study.
9 E-mail from Jose B. Guevara, PAG Financial Affairs Controller to Frederick Horecky, PUC Counsel, dated May 20, 2010.
10 Record of Fee Negotiations – RFP No. 010-005 [Memorandum from General Manager to Procurement and Supply Manager, dated May 24, 2010] filed in Docket 09-01 on August 24, 2010.
11 Id. at p. 1.

PAG has submitted a copy of the Consultant Agreement between PAG and the Cornell Group, Inc. to the PUC for review and approval.[12]

Review of the Consultant Agreement and Recommendation

Section 7 of Public Law 30-52 states in pertinent part:

> "...the Request for Proposals to study existing rates, charges and costs of services in *shall* be subject to the review and approval of the Commission prior to issuance; and **any contract entered into by the Port for such services *shall* be subject to the prior approval of the Commission.**"[13]

The proposed Consultant Agreement dated August 23, 2010, appears to be a standard form agreement between a government entity and a private contractor such as the Cornell Group, Inc. Counsel has been verbally informed by Mr. Guevara that the Board of Directors has approved the agreement. If approved by the PUC, the agreement must subsequently be "approved as to form" by PAG Legal Counsel. The Agreement must be signed by the Chairman of the Board of PAG.[14]

The Agreement incorporates in the "Scope of Work" the scope of services set forth in the RFP (which was reviewed and approved by the PUC), the Consultant's Proposal (see Work Plan and Schedule attached hereto as Exhibit "A"), and the Revised Cost Proposal agreed to by the parties. Counsel submits that the agreement adequately defines the scope of services which the Cornell Group will perform in providing a comprehensive rate study to PAG as well as its specific duties and responsibilities. The Consultant also agrees that it will provide consultation, advice and assistance to the PAG pertaining to the preparation of presentations and cases at public hearings before the PUC or other relevant government bodies.[15] The Agreement contains standard termination and other clauses designed to protect the interests of PAG.

Counsel believes that the Agreement adequately sets forth the plan by which the Cornell Group will prepare a study of existing rates, charges and costs of services. If the services are provided in accordance with the Agreement, the Port should be able to meet its statutory duty under Section 7 of Public Law 30-52 of submitting the study to

[12] See Consultant Agreement between the Jose D. Leon Guerrero Commercial Port and the Cornell Group, Inc., dated April 23, 2010.
[13] Public Law 30-52 Section 7, enacted July 16, 2009.
[14] See Consultant Agreement between PAG and the Cornell Group, Inc., p. 13.
[15] Id. at p. 31.

the Commission no later than December 31, 2010. The cost of the proposal appears reasonable, given the comprehensive nature of the proposed tariff study; the cost of the study will not have any measurable impact upon Port rates or tariffs.

For the foregoing reasons, Counsel recommends that the Commission approve the Consultant Agreement between the Jose D. Leon Guerrero Commercial Port and the Cornell Group, Inc. However, as noted in the PUC Order dated April 1, 2010, the Agreement cannot be effective without the prior approval of the Commission.[16] Section II, Term of Agreement, must be modified as follows:
"The effective date of this Agreement is the date upon which the agreement is approved by the Guam Public Utilities Commission." The contract is effective upon the date of approval by the Commission. A proposed Order is submitted along with this Report.

Dated this 27th day of August, 2010.

Frederick J. Horecky
PUC Legal Counsel

[16] PUC Order, Port Docket 09-01, issued April 1, 2010.

VI. Work Plan and Schedule

Our Understanding of the Key Issues

The Port of Guam intends to implement a Port Modernization Master Plan, including an estimated $200 million in capital improvement projects, and needs to generate adequate revenues to fund the improvements. Regardless of the nature and source of funding for these projects, sound fiscal policy suggests that the cash flow generated from the projects should adequately cover the cost of capital, and earn an adequate return on investment. The port needs to determine the level and nature of adjustments in port tariffs required to generate the cash flow to support its planned capital improvement projects.

Prior to the enactment of Law 30-52, the Port's terminal tariff had not been adjusted since 1993. This had created a situation whereby the port was required to depend on cost control and government subsidy to maintain and upgrade the port's facilities and equipment. Since the passage of this law, the Public Utilities Commission has approved the port's application for "interim" tariff rates, which have been implemented as of February 2010. These new tariffs need to be economically and financially justified.

The Government and the port have identified major additions and upgrades to the port to sustain its position as the Hub port for the Micronesia Region. It has become evident to port and government officials that changes to the tariff and other charges are necessary to put a Master Plan into action.

The port needs to identify the level and type of rates and charges that may be adjusted without altering the competitive position of the port or harm the economy of port users in their service area. To accomplish this, the port needs to identify methods for periodic increases that are consistent in the port industry, consistent with port costs and can be implemented without adversely effecting the port's regional competitive position, or Guam's economy.

Since the port must have its rates approved by the Public Utilities Commission and file its tariff before the Federal Maritime Commission, it requires professional assistance to identify how these changes can be accomplished and to present its case before government authorities.

The Cornell Group's proposed staff has many years of experience in establishing port rates, negotiating rates with port users and government authorities as well as working with State, Local and Federal regulators in designing port rate structures. Our staff has successfully presented economic justification of rates and tariff adjustments to the Federal Maritime Commission and other regulatory agencies for numerous U.S. ports and carriers, and prevailed. We have also assisted foreign governments in creating and restructuring tariff regulatory agencies and modifying tariff legislation, in a number of countries.

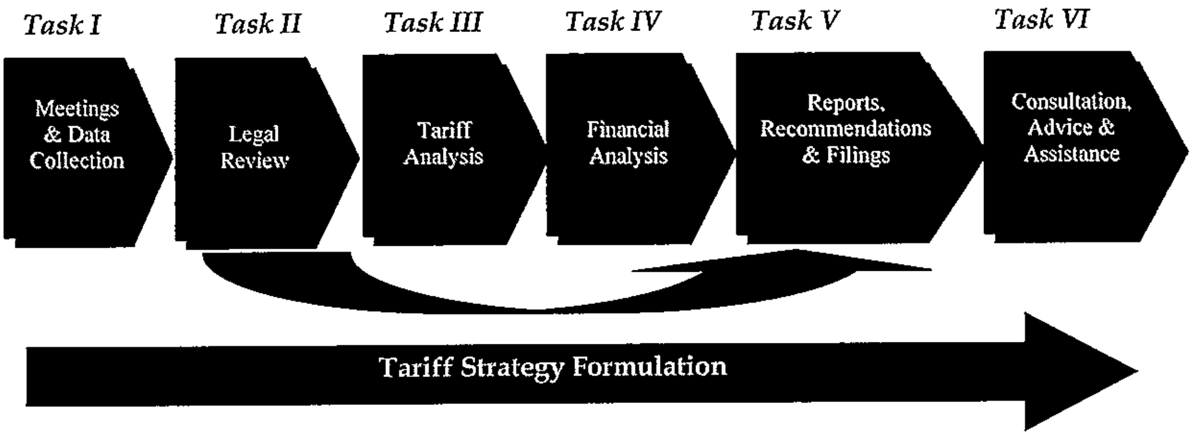
Our work plan is presented next.

Exhibit "A"

Work Plan and Tasks

Our proposed work plan is presented in the following exhibit, and is structured to ensure that all the tasks and deliverables outlined in your RFP "Attachment 1, Preliminary Scope of Services" are fully and comprehensively addressed.

Exhibit 1 – Tariff Study Work Plan



Source: Cornell

The detailed task descriptions are presented next.

Task I – Accumulation of Information and Meetings with Relevant Stakeholders.

This task will include the kick-off meeting with the PAG, additional meetings with staff and other government officials, meetings with appropriate stakeholders, port users and collection of data.

1. The Cornell team will meet with Port officers and employees and the involved Government officials to discuss the scope of services as defined in the RFP, and brainstorm the anticipated results and the impact of tariff adjustments on the port financial requirements and Guam's economy. This will include meetings with the Public Utilities Commission and other government bodies involved in the decision to adjust port tariffs. During these meetings we will confirm the deliverables required and the schedule for completion of the work.
2. At this time we will submit a data list requesting copies of legislation, documents and information required to perform the study. The list will include but not be limited to all previous studies and reports, Master Plans, and specifically the Capital Improvement Plan and schedule.
3. We will discuss the pros and cons of changes to port tariffs and those of existing contractual agreements if such agreements exist. Special attention will be paid to that of The Port of Guam's competition and effect of higher prices on services.
4. If agreeable to PAG, we will meet with port users and other stakeholders who may be affected by any port improvements and resulting tariff changes. Given that ports users and businesses are most likely to be affected by any tariff changes, we feel it is

important to discuss the issues and get a perspective from stakeholders affected by port tariffs.

5. Through these meetings we will also determine if operational changes are advisable prior to changing the rate structure of the port.

At the conclusion of this task, we will submit a Progress Report defining our preliminary findings, challenges, additional information required and next steps.

Task II – Legal Review

This task will review and analyze all the regulations and laws that define the process, supporting evidence, limitations, and nature of changes that will govern the pricing and tariff adjustments required by the port. Existing port contracts will also be examined.

1. Review all local and Federal laws pertaining to the port, its operation and it capability to establish rates on its services as well as its authority to enter into contracts with its customers and handle its own financial affairs. This review will determine the level of autonomy at the Port Authority of Guam.
2. Review local laws and determine if they impact the tariff, are adequate regarding enforcement of collections, provide methods to collect for services rendered and can adequately resolve conflicts between the port and port users.
3. Review laws of the Federal Maritime Commission to determine any recent changes and how such changes would affect a revised PAG Tariff. Included will be FMC regulations as to port contracts and private operator contractors.
4. Review aspects of the Jones Act to determine if it will affect tariff application and change at the PAG.
5. Examine all existing port contracts, concessions and leases that may be affected by or may constrain tariff adjustments, analyze the impact and suggest solutions.

Our findings of the legal review will be submitted in a second Progress Report, defining the options and constraints under which PAG may adjust tariffs, and our recommendations.

Task III – Competitive Tariff Analysis

The purpose of this task will be to examine the current tariffs and associated services at PAG, review comparable tariffs for similar services at competitor ports, and considering the location and nature of the Guam economy, develop a range of tariffs that are competitive and justifiable, while not adversely affecting Guam's economy.

1. Prepare a Tariff Analysis using five years of recent financial information to determine the activity and revenue produced from each of the tariff items. If financial information is not available by tariff item, the analysis will focus on areas of revenue production and each area's tariff rate utilization.
2. After determining the PAG's competition in the region, we will prepare an analysis of PAG rates with the competitive ports and other ports that operate under the Jones Act.

From this information we will determine if these competitive rates are based on costs of operation, return on capital investments, consideration of competition, productivity of the port or on political considerations.

3. To the extent that data is available, we will attempt to link specific tariffs to particular business units within the port and specific services provided by each business unit. If the port does not collect data by business unit, we will attempt to develop a business unit structure and related tariffs, allocated revenue and allocated costs for discreet business activities within the port. This analysis is possible if the tariff, revenue and costs can be logically allocated and separated within the port.
4. Since many ports vary in the tariff and services provided, as well as the contracted and Private Operator services they perform, we will apply the analysis to major tariff items and attempt to determine the revenue of other ports from information that is publically published or that is provided by the port.
5. Review the PAG Tariff operating rules (such as collection, operating hours, labor utilization, etc.) to determine if port operating rules are affecting the tariff revenue production adversely and if such rules are comparable with competitive ports.
6. Based on the above analysis, we will develop a high and low range of competitive tariffs for the port of Guam. In addition, and to the extent that data from the port can be allocated to discrete business units or activities, we will develop tariffs for each discrete business activity that can be billed for specific services.

The next task will analyze the financial feasibility of tariffs and adjustments needed.

We will submit a Progress Report defining a range of competitive, remunerative and economically justifiable tariffs, which will be tested for economic viability and capital cost recovery in the following Financial Analysis.

Task IV – Financial Analysis

This task develops the financial model for the port, analyzes port financials, includes the magnitude and timing of the $200 million investments, and develops alternative scenarios for revenue required to cover the port's operating and capital costs, as well as an adequate Return on Investment.

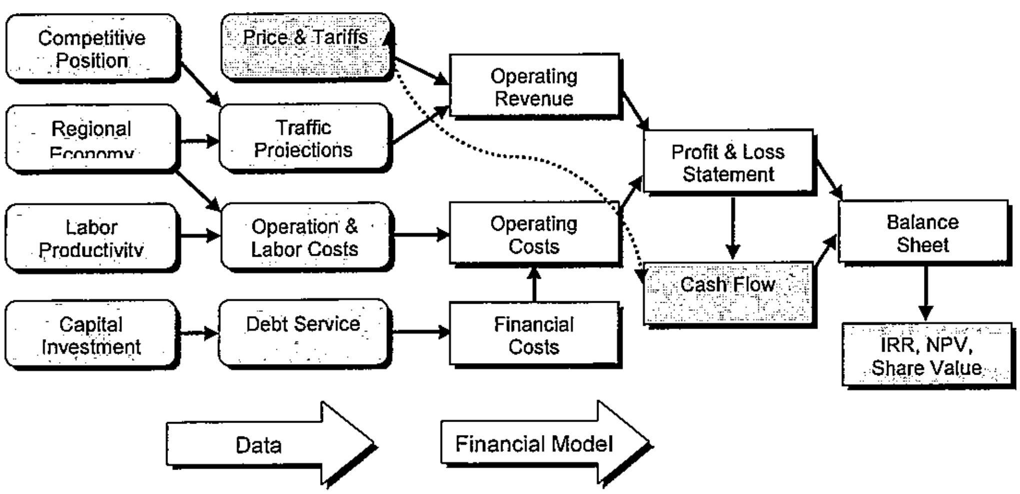
1. Our Financial Analysts will obtain information from the port that will provide Revenue, historical volume of activity and financial results for at least 5 years by specific units of port activity such as containers, breakbulk, bulk, leases and other units of revenue production.
   a. If adequate data is available further breakdown will be analyzed by services performed in each of the major revenue producing areas.
   b. If the data is not available or cannot be linked to specific port services or business units, we will attempt to consolidate and link the tariffs and costs to specific and discrete port services for this study, and recommend changes to the port data collection system that will provide the information in the future.

   c. The analysis will focus on areas of tariff charges such as charges to vessels, Stevedoring of vessels, terminal handling services, leases and other sources of revenue.

2. Determine if anticipated changes to operations would have affected any of the past performance results.
3. Review the cost estimate of an expanded and renovated port as provided by the Master Plan and attempt to determine if the recent economic downturn has altered the estimate.
4. Review operating costs of the port and determine if such costs are adequate or excessive and how they will affect future years of port financial results.
5. Obtain from the port cargo projection activity on a basis of "High-Low-Medium" levels of future activity.
6. After factoring in cost of port additions and alterations, annual cost of future Debt Service, government subsidies, projected cargo volumes and anticipated cost of services, a projection of revenue shortfall will be determined. A margin of profit on revenue will be discussed with all responsible parties and factored into the revenue to be adjusted through the tariff and other sources of revenue.
7. We will develop a model which will allow us to test the competitive tariffs developed in the earlier tasks, and determine the range of tariffs that will recover the cost of capital investments, port operations and provide an acceptable return on investment.

Cornell has developed a Financial Feasibility and Valuation model, which will provide the Internal Rate of Return (IRR), Net Present Value (NPV) and other similar measures of investment attractiveness, based on varying price or tariff changes, as shown below.

Exhibit 2: Cornell's Financial Feasibility and Valuation Model



Source: Cornell's Trade Secret or Proprietary Data as per Section (X) of RFP

As shown above, future revenues are a primarily a function of tariffs (price) and cargo and volume and ship traffic projections, while costs are a function of future operating costs and capital expenditures in developing the facilities. Based on the data obtained and analysis completed in the previous tasks, we will create a financial Cash Flow model, and develop detailed, long-term projections of Profit & Loss Statements, Balance Sheets, Capital Investment and Depreciation schedule and Cash Flow Statements. The results of this cash flow model will provide the IRR, Return on Assets (ROA), Return on Invested Capital (ROIC), Debt Service Coverage Ratio (DSCR) and other indicators that may be used to determine the relative attractiveness of one alternative against the other. Typically, if the capital investment is made entirely by the public sector, the expected Return on Invested Capital is less than 15%, while a private sector investor in port developments will expect an Internal Rate of Return of over 25%, depending on risk.

Most importantly, as shown by the red-dotted line connecting the Tariffs and Cash Flow, the model allows an unlimited number of sensitivity analyses for varying tariff rates and the port's business volume projections. For example if a proposed tariff rate does not provide adequate cash flow to pay for operations, capital improvements and a return on investment needed for future capital improvements, the tariffs can be adjusted under varying economic scenarios to see which one will best fit the needs of the port, while maintaining a reasonable level of rates that will not adversely affect port users or Guam's economy. As importantly, this model can be very effectively used to present and support the Port's requests to the PUC and FMC for rate adjustments.

A sample of the financial feasibility analysis that Cornell has conducted is shown in the following exhibit.

Exhibit 3: Sample of Cornell's Financial Feasibility and Valuation Analysis

	SUMMARY Re.: NPV CALCULATIONS 000 US$ STATUS QUO - SCENARIO 1											
	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Total Revenues	106,836	101,106	99,095	105,404	110,257	114,639	122,592	127,202	131,759	140,438	145,292	150,207
Operating Expenses	81,175	90,452	96,066	99,446	103,478	106,616	108,727	110,736	112,327	113,793	114,420	116,460
Operating Income	25,661	10,654	3,029	5,958	6,779	8,023	13,865	16,466	19,432	26,645	30,872	33,747
Total Tax Provisions	14,217	4,048	1,151	2,264	2,576	3,049	5,269	6,257	7,384	10,125	11,732	12,824
After Tax Cash Flow	11,444	6,606	1,878	3,694	4,203	4,974	8,596	10,209	12,048	16,520	19,141	20,923
Less Cons Fund	(5,813)	(4,348)	(563)	(1,108)	(1,261)	(1,492)	(1,719)	(2,042)	(2,410)	(3,304)	(3,828)	(4,185)
Less Charity, etc	(1,830)	(1,354)	(300)	(591)	(672)	(796)	(1,360)	(1,360)	(1,360)	(1,360)	(1,360)	(1,360)
Add back Depreciation	10,972	11,908	17,190	18,776	20,983	22,462	22,795	23,129	23,062	22,795	21,728	22,061
Modernisation & Investments		0	(20,000)	(31,000)	(20,000)	(4,000)	(4,000)	(4,000)	(4,000)	(4,000)	(4,000)	(4,000)
Change In Working Capital		(1,144)	181	(568)	(437)	(394)	(716)	(415)	(410)	(781)	(437)	(442)
Net Cash Flow - 10 years	14,774	11,668	(1,615)	(10,797)	2,815	20,754	23,597	25,521	26,930	29,869	31,243	32,997

Source: Cornell's Trade Secret or Proprietary Data as per Section (X) of RFP

This analysis will provide us with an estimate of:

- ❑ Range of economically, competitively, and legally justifiable tariffs.
- ❑ Level and timing of Capital Investments supporting the tariffs.
- ❑ Return on Investment to PAG, including IRR, NPV and ROIC etc
- ❑ Cash Flow and Concession Fees paid to PAG, if private sector provides Capital.

We will submit a Financial and Tariff Analysis Report showing the tariffs that may be economically and reasonably charged to support the new capital investments and future development of the port.

Task V – Reports, Recommendations and Filings

This section outlines our progress and reporting procedures, and discusses our deliverables in more detail. As presented in previous tasks, we will periodically present, discuss and brainstorm with Port Management the progress toward accomplishing the ultimate results and present sections of the report as they are completed. The key deliverable of this task will be the Draft Final Report, and subsequent to PAG's approval, the Final Report.

1. The Final Draft Report will consist of the following:

    a. An Executive Summary that can be given to Agencies and Government Officials that summarizes the findings and recommendations of a revised tariff. This document will present a compelling, stand-alone, legally sound, logical, and economically justifiable case for tariff adjustments proposed by PAG.

    b. A report on the Legal findings and any recommendations for changes to laws, rules and regulations.

    c. A financial analysis that will show port results if no changes are made and results for a revised tariff. The analysis will allow for current and projected operating costs, provide for port expansion with debt service costs, provide for changes that are anticipated in the organization or operation and provide for variable amounts of profit. These results will be projected for the first year, 5th year and 10th year. The projections will include the recommended tariff changes in "d" below at the opening of the new facilities and those recommended for future years.

    d. A Tariff Analysis that will show current activity results, plus the following:

        i. A list of recommended tariff changes to rates and operating rules.

        ii. A draft proposed tariff reflecting those changes.

        iii. A system of monitoring and providing for future tariff changes that will be consistent with local laws, acceptance in the maritime and user community, consistent with ports that are competitive and operating under the Jones Act regulations and adequate to provide the port with the revenue to cover operating costs, debt service and reasonable profitability.

        iv. Recommendations for changes to accounting and billing systems that will provide for collecting revenue and cost information that will improve tariff analysis in the future.

        v. Recommendations as to possible changes in revenue applications such as contracts, agreements, methods of rate consolidation, etc.

        vi. Appendices will be provided that will include worksheets, formulas and calculations that can be used to substantiate filings before the

Guam Public Utilities Commission (GPUC) and the Federal Maritime Commission (FMC).

Prior to preparation of the new tariff and the changes recommended, Cornell will discuss with management and the PAG those changes with the supporting justification.

The report and approved tariff will be provided with 19 bound copies, one unbound copy and 10 CD's in pdf format as prescribed in Attachment 1 of the PAG Request for Proposal 10-005.

Cornell will provide and file the final tariff, approved by the Public Utilities Commission, with the Federal Maritime Commission.

Cornell anticipates these tasks to be completed within the 90 day time frame and will begin preparing presentations, along with Port Management, to the PAG Board of Directors, the Public Utilities Commission and legislative officials.

Task VI – Consultation, Advice and Assistance

1. Cornell will provide consultation, advice and assistance to the PAG as it pertains to preparation of presentations and cases at public hearings, before the GPUC and any other relevant government agency or legislative committee.
2. Cornell will be present during public and government meetings and presentations to provide justification and reasonableness of tariff changes, as required by the PAG management.

Project management and schedule of deliverables is presented next.

BEFORE THE GUAM PUBLIC UTILITES COMMISSION

RECEIVED
AUG 30 2010
Public Utilities Commission
of Guam

In the Matter of: Port Authority of Guam Request for Approval of $3.5M Loan from ANZ Bank	Port Docket 10-01

ORDER

Background

This matter comes before the Public Utilities Commission [PUC] upon the Request of the Port Authority of Guam [PAG] for approval of a $3.5M Loan with ANZ Guam Inc. Bank, filed August 24, 2010.[1] PAG is now defined as a "public utility" for purposes of 12 GCA Chapter 12, Public Utilities Commission and the Guam Telecommunications Act of 2004.[2] 12 GCA §12004 provides that "The utility shall not, however, enter into any contractual agreements or obligations which could increase rates and charges prior to the written approval of the Commission." On August 17, 2010, the Port's General Manager and ANZ Guam Inc. entered into a loan commitment letter authorizing PAG to borrow $3.5M from ANZ.[3] On August 27, 2010, PAG submitted to the PUC a revised Loan and Security Agreement, a Promissory Note, and a UCC Financing Statement document (the "final" loan documentation).[4]

The final Loan and Security Agreement indicates that PAG purchased certain cargo handling equipment in 2009 and 2010: four (4) 2009 Hyster Top Lifters from Morrico Equipment and ten (10) 2010 Cargo Tech/Kalmar Ottawa Terminal Yard Tractors.[5] The purpose of the loan proceeds is to reimburse PAG for its expenditures of the foregoing equipment.[6] According to PAG, it was obligated to expend operations funds for the purchase of this necessary equipment. The loan is 90% guaranteed by the United States Department of Agriculture; it will be repayable over a 15 year period. The interest rate is calculated at 3.0% above the FHLBSEA 15 year amortizing fixed advance rate (currently 3.22%) Therefore, the present interest rate is 6.22%. The monthly payments

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[1] E-mail from Jose B. Guevara, PAG Financial Affairs Controller, to Fred Horecky, PUC Counsel, dated August 24, 2010.
[2] 12 GCA §12000 et. seq.
[3] See Commitment Letter for $3.5M Loan to PAG by ANZ, dated August 17, 2010 and filed herein on August 24, 2010.
[4] Email from Jose B. Guevara, PAG Financial Affairs Controller, to Fred Horecky, PUC Counsel, Port Docket 10-01, filed August 27, 2010.
[5] Final Loan and Security Agreement, p. 6; and SCHEDULE 1.
[6] Id.

will be approximately $29,952.60.[7] The provisions of the Loan and Security Agreement appear to be standard in terms of commercial loan documentation. PAG is required to give a lien and security interest in its equipment to ANZ Bank.

Analysis

The Loan and Security Agreement, along with the terms in the Loan Commitment Letter, are reasonable. The current interest rate of 6.22% compares favorably with other taxable loans recently negotiated by other government entities (i.e., the GWA $25M and $5M loans, with interest rates of 7.75%). PAG has demonstrated a need for the loan funds. It does not appear that the monthly amount of the principal and interest payments, approximately $29,952.60, will increase PAG rates to consumers and the public. The $3.5M loan is included in the preliminary financial projection that was submitted to PUC for the 3.4% increase in tariff rates in the financial feasibility rate increase schedule.[8]

Upon consideration of the record herein, the Request of the Port, the PUC Legal Counsel Report, and for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby ORDERS that:

1. PAG is authorized to enter into a $3.5 million loan with ANZ Guam, Inc., in accordance with the terms of the final loan documentation and the loan commitment letter dated August 17, 2010.

2. PAG has demonstrated a need for the loan funds, and the terms of the loan are reasonable.

3. The loan obligation will not increase the rates or charges of the Port.

4. Final approval by the PUC shall be conditioned upon submission of proof by PAG that the final loan documentation has been approved by the PAG Board of Directors, and execution of such documentation by all appropriate Port officials, including approval as to form by Port Legal Counsel.

5. The Port 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

[7] Loan Commitment Letter, p. 1.
[8] Email from Jose B. Guevara, Financial Affairs Controller, to Fred Horecky, PUC Counsel, July 26, 2010.

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 30th day of August, 2010.

Jeffrey C. Johnson
Chairman

Joseph M. McDonald
Commissioner

Rowena E. Perez
Commissioner

Filomena M. Cantoria
Commissioner

Michael A. Pangelinan
Commissioner

RECEIVED
AUG 2 8 2010
Public Utilities Commission
of Guam

BEFORE THE GUAM PUBLIC UTILITES COMMISSION

In the Matter of:	)	Port Docket 10-01
Port Authority of Guam Request for Approval of $3.5M Loan from ANZ Bank	)	

PUC COUNSEL REPORT

Background

This matter comes before the Public Utilities Commission [PUC] upon the Request of the Port Authority of Guam [PAG] for approval of its $3.5M Loan with ANZ Bank, filed August 24, 2010.[1] In 2007, PAG issued RFP No. PAG RFP 07-006, requesting proposals for the provision of a loan to purchase cargo handling equipment. ANZ Guam Inc. was selected as the successful offeror in response to the RFP.[2] PAG had not been able to finalize the loan negotiations until August 17, 2010, at which time the Port's General Manager and ANZ Guam Inc. entered into a loan commitment letter authorizing PAG to borrow $3.5M from ANZ.[3]

Along with its Request, PAG has submitted a "Loan and Security Agreement", with Promissory Note attached as Exhibit "A".[4] That loan documentation (the "initial" loan documentation) had previously been prepared based upon an assumption that the loan would be exempt from Guam GRT and Guam income tax; however, an opinion of the Guam Attorney General indicated that the interest earned by ANZ Guam Inc. is not tax exempt.[5] Therefore, in the August 17, 2010 Loan Commitment Letter, the parties have revised the fixed interest rate of 4.96%, which was applicable to a tax exempt loan, to 6.22% for a loan on which the interest is taxable.

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[1] E-mail from Jose B. Guevara, PAG Financial Affairs Controller, to Fred Horecky, PUC Counsel, dated August 24, 2010.
[2] Loan and Security Agreement, p. 1.
[3] See Commitment Letter for $3.5M Loan to PAG by ANZ, dated August 17, 2010 and filed herein on August 24, 2010.
[4] Loan and Security Agreement, with Promissory Note Attached as Exhibit "A", filed herein on August 24, 2010.
[5] Loan and Security Agreement, p. 7; Loan Commitment Letter, dated August 17, 2010, p. 1.

The parties made certain further revisions in the Loan and Security Agreement, as well as the promissory Note, to incorporate the taxable interest rate and a repayment schedule based upon the August 17, 2010 Loan Commitment Letter. On August 27, 2010, PAG submitted to the PUC a revised Loan and Security Agreement and Promissory Agreement, and a UCC Financing Statement document (the "final" loan documentation).[6]

Jose B. Guevara, Financial Affairs Controller, has confirmed that the PAG Board of Directors has approved the Loan Commitment Letter dated August 17, 2010 . In addition, the Board has informally approved the loan documentation by an email vote.[7]

Review of Loan and Security Agreement

At present, no "Contract Review Protocol" between PUC and the Port is in place. However, PUC Counsel and the PUC Consultants on Port matters are currently preparing a draft "Contract Review Protocol" for PAG contracts. When such Protocol is completed it will be submitted to the Port for comment. The final Protocol will be presented to the Commissioners for review and approval.

Even though no protocol is presently in place, PAG is now defined as a "public utility" for purposes of 12 GCA Chapter 12, Public Utilities Commission and the Guam Telecommunications Act of 2004.[8] 12 GCA §12004 provides that "The utility shall not, however, enter into any contractual agreements or obligations which could increase rates and charges prior to the written approval of the Commission." Even though no contract review protocol has been approved by the Commission, PAG is still required to seek approval of its final "Loan and Security Agreement" with the PUC.[9]

The final Loan and Security Agreement indicates that PAG purchased certain cargo handling equipment in 2009 and 2010: four (4) 2009 Hyster Top Lifters from Morrico Equipment and ten (10) 2010 Cargo Tech/Kalmar Ottawa Terminal Yard Tractors.[10] The purpose of the loan proceeds is to reimburse PAG for its expenditures of the

[6] Email from Jose B. Guevara, PAG Financial Affairs Controller, to Fred Horecky, PUC Counsel, Port Docket 10-01, filed August 27, 2010.
[7] Discussion between Jose B. Guevara and PUC Counsel on August 30, 2010; email from Board Chairman Monte Mesa, dated August30, 2010, confirming that Board has informally approved loan documentation.
[8] 12 GCA §12000 et. seq.
[9] 12 GCA §12004
[10]Final Loan and Security Agreement, p. 6; and SCHEDULE 1.

foregoing equipment.[11] The PAG Financial Affairs Controller has indicated to PUC Counsel that PAG was obligated to expend operations funds for the purchase of this necessary equipment. The loan is 90% guaranteed by the United States Department of Agriculture; it will be repayable over a 15 year period. The interest rate is calculated at 3.0% above the FHLBSEA 15 year amortizing fixed advance rate (currently 3.22%) Therefore, the present interest rate is 6.22%. The monthly payments will be approximately $29,952.60.[12] The provisions of the Loan and Security Agreement and Promissory Note appear to be standard in terms of commercial loan documentation. PAG is required to give a lien and security interest in its equipment to ANZ Bank.

Analysis and Recommendation

PUC Counsel believes that the Loan and Security Agreement, along with the terms in the Loan Commitment Letter, are reasonable. The current interest rate of 6.22% compares favorably with other taxable loans recently negotiated by other government entities (i.e., the GWA $25M and $5M loans, with interest rates of 7.75%). PAG has demonstrated a need for the loan funds. Due to the purchase of the cargo handling equipment, the Port had to defer other capital projects, such as repair of the fuel pipeline connecting to the Mobil Tanks. Other small capital projects totaling $200,000 were put hold. The Port has also received a COLA billing from the government in the amount of $1.2M.[13]

It does not appear that the monthly amount of the principal and interest payments, approximately $29,952.60, will increase PAG rates to consumers and the public. The $3.5M loan is included in the preliminary financial projection that was submitted to PUC for the 3.4% increase in tariff rates in the financial feasibility rate increase schedule.[14] Counsel recommends that the PUC approve the basic terms and conditions set forth in the Loan Commitment Letter, as well as the final loan documentation. However, final approval by the PUC shall be conditioned upon submission of proof by PAG that the final loan documentation has been approved by the PAG Board of Directors, and execution of such documentation by all appropriate Port officials, including approval as to form by Port Legal Counsel.

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[11] Id.
[12] Loan Commitment Letter, p. 1.
[13] Email from Jose B. Guevara, Financial Affairs Controller, to Fred Horecky, PUC Counsel, dated August 30, 2010
[14] Email from Jose B. Guevara, Financial Affairs Controller, to Fred Horecky, PUC Counsel, dated July 26, 2010.

Dated this 28th day of August, 2010.

Frederick J. Horecky

Frederick J. Horecky
PUC Counsel

RECEIVED
AUG 26 2010
Public Utilities Commission of Guam

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

In the Matter of: GTA Telecom,, LLC ("GTA") USAC CERTIFICATION	GTA Docket 10-06 PUC LEGAL COUNSEL REPORT

BACKGROUND

On August 18, 2010, GTA Telecom LLC ("GTA") petitioned the Guam Public Utilities Commission ("PUC") to issue a Certification that GTA will use federal universal service support funds for purposes in compliance with Section 254(e) of the Communications Act. [1] GTA receives monies from interstate universal service funds (USF) that are designated to support local services, build needed infrastructure and improve service quality. Each year the PUC is required to certify (by September 30) to the Federal Communications Commission (FCC) and Universal Service Administrative Company (USAC) that those funds will be used only for the purposes designated in the federal Act. [2] Absent such a Certification by PUC, GTA, as an "Eligible Telecommunications Carrier" ("ETC"), would be denied funds for each quarter of the year that certification is delayed.

GTA's Petition states that universal support funds received by it are all being used to support core services that are designated for USF support. [3] GTA indicates that the cost of providing these core services is covered at least partially by federal USF support as intended by the federal USF programs. [4]

On March 17, 2005, the FCC released its ETC ("Eligible Telecommunications Carrier") Designation Order, which adopted specific requirements for ETCs granted designation pursuant to Section 214(e)(6) of the Federal Act. [5] The FCC designated nine core

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1 GTA Petition for Annual USAC Certification, GTA Docket 10-06, filed August 18, 2010.

2 Georgetown Consulting Group Report on USAC Certification – GTA Telecom, dated September 12, 2008.

3 GTA Petition, p. 5.

4 Id., and Exhibit B, GTA Audited Financial Data.

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").

ATTACHMENT E

services that are eligible for Universal Service Fund (USF) support: single party service; local usage; voice grade access to the public switched telephone network; dual tone multifrequency signaling; access to emergency services; access to operator services; access to interexchange services, access to directory assistance; and toll limitation service for qualifying low-income consumers. [6]

COMPLIANCE WITH FCC AND ETC DESIGNATION ORDER REQUIREMENTS

In its Petition, GTA certifies that, in accordance with 47 C.F.R. §54.101, GTA provides all of the core services that are designated for USF support. It provides those services as part of its basic residential and business local line service under its General Exchange Tariff approved by the PUC. Through GTA's tariff, its customers are able to purchase single party, unlimited local usage telephone services that utilize dual tone multifrequency signaling. In addition, GTA provides access to 911 as well as access to operator services, directory assistance and access to interexchange services. It provides toll limitation for domestic and international toll calls. [7]

GTA has submitted information to demonstrate that it is in compliance with the FCC requirements of the ETC Designation Order:

1. Progress report on the ETC's five-year service quality improvement plan. Construction projects listed under GTA's plan are designed to improve service quality, network reliability and enhanced capabilities as envisioned under the federal USF program. GTA has submitted its filing for a five-year service quality improvement plan. The plan provides cost and cost projections for succeeding years.

2. Detailed information on any outage lasting at least 30 minutes. GTA did not have any outages during calendar year 2009, or year-to-date 2010, that lasted 30 minutes.

3. The number of requests for service from potential customers that were unfulfilled for the past year. GTA estimates that it was unable to fulfill an average of 4 subscribers per month during calendar year 2009. The majority of the requests that GTA was unable to fulfill were due to the subscriber's

[6] Id.

[7] GTA Petition, supra, at p. 2-3.

inability to pay the required deposits for delivery of service drops for new subscribers.

4. The number of complaints per 1,000 handsets or lines. During calendar year 2009 GTA was not aware of any complaints filed with the PUC or any other regulatory body.

5. Certification that the ETC is complying with applicable service quality standards. GTA has filed its Quality of Service Reports with the PUC and indicates that it is complying with applicable service standards.

6. Certification that ETC is able to function in emergency situations. GTA certifies that it has the ability to remain functional in emergency situations. Through the use of its backup electricity generators, buried copper and fiber plant, and backup battery power at its central offices, GTA has the necessary infrastructure and equipment to remain functional in situations that include fires, earthquakes or typhoons.

7. Certification that the ETC is offering a local usage plan that is comparable to the incumbent LEC. GTA is the incumbent LEC and offers an unlimited local usage plan to its subscribers.

8. Certification that the carrier acknowledges that the Commission may require it to provide equal access. GTA currently offers equal access to all of its subscribers and therefore is in compliance with this requirement.

GTA's Petition contains a certification that, as a designated ETC, it has offered all of the services required by the FCC for support pursuant to Section 254(c) of the Communications Act during calendar year 2009, in compliance with 47 C.F.R. §54.101. GTA has also provided the required certification that it has advertised the availability of the supported services and charges through advertising, internet, and general media distribution. [8]

GTA indicates that, for calendar year 2009, it received $8.095M in USF. To date through August 2010, it has received $4.5M. GTA has also submitted audited financial data for 2009 as an attachment to its Petition to demonstrate that all funds are being used to support core services. [9] Based upon the Petition and supporting exhibits

[8] Id at p. 4-5.
[9] Id, Petition, supra at p. 5.

submitted by GTA, it appears that the USF received in calendar year 2009 has been used as intended. Counsel is not aware of any evidence which contradicts the above certifications by GTA and believes that such certifications should be accepted. It is Legal Counsel's recommendation that GTA's request for USAC Certification be granted. The Commission may reasonably certify that USF received in calendar 2009 will be appropriately used. A draft letter to the FCC approving GTA Telecom LLC's "use" certification is attached.

Dated this 26th day of August, 2010.

Frederick J. Horecky

Frederick J. Horecky
PUC Legal Counsel

Guam Public Utilities Commission

To: Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Irene M. Flannery
Vice-President - High Cost & Low Income Division
Universal Service Administration Company
2000 L Street, N.W. Suite 200
Washington, DC 20036

RE: CC Docket 96-45 - "Use" Certification

This is to certify that GTA Telecom LLC will use federal high cost support funds only for the provisioning, maintenance and upgrading of facilities and services for which the support is intended, consistent with section 254(e) of the Communications Act.

I am authorized to make this certification on behalf of the Guam Public Utilities Commission. This certification is for study area 663800 for the Territory of Guam.

Dated this 1st day of September, 2010.

Jeffrey C. Johnson
Chairman
Guam Public Utilities Commission

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Public Utilities Commission
of Guam

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

In the Matter of	GTA Docket 10-07
Pulse Mobile, LLC ("Pulse") USAC CERTIFICATION	PUC LEGAL COUNSEL REPORT

BACKGROUND

On August 18, 2010, Pulse Mobile, LLC ("Pulse" or "Pulse Mobile") petitioned the Guam Public Utilities Commission ("PUC") to issue a certification that Pulse will use federal universal support funds for purposes in compliance with Section 254(e) of the Communications Act. [1] Pulse receives monies from interstate universal service funds (USF) that are designated to support local services, build needed infrastructure and improve service quality. Each year the PUC is required to certify (by September 30) to the Federal Communications Commission (FCC) and Universal Service Administrative Company (USAC) that those funds will be used only for the purposes designated in the federal Act. Absent such a Certification by PUC, Pulse, as an "Eligible Telecommunications Carrier" ("ETC"), would be denied funds for each quarter of the year that certification is delayed.

On February 1, 2007, the PUC granted Pulse Mobile's Petition for designation as an ETC.[2] ETCs are service providers eligible to receive federal support for local services from Universal Service Funds. In accordance with such Order, Pulse Mobile's annual designation as an ETC is subject to its provision of annual certifications and data submissions to the PUC. The PUC requires such information so that it can ensure that funds received by Pulse will be expended in accord with the requirements of the Telecommunications Act. Based upon the certifications and documentation provided by Pulse in its Petition for Annual USAC Certification, it is Counsel's opinion that there is a sufficient factual and evidentiary basis upon which the Commission can reasonably certify that the USF distributed to Pulse in calendar year 2010 will be used in accordance with the purposes and requirements designated in the federal Act. Counsel recommends that Pulse's Petition for USAC certification be GRANTED. A draft letter to the FCC is attached.

[1] Pulse Mobile Petition for Annual USAC Certification, Docket No. 10-07, filed August 18, 2010 .
[2] Application of Pulse Mobile, LLC for Designation as an Eligible Telecommunications Carrier (Order Approving Designation, Docket No. 06-8, issued February 1, 2007).

RECENT DEVELOPMENTS

In support of its certification, Pulse indicates that it currently provides two separate wireless networks on Guam, a GSM network and a 3G network. Coverage maps are attached to its petition which indicate the reach of its two wireless networks throughout Guam. It has also provided a list indicating percentage of coverage for each village of Guam by its two networks.[3] The percentage of areas covered has been increasing, and Pulse has committed to a Five Year Plan which will enhance its services and networks. Pulse's Five Year Plan indicates that over the next five years it will continue to enhance its service and network and build-out various aspects of its GSM wireless network. It will seek to increase full island capacity and coverage and remote area coverage.[4]

During 2010-11, Pulse is continuing to expand its core island coverage and capacity by adding additional cell sites. It is increasing its coverage footprint as well as overall capacity for voice traffic.[5] Rural area coverage will also be expanded in southern areas of the island.[6] In year five, Pulse plans to continue to expand high-speed data network to include Long Term Evolution ("LTE") or 4G network throughout Guam.[7]

REQUIREMENTS

The Pulse ETC Designation Order contains the following requirements:

(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, 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 there for 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;

[3] Attachment C to Pulse's Petition.
[4] Attachment A to Pulse's Petition, Pulse Mobile's Five Year Build Out Plan.
[5] Id. at p. 2.
[6] Id. at p. 5.
[7] Id. at p. 7.

(e) Pulse Mobile must file a detailed build-out plan satisfying the FCC's requirements.

(f) Pulse Mobile will file with the Commission as part of its annual submission of certification and documentation by August 31 of each year, an annual certification in substantially the form required by Section 54.314(b) and 54.314(c) of the FCC's Rules to verify that Pulse will use federal high-cost support only for those facilities and services for which the support is intended.

(g) Pulse Mobile must submit to the Commission on October 1 of each year the following 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 Mobiles' 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 the Commission may reasonably request from time to time.

COMPLIANCE WITH REQUIIREMENTS

(a) FCC Local usage requirements-

The FCC has designated nine core services that are eligible for Universal Service Fund (USF) support: single party service; local usage; voice grade access to the public switched telephone network; dual tone multifrequency signaling; access to emergency services; access to operator services; access to interexchange services; access to directory assistance; and toll limitation service for qualifying low-income consumers. [8] In its Petition, Pulse certifies that, in accordance with 47 C.F.R. §54.101, it provides all of the

[8] 47 U.S.C. §214(e).

core services that are designated for support for USF throughout its licensed service territory. [9]

(b) E911 Service-

Pulse indicates that it currently offers its customers access to operators throughout Guam to provide the requested services. [10] Pulse certifies that it continues to support 911 services and supports E911 services including providing the automatic numbering information throughout the territory of Guam. [11] In accordance with the ORDER APPROVING DESIGNATION, Pulse is required, to the extent that a governmental authority in Guam implements E911 systems, to provide E911 service. Pulse's designation as an ETC is also conditioned on its compliance with any FCC requirements concerning E911 service when implemented in Guam. [12]

(c) Certification of services -

In compliance with Pulse's ETC Designation Order, and FCC 05-46, it certifies to the PUC that it offers all of the services designated by the FCC for support pursuant to Section 254(c) of the Federal Act by using its own facilities and advertising the availability of supported services and charges using media distribution available on Guam. [13] Pulse also advertises its services on its website and through direct mail. It also provides advertising and education of lifeline services through its website to eligible low income subscribers and has advertised it through flyers distributed through various government agencies, and publication in newspapers of general circulation. [14]

(d) Notification of inability to provide service -

Pulse Mobile certified that it "has been able to fulfill services to all requesting customers in accordance with FCC requirements." [15]

[9] Pulse Petition for Annual USAC Certification, p. 6.
[10] Id at p. 3.
[11] Id., see also Exhibit B.
[12] ORDER APPROVING DESIGNATION, Docket No. 06-8, p. 3.
[13] Id at p. 4.
[14] Id.
[15] Id at p. 5.

(e) *Filing of detailed build-out plan-*

Pulse Mobile filed its detailed five year build-out plan, under confidentiality, as an attachment to its Petition. [16] The projects described in the plan support the provision of the core services for which service was intended.

(f) *Filing of annual certification under Section 54.314(b)-*

Pulse has certified that all Federal High-Cost support provided to it will be used only for the provision, maintenance and upgrading of facilities and services for which support is intended. Pulse Mobile made appropriate certifications by letter dated August 25, 2010.

(g) *Filing Documentation-*

(i) Pulse's progress toward meeting its build-out plans - Pulse's five year plan indicates that it has made substantial improvements to its GSM wireless network and plans to continue to make such improvements over the next five years.

(ii) Information on any outages - Pulse did not have any outages during calendar year 2009, or for year 2010 to date, that lasted 30 minutes.

(iii) Unfulfilled requests for service - Pulse indicates to date it has been able to fulfill services to all requesting customers in accordance with FCC Requirements.

(iv) Complaints per 1,000 handsets - During calendar year 2009 Pulse is not aware of any complaints filed with any regulatory body.

(v) Compliance with CTIA Consumer Code - Pulse certifies that it is in compliance with the CTIA Consumer Code within the reporting period.

(vi) Ability to function in emergency situations - Pulse has certified that it has the ability to remain functional in emergency situations. Through the use of its backup electricity generators and backup battery power at its mobile switching offices and towers, Pulse has the necessary infrastructure and equipment to remain functional in situations that include fires, earthquakes or typhoons.

[16] Attachment A to Pulse Petition, Pulse Mobile Five Year Build-Out Plan.

(vii) Certification of local usage plan – Pulse offers a comparable local usage plan to that of the incumbent LEC that offers 3,000 minutes per month for local calling.

(viii) Equal access certification – Pulse acknowledges that it currently is not required to offer equal access to long distance carriers but acknowledges that it may be required to do so in the event that no other ETC is providing equal access in service area.

(h) *Prompt submission of information or reports-*

Pulse must promptly submit to the Commission any additional information or reports that the Commission may reasonably request from time to time. Pulse has been responsive in providing additional information requested by Legal Counsel on August 25, 2010. Legal Counsel has not become aware of any contrary evidence which would contradict the above certifications by Pulse.

RECOMMENDATION

Pulse indicates that, for calendar year 2009, it received $1,431,795.00 in USF. To date through August 2010, it has received $695,839.00. It is Legal Counsel's belief that Pulse has satisfied all of the criteria set forth in the Pulse ETC Designation Order and the FCC's requirements. Pulse Mobile's Five Year Plan has demonstrated a commitment to further build-out and upgrade its wireless local networks. It has satisfied the requirements of the Order Approving Designation. Therefore, Counsel recommends to the Commission that it certify to the FCC that Pulse Mobile has used universal service funds for the purpose intended.

Dated this 25th day of August, 2010.

Frederick J. Horecky
PUC Legal Counsel

Guam Public Utilities Commission

To: **Marlene H. Dortch**
Office of the Secretary

Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Irene M. Flannery
Vice-President – High Cost & Low Income Division
Universal Service Administration Company
2000 L Street, N.W. Suite 200
Washington, DC 20036

RE: **CC Docket 96-45 – "Use" Certification**

This is to certify that Pulse Mobile, LLC will use federal high cost support funds only for the provisioning, maintenance and upgrading of facilities and services for which the support is intended, consistent with section 254(e) of the Communications Act.

I am authorized to make this certification on behalf of the Guam Public Utilities Commission. This certification is for study area 669003 for the Territory of Guam.

Dated this 1st day of September, 2010.

J. Johnson

Jeffrey C. Johnson
Chairman
Guam Public Utilities Commission

RECEIVED
AUG 30 2010
Public Utilities Commission of Guam

RESOLUTION

Whereas, the Guam Public Utilities Commission ("PUC") is an autonomous instrumentality within the Government of Guam;

Whereas, pursuant to 12 GCA §12002(a), the PUC has the authority to retain consultants, an attorney, and an administrative law judge;

Whereas, on or about September 22, 2008, the PUC approved Professional Services Agreements for legal counsel with Frederick J. Horecky of the Law Offices of Horecky & Associates, for Administrative Law Judge with David A. Mair, Esq., of the law firm of Mair, Mair, Spade & Thompson, and for Consultant with Georgetown Consulting Group Inc.;

Whereas, each of the three above mentioned Professional Services Agreements provided for a maximum total term of five years, with four one year options to extend;

Whereas, on or about September 30, 2009, the PUC exercised the first option to extend the Professional Service Agreements of Legal Counsel, the Administrative Law Judge and the Consultant for a one year period.

Whereas, Legal Counsel , the Administrative Law Judge, and the Consultant have now served the Commission for nearly two years pursuant to their respective Professional Services Agreements;

Whereas, the Commission is satisfied with the services rendered by Legal Counsel, Administrative Law Judge, and Consultant;

Whereas, the PUC hereby desires to exercise its second option to extend the Professional Service Agreements of Legal Counsel, the Administrative Law Judge and the Consultant for a one year period;

NOW THEREFORE, in due consideration of the above recitals and for good cause shown, the PUC hereby resolves that:

1. The Professional Services Agreement retaining Frederick J. Horecky of the Law Offices of Horecky & Associates as Legal Counsel for the PUC is hereby extended for a period of one year;

2. The Professional Services Agreement retaining David A. Mair, Esq., of the law firm of Mair, Mair, Spade & Thompson as the Administrative Law Judge for the PUC is hereby extended for a period of one year;

ATTACHMENT F

3. The Professional Services Agreement retaining Georgetown Consulting Group Inc. as the Consultant for the PUC is hereby extended for a period of one year;

4. During the period of the one year extension, all terms and conditions of said Agreements between the PUC and the above referenced parties shall fully remain in effect and shall govern the respective relations of the parties. However, for the Agreements for Legal Counsel and Administrative Law Judge, Exhibit "A', HOURLY RATE SCHEDULE, I. Attorneys, is hereby amended to read "$175.00";

5. The Chairman is authorized to sign all documents necessary to effectuate the above referenced professional services agreements.

Dated: August 30, 2010

JEFFREY C. JOHNSON
PUBLIC UTILITIES COMMISSION
Chairman

Dated: August 30, 2010

JOSEPH M. MCDONALD
PUBLIC UTILITIES COMMISSION
Commissioner

Dated: August 30, 2010

FILOMENA M. CANTORIA
PUBLIC UTILITIES COMMISSION
Commissioner

Dated: August 30, 2010

ROWENA E. PEREZ
PUBLIC UTILITIES COMMISSION
Commissioner

Dated: August 30, 2010

MICHAEL A. PANGELINAN
PUBLIC UTILITIES COMMISSION
Commissioner