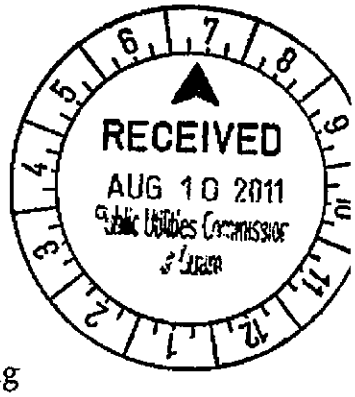

GUAM PUBLIC UTILITIES COMMISSION
REGULAR MEETING
May 16, 2011
SUITE 202, GCIC BUILDING, HAGATNA

MINUTES

The Guam Public Utilities Commission [PUC] conducted a regular meeting commencing at 6:28 p.m. on May 16, 2011, pursuant to due and lawful notice. Commissioners Johnson, McDonald, Cantoria, Pangelinan and Perez 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 April 18, 2011. Upon motion duly made, seconded and unanimously carried, the minutes were approved, subject to needed changes.

2. **Guam Power Authority**

The Chairman announced that the next matter on the Agenda was consideration of GPA Docket 11-04, Self Insurance Policy, PUC Counsel Report, and Proposed Order. Counsel indicated that a surcharge had been established in the prior Rate Case for civilian and Navy customers which would allow GPA to provide for a "self-insurance fund", monies that would be available for catastrophic losses in the event of a typhoon or other similar natural catastrophe. Previously, the Commission had held that the limit of such fund would be $10M (it was increased from $2.5 to $10M). In prior rate Orders the Commission had ordered GPA to make subsequent filings concerning the appropriate amount of surcharge and cap on the self-insurance fund.

GPA's most recent filing on the self-insurance fund included a report by RW Beck which recommended a 16% increase in the current surcharge, and an increase on the cap of the fund from $10M to $20M. Subsequently GPA withdrew its request that the surcharge be increased. The Report of the Commission's Consultant the Georgetown Consulting Group said that there are various issues that must first be determined before the cap is increased; however GCG did recommend that GPA be allowed to continue to collect the self-insurance fund surcharge even though the $10M cap would shortly be exceeded. This matter needs immediate attention, as the $10M cap will be exceeded either at the end of this month or the beginning of the next month. If the Commission takes no action, the self-insurance fund surcharge will cease after the fund exceeds $10M.

The main issue before the PUC is whether it should allow GPA to continue to collect the surcharge from civilians and Navy even though the $10M cap has already been exceeded. Presently the surcharge for civilian customers is $.00290 per kWh and $.00070 for the Navy per kWh. The Navy does not object to continuing the surcharge in effect in accordance with GCG's recommendation. Counsel also believes that the self-insurance fund surcharge should remain in effect, as it is important that GPA have sufficient funds to meet any natural catastrophes that occur. There is still the matter of the appropriate cap for the surcharge; until that matter is fully addressed, GPA should be allowed to continue to collect the surcharge. The Order prepared for the Commissioners would allow the self-insurance surcharge for civilians and the Navy to remain in effect notwithstanding the fact that the $10M cap has been exceeded. The Administrative Law Judge would be authorized to conduct further action in this Docket, and to determine whether or not it is appropriate to increase the cap on the surcharge fund from $10M to $20M.

The Chairman asked whether there were any questions or a motion. Senator Vicente Pangelinan was then given an opportunity to make public comment. He stated his position that the cap of the self-insurance fund should not be increased from $10M to $20M, nor should GPA be allowed to continue to collect the self-insurance surcharge after the $10M cap was exceeded. Because of the LEAC increases to the ratepayers, unnecessary surcharges should not be continued. The self-insurance fund is already funded at the cap of $10M. The surcharge should be discontinued to provide relief to the ratepayers. The cap of $10M established in February 2008 is adequate. The working capital fund is currently being used by GPA for contingencies in an amount of $2M per month. Setting aside millions of dollars for contingencies only unduly burdens the citizens and businesses of Guam. The PUC should not allow the self-insurance surcharge to continue. The Georgetown Report indicated that the surcharge was to be turned on and off depending on whether the reserve criteria established by the Commission are met. As the reserve criteria have been met this month, the Senator finds it prudent that the Commission turn off the surcharge and relive taxpayers of this burden with the option to turn the surcharge back on at a later time.

The Chairman of the CCU Simon Sanchez then proceeded to comment. He stated that the working capital fund was needed to bridge operating situations like LEAC. The use of WCF for LEAC is a good use of funds so as to avoid the necessity for a midterm LEAC adjustment. WCF is used purely for operational purposes. For typhoons, the average amount that GPA needs available for recovery is $25M to $30M. That's cash on hand to deal with recovery. That's insurance. GPA doesn't have access to $25M on top of working capital. History has shown that sometimes you will need $20M to $30M for typhoon recovery. Both WCF and self-insurance surcharge funds must be maintained. GPA can't get self-insurance on transmission and distribution, so it has to self-insure. With due respect to the Senator, there are two separate needs. The Chairman asked GPA's General Manager or Chief Financial Officer whether they knew what an average ratepayer at 100 kWh would be paying for this self-insurance fund.

The CFO Randy Wiegand stated that it was $2.90 per month. Counsel clarified that the Order before the Commission would be a temporary order because it would only allow the surcharge to continue pending the completion of further proceeding with the ALJ or rate case before the PUC. Senator Pangelinan pointed out that how FEMA figures into the self-insurance fund also needs to be ferreted out. Any contributions FEMA would make also have to be ferreted out. Upon motion duly made seconded and unanimously carried, the Commissioners approved allowance for GPA to continue to collect the self-insurance fund surcharge after the $10M cap has been exceeded and adopted the Order made *Attachment "B"* hereto.

3. GTA Telecom LLC

The Chairman stated that the next matter for consideration by the PUC was GTA Docket 99-10, E-911 Surcharge, Pending Issues regarding Docomo, GCG Report, PUC Counsel Report, and Proposed Order. Commissioner Pangelinan noted for the record that he recused himself from this case because Docomo is a client of his law firm. Counsel proceeded, and indicated that there were a few Docomo representatives present, Mr. John Wu and Attorney Hoffman. Counsel indicated that this was another matter involving an"E-911 cleanup" issue. This issue arose in the course of the Public Auditor's Report. Docomo indicates that an earlier point in time it had begun to make overpayments of the E-911 Surcharge receipts to the Department of Administration, and was remitting approximately $10-12,000 more per month than it had actually received in E-911 Surcharges. Georgetown [GCG] confirmed that Docomo was including in its reports some prepaid CDMA lines that had already migrated to GSM lines. There was a reporting error which ultimately caused Docomo to pay approximately $188,000 too much for E-911 Surcharges. Docomo, realizing such error, sought to recover these overpayments by withholding the surcharge payments to DOA.

In the meantime, after withholding payments from DOA, Docomo has now fully recovered the overpayments. In November 2010, Docomo again began remitting its E-911 surcharge payments to DOA. The numbers do check out, and the quarterly reports have been fully reviewed to make sure that Docomo did in fact over-report those amounts, and that it recovered the amounts indicated. Docomo probably should have come to the PUC earlier to advise it of this problem; the over-payment problem only came up during the course of certain reports and investigations by Georgetown. In the future Counsel recommends that, if any similar problems come up with the collection agents and the E-911 surcharge remittances, they should report the problems to the PUC. The PUC can then immediately review such situations, and if necessary, approve actions that are taken. The surcharge reports of Docomo now balance; the revised line counts that were included in Docomo's reports are reasonable. There was an overpayment which has now been recovered.

The Counsel Report recommends that the Commission approve what Docomo did here. It reimbursed itself properly, although it should have earlier come to the Commission to report this. The Order provides that it any future situation Docomo must report to the PUC. Docomo is ordered to continue to remit the required E-911 Surcharge receipts to DOA with an allowed deduction for approved PUC administrative expenses. Commissioner Perez asked whether Georgetown reviewed the Docomo report. Counsel indicated that GCG did review the report. Commissioner Perez asked whether there was an additional report. Counsel indicated that the report which the Commissioners had was the public report; two other reports dealt with issues involving line counts of the telecommunications company, which counts are confidential. The Commissioners can review any of the reports filed with the PUC on this matter. With regard to Par. 3 of the proposed Order, Commissioner Perez asked whether the PUC has determined what the administrative expenses will be or whether it will look at the report and then determine the administrative expenses. Counsel indicated that Docomo previously did come before the Commission for approval of its administrative expenses.

Commissioner Perez asked whether there was a percentage that is applied. Counsel stated that there are already set expenses. Docomo has initial expenses for improving its computer system and then monthly administrative charges for record keeping. These expenses are set, and Docomo has been reporting them in its reports. When Docomo files its quarterly reports, they deduct the amount of administrative expenses that have already been approved by the Commission. Commissioner Perez clarified that Par. 4 of the Order required that Docomo report any circumstances requiring it to withhold E-911 surcharge remittances from DOA before it withholds the same. Counsel indicated that her understanding was correct. Counsel stated that there was already a prior PUC Order referred to in the Counsel Report from June of 2002 that ordered Docomo to make surcharge remittances to DOA within 45 days after receipt, so it's actually already in the law and prior PUC Order. The legal obligation is clear. Commissioner Perez wanted to make sure that the money comes to the government and not be withheld. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the Order made *Attachment "C"* hereto.

The Chairman announced that the next order of business was GTA Docket 11-03, GTA Petition to Define the Appropriate Repair Time Interval for DSL UNE. Counsel reported that there was not yet a Counsel Report as the PUC had just received comments on this matter this last week from PDS and Mr. Sikes. Counsel has received a request from GTA to be given an extension of time to respond to some of the comments and to make a filing by May 19. This request appears to be reasonable. It is difficult for the Commission to take action this evening due to the late receipt of comments, and tonight has been scheduled as the time for the public hearing. Counsel suggested the Chairman should ask anyone who wants to comment on this repair time interval to be given such an opportunity. At that time the Chairman asked whether there was anyone in the public present that would like to expand upon written comments. No public

comments were made. Counsel suggested that no action be taken on the matter, and that it be addressed at the next meeting.

4. Guam Waterworks Authority

The Chairman announced that the next matter on the agenda was GWA Docket 11-01, GWA Supplemental Filing and Request for Reconsideration, Supplemental ALJ Report on Bond Funding Issues, and Proposed Order. ALJ Mair indicated that he had prepared a presentation but that he would be spared from having to make the presentation because when he got here Simon Sanchez [Chairman of the CCU] presented his testimony, and in the last two pages thereof he proposes funding the $20M payment to the government in a timeline that would solve the problem. The ALJ requested that Mr. Sanchez be allowed to explain his proposal and that the ALJ's Order be tabled. GWA and the ALJ would be given an opportunity to put together a Stipulated Order. Hopefully that could be put together and approved by the next PUC meeting. Based on what the ALJ has read here that may very well be possible. He will let Mr. Sanchez explain what he has proposed.

Simon Sanchez then stated that it is everyone's goal to implement public law appropriately and in the best interest of the community. Last May GWA had received additional authorization to borrow additional $20M to give the money back to the government of Guam. When that law was passed GWA was already on the 1 yard line with an infrastructure loan in the summer of 09. The PUC ordered that GWA would be granted a series of annual rate increases and that these rate increases would be used to borrow money for infrastructure or Bank of Guam $30M loan that GWA would use for interim funding. At that time the additional authorization which Senator Pangelinan had added wasn't known to anyone. In the summer 09 approval GWA began the process with the Bank of Guam in building the engineers report for the structure of the infrastructure loan, bond counsel report, the rating agency presentation and all things necessary to close the infrastructure loan. Just a little earlier GWA ran to the legislature because, although the law authorized GWA to borrow $220M, the law had an interest cap, and the legislature had not been aware in 2005 of the opportunity to issue build America bonds. GWA thought that it might use that structure to get the best rate for the ratepayers. When GWA went to the legislature, Senator Pangelinan amended the borrowing authority in the original public law from $220M up to $240M with the intention of giving $20M from GWA back to the general fund.

GWA's dilemma at the time was that it was on the 1 yard line and had done nine months of work with authorization from the PUC only for a infrastructure loan and a $30M loan. It became concerned about the delay because it had also told the federal court that it would have this money by a certain time. So GWA interpreted the law, felt that because it allowed for a series of loans, it decided to complete the infrastructure loan of $118M and delay borrowing the extra $20M. It had just gotten the authorization in May. If everyone had known it was going to get this authorization, it was so far along with the infrastructure loan that it could not risk delay and it didn't have PUC

approval for it, which would have further prolonged it. So GWA chose to pursue the loan separately after it got the infrastructure loan. In January PUC authorized GWA to expend the money only on infrastructure then Senator Pangelinan raised the legal concerns. The ALJ has opined and GWA has disagreements. The bottom line for GWA when the ALJ looked at trying to appropriate the money depends on the Commissioners' decision whether the money would be taken from the recent infrastructure bonds and it's a challenge for the Commissioners, as lay people, to take two good attorneys, Mr. Mair and Mr. Dirks who just have different views. Mr. Sanchez thinks there are legal consequences to GWA if it takes the monies out of bond proceeds that were already acquired. GWA explained this to the Legislature last week and 11 senators voted for an amendment not to take any money out of the $118M bonds. That amendment passed and then the bill was pulled from the floor. At least GWA got the sense from 11 senators no one tried to break the law.

The circumstances created the situation where GWA was so far along getting approvals that it had already received; to delay would have caused it significant problems, perhaps created legal questions today of which GWA is not certain of their resolution. GWA suggested and would like to suggest tonight that GWA commence the process of borrowing the remaining $20M so that it can meet the intention of the law. GWA will be able to show PUC what the $20M borrowing might cost. GWA estimates that it might be a 4-8% rate increase depending on whether it gets a 5 or 10 year loan or looking to a loan similar to when the Bank of Guam loaned GWA $30M. They loaned GWA a 5 year loan with a 10 year amortization. GWA wants to borrow the money locally rather than floating a bond. GWA is opposed to running out to the bond market because its time consuming and expensive and GWA thinks it can be successful with a local bond borrowing because it's smaller so what GWA is asking the PUC to consider.

Parallel to Mr. Mair's earlier remarks is that's the Commissioners don't necessarily have to make a ruling either way on the ALJ's current submittal and that the Commissioners can allow the parties to work with the ALJ to create a stipulated order ensuring that GWA will borrow the money and will pursue PUC approval of the borrowing and the rates necessary to borrow and once PUC authorizes GWA as it did in 09, GWA will go out and borrow the money. This summer GWA must do the annual true-up in order to get the FY2012 rate increase. That is a process already ordered by the PUC. GWA can also use that process to flush out borrowing parameters and show PUC what the rate increase range could be. Maybe then this summer when PUC decides what to do with the true-up it could also include a decision as to whether to allow GWA to borrow and on what terms and conditions and at least show GWA that it has rate support. It can't issue procurement for borrowing unless it has a funding source. Gov Guam procurement 101 is that GWA always uses the rate increases as its basis for borrowing. So it provides a win-win and achieves the goals of the Senator. It allows the PUC to do its job determining what GWA is borrowing the money for, what's the rate impact and is it prudent. It allows GWA to bring PUC a proposal that it can review, it avoids any of the legal issues that have been raised by Mr. Dirks and Mr. Mair. It eliminates that uncertainty. GWA would much rather be spending its time trying to figure out how to

implement the law to get the monies created and let PUC see the rate increases or worrying about whether to appeal, to bring it back to PUC, to litigate. If GWA does nothing and accept the ALJ's Order, and it found out that one of the bond buyers says what do you mean it's not an infrastructure tax exempt loan. GWA just doesn't want to go down there because GWA's proposal would at least carry out the intention of the law and have everyone play its role properly and have everyone do it with full transparency so that the rate payers will see it, PUC will see it, and everyone will see it so that PUC can make the best decision. That's covered in GWA's submittal to PUC this evening as an alternative order.

Senator Vicente Pangelinan then proceeded to give comments. He stated that GWA knew what its legal obligations were, but decided to ignore the law and not follow it. GWA is now arguing that the consequences of their not following the law are for the PUC not to follow the law. The PUC has an obligation to follow the law, and GWA asks it not to do that. GWA discussed the borrowing, they could have stopped the borrowing, and it would be a week, two weeks or a month, to come back to this commission and said look we have these new conditions here yet, no, they decided to move ahead. They never broached the subject of borrowing the additional $120M until the Senator came before this Commission and said that they were not following the law. They didn't come to the PUC and indicate how they could meet their obligations. GWA continued upon the path it had planned without regard to the Legislature, the law, and this Commission to move forward before the Senator brought this matter to the Commission and this review was done. Mr. Dirks' opinion is full of parachutes and backdoors: it "may", it "could", it "might". It's not saying that you can't do this obligation by fulfilling it with the proceeds of this borrowing.

If GWA wants to wait, then let it borrow the $20M for its other programs, fulfill the obligations of the law and make this order to have them reimburse the general fund now. The reason why the Legislature did that is the pressures it has to try and meet the obligations of the people of Guam by helping the general fund at a time when the government needs help to meet its obligations. The people have been meeting the obligation of helping GWA for the last 15 or 20 years by paying the debt service on the proceeds of the bonds that went to their benefit and the entire community of Guam. The intention is to pay our COLA retirees, half of these people have died since we started paying out our obligations to them. Last week 5 more of them were buried. Now they want these people to wait because they didn't follow the law. More people will pass away without meeting the obligations for these people. They can go out and borrow this additional 20 that they reserved for their own needs. But, meet the needs of what the law called for. This idea that it will result in a rate increase is presumptuous. That's the purview of this body. This institution [the PUC] that was set up by law has an obligation to insure that the entities which it oversees follow the law. The Senator doesn't believe that the consequences of requiring them to use the proceeds of the $118M to reimburse what is required by statue are as dire as they say. GEDA has been informed that this is not a disallowed use at all.

Mr. Dirks' opinion does not say that this will result in a catastrophic downgrade of the bond issue or that this will result in a calling of the bonds (it "may", it "could", it "might"). Mr. Dirks knows and informed the government, its financial manager GEDA, acting on behalf of the government, that it won't. This is an allowable structure and it is an allowable expense and an allowable project authorized under the terms of the statute for GWA to go out and borrow the money. The Senator doesn't think that we should make these people wait, let GWA go and borrow the money to reimburse their funds for whatever projects they have. They are not going to be able to spend this $120M the next 40 days or in the next 180 days or in the next 360 days. They are not going to be able to take and deploy all of this money. Life can be made better by taking that $18M for people looking for emergency tax refunds needed to bury their loved ones they weren't able to take off-island and the Manamko who are depending on this. That's who cannot wait, GWA can wait they can go out and borrow that money and replenish their bond project funds if they are saying that they absolutely have to do it today. The Senator pleads with the PUC on behalf of the people for whom these proceeds have been earmarked that GWA can and should wait as a consequence of not following the law. They could have made this decision at the very beginning and come forward and said we have this obligation and you're going to take another month and resolve this matter. They discussed all of these things and they decided to proceed without following the law, and they never came back and said hey, we still have another obligation.

They went ahead and put in the expenditures, only when it was brought before this body a question of whether they are in compliance with the law did they say oh yeah we have plans to go out and borrow that money. They didn't tell us that until we asked them, how come you are not following the law, they said oh, we will. GWA must follow the law now. For this body to allow them not to follow the law and the consequences that would go against the entire rationale for establishing this institution. It oversees the entities it is chartered with overseeing to ensure that they protect the public interest and that they protect the laws and regulations of the government of Guam. That's the Senator's plea with the PUC Commissioners, and he thanks them very much.

Simon Sanchez asked for an opportunity to respond. He stated that the crux of the issue before the PUC was that there are 2 attorneys that disagree as to whether GWA has followed the law or not. GWA has followed the law, so it must respectfully disagree with the Senator's contention; as everyone knows, attorneys and courts can view things differently. The PUC Commissioners, as lay people, are being asked to opine whether GWA is or is not in violation of the law. That is a tough position in which to be. GWA has crafted an alternative solution which avoids the issue of whether the law is being violated and will allow GWA to fully implement the law. Some of the representations the Senator has made, we would caution you that Stan Dirks taking the proceeds from this loan cannot be guaranteed not to create a question as to taxability. His ruling speaks for itself. He raises enough concerns that the Senator is wrong and could affect GWA's ability to borrow money for the court order. It could

affect the credibility of GWA and the PUC because GWA came to PUC in good faith in the summer of 09 and told PUC what GWA was going to borrow the money for. PUC approved rate increases for that and acted upon that. In May out of the blue Senator Pangelinan comes in with this amendment. The bill that he was amending wasn't even about the borrowing capacity it was about terms. He didn't consult with GWA or Stan Dirks when he was passing the amendment. He's a smart capable guy but he's not bond counsel. Senator Pangelinan interjected that he didn't do it on his own, but with 14 other colleagues.

Simon Sanchez stated that nobody in the legislature asked GWA or Bond Counsel what this would do to the work already done. GWA is allowed to make those decisions. GWA agrees with Mr. Dirks as executors of law it is allowed to make some decisions too and interpret the law. GWA's interpretation of the law was that it could do it in series and too much work had been done on the $118M. GWA was ready to go to market. GWA had done the Engineer's Report. GWA had filled everything. GPA was even looking at structure and to go in and take all of that out. What happens when some of the loan is not for infrastructure, to determine and guess how long the PUC might have to act on this additional borrowing is a big concern to GWA. GWA has court imposed deadlines and the infrastructure loans are to meet these deadlines, not that we can use these funds 6 months or 9 months from now. GWA is about to issue procurements based upon the funds it has in hand. GWA had told PUC what it was going to use it for and PUC approved it. There is a process and it takes PUC time to review it. In November, PUC didn't approve it until January as PUC took its time to do due diligence. It was not just a week or two delay that GWA contemplated. You are talking to the two grandfathers of the PUC, we know how long it takes PUC to act. This additional $20M is going to require a rate increase. PUC saw the balance sheets etc. in the summer. GWA didn't have $20M lying around to give back to people. PUC told GWA it could borrow $150M, not $170M and here's the rate increases. This extra $20M didn't pop up until all the work of the PUC, GWA, and the CCU had already been completed in good faith as ordered by the PUC. The bottom line for GWA is, PUC has to make a decision and GWA has a chance to make it right.

Sanchez stated that he was sympathetic to the COLA and the withholding folks. The government of Guam has been owed COLA and withholding for years. It's not GWA' s fault that, at the last minute, a loan that the government has been paying off since 1988, when GWA didn't even get these proceeds. GWA didn't even exist in 1988, PUAG was a line agency. The government of Guam had to borrow the money, there was no GWA. When GWA was created in 1998 the legislature didn't say take over this loan. When they refinanced in 2001, the legislature didn't say take over this loan. In 2002 when they created CCU they didn't say GWA take over this loan. Nothing was raised until last May when there were four payments left. This loan is paid off this December. Mr. Sanchez appreciates that the Senator has a tough job balancing the general fund budget. He is arbitrarily saying that he wants to take it from GWA. The people got the benefit of this infrastructure, it went into Piti projects, Santa Rita projects. GWA didn't use it for payroll. So you have the people of Guam who in December payoff $50M in

financing and now they've got to pay another $20M for the same thing that they already own? Now that's a policy question for the legislature to decide. Mr. Sanchez agrees with ALJ Mair this is where we need to take that argument but he greatly disagree with the Senator in his view GWA is violating the law.

In GWA's view it is carrying out the law. PUC has the tough decision of deciding who is following the law. GWA is offering a suggestion that eliminates the need for anybody having to argue about who's following the law. GWA's suggestion is to borrow the money, let PUC see it, let it do the rate work that it has to do. If GWA doesn't justify it then GWA doesn't get rates and will still have to borrow the money. But at least PUC gets to do its job with full disclosure. PUC made a decision in summer of 09 before this $20M ever existed. So it's not fair to ask PUC to just deal with it without having a chance to look at the facts and the numbers. So GWA's proposal to PUC is that there is a mechanism this summer that automatically makes PUC look at GWA rates. In that process PUC could, if the numbers justify it, in addition to whatever adjustment for FY12 that you grant, say now go get this loan. PUC could at least agree to provide GWA rates necessary to support the debt service on the loan just like it did in the summer of 09 and GWA will go out and do that. GWA got the Bank of Guam commitment in months of the PUC approving it. The problem is that the Bank of Guam wanted terms and GWA had to go running back to Senator Ben and he granted them, that's what extended getting a loan offer; it wasn't the procurement process, so once PUC said here's a rate increase where GWA is authorized to borrow, and PUC agrees to provide GWA with rate support. GWA needs that because no procurement is going to occur in the government of Guam without a funding source. GWA needs at least a commitment for a funding source then GWA will bring it back to PUC.

Then ALJ Mair made some additional comments. He indicated that neither he nor Mr. Dirks could win an argument with Senator Pangelinan or Mr. Sanchez. He was impressed with both of their passions. In fairness he thinks that Senator Pangelinan has made some points that things could have been handled differently in the past. That's undoubtedly true. In retrospect of course everything might have been handled differently. He wishes to confine his discussion to whether or not the proposal of Mr. Sanchez is in compliance with 31-45 and the proposal the ALJ is talking about is the one in the letter. He explained why this proposal now is in compliance with 31-45 because what was happening in the past, yes, he had a disagreement with; but, what they propose now would comply because what the statute says is that they can borrow up to 240M and they are authorized to do that. Sen. Pangelinan just said why are you seeking permission you already have- -they already have statutory authorization for that. The ALJ agrees with Sen. Pangelinan 20M shall be paid to Gov. Guam. He interprets GWA to be in compliance with that because they're saying they are now going to borrow up to $240M, another $20M, and they're going to use that to repay Gov. Guam. The complaint is it should have been paid earlier and the ALJ guesses in an ideal world that's probably the case, but in the real world, he thinks this complies with the letter of the law which does not specify exactly when the $20M should be paid. So that's the reason the ALJ would ask for a little time to put together a Stipulated Judgment, have

them borrow the $20M, have them pay the $20M to the government of Guam and have PUC discuss with GWA the rate increase. If any of that should be applied because of that borrowing he thinks that's appropriate but realizes it doesn't make everybody happy. But the ALJ thinks they would comply with the letter of the Law- -prior to that there didn't seem to be an interest in borrowing the $20M and paying the government of Guam. That didn't start happening 'til the PUC started rattling a few cages but now it's happening.

Senator Pangelinan then stated that he did not have a problem with them borrowing the additional $20M. He thinks that the government needs that money now; if they want to go borrow the 20, have them borrow the 20 and replenish their fund but meet the obligation of paying the money under the statute now. He says that it is much more important that not only the letter of the law be followed but also the spirit of the law. The spirit of the law was to provide some relief and relief is needed now. It does not impose any hardship upon GWA for them to go out borrow this additional 20 and to use it for their purpose. There is no additional hardship for GWA to do this there is hardship for the general fund to wait until GWA is good and ready to go out to borrow the funds. It is accomplishing the same thing, borrowing the money and reimbursing the general fund but who gets harmed in this case first is the people. The Senator doesn't believe that it is a certainty this is going to result in some negative impacts with regard to the taxability when that's not what GEDA is saying.

Simon Sanchez then stated that he supported the recommendation of the Administrative Law Judge as far as carrying out- -the first thing you want to separate there's nothing stopping the legislature now from appropriating $20M to pay the COLA. Senator Pangelinan stated that we don't have the money. Sanchez indicated that that's not the problem of GWA. Senator Pangelinan stated that it was the problem of GWA when GWA was not reimbursing the general fund, the reason for getting that guaranty and getting those authorizations. Simon Sanchez stated that GWA chose when it looked at the law as passed and signed into law, what does it say? It says in a series of loans, a series means more than one as long as you're up to 240 as many as you need to borrow 240. It had clear instructions from the PUC what GWA could borrow the money for. He knew that delaying the bond issue and coming back for approval for another $20M would have delayed GWA to the point where it is already under great pressure from the federal court to meet these timelines and it's getting worse. After PUC said GWA could borrow this money in summer 09 it began informing the district court in quarterly meetings in 09 and 2010 right up until now. GWA is saying it is going to borrow the money for this-GWA was not aware of any change in law until at the last moment. To go back to the court, the thing that Senator Pangelinan is not appreciating is that GWA has to cut out $20M as projects that it needs for the court order because GWA can't put out an RFP for a project to fit it unless it has a funding source to take $20M away from the $118M. Then GWA has to wait to get PUC approval for the extra $20M. It does adversely affect GWA in the court ordered timeline that GWA is going to face.

That was a compelling reason as administrators of the law and by the belief from the GWA legal team, both Mr. Taylor and Mr. Dirks that GWA was acting within the law that's why GWA did it. To portray that GWA didn't take any action after PUC passed the law remember that first GWA is trying to get the $118M in because that is what PUC said GWA could do. Then GWA finally had the rating agency presentation in November and finally got the money in November. GWA then waited to get PUC approval to spend it. PUC finally gave that to GWA in January now that GWA has it GWA can look at new borrowing. GWA really wanted to finish the job that PUC had given it to do that GWA had told PUC it was going to do. The fact that the Legislature added a last minute request for $20M is fine, but as long as GWA is not violating the law GWA believes that it acted prudently and wisely and it wanted to make sure that the PUC had enough time to review the borrowing. GWA felt that it shouldn't rush PUC either; PUC has a fiduciary responsibility. Having said all that we respectfully disagree with each other and GWA thinks that its proposal would carry out the good Senator's intentions. How the general fund solves its problems is a separate issue. GWA clearly has the $20M. Mr. Sanchez confirmed with GWA's CFO that as of today it has only borrowed $213M. It could still do $20M and comply with the $240M cap $20M requirement and still have money.

The Chairman asked Mr. Sanchez whether they borrowed the full $220M. Mr. Sanchez said they did, $102M was borrowed in 2005 now in 2010 GWA had paid $7M of debt service down that goes down to $95M or $98M. GWA has the capacity to borrow under the law that Senator Pangelinan amended. GWA felt that it was not in violation of the law. Mr. Sanchez disagrees with the good Senator and the ALJ that GWA has violated the law. The problem is that the Commission now has to make a decision. GWA agrees with Mr. Mair that if GWA had sat down a year ago it would have added $20M but it can't undo the movie but it can still add $20M and it will still require whatever rate support it will require. GWA supports the ALJ's recommendation that it craft with him a Stipulated Order that binds GWA to borrow the money. It will borrow the money as fast as PUC can approve the rate support so that GWA can issue a procurement knowing that it has rate support. GWA can't do it if it doesn't have the money and the bank is not going to loan it the money without seeing that PUC made it clear in its 09 order that GWA can borrow this much for infrastructure and $30M for a short term loan. To do these things PUC made it very clear because GWA knew what the law was for, GWA was able to explain it to PUC, PUC was able to review it and come up with rates and opine and make a prudent decision. Let's do the same thing with this $20M loan. Commissioner Joey Duenas of the CCU then stated that GWA could be harmed. It is about to give PUC the numbers for its rates, and some of those numbers are going to change. GWA can't assume that there will be no rate impact, it already knows that some of its costs will be going up. GWA knows this going to have a rate impact. Mr. Duenas begs to differ with the Senator, to bring this to PUC and to make informed decisions. He thinks that's why the ALJ and GWA are on the same page. Mr. Duenas thinks the ALJ understands that GWA does want to comply with the letter of the law. GWA wants to do it in such a way that there is no harm to GWA. GWA wants to help

the general fund, but it can't help the general fund at the expense of GWA. That's got to be a concern too.

Next GWA attorney Sam Taylor stated that a couple of issues the commissioners brought up were some very good points relative to ratepayers vs. GWA. He noted that the PUC Commissioners have in their packets a submission by GWA from Pacific Financial indicating that if GWA did go down the path suggested, taking $20M, that it is quite possible that our rating would be damaged and as a result of that GWA would be forced to borrow at a higher cost which ultimately would then impact negatively our ratepayers. GWA's rating, which is something GWA has been working on a lot has a big impact, so if all of a sudden you take $20M it becomes taxable, bond holders are expecting certain benefits from that issuance that they no longer have beneficial use of; that could actually negatively adversely affect GWA rates and therefore its customers. Mr. Taylor noted that there is no law currently on the books mandating that the $20M in payments be made by GWA which have to go to COLA or for tax refunds, that is not on the books. In fact when that was brought up and it was suggested that the $20M be used to pay tax refunds and COLA, that bill was pulled after an amendment came out saying no, not from 2005 bonds, not from the 2010 bond issuance. Don't take the money from there. 11 senators voted on the amendment passed it and said we do not want GWA to take money from those sources, we want GWA to go borrow independently. So that is where we are at in terms of the law right now.

Senator Pangelinan stated that if there were consequences for the way and the ramifications for which this deal was structured, ramifications should be borne by those people who have the advice on the consequences of deciding to proceed with the procurement of these bonds in the manner that they proceeded and in the structure that they proceeded. There are consequences, the public finance group and Stan Dirks should be made to pay those consequences. Simon Sanchez stated that the same body that authorized the $240M said last Monday with 11 votes on the floor made it very clear that none of those proceeds should come from the recent borrowing because of the controversial issues and uncertainties of whether the law has been fully complied with or not or whether their phrase, unexpected consequences, a good act handled in an unexpected way, creates unexpected consequences that create things that nobody wants. Senator Pangelinan doesn't want to hurt GWA's credit rating he doesn't want to hurt GWA he's just trying to do something for COLA recipients and withholding it is a wonderful goal and GWA doesn't want to do anything to break the law. GWA doesn't want to hurt ratepayers unless it has the authority to borrow money accordingly and invest money as it is supposed to. No one wants to break the law; it's unfortunate the way it evolved. GWA can't turn the clock back, what sits before the PUC is a difficult decision. GWA would be willing to support the ALJ's recommendation that GWA work with him to create a stipulation to get the borrowing done as contemplated by law, to get that money to the government of Guam as fast as possible and that as fast as humanly possible the PUC, GWA and the CCU and all other players that have to, make it happen.

Commissioner Perez asked why GWA did not start working on this earlier why did it wait for Senator Pangelinan to bring the matter to the PUC's attention. Simon Sanchez stated that they did not get the loan until November 2009 but had gotten the first loan and you only gave us rate increases for the first loan and the $30M. GWA did a true up during the summer and the law was already in place during the summer the issue wasn't raised by GWA during the summer or by the PUC. It was already in place, that law was passed in May 2010, the parties could have brought it up no one brought it up. PUC wasn't acting in bad faith; GWA wasn't acting in bad faith. Senator Pangelinan brought it at the last moment and none of us were prepared to deal with it when GWA was ready to launch this new borrowing. GWA still had to go get the loan; it didn't get it until November when GWA did the rating presentations.

Commissioner Perez stated that she understood that, but since GWA already knew in the Summer that this amendment was made and it was passed, why didn't GWA approach senator Ben's office and to let them know, GWA understands that this is what the Senator has been wanting, but this is where GWA is at and to discuss this rather than bring it up on the spot – why couldn't GWA have communicated with Sen. Ben, obviously both Senator Pangelinan and Mr. Sanchez are passionate, that this was a concern? Why didn't GWA bring this up then and be proactive in dealing with that. She understands that there are tax implications with bonds, having to learn about this. Simon Sanchez indicated that Senator Pangelinan passed this amendment in the committee of the whole and GWA reviewed it and didn't realize that its interpretation of the law was going to cause so much concern. GWA was all ready to do the 115, the 118 let's do that if GWA gets that in place it will go borrow the $20M. That was GWA's internal logic; GWA did not know that it would cause concern with the Senator. The law, even as Mr. Mair has pointed out, is not very clear when the money was to be borrowed. What GWA interpreted, as we read it, based upon what GWA knew and what its lawyers said GWA needed to borrow this money, but GWA didn't need to borrow it now and the law didn't say borrow it now. In 2005 the law said GWA could borrow $220M, it only borrowed 101. GWA didn't write a letter every month to the Legislature from 2005 to 2010, it only borrowed 101 out of 220. GWA kept working on when it would borrow the next tranche. GWA was focused on implementing the PUC order and getting GWA's money as its funding for the court.

Commissioner Perez asked whether GWA did not go in and provide testimony to what this amendment was going to do with the progress that it had already made. Did GWA come in and advise...Simon Sanchez stated that GWA wasn't asked to advise, it was brought up on the floor by the Senator, GWA was not asked for feedback. Senator Pangelinan stated that they knew that the authorization was increased it was based upon the promise that they borrow the remaining balance it wasn't like we're just going to increase it and wait until you are good and ready. Simon Sanchez stated that GWA is borrowing the balance, the law didn't say when to borrow the balance. Senator Pangelinan stated that the legislature increased it because they were in the process of borrowing and it would be added on to that to have less cost of issuance, less discount. Sanchez stated that none of that was in the law. Senator Pangelinan stated that was the

discussion of why it was being increased. Sanchez stated that GWA can't implement what they discuss on the floor, only what they pass. It doesn't say when to borrow the $240M it says in a series of loans. GWA borrowed one in 05, one in 010 and now it will borrow one in 011. That's a "series of loans". GWA didn't borrow 220 in 2005, only 101 because GWA wanted to phase in rate increases. The law did not say grab it all at once. If GWA knew it had PUC rate support legally then it would bring back this new authorization. It was done at the last moment, no feedback from GWA. GWA had already done the true-ups with the PUC; the boat has sailed on the $150M borrowing which would lead us to the next one. GWA did not mean it as a slight to the Senator. GWA felt it was within its legal grounds.

Commissioner Cantoria asked whether when GWA came to the PUC, there was already approval from the legislature about this. Sanchez stated that not in 09, this wasn't passed until 2010 nine months after PUC approved the rates for the borrowing. Commissioner Cantoria stated that she was not talking about the borrowing, that GWA already had the legislature approve the borrowing. Sanchez stated that yes, for 220 that was in 2009. Commissioner Cantoria asked whether the $20M was ever considered as the reason for the borrowing. No, not until May 2010 when he said GWA could borrow it. Up at that point GWA didn't have the authority to borrow it. When GWA came to PUC in 2009 it didn't have the authority to borrow so it didn't ask to borrow it; GWA didn't know it were going to get the authority and the other thing to remember is this amendment was put on to a bill that had nothing to do originally with borrowing any more money, it was the change in interest rate and to allow GWA to use build America bonds so the Legislature on its own chose to extend the additional credits saying GWA can borrow more money but they didn't consult with GWA they just asked on the floor. The Senator got the votes and GWA got 20M but you can read what it says it doesn't say you will take it out on the next loan, it just says you can borrow up to this amount in a series of loans. GWA is now ready to embark on the third series of loans and comply with the bond and it can only read what they write and that's what they wrote so that's what GWA implemented.

Sam Taylor stated that GWA started having quarterly status hearings with the US District Court in the beginning of March of 2010. One of the things that the court made clear to GWA was get the money, get in now, get it fast and GWA kept telling them all the way from the time that it started having those status hearings all the way up until the time GWA got the money, it's coming, and she said what is it going to be used for? And GWA told her and it was doing that in its status filings with the court so that was one of GWA's major driving forces in terms of why it was getting the money. GWA needed these things to basically improve the system so it could comply with the clean water act. The judge was adamant and she seemed to indicate that if GWA didn't get the money in November GWA is in deep kimchee because it had told her it would get it in November. GWA originally thought it was going to get it earlier than November and there was a delay in that process and then GWA finally got that in November. It was dependent of course on GWA's borrowing of the $30M was the precursor to getting the bonds in the first place because GWA needed to fill its reserve accounts.

The Chairman asked if there were any questions from the Commissioners. Commissioner Pangelinan stated that when talking about the PUC's dual role, protecting ratepayers and safeguarding interest of utilities he thinks that safeguarding the interest in utilities is really for the purpose of protecting ratepayers because the whole commission is here to protect the public and regulate so that everyone is following the law. He has a lot of confidence in the ALJ and so when I see an ALJ Report recommending certain course of action that carries a lot of weight and he happens to have read the report and he actually tend to agree with his interpretation of the law. Commissioner Pangelinan also gives great weight to the ALJ recommendation this evening also. Now he just asks the ALJ if the interpretation of the law is as it is set forth in his report, the ALJ could have come here tonight and says he stands by his recommendation. The ALJ is not changing his mind about what he recommended or his interpretation of the law and obviously there must be some good reason for why the ALJ thinks the better course of action is to go with the stipulation. The Commissioner's interest would be if the interpretation is as set forth then the ALJ needs to get that money paid back as soon as possible but if the ALJ approach now, if his recommendation now is going to get everyone there then the Commissioner would be interested in hearing the ALJ's thinking process.

ALJ Mair stated that his thinking process in his report was they could not evidence the intent to borrow $220M and their interpretation of the law was that GWA borrowed $220M, GWA doesn't owe the government of Guam a penny and it said GWA may borrow more if appropriate. The ALJ just had the impression from actions and words that they were borrowing up to that amount and not going to go over that amount and they thought that would be okay and as a consequence that they wouldn't have to pay anymore to the government of Guam. The ALJ just felt that that wasn't the Legislature's intent so that's the reason he developed the proportionate fee. The new plan now is considerably different, if they had said this back in January the ALJ would have said okay that this complies with the law and then borrow the $20M because the law says that you can borrow up to $240M, but $20M has to go to the government of Guam. The ALJ thinks that what they are proposing now is in compliance with the law The ALJ was just having problems with what was happening before the first he heard of this was when he got here and saw the proposal, he told Mr. Sanchez that borrowing $20M from the Bank of Guam, that's what's changed. Before the ALJ had been informed that there was no obligation to borrow money "unless it was appropriate."

Commissioner Perez asked why this didn't come out in January. Simon Sanchez stated that even the ALJ in January with this law on the books recommended to PUC to approve spending all the money on infrastructure. ALJ Mair stated that he had made a mistake and his mistake at that time was that he had just taken over the ALJ's work for GWA at a time it approved the expenditure of the $118M for the capital improvement projects. The truth is he just didn't notice the problem until it got pointed out by Mr. Pangelinan. When he pointed it out, PUC had to address it and find a way to get the $20M. Senator Pangelinan' s right. PUC can't leave it out there and not have it paid. Simon Sanchez stated that good people make mistakes, and GWA made a mistake last

summer and GWA is now proposing a way to do it. Senator Pangelinan said that he does not like their going out to borrow the $20M and the government being made to wait. Commissioner McDonald said that the main issue is acquire the $20M by October? Simon Sanchez stated that first GWA needs a PUC order giving it the funding for the proceeds. Commissioner McDonald asked when they thought they could secure it.

Then Simon Sanchez stated that if GWA submits the numbers to PUC in June how soon do you think the PUC can act on it? Once PUC acts on it then and okays it GWA will issue the RFP. If PUC grants a rate increase this summer GWA will go borrow $20M and actually GWA had the commitment summertime 09, September, from Bank of Guam but then they wanted the guarantee of the government. And then it went back to the Legislature and Sen. Ben got GWA the guarantee but the delay was not GWA or by the vendor who had sought to make the loan. One of their conditions was getting the guarantee of the general fund. So what delayed the borrowing from September to May was having to run to the Legislature and getting their ok of the general fund guaranteeing the loan so GWA could have had a loan in 3 or 4 months if the bank didn't require something.

Senator Pangelinan then stated that the real world of approving this borrowing $30M and going to the local banks the local banks don't have the capacity anymore or the desire to take on additional government of Guam debt. Bank of Guam has already lent $30M to GWA and you want them to lend another $30M? The FDIC would come down on their case for over exposure. The real world is that they would go out and issue this RFP and come back and say that no one wants to issue this loan what's going to happen that's the real world of this plan. Simon Sanchez said that if that happens, GWA will come back to PUC and say that no one wants to loan the money locally and we'll issue a bond publicly. Simon Sanchez said that we can avoid all the uncertainty by carrying out what ALJ Mair wants to do is go out and borrow the money from somebody. Either way GWA needs a PUC rate increase. GWA can't afford to pull the money out of the proceeds and cause the legal problems that Mr. Dirks raises, federal court issues that they are going to raise about the timing of the projects that GWA is funding. The Chairman then asked whether there are any other comments from the Commissioners or a motion. Commissioner Cantoria asked whether we have an Order requiring GWA to pay. The Chairman stated that we could have one of either two motions, to table it and to allow the ALJ to work out a stipulated order with GWA and come up with the sourcing for the $20M or to pass the Order as written. The Chairman stated that the ALJ has recommended for further review and more time to indicate basically to table it for this evening and then we are still complying with the law 31-45. Commissioner Cantoria stated that if we are requiring GWA to pay, to study further how they will repay the money. The Chair stated that it would leave a lot of open questions to be answered.

Commissioner Pangelinan moved that the PUC accept the ALJ's recommendation to allow the ALJ to file a supplemental report but that the report be required to be filed

within two weeks. The Chairman asked if there was a second to that motion or if anyone wanted to add something. Commissioner Perez stated that she wanted to add something to it and in the meantime GWA is to go and check with the vendors on borrowing. The Chairman asked Commissioner Pangelinan if that was agreeable to him. Commissioner Pangelinan stated that he wanted to proceed with an RFP – they have to do an RFP. Commissioner Perez asked if the RFP was for the borrowing. Commissioner Pangelinan stated that they have to do an RFP. Commissioner Perez asked if that would that be added. The Chairman suggested that they wait until after the two weeks for that to see what they work on within two weeks on the stipulated order so that they could get moving. He then asked if there was a second to the motion. Commissioner Perez seconded the motion. The motion was approved and carried. The Chairman replied that the ALJ has two weeks to come up with the decision and further work this out, put a little more detail into it. Commissioner Pangelinan stated that another recommendation from the ALJ is required within two weeks.

5. GTA Telecom LLC

The Chairman announced that the next item for consideration by the PUC was GTA Docket 11-04, GTA Individual Case Basis Filing for DOE, the PDS and IT&E Request for Reconsideration of the PUC Order dated April 18, 2011, ALJ Report, and Proposed Order. Counsel proceeded to give the ALJ Report that had been filed with the Commission. A true and correct copy thereof is made *Attachment "D"* hereto. Counsel essentially reviewed the Report for the Commissioners, and the points are summarized as follows. The Commission already approved an Individual Case Basis Tariff for GTA Telecom LLC. On April 18, 2011, the Commission approved GTA's application for approval of an ICB arrangement with the Department of Education. The Commission found that all the conditions for the tariff were met. GTA was authorized to engage the Department of Education in an individual case basis arrangement which would allow GTA to provide Centrex lines to DOE. After the April 18, 2011 Order of the PUC, both IT&E and PDS filed motions for reconsideration. Counsel repeated the recommendations of the ALJ Report; the report extensively set forth reasons why the motions for reconsideration should be denied.

Adequate and proper notice was provided to PDS and IT&E. The issues they raised could all have been raised either on or prior to April 18, 2011. The ALJ Report finds that PDS and IT&E have not presented "good and sufficient cause" for a rehearing. The ALJ Report disagrees with PDS' contention that GTA Telecom does not have an ICB tariff. The PUC Order approving the tariff specifically approved it for GTA Telecom. Contrary to PDS' assertion, the ALJ Report finds that the PUC did enter an order which finally approved the ICB tariff by Orders dated October 3, 2008 and November 24, 2008. PDS also challenges issues concerning the adoption of "Long Run Incremental Cost Standards" by the PUC; however a party should not be allowed to come back two and a half years after the fact and relitigate what the Commission has already done. The LRIC study provided by GTA addressed the criteria raised by GCG and included the appropriate figures and certifications. Although PDS claims that GTA violated FCC

rules, no specific rule has been cited and both PDS and IT&E would have a remedy by going to the FCC. The ALJ also does not recommend that the PUC concur with the last argument of the parties, that the PUC needs additional review of these matters by an outside independent "consultant".

The Chair asked whether GTA would like to comment. GTA, though its Vice President Eric Votaw, stated that they support the ALJ Report. They recommend that, since GTA filed its petition in compliance with PUC orders and the Georgetown Report, that the fees in this docket also be assigned to all of the parties. Counsel indicated that the Order does include a recommendation that fees for this docket be shared by GTA, PDS and IT&E. In response to the Chairman's question, Counsel indicated that the costs before April 28, 2011 should be borne by GTA, and costs after April 28, 2011 should be shared by all three parties. John Day, President of PDS, then made a presentation on behalf of PDS. PDS does not agree with the ALJ Report. It feels that it did not have proper notice and did not have a copy of the ALJ Report before the PUC hearing on April 18. It could not properly raise its objections on April 18, 2011 since it had not yet reviewed the report. PDS contends that although the DOE award was made to TeleGuam Holdings LLC, TeleGuam does not have a certificate of authority to provide telecom services on Guam. The PUC must address the problem of "an unauthorized entity providing telecommunications services". Also, GTA Telecom LLC does not have a tariff from which it can request authority to deviate from on an ICB basis.

Also, PDS believes that the PUC has not properly approved ICB authority for GTA. PDS also believes that it did not receive proper notice of proceedings for development of ICB standards in 2008. It did not receive notice of the Georgetown March 10, 2008 Report which established the ICB standards. PDS should have been a party to discussions between the ALJ and GTA regarding the ICB standards. Those were ex-parte communications, and PDS has no proper notice of the subsequent PUC orders involving the ICB standards. PDS was not aware of any of these developments until the PUC meeting on April 18, 2011. There has not been an order by the ALJ approving GTA's proposed tariff amendments as required by the PUC Order dated February 15, 2008. PDS has a due process right to comment and protest any of such orders. A hearing should be scheduled for the purpose of allowing PDS to submit briefs. Furthermore, PDS claimed that GTA is not charging a "subscriber line charge" to DOE under Part 1B of their bid form. PDS claims that GTA is not telling the truth when it says that it is charging the subscriber line charge. Failure to charge SLC is discriminatory. This is new information being presented to the Commission. PUC should rescind its order of October 3, 2008 and schedule a hearing on the LRIC analysis suggested by Georgetown. Also the order of April 18, 2011 approving the ICB should be rescinded.

IT&E also submitted comments through its legal counsel Steven Carrera. He stated that IT&E did not have the Counsel Report before the April 18 hearing. Also, the "third party review" should be done by the PUC as well as the ALJ. ALJ Horecky responded

on various of the points made by PDS and IT&E. The parties failed to point out any statutory violations of notice or due process. They could have requested the Counsel Report or any other information from the PUC but failed to do so. PDS was present at the April 18 meeting and could have requested a continuance if it felt further documents were needed; it did not. As far as the earlier proceeding on the ICB standards (Docket 05-03), PDS did file public comments in that docket and was fully aware of the proceedings. It also knew that the February 15, 2008 PUC Order had indicated that further proceedings would be conducted where GCG would develop the requirements for an LRIC study. PDS did not seek to intervene or undertake any other action to be involved in the proceedings. Each of the contentions of PDS and IT&E were disputed and found not to constitute "good and sufficient cause."

GTA has filed Exhibit 3 indicating that it is charging subscriber line charges and universal service fund charges. It does in fact charge such charges for the Centrex and POTS lines it provides to all customers, including DOE, as required by FCC regulation. Bill Mann, Counsel for PDS, stated that GTA's exhibit itself shows that is not charging the subscriber line charge on the Centrex system. If the PUC approves the ICB request, GTA will be allowed to discriminate against its other customers. It suggested that there was no appropriate or proper remedy with the FCC. Mr. Votaw, for GTA, reiterated that GTA does charge subscriber line charges to DOE and is required to do so. GTA is audited annually by NECCA. If GTA doesn't charge SLC and USF, GTA cannot obtain its federal subsidies including USAC. The Chairman pointed out to PDS that there was no disagreement on the POTS line charges, as they are indicated in Form 1B. PDS did not disagree. The Chairman then asked Mr. Day whether it had previously argued that the PUC should use GCG, but was now complaining in testimony that the GCG decision and methodology was wrong. John Day reiterated that claim that PDS did not have the opportunity to adequately participate in the rulemaking process on the development of standards for ICB and LRIC.

The Chairman indicated his belief that the GCG methodology for LRIC does make sense- -it is not a full blown LRIC study which would be very costly, time consuming and anti-competitive. The Formulas GCG came up with was probably the best that could be done at the time. PDS again objected that it did not participate in that formula. The Chairman also asked PDS whether their limited LRIC standards do not probably disallow GTA from including costs that they potentially could with a real LRIC study. The Chairman indicated to PDS that a full LRIC study would be more complicated, expensive, complex, and time consuming. Mr. Day stated that the PUC should take a second look at this matter and allow participation by PDS and its regulatory consultant. The Chairman then clarified as to whether GTA charges subscriber line charges in relation to the services provided under part 1B. Mr. Votaw stated that GTA has to charge SLC. The Chairman asked for DOE's position if it were to be charged the extra $9.20 on the subscriber line charge. Ms. Eunice Aflague from DOE stated that in such case DOE's purchase order would be adjusted for the cost of the services. If the SLC is incorporated, DOE may have to decrease the quantity of Centrex lines to incorporate

the subscriber line charge. Commissioner McDonald asked questions concerning the invoices detailing the SLC, and whether GTA would provide such invoices, and the current contract for the year indicating SLC's. Mr. Votaw indicated that those could be produced tomorrow. Commissioner McDonald wanted to see the current fiscal year details. Upon motion duly made, seconded and unanimously approved, the Commissioners adopted the proposed Order approving GTA's ICB arrangement with DOE; however such approval was subject to the conditions that GTA showed the SLC charges for this fiscal year and the next fiscal year and the invoices for the SLC charges. Ms. Aflague from DOE indicated that the PUC could get the updated modifications of the purchase order after July 1. The Chairman indicated to Mr. Votaw that GTA was requested to provide an updated Form 1B and an updated purchase order by July 1. Mr. Votaw indicated that the updated Form 1B would be provided by July 1. A discussion followed concerning the holding of the next PUC meeting.

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

Jeffrey C. Johnson
Chairman

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION
REGULAR MEETING
SUITE 202, GCIC BUILDING
414 W. SOLEDAD AVE. HAGATNA, GUAM
6:00 p.m. May 16, 2011

Agenda

1. Approval of Minutes of April 18, 2011.

2. Guam Waterworks Authority
   - GWA Docket 11-01, GWA's Supplemental Filing and Request for Reconsideration, Supplemental ALJ Report on Bond Funding Issues, P.L. 30-145, and Proposed Order

3. GTA Telecom LLC
   - GTA Docket 11-03, GTA Petition to define the appropriate Repair Time Interval for xDSL UNE ("Unbundled Network Element"), PUC Counsel Report, Proposed Order.
   - Docket 99-10, E911 Surcharge [Pending Issues regarding Docomo], GCG Report, PUC Counsel Report, Proposed Order.
   - GTA Docket 11-04, GTA Individual Case Basis Filing/DOE, PDS/IT&E request for Reconsideration of PUC Order, dated April 18, 2011, which approved ICB Filing, ALJ Report, and Proposed Order.

4. Guam Power Authority
   - GPA Docket 11-04, Self Insurance Policy, GPA Filing Re: Self-Insurance Policy, GPA Supplemental Filing Re: Self-Insurance Policy, GCG Report Re: GPA Request for Changes in Self-Insurance Protocol, PUC Counsel Report, and Proposed Order.

5. PUC Website
   - Update

6. Administrative Matters

7. Other Business

ATTACHMENT A

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:	)	GPA Docket 11-04
GUAM POWER AUTHORITY'S FILING REGARDING SELF INSURANCE POLICY	)	ORDER

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission [PUC] upon the Guam Power Authority [GPA] Filing to increase the self insurance surcharge and to increase the cap, or limit, of the GPA surcharge fund from $10M to $20M.[1]

2. PUC Counsel filed a Report herein on May 11, 2011, which recommends that the PUC allow GPA to continue to collect the self-insurance surcharge after the $10M cap is reached.[2]

4. In its Supplemental Filing, GPA dropped its request to increase the amount of the self-insurance surcharges. The issue now before the PUC is whether GPA should be allowed to continue to collect the self insurance surcharge from civilian rate payers and the Navy, even though the limit or cap of $10M has or will soon be reached.

BACKGROUND

5. In the Phase I Rate Decision in Docket 07-10, filed February 15, 2008, the Commission increased the ceiling of GPA's self insurance surcharge program from $2.5M to $10M effective March 1, 2008; the surcharge for civilian ratepayers was set at $0.00290 per kWh for civilian ratepayers and $0.00070 per kWh for the Department of Defense.[3]

6. Pursuant to the February 25, 2010, FY10 (Phase II) Rate Decision of the PUC in Docket 07-10,[4] GPA filed its Report re: Self-Insurance Policy with the PUC on

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[1] GPA Filing Re: Self Insurance Policy, Docket 07-10 [In the Matter of: Guam Power Authority's Filing Regarding Self Insurance Policy], filed February 1, 2011.
[2] PUC Counsel Report
[3] PUC FY08 Rate Decision, Docket 07-10, filed February 15, 2008, p. 5.
[4] PUC FY10 (Phase II) Rate Decision, Docket 07-10, issued February 25, 2010, at p. 7.

February 1, 2011.[5] A Report by GPA Consultant R.W. Beck was attached to the filing. Among other matters, Beck recommended a 16% increase in the self-insurance surcharge tariffs, and that the self-insurance fund maximum limit be increased to $20M, in order to more adequately protect GPA against catastrophic losses.[6]

7. On April 6, 2011, GPA filed its Supplemental Filing Re: Self Insurance Policy.[7] GPA withdrew its request for an increase in the amount of the surcharge, but continued to request an increase in the self insurance fund cap of $20M, and requests that the PUC "approve the principles set forth in the R.W. Beck report included in the February 2011 self insurance filing].[8]

8. Furthermore, the General Manager requested that the PUC approve the continuance of self-insurance surcharges in effect even after the $10M cap was reached.[9]

9. At the request of PUC Counsel, PUC Consultant Georgetown Consulting Group, Inc. prepared a report concerning GPA's filing to modify the self-insurance protocol. On April 29, 2011, GCG filed its Report Re: GPA Request for Changes in Self-Insurance Protocol, GPA Docket 11-04.[10] The Report included the recommendation that the self-insurance surcharges continue in effect after the $10M cap is reached.[11]

10. GPA filed a response to the GCG Report on May 9, 2011. It again clarified that no increase in the self-insurance fund surcharge rate is being sought, but it continues to request the increase of the self-insurance fund cap from $10M to $20M.[12]

[5] Letter from GPA General Manager to PUC ALJ, dated March 29, 2011, at p. 1, f.n. 2.
[6] R.W. Beck Insurance Options Assessment at Section 7, p. 7-2.
[7] GPA Supplemental Filing Re: Self Insurance Policy, Docket 07-10, filed April 6, 2011.
[8] Letter from GPA General Manager to PUC ALJ, dated March 29, 2011.
[9] Id. at p. 2.
[10] GCG Report Re: GPA Request for Changes in Self-Insurance Protocol, GPA Docket 11-04, filed April 29, 2011.
[11] Id. at p.8.
[12] GPA Response to GCG Report Re: Self-Insurance Policy, filed May 9, 2011.

ORDERING PROVISIONS

After careful review and consideration of GPA's Filing Re: Self Insurance Surcharge, the Supplemental Filing, the Reports of GCG and PUC Counsel, and the GPA Response to the GCG Report, and the record herein, for good cause shown, on motion duly made, seconded and carried by the undersigned Commissioners, the Guam Public Utilities Commission **HEREBY ORDERS** that:

1. The recommendations of GCG and PUC Counsel that PUC allow the monthly self-insurance surcharge payments to continue even after the $10M cap has been reached by GPA are approved.

2. The current self-insurance surcharges for both civilian ratepayers and the Navy ($0.00290 per kWh for civilian ratepayers and $0.00070 per kWh for the Department of Defense) shall continue in effect until PUC approval of self-insurance fund protocols or the completion of the next base rate case, whichever is sooner.

3. The continuance of the current self-insurance surcharges in effect will help to ensure that GPA has a sufficient reservoir of funds to cover catastrophic losses.

4. Whether the cap for the self-insurance fund should be raised to $20M, the appropriate protocols, and other unresolved issues concerning the self-insurance fund, shall be further explored in proceedings to be conducted under the direction of the ALJ.[13]

5. Upon approval by the PUC of self-insurance fund protocols, or at the conclusion of the next base rate case, whichever is sooner, a maximum self- insurance reserve will be established after proper investigation.

6. The principles in the R.W. Beck Report will not be adopted at the present time, but will be further considered in proceedings conducted by the ALJ.

7. 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 the 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.

[13] Id. at pgs. 2-6.

Dated this 16th day of May, 2011.

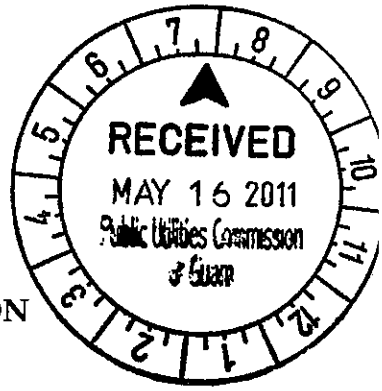
Jeffrey C. Johnson
Chairman

Joseph M. McDonald
Commissioner

Rowena E. Perez
Commissioner

Filomena M. Cantoria
Commissioner

Michael A. Pangelinan
Commissioner



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

E-911 EMERGENCY SYSTEM SURCHARGE: Issues Regarding NTT Docomo Pacific E-911 Requirements	)	Docket 99-10

ORDER

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Reports of Georgetown Consulting Group Inc. dated January 13, 2011 and January 27, 2011.[1]

BACKGROUND

2. During GCG's review of FY2008 and FY2009 surcharge revenues, it learned of the claim of Docomo that it had been remitting $10-12,000 more per month to the Department of Administration [DOA] than it received in E911 Surcharge revenues.[2]

3. The alleged overpayments commenced approximately May of 2008, continuing until May 2010; the cumulative difference between receipts and remittances was reported to have reached $188,000 by May 2010.[3]

4. In June 2010, Docomo stopped sending remittances to DOA without requesting specific approval from the PUC.[4]

5. Apparently, the overpayments were due to inclusion by Docomo in its Collection Agent Reports of line counts for prepaid CDMA lines that had already migrated to GSM lines.[5]

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[1] GCG Report Re: E-911 Fiscal 2010 Surcharge Summary, dated January 13, 2011 at p. 2; GCG Report Re: Docomo Overpayment of E-911 Surcharge, Docket 99-10, dated January 27, 2011.
[2] GCG Report Re: Docomo Overpayment of E-911 Surcharge, Docket 99-10, dated January 27, 2011, at p. 1.
[3] Id. at p. 1.
[4] Id.
[5] Id. at p. 2.

6. The overpayment reached $188,000 by May, 2010. Docomo then ceased making payment of the E911 surcharge receipts to DOA, "withholding" the same as an offset to the overpayment.[6] PUC was not notified of such withholding until later inquiry by GCG.

7. The E-911 Fourth Quarter Report submitted by Docomo indicates that the overpayments had been recovered by Docomo by October 2010.[7] Commencing in November 2010, Docomo began paying all of the cash receipts for E-911 surcharges, minus approved expenses for the Collection Agent, to the Department of Administration.[8]

DETERMINATIONS

8. Based upon Docomo Reports presented, it is reasonable to conclude that the decline in the number of CDMA lines was approximately equal to an increase in GSM lines, supporting a conclusion that most of Docomo's prepaid CDMA customers migrated to GSM service.[9]

9. Docomo's overpayment may have resulted from continued inclusion in its Reports of CDMA customers who had already migrated to GSM service. Docomo's revised line counts appear to be reasonable.[10]

10. Docomo has established that there was overpayment to DOA in the approximate amount of $188,000 in E911 surcharges; by retaining E911 surcharges and not remitting the same to DOA, Docomo recovered such overpayment by October 2010.

11. Docomo recommenced the transfer to DOA of surcharge remittances in November, 2010.[11]

12. Docomo should have notified PUC in a timely manner of its overpayment of E911 surcharge payments, as well as its plan to "offset" such overpayment by

[6] Id. at p. 2; see Docomo Third Quarter E911 Report for 2010.
[7] FY 2010 Docomo E-911 Report, Fourth Quarter.
[8] Id.
[9] Id. at p. 2.
[10] Id.
[11] FY 2010 Docomo E-911 Report, Fourth Quarter.

withholding of remittances to DOA. There should not have been withholding of surcharge payments to DOA without approval of the PUC.

13. While Docomo should have given the PUC notice of the overpayments and the offsets of E911 surcharge remittances, Docomo has demonstrated that there were overpayments and it did adopt a logical method for recovering the overpayments. There was no intentional violation by Docomo of any legal requirements.

ORDERING PROVISIONS

After careful review and consideration of the E911 Reports filed by Docomo herein, the Reports of GCG and PUC Counsel, and the record herein, for good cause shown, on motion duly made, seconded and carried by the undersigned Commissioners, the Guam Public Utilities Commission **HEREBY ORDERS** that:

1. Docomo's retention of E911 surcharges to reimburse itself for overpayments in the approximate amount of $188,000 is hereby approved.

2. Docomo shall continue to remit its required E911 surcharge receipts to the Department of Administration, with an allowed deduction for approved PUC administrative expenses.

3. Docomo shall continue to remit its monthly E911 surcharge collections to the Department of Administration no later than forty-five (45) days after the end of the month in which the amount is collected with allowance for approved PUC administrative expenses.

4. Should any future situation occur which Docomo believes requires it to withhold E911 surcharge remittances from DOA, it shall promptly report such situation or circumstances to the PUC.

5. All regulatory expenses and fees incurred by the PUC in this Docket shall be paid from the E911 Surcharge Receipts, in accordance with the Order in the Docket 99-10 dated June 24, 2002.

Dated this 16th day of May, 2011.

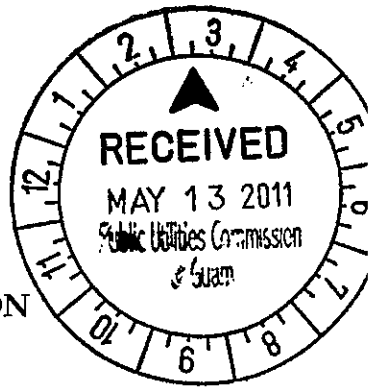
Jeffrey C. Johnson
Chairman

Joseph M. McDonald
Commissioner

Filomena M. Cantoria
Commissioner

Rowena E. Perez
Commissioner

Michael A. Pangelinan
Commissioner



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:	)	GTA DOCKET 11-04
GTA TELECOM LLC INDIVIDUAL CASE BASIS FILING	)	ALJ REPORT

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission [PUC] pursuant to the Order issued by the PUC on April 18, 2011, which approved the filing of GTA Telecom LLC [GTA] to establish an Individual Case Basis arrangement with the Guam Department of Education [DOE] pursuant to GTA's ICB Tariff.[1]

2. GTA's proposed tariff for ICB arrangements was previously approved by the PUC in Docket 05-03. The Individual Case Basis Tariff, originally filed by GTA as Tariff Transmittal No. 11 on December 1, 2008, contains three conditions: a] ICB's will be offered only to business or government customers having or ordering more than 10 access lines; b] Rates for services provided under competitive bids shall not exceed the tariff prices where specific charges are provided in the tariff; c] The ICB prices contained in any contract should be available to any similarly situation customer.[2]

BACKGROUND

3. In its April 18, 2011 Order, the PUC determined that GTA's proposed ICB arrangement with DOE satisfied the three conditions of the ICB tariff.[3]

4. The PUC issued findings that GTA's ICB arrangement with DOE: (a) offered more than ten access lines to a government customer, DOE; (b) offered a per-line cost to DOE that did not exceed the tariff prices provided in GTA's General Exchange Tariff No. 1;[4] and (c) contained a certification by GTA that the ICB prices contained

[1] PUC Order, GTA Docket 11-04 [GTA Telecom LLC Individual Case Basis Filing], issued April 18, 2011.
[2] GTA Telecom LLC Filing of Individual Case Basis Tariff, filed December 1, 2008.
[3] PUC Order, GTA Docket 11-04, issued April 18, 2011, at p. 2.
[4] Id.

in the arrangement with DOE would be available to any similarly situated customer.

5. In addition, in compliance with the PUC Order issued October 3, 2008, GTA had filed an analysis which established that the DOE contract prices exceed GTA's incremental cost as determined using the long-run incremental cost [LRIC] standard.

6. The "LRIC-like" filed by GTA demonstrated that the average cost per loop offered by GTA to DOE is above the average cost per line developed in its LRIC study. The offered contract price to DOE exceeded the incremental cost as determined using the LRIC-like Georgetown criteria and standards. [5]

7. The Commission, finding that all of the requirements for the tariff as set forth in the GCG Report of March 10, 2008 had been satisfied, approved GTA's Individual Case Basis Filing with DOE.[6]

8. On April 28, 2011, Pacific Data Systems ["PDS"] filed a Request for Reconsideration and/or Rehearing.[7] On the same date, PTI Pacifica Inc. dba IT&E ["ITE"] filed its Petition for Re-Hearing.[8]

9. PDS and IT&E file their requests pursuant to Rules 36 and 37 of the PUC Rules for Practice and Procedure. PDS alleges that PUC "may" have violated its processes in the handling of this filing, and that serious defects exist in the original GTA Telecom filing and the process used by the Commission to review/approve the filing..." PDS seeks rehearing to allow it to bring "additional pertinent facts and necessary considerations" to the attention of the Commission.[9] IT&E also raises notice issues and suggests that GTA's ICB Tariff is not in effect due to an alleged lack of approval by the PUC ALJ.[10]

10. On May 9, 2011, GTA filed its "Position of GTA" in response to the Requests of PDS and IT&E.[11] GTA contends that it has complied with all requirements of the PUC with regard to the ICB Tariff and the ICB Arrangement with DOE.[12] The ALJ now

[5] GTA Petition for Individual Case Basis Filing, GTA Docket 11-04, Exhibit B and Exhibit 2B.
[6] PUC Order, GTA Docket 11-04, issued April 18, 2011, at p. 3.
[7] PDS Request for Reconsideration and/or Rehearing, GTA Docket 11-04, dated April 28, 2011.
[8] ITE Petition for Re-Hearing, GTA Docket 11-04, filed April 28, 2011.
[9] PDS Request for Reconsideration and/or Rehearing, GTA Docket 11-04, dated April 28, 2011, at p. 1.
[10] ITE Petition for Re-Hearing, GTA Docket 11-04, filed April 28, 2011.
[11] GTA Telecom LLC "Position of GTA, GTA Docket 11-04, filed May 9, 2011.
[12] Id. at p. 1.

issues this Report to address the issues raised in PDS' and IT&E's Requests for Reconsideration and/or Rehearing.

DISCUSSION

11. The ALJ shall address each of the issues raised in the PDS and IT&E Requests for Reconsideration/Re-Hearing.

1. Defective Filing

12. PDS claims in its Request that "upon its face the GTA Telecom LLC filing with the GPUC is defective since it requests approval for an ICB arrangement that was proposed by and awarded to TeleGuam Holdings, LLC by Guam Department of Education not GTA Telecom LLC."[13]

13. On April 9, 2011, PDS was provided with a copy of the Agenda for the PUC Meeting of April 18, 2011. The Agenda, which PDS received, advised it that GTA Docket 11-04, GTA Petition for Approval of Individual Case Basis/DOE, would be on the Agenda and considered at the PUC meeting of April 18, 2011. The Agenda also indicated that GTA Telecom LLC was the moving party for the Petition for Approval of Individual Case Basis Arrangement with DOE.

14. If the Petition was defective "on its face", PDS knew of such defect before the PUC meeting on April 18th and could have raised such issue to the PUC prior to the hearing. If PDS believed that it needed further information concerning the Petition, it could have requested that the PUC continue the consideration of this matter.

15. PDS claims a "notice" violation in that notice of the ICB Filing was not provided to interested parties, nor "did the Commission solicit public comment" on the filing. PDS does not explain in its Request what interest it claims in GTA's ICB arrangement, how it is affected by such filing, or why it should be entitled to notice. Furthermore, PDS does not cite any specific statute, rule, or regulation which entitles it to notice. PUC did publish notice in the Pacific Daily News of the April 18 meeting in accordance with the Open Government Law.[14]

16. GTA's Filing herein is not a Tariff filing, but a compliance filing to demonstrate that it complies with the requirements of the ICB Tariff. There is no statute which gives

[13] PDS Request for Reconsideration and/or Rehearing, GTA Docket 11-04, dated April 28, 2011, at p.2.
[14] The Agenda, which included specific reference to the GTA Telecom ICB filing, was published in the Pacific Daily News on April 11 and 14, 2011.

PDS the right to any particular manner of notice. Even with regard to tariff filings, no statutory notice is required to any party except the party filing the tariff.[15] There is no constitutional right to notice and hearing in rate-related matters if no statutory right to a hearing exists. Ohio Consumers' Counsel v. Public Utilities Commission, 111 Ohio St. 32 300, 856 N.E. 2d 213, 222 (Supreme Court of Ohio 2006).

17. PDS' allegation that it was deprived of notice and opportunity to respond is incorrect; PDS sent numerous email correspondences to the PUC prior to the hearing raising issues in opposition to the GTA Petition. On April 12, PDS sent an email to the PUC complaining that GTA did not adhere to the language of the ICB Order in failing to obtain approval for the ICB tariff, and that "GTA does not yet have authority to provide ICB pricing to any customer until this has been done."[16]

18. IT&E also claims a lack of notice in that "[It] does not appear that either a copy of the proposed tariff request and/or counsel report were available for inspection prior to the hearing which prevented effective public comment."[17] However, IT&E never requested that the PUC provide it with copies of GTA's ICB Arrangement or the PUC Counsel Report. Portions of GTA's filing and the PUC Counsel were available to IT&E prior to the April 18 hearing, had it so requested.[18] IT&E has not pointed to any statute which entitles it to notice of the GTA filing or to public comment.

19. In addition, a representative of PDS, Cork Vanderford, attended the PUC meeting on April 18, 2011. PDS raised no objection during the PUC meeting nor did it request any continuance. It did not raise any complaint alleging that GTA's petition was defective. On a Request for Reconsideration, it is not appropriate for a party to raise issues that could have been raised in a timely fashion. Even where a party is entitled to notice by statute, such notice is waived by such party appearing and participating in the proceedings, without objection to the sufficiency of the notice given. Consumers' Gas Co. v. Corporation Commission, City of Miami, 95 Okla. 57, 219 P. 126, 129 (Supreme Court of Oklahoma 1923). The method of issuing notice of hearing is generally discretionary, and will not be reversed unless exercised in "clear abuse of discretion." Eckre v. Public Service Commission, 247 N.W.2d 646, 664 (Supreme Court of North Dakota 1976).

[15] 12 GCA §12106
[16] Email from John Day, PDS, to PDS Counsel dated April 12, 2011.
[17] ITE Petition for Re-Hearing, GTA Docket 11-04, filed April 28, 2011, at p. 1.
[18] PUC Counsel Report was filed with the Commission on April 14, 2011.

20. The Petition filed by GTA Telecom LLC was not defective. In its Order in Docket 05-3 [In the Matter of GTA Telecom General Tariff #1, Transmittal #11], issued February 15, 2008, the PUC indicated that GTA Telecom LLC had filed notice with the PUC on November 30, 2007 to implement new tariff provisions for individual case basis [ICB] arrangements. The PUC approved GTA Telecom LLC's proposed tariff for ICB arrangements.[19] In the prior proceeding, Docket No. 05-3, PUC expressly held that the ICB tariff was approved and applicable to GTA Telecom LLC.[20]

21. PDS is free to raise whatever arguments it desires in the procurement process that "the original offer made by Teleguam Holdings LLC to the Guam Department of Education" is not a legitimate bid. PUC is not a procurement appeals board and does not resolve such issues.

22. PDS seeks to make a technical distinction between TeleGuam Holdings LLC and GTA Telecom LLC. As the PUC has previously determined, GTA Telecom is "a wholly-owned subsidiary of TeleGuam..."[21] On July 27, 2005, the PUC approved the application of TeleGuam Holdings LLC to transfer its certificate of authority to GTA Telecom LLC.[22]

23. There is an applicable tariff for services provided for GTA Telecom LLC filed with the Commission. GTA General Exchange Tariff #1 is applicable to GTA Telecom. The PUC has already determined that the ICB Tariff is applicable to GTA Telecom. The PUC, in approving the transfer of TeleGuam's Certificate of Authority to GTA Telecom, required GTA Telecom LLC to fully comply with its contractual, statutory and regulatory duties.[23]

24. Pursuant to 12 GCA §12106, a telecommunication company cannot provide or resell telecommunications services without tariffs relating to such telecommunications services having been filed.[24] In providing telecommunications services pursuant to a certificate of authority, GTA Telecom LLC must comply with the tariffs in General Exchange Tariff #1. In various dockets before the PUC, GTA Telecom LLC has

[19] PUC Order, Docket 05-3 [In the Matter of GTA Telecom General Tariff #1, Transmittal #11], issued February 15, 2008 at p. 1.
[20] Id.
[21] PUC Order, Docket 05-03 [In the Matter of Application of TeleGuam Holdings LLC and GTA Telecom LLC to Transfer Certificate of Authority], issued July 27, 2005, at p. 2.
[22] Id. at p.2.
[23] Id. at p. 4.
[24] 12 GCA §12106(c)

proposed tariff revisions to GTA General Exchange Tariff #1, which revisions have been approved by the PUC.[25]

25. There is no basis for PDS' contention that GTA Telecom's Petition herein is defective.

2. The Authority of GTA Telecom LLC to Offer ICB Arrangements

26. PDS claims that there was never a final approval by the ALJ finding that the ICB tariff had been filed with the PUC in a form consistent with the PUC order issued February 15, 2008. IT&E also argues that no finding was ever issued by the ALJ that the ICB tariff filed was consistent with the PUC Order, nor did GTA file the ICB tariff with the proper language. To the contrary, GTA Telecom did properly file its ICB Tariff, and that tariff has been finally approved by the PUC.

27. In its February 15, 2008 Order, the PUC approved GTA Telecom LLC's tariff for ICB arrangements, subject to certain amendments recommended by Georgetown Consulting Group [GCG], and further indicated that the tariff would be effective upon the ALJ's finding that it had been filed with PUC in a form consistent with the Order.[26]

28. However, on October 3, 2008, the PUC issued a subsequent Order in Docket 05-3, an order which is not referenced by PDS or IT&E in their Requests for Reconsideration.[27] In that Order, the PUC recognized the ICB tariff had been approved subject to certain conditions. In its Order, the Commission ordered that: "on or before October 10, 2008, GTA shall file a revised tariff sheet [*Section 2 page 6*] which is consistent with this order." This subsequent Order only required filing of the revised tariff by GTA and no longer included any requirement that the ALJ approve the final form.[28]

29. To confirm the foregoing, there was a subsequent order issued by the ALJ on November 24, 2008.[29] Therein ALJ indicated that the October 3 Order had required that GTA file, on or before October 10, 2008 "a revised tariff sheet... consistent with this Order." The ALJ noted that GTA was not served with a copy of the October 3,

[25] See GTA Docket 11-01, Tariff Transmittal No. 15 of GTA Telecom LLC; GTA Docket 11-02, Tariff Transmittal No. 16 of GTA Telecom LLC.
[26] PUC Order, Docket 05-3, issued February 15, 2008, at p. 1.
[27] PUC Order, Docket 05-3, issued October 3, 2008.
[28] Id. at p. 3.
[29] ALJ Order, Docket 05-3, issued November 24, 2008.

2008 Order until November 14, 2008; consequently, GTA was ordered to comply with the October 3, 2008 Order "on or before December 1, 2008."[30]

30. Thus, the only further requirement imposed in regard to the ICB filing was that it be filed with the Commission, consistent with the October 3, 2008 Order. The PUC Orders subsequent to February 15, 2008 did not contain any requirement that there be further review by the ALJ or the PUC of the ICB filing.

31. In compliance with the November 24, 2008 Order, GTA did file Tariff Transmittal No. 11 [the ICB Tariff] with the PUC on December 1, 2008.[31] A copy of the filing was furnished to the ALJ. The ICB tariff filing included all three conditions required in the February 15, 2008 PUC Order.[32] Thereafter, neither the PUC nor the ALJ ever informed GTA that there was any problem or issue involving the ICB tariff, or that the tariff was somehow not in effect. The ALJ was provided with the tariff and did not require GTA to make any further revisions.

32. Even if other action had been contemplated by the PUC on the ICB filing, ICB tariff is now final by operation of law. GTA Telecom LLC is authorized to make a change in a rate or tariff "after thirty (30) days prior notice to the Commission..." At latest, the ICB tariff was fully in effect within 30 days after GTA filed it on December 1, 2008.[33] Furthermore, the Commission took no action to suspend the ICB tariff filed by GTA on December 1, 2008 for a period of four months thereafter.[34] The Individual Case Basis tariff filed by GTA on December 1, 2008 is final, conclusive, and binding.

3. PUC Costing Standards for ICB Pricing

33. In this proceeding, PDS now complains about the ICB pricing criteria and standards that were adopted by the PUC in Docket 05-03. As PDS notes, the Georgetown Consulting Group, on March 10, 2008, provided an extensive memorandum to the PUC re: "Cost Support for Tariff Revisions-Individual Case Basis (ICB) Contract Filings."[35] GCG filed such report pursuant to the PUC order of February 15, 2008, which authorized and directed the ALJ "to examine the need for specific guidelines

[30] Id.
[31] GTA filing of Tariff Transmittal No. 11, ICB, dated December 1, 2008.
[32] Id.
[33] 12 GCA §12106(b).
[34] See 12 GCA §12106(e).
[35] GCG Report Re: Cost Support for Tariff Revisions-Individual Case Basis (ICB) Contract Filings, Docket 05-03, filed March 10, 2008.

to establish the level of analysis which will be required under GCG conditions #2."[36] GCG Condition #2 was that GTA should, consistent with PUC's Confidentiality Rules, file with PUC each ICB contract upon execution together with an analysis, which establishes that the contract prices exceed incremental cost [as determined using the LRIC (long run incremental cost) standard].[37]

34. Contrary to PDS' contention, the type of LRIC model proposed by GCG was fully adopted by the PUC on October 3, 2008. The ICB pricing and the standards adopted by the Commission are already final and conclusive, and not subject to further review upon this Request for Reconsideration. As noted in the PUC Order in Docket 05-3, issued October 3, 2008:

> "In its February 15, 2008 order, PUC also directed that its ALJ examine the need for specific guidelines to establish the level of analysis, which will be required to satisfy condition [b] above. On March 10, 2008, Georgetown issued a report, which recommended costing guidelines and the data, which GTA should provide to PUC for each ICB contract. The report is attached to this order. GTA has agreed to this Georgetown recommendation."[38]

35. In its October 3, 2008 Order, the PUC expressly approved the guidelines set forth in the Georgetown Report issued March 10, 2008: "... GTA shall file with each ICB contract analysis, which is consistent with the guidelines set forth in the attached Georgetown Report."[39] The PUC Order approved the criteria and analysis set forth in the Georgetown Report for all ICB filings.

36. The PUC did adopt the standards for ICB pricing, as set forth in the GCG Report, and those cost standards and pricing were final as of October 3, 2008. The ICB cost standards and pricings are not subject to any further review in this Docket, GTA Docket 11-04. ICB cost standards and pricing have already been finally established by virtue of the October 3, 2008 PUC Order. PDS cannot be permitted to relitigate ICB cost standards that were adopted in a final PUC Order over two and a half years ago.

[36] PUC Order, Docket 05-3 [In the Matter of GTA Telecom General Tariff #1, Transmittal #11], filed February 15, 2008, at p. 1.
[37] ALJ Report, Docket 05-3, [In the matter of GTA Telecom General Tariff #1, Transmittal #11], filed February 15, 2008 at p. 2.
[38] PUC Order, Docket 05-3, issued October 3, 2008at p, 2.
[39] Id. at p. 3.

37. PDS now claims that it was somehow "denied notice" because the March 10, 2008 GCG cost memorandum was not "forwarded to it" nor was there a formal rulemaking processes undertaking by the Commission. With regard to adoption of a tariff, there is no rule, law, or regulation which requires that there be a "formal rulemaking process" to be undertaken by the Commission. PDS has not established that any such legal requirement exists. The statutory process for adoption of tariffs is set forth in 12 GCA §12106.

38. PDS claims that had it "been aware of the suggested LRIC alternative model proposed by GCG in its memo of March 10, 2008," it would have objected to the proposed formula.[40] Notwithstanding its protestations, PDS was fully aware of the proceedings conducted by the PUC in Docket 05-03. PDS had actual knowledge of the proceedings and submitted public comment to the PUC on GTA Tariff Transmittal No. 11 on January 25, 2008. Therein it responded to the tariff filing by GTA for ICB and the report and recommendations made by GCG dated January 7, 2008. It has specifically raised concerns about cost factors and pricing for the ICB.[41]

39. Furthermore, on January 28, 2008, PDS, through its attorneys, filed extensive Public Comment regarding GTA Tariff Transmittal No. 11.[42] Therein, PDS specifically raised concerns regarding the GCG recommendation that no LRIC cost study with regulatory approval be conducted by the Commission to approve ICB pricing. PDS further claimed that PUC approval of GTA's ICB pricing without a cost study would be an abdication of the PUC duty to prevent any competitive pricing.

40. PDS raised numerous other concerns about ICB tariff pricing, including the argument that the cost study of baseline incremental costs for services should be required, ICB tariff pricing allegedly violated the Telecommunications Act, and that the PUC had a duty to determine whether ICB tariff pricing was appropriate.[43]

41. In his ALJ Report dated February 14, 2008, the ALJ addressed comments raised by PDS on January 25 and 28, 2008.[44]

[40] PDS Request for Reconsideration and/or Rehearing, GTA Docket 11-04, filed April 28, 2011, at p. 3.
[41] PDS Letter to PUC, dated January 25, 2008, Re: Public Comment Regarding GTA Tariff Transmittal No. 11 to GTA GET #1.
[42] Public Comments filed by PDS attorneys, Shimizu, Canto, & Fisher, dated January 28, 2008, regarding GTA Tariff Transmittal No. 11.
[43] Id.
[44] ALJ Report, Docket 05-3 [In the Matter of GTA Telecom General Tariff #1, Transmittal #11], filed February 14, 2008 at pgs. 3-4.

42. In its February 15, 2008, Order [of which PDS was aware], the Commission specifically notified all parties that the ALJ would be undertaking an examination of the further need for specific guidelines to establish the level of analysis that would be required for ICB filings, including the analysis that establishes that contract prices exceed incremental cost as determined using the LRIC standard.

43. PDS was fully aware that the Commission intended to address the adjusting standards and the appropriate pricing model for the ICB tariff in Docket 05-03. PDS had actual knowledge that those issues were before the PUC and was required to take any steps it deemed necessary to protect its interest. On April 15, 2008, PDS representative John Day requested that the PUC Administrator provide him with a copy of the ALJ Report dated February 14, 2008, in Docket 05-03.[45] On April 18, the PUC Administrator provided Mr. Day with the ALJ Report and a copy of the PUC Order dated February 15, 2008. PDS was fully aware that the PUC intended to undertake further analysis of the specific guidelines that would be required for ICB filings. PDS cannot now attack costing standards adopted by the PUC for ICB arrangements in 2008. As GTA suggests, PDS should have taken steps to protect any interest it claimed in Docket 05-03 and intervened therein or filed further objections to the cost pricing standards adopted.[46]

44. Both PDS and its consultant misapprehend the nature of the cost analysis adopted by the PUC for ICB filings. PDS has submitted the statement of its Regulatory Consultant concerning "the need for the Commission to engage in a rulemaking process to clearly articulate the standards and guidelines that should be used in any LRIC model." There is no issue in this proceeding before the Commission concerning standards or guidelines that should be used in the LRIC model. The issues concerning the appropriate standards and guidelines were fully resolved by the PUC order dated October 8, 2008 in Docket 05-03.

45. The letter from the PDS Consultant is not relevant to the issue of whether GTA satisfied the requirements for an ICB arrangement in GTA Docket 11-04. Particularly, on a motion for reconsideration, matters should not be raised which do not relate to the issues before the administrative body in the proceeding. PDS claims that the Consultant's testimony gives insights into "the many issues that need to be considered by the Commission related to the LRIC studies and variables that should and should not be included in these types of LRIC models." As

[45] Email from John Day, PDS, to PUC Administrator re: ALJ Report on GTA Tariff Filing, dated April 15, 2008.
[46] GTA Telecom "Position of GTA", GTA Docket 11-04, filed May 9, 2011, at p. 3.

indicated, there is no issue in this proceeding about variables to include in the LRIC model. The Commission has already adopted the proper standards and cost pricing, as set forth in the GCG Report of March 10, 2008, to govern the review of Petitions for ICB arrangements. Issues concerning the appropriate model and the variables to be included have already been resolved and are not now pending before the PUC.

46. It is untimely, after the Commission adopted the appropriate standards for an ICB arrangement, for PDS and IT&E to argue that there should be a formal rulemaking process or a "re-opening" of the proper LRIC model or standards.

47. PDS and its Consultant misapprehend the nature of the standard adopted by the Commission for review of ICB arrangements. Contrary to their assertions, Georgetown did not propose, nor did the Commission adopt, a standard LRIC model. The purpose of GCG's letter dated March 10, 2008, was "to provide a recommendation on cost and guidelines and the data to be provided by GTA whenever it concludes an ICB contract negotiation." However, Georgetown specifically indicated that it was not requiring an LRIC study to be done each time GTA applied for an ICB arrangement:

> "LRIC studies tend to be relatively costly. They require modeling of the technologically ideal network using the latest equipment prices and most efficient engineering parameters. Companies of the size of GTA usually do not have the resources to perform these studies internally and engage consultants instead. The studies are also time consuming. Our experience is they may take a month or more of effort. Regulatory approval adds more time requirements. On the other hand, a competitive bidding situation such as contemplated in Tariff Transmittal No. 11, normally requires a fast turnaround. GTA simply could not respond in a timely fashion if it had to complete a LRIC study and gain Commission approval before it could bid. Further, GTA's competitors do not face the same requirement. For these reasons, we recommend that GTA provide a demonstration that prices are above incremental cost to the Commission on request after the competitive bid has been awarded to GTA."[47]

48. Furthermore, Georgetown indicated that the Commission could be assured that prices are not anti-competitive <u>if GTA performed a more simple LRIC-like study</u>

[47] GCG Report, issued March 10, 2008, Re: Cost Support for Tariff Revisions-Individual Case Basis (ICB) Contract Filings, at p. 2.

using historical accounting data. This "rough justice" approach would avoid the need for a complex modeling exercise using the most up-to-date equipment cost inputs." GCG then proceeds to outline the specific factors that would be included in the calculation for each service being offered as an ICB.[48]

49. PDS' Consultant's letter criticizes the statement in the PUC Counsel Report that "the Commission may be assured that prices are not anti-competitive if GTA performed a more simple LRIC-like study using historical accounting data." The consultant alleges that this statement is "alarming" because historical data is almost by definition excluded from LRIC studies, which are based on forward-looking cost. The statement in Counsel's Report was taken directly as a quote from GCG March 10, 2008 Report.[49] The PUC never adopted any requirement that GTA conduct a standard LRIC study.

50. The Georgetown standards and cost pricing materials have been adopted by the Commission. The issues which PDS and its consultant seek to raise are not open for review or consideration in this proceeding.

51. Neither PDS nor IT&E were denied due process in Docket 05-03. They had, or could have had, the opportunity to comment publicly. They were fully aware of the proceedings and the scope of the proceedings.

4. Whether ICB pricing arrangements proposed by GTA violate FCC Rules

52. PDS claims that "the pricing offer made to Guam Department of Education is a matter of public record and closer review of the ICB offer shows that it specifically excluded amounts for surcharges related to Subscriber Line Charges (SLC) and Universal Service Fund (USF). PDS claims that the proposed GTA Telecom ICB arrangement cannot exclude the surcharges unless telecom plans to exclude all other GTA customers from the surcharges."[50]

53. This was a "matter of public record" contained in GTA's bid to DOE. PDS could have raised this issue either before or at the PUC hearing of April 18, 2011. It failed to do so.

[48] Id.
[49] PUC Counsel Report, GTA Docket 11-04, [In the Matter of: GTA Telecom LLC Individual Case Basis Filing], filed April 14, 2011, p. 3 [see par. 10, fn. 13].
[50] PDS Request for Reconsideration and/or Rehearing, GTA Docket 11-04, filed April 28, 2011 at p. 4.

54. In addition, PDS has not pointed to any specific FCC rule or regulation which GTA allegedly violated in its ICB arrangement. PDS claims that this "critical" information does not appear in the record of GTA Docket 11-04. Had PDS properly raised the issue, it would have appeared in the Docket.

55. GTA alleges that it has complied with the FCC requirements. Its proposal for Centrex and POTS line services does indicate placement of Subscriber Line Charges and Universal Service Fund surcharges. GTA does charge SLC and USF charges for Centrex and POTS services as required by FCC Regulations.[51]

56. PUC Counsel did present whatever material was supplied by PDS in his presentation to the PUC Commissioners on April 18, 2011. Counsel expressly presented the concern of PDS that the tariff had allegedly had not been finally approved by the ALJ.[52] Counsel presented that concern, but stated his opinion that the tariff was effective and did comply with the requirements that the Commission had noted. Had PDS brought any concerns to the Commission either before or during the meeting that the ICB pricing arrangements allegedly violated FCC rules, that concern could have been addressed by Counsel and considered by the Commission.

5. Due Diligence by PUC for ICB Filing

57. PDS contends that since this is the first ICB filing by GTA Telecom LLC, the Commission should hire "outside regulatory expertise" to review the technical filing. It is the Commission, not PDS, who determines which professional services are required by it in the performance of its duties.[53] The Commission has sufficient expertise to address the issues herein.

58. In this Motion for Reconsideration, PDS attempts to relitigate the validity and propriety of GTA's ICB Tariff. That tariff was fully approved and validated previously by the Commission in Docket 05-03. The scope of inquiry in this docket is whether GTA's proposed ICB arrangement with DOE complies with the requirements of the tariff. After careful review of the filing and cost pricing requirements established by GCG and approved by the Commission, the ALJ is satisfied that the ICB arrangement proposed by GTA with DOE is in full accordance with the requirements of the ICB tariff.

[51] GTA Telecom "Position of GTA", GTA Docket 11-04, filed May 9, 2011, at pgs. 3-4.
[52] See Transcript of April 18, 2011, PUC Meeting.
[53] 12 GCA §12002(a).

6. PDS Reply Comments to GTA Telecom

59. On May 12, 2011, PDS filed its Reply Comments to GTA Telecom Response.[54] PDS has reiterated the same issues raised in its motion, and contends that GTA has not responded to those issues.[55]

60. However, as previously stated, PDS' contentions have not been raised in a timely manner. As to the "defective filing" claim, the gist of PDS' argument is that GTA TeleGuam is not a proper bidding entity and cannot provide services to GDOE. As indicated, it is not the role of PUC to determine if parties are proper bidding entities. The contention raised by PDS in no manner demonstrates that the GTA Telecom Petition for ICB arrangement was "defective." PUC has already held that the ICB tariff is applicable to GTA Telecom LLC.

61. Contrary to PDS' contention, no further approval of the GTA Telecom ICB is required. The PUC October 3, 2008 and November 24, 2008 Orders only required filing of the tariff by GTA Telecom; no further "approval" requirement was imposed. Furthermore, by law the ICB tariff was final thirty days after its filing.

62. PDS is barred and estopped from challenging ICB costing standards that were approved by the PUC on October 3, 2008.

63. PDS has not pointed to any specific statute, rule or regulation which entitled it to "notice" of every filing therein. As previously indicated, PDS was aware of April 4, 2008, that the Commission intended to further consider ICB costing standards. PDS took no steps to protect its alleged interest.

64. Contrary to PDS' assertion, GTA does charge a Subscriber Line Charge of $9.20. See Addendum 1-Bid Form at Exhibit C [to Position of GTA.] If PDS has a complaint that FCC Rules were violated, it should file a complaint with the FCC.

CONCLUSION

65. On April 18, 2011, the Commission issued an Order approving GTA's individual case basis filing dated March 31, 2011, finding that ICB arrangement proposed by GTA with the Department of Education satisfies the three ICB tariff conditions. It found that the GTA ICB filing established, through an LRIC-like study which

[54] PDS Reply Comments to GTA Telecom LLC Response Comments, GTA Docket 11-04, filed May 12, 2011.
[55] Id.

complied with the requirements set forth in the March 10, 2008 GCG report, that that the prices per line for Centrex services offered to DOE exceeded GTA incremental costs.

66. Whether to rehear a matter is addressed to the discretion of administrative bodies such as the Public Utilities Commission. Only a showing of the clearest abuse of discretion can sustain an exception to that rule. Blas v. Guam Customs & Quarantine Agency, 2000 WL 344327 (Guam Terr.), 2000 Guam 12. Before the administrative power of reconsideration can be exercised, there is a requirement that "good cause" be shown.[56] Rule 39 of the PUC Rules for Procedure and Practice contains a similar requirement. After consideration of an application for rehearing or reconsideration, the Commission "shall determine whether good and sufficient cause has been shown by applicant for rehearing or reopening."[57]

67. PDS and IT&E have not shown good and sufficient cause for the reconsideration, reopening, or rehearing of the PUC Order of April 18, 2011. The ALJ recommends that the Commission not exercise its discretion to reconsider, rehear, or reopen this matter. Neither PDS nor IT&E have demonstrated the applicability of any ground within Rule 37 to justify a rehearing in this matter. They have not shown that PUC committed any error in approving the ICB filing of GTA, or that any of the findings or conclusions of the PUC were erroneous. No newly discovered evidence has been prone to justify reconsideration. PDS' Request for Reconsideration/Rehearing and the IT&E Petition for Re-hearing should be denied.

Dated this 13th day of May, 2011.

Frederick J. Horecky
Administrative Law Judge

[56] Blas v. Customs & Quarantine Agency, supra, at p. 8.
[57] Rule 39 of the PUC Rules for Practice and Procedure.