

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

REGULATORY PARTICIPATION
IN COMPLIANCE ACTIVITIES
UNDER CONSENT DECREE IN
FEDERAL DISTRICT COURT OF
GUAM CIVIL CASE 02-22

DOCKET 07-9



Resolution

The Guam Public Utilities Commission [*PUC*] opens a new docket to address its participation in compliance activities by the Government of Guam [*GovGuam*] under the Consent Decree in Federal District Court of Guam Civil Case No. 1-02cv-00022 [*United States of America v. Government of Guam*].

In its February 1, 2007 order in Docket 06-2, PUC, at the request of the office of the Attorney General of Guam, made recommendations regarding institutional changes in the management and operation of GovGuam's solid waste operations to empower it to meet the requirements of the Consent Decree. In that order, PUC pledged, within the scope its enabling legislation, to provide any assistance and to perform any task as may be assigned to it by the District Court under the Consent Decree.

On July 6, 2007, Federal Judge Manibusan issued a Report and Recommendations [*Report*] in the Consent Decree proceeding. Judge Manibusan recommends that PUC, in its capacity as an independent regulatory authority, be ordered by the court to review and approve: a) proposed legislation from GovGuam to convert solid waste management into a public corporation under the Consolidated Commission on Utilities; and b) petitions from the new corporation for: i) revenue bond financing; and ii) a plan for privatizing residential waste collection and billing and collection and for restructuring the new corporation's business relationship with commercial haulers. The Federal court has not yet taken action on Judge Manibusan's report. In his report, Judge Manibusan noted PUC's February 1, 2007 pledge to provide assistance consistent with its role as an independent regulatory body.

On July 23, 2007, Executive Order 2007-09 was promulgated, which designates PUC as a member of the Solid Waste Law Review Commission [SWLRC]. The SWLRC is created and tasked by the Executive Order with: a) establishing solid waste management legislative policy; b) drafting legislation to reconstitute the Solid Waste Management Division into an entity that can effectively manage

solid waste management on Guam; and c] preparing a petition and supporting legislation for revenue bond financing for solid waste management requirements. The Executive Order is in direct conflict with the Report¹.

On August 6, 2007 PUC chairman Terrence Brooks, in a letter to Governor Camacho and Speaker Forbes [*copy attached*], expressed concern that PUC's participation in SWLRC activities would conflict with: a] the independent regulatory duties, which Judge Manibusan has recommended that the Federal District Court order PUC to undertake; and b] Guam public policy that a strong public interest is served by maintaining a strong, independent PUC, which is independent of the Executive and Legislative branches².

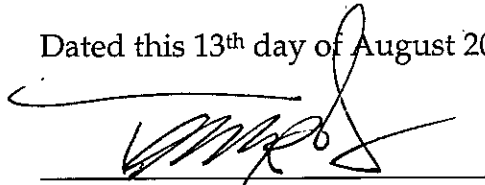
After careful review of the Report, Executive Order 2007-09 and PUC's February 1, 2007 order and after discussion and on motion duly made, seconded and carried by the affirmative vote of the undersigned commissioners, the Guam Public Utilities Commission **RESOLVES THAT:**

1. PUC's participation as a member of the SWLRC would inconsistent with:
a] its responsibilities and status under Guam law as an independent regulatory commission: b] its pledge to provide independent regulatory service to the District Court of Guam; and c] Judge Manibusan's recommendation that PUC be ordered to review and approve petitions from GovGuam concerning compliance activities.
2. Consistent with clear Guam public policy for a strong, independent regulatory commission, PUC must respectfully decline to serve on the SWLRC.
3. In the event that the Report is not adopted by the District Court of Guam, then PUC will reconsider this resolution, consistent with its strong interest in contributing its services toward the goal of empowering GovGuam to meet its obligations under the Consent Decree.
4. A copy of this Resolution shall be transmitted to the Governor and to the Speaker of the 29th Guam Legislature.

¹ The Executive Order states "*the U.S. District Court of Guam should not determine for the government of Guam what type of entity the Solid Waste Management Division should be converted into...*"

² See Public Law 26-18

Dated this 13th day of August 2007.



Terrence M. Brooks

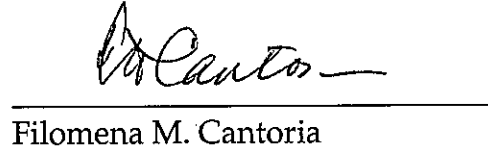


Edward C. Crisostomo

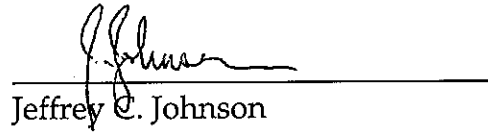
Rowena E. Perez



Joseph M. McDonald



Filomena M. Cantoria



Jeffrey C. Johnson

**PUBLIC UTILITIES COMMISSION
OF GUAM**

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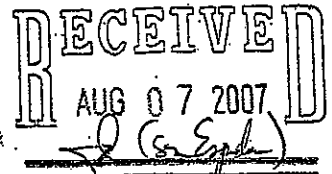
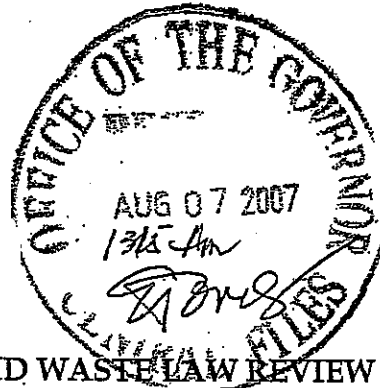
Office of the Speaker
MARK FORBES
Date: 8/7/07
Time: _____
Rec'd by: Janel
Print Name: _____
Harry M. Boertzel
Administrative Law Judge

Lourdes R. Palomo
Administrator

August 6, 2007

VIA HAND DELIVERY

The Honorable Felix P. Camacho
Governor of Guam
Office of the Governor of Guam
P.O. Box 2950
Hagatna, Guam 96932



**RE: EXECUTIVE ORDER 2007-09: SOLID WASTE LAW REVIEW
COMMISSION**

Dear Governor Camacho:

Executive Order 2007-09 designates the Guam Public Utilities Commission [PUC] as a member of the Solid Waste Law Review Commission [SWLRC]. The SWLRC is created and tasked by the Executive Order with: a) establishing solid waste management legislative policy; b) drafting legislation to reconstitute the Solid Waste Management Division into an entity that can effectively manage solid waste management on Guam and c) preparing a petition and supporting legislation for revenue bond financing for solid waste management requirements.

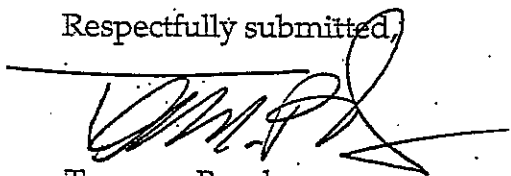
While PUC is respectful and would like to be supportive of the SWLRC's mission, it has serious concerns whether its participation on the SWLRC would compromise the independent regulatory role, which Judge Manibusan has recommended PUC be ordered to assume in his July 6, 2007 Report and Recommendation in Federal District Court of Guam Civil Case No. 1-02cv-00022 [United States of American v. Government of Guam]. In his Report, Judge Manibusan has recommended that the Federal District Court of Guam order PUC, in its capacity as an independent regulatory authority within defendant Government of Guam, to review and approve the very work product, which the SWLRC is tasked with developing under the Executive Order. Judge Manibusan's report recommends that PUC be ordered to review and approve: a) proposed legislation from the Government of Guam to convert solid waste management into a public corporation under the Consolidated Commission on

Utilities; and b] petitions from the new public corporation for: i] revenue bond financing; and ii] a plan for privatizing residential waste collection and billing and collection and for restructuring the new corporation's business relationship with commercial haulers.

The Government of Guam has emphasized, most recently in Public Law 26-18, that *"a strong public interest is served by maintaining a strong, independent Public Utilities Commission of Guam, which is independent of the Executive and Legislative Branches. Federal legislation, which authorized the transfer of the U.S. Navy's electric power assets to the Guam Power Authority under the GPA - Navy customer service agreement, was conditioned on Guam's creation of an independent public utilities commission. Moreover, GPA's bond indenture agreements require the existence of an independent Commission."* Given the strong Guam public policy in maintaining PUC's independent regulatory stature and given Federal Judge Manibusan's recommendation that PUC be ordered to provide independent regulatory services to the Federal District Court of Guam, PUC must carefully examine whether it would be appropriate to participate in the SWLRC's activities.

PUC has scheduled a business meeting for August 13, 2007 to consider this serious matter. PUC will report to you on August 14, 2007 regarding the outcome of this deliberation. Please accept my assurance that PUC remains dedicated to contributing its services toward the goal of empowering the Government of Guam to meet its obligations under the Consent Decree.

Respectfully submitted,



Terrence Brooks
Chairman

Cc: Mark Forbes, Speaker
Senator Jim Espaldon