

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

REGULATORY REVIEW OF GWA  
INTERIM FINANCIAL PLAN UNDER  
FEDERAL COURT ORDER IN CIVIL  
CASE 02-35

DOCKET 04-01



ORDER

*Background*

The Guam Public Utilities Commission [PUC] is responsible under sections 28 and 29 of the Stipulated Order For Preliminary Relief in United States District Court - Territory of Guam Civil Case No. 02-35 [USA v. Guam Waterworks Authority and Government of Guam - the "Federal Order"] to review and approve a Guam Waterworks Authority [GWA] interim financial plan [Interim Plan]. The purpose of the Interim Plan is to enable GWA to fund its timely compliance with the Federal Order during the 23-month period [4/04-2/06] until a permanent financial plan is approved by PUC in early 2006.

On January 29, 2004 GWA filed a petition with PUC, which purported to present for regulatory consideration an Interim Plan and a petition for interim rate relief to be effective April 1, 2004. Although PUC's administrative law judge [ALJ] found that GWA petition failed to meet minimum filing requirements established by PUC, he ruled, with the concurrence of PUC's regulatory consultant Georgetown Consulting Group [GCG], that regulatory consideration of the petition would proceed. On March 5, 2004, GCG filed its report and analysis of the GWA petition. During the period March 12, 2004 to March 19, 2004 GWA and GCG meet in regulatory conferences with ALJ to discuss the differences in the their positions regarding the Interim Plan. As a result of these conferences, GWA and GCG executed a joint stipulation [Attachment A - "Stipulation"] by which they recommended an interim package of rate relief for GWA and a protocol under which they would work together to prepare and finalize the Interim Plan for PUC review during the September 2004 regulatory session.

Pursuant to due and lawful notice provided by GWA and PUC, three public hearings were held on the GWA petition and on the Stipulation [March 19: Hagatna; March 22: Agat; and March 23: Dededo]. Public testimony at these hearings focused on alternatives to the proposed rate increase [privatization, Federal financial aid; Federal receivership; cost savings; accuracy of meter readings; receivable collection; and the need for GWA to demonstrate tangible system improvement in concert with rate relief].

On March 30, 2004, PUC met at a duly noticed and convened meeting to consider the Stipulation and the comments, which were presented at its three public hearings. After discussion and deliberation on the record herein and on motion duly made, seconded and carried by the affirmative votes of the undersigned commissioners, PUC makes the following determinations:

*Determinations*

1. All rulings of the ALJ during the course of this proceeding should be confirmed and ratified. All motions not heretofore granted or denied should be denied.
2. The parties should be directed, under ALJ oversight, to undertake the tasks identified in attachment A to the Stipulation under the schedule contained therein, subject to such amendments as ALJ may consider appropriate. The Interim Plan should evolve under ALJ oversight during the next six months in a dynamic, interactive regulatory process between GWA, PUC and other interested parties.
3. Integral components of the Interim Plan include: a] a reorganization plan for GWA's finance department, including implementation of the recommendations made by GCG's November 2001 GWA Revenue Cycle Audit; b] a debt retirement plan; c] restructured user fees; d] a receivables collection plan, which shall include, if necessary, judicial proceedings against the Government of Guam to collect sums due to GWA; e] a funding analysis component to establish an appropriate blend of revenue sources consistent with determination 6 below, which will be prepared in consultation with GWA's financial advisor [Bank of America Securities]; and f] a report on the Interim Plan projects and activities, in compliance with the Minimum Filing Requirements.
4. PUC should reserve its continuing jurisdiction, under GWA's existing 12 GCA 12001.2 public notice, to review the Interim Plan, including the consideration of the need for additional rate relief during the September 2004 regulatory session. Accordingly, any further rate proceedings under this docket should only require public notice under 12 GCA 12016.
5. Pursuant to 12 GCA 12001.2, PUC has taken into account the results of its staffing studies of GWA [Docket 01-07] in determining whether to approve GWA's rate petition in this proceeding.

6. The financial requirements, which must be funded during the Interim Plan, include the prudent and reasonable cost of: i] the compliance activities and deliverables mandated by the Federal Order during the interim term<sup>1</sup>; ii] other anticipated expenses; iii] the retirement of outstanding debt; iv] expected debt service, consistent with a debt service ratio established by PUC; and v] the financial reserves required by Federal Order section 32.

Interim Plan funding should include an integrated blend of rate relief, external financing<sup>2</sup>, receivables collection, and third party relationships<sup>3</sup>, which is reasonably sufficient to ensure GWA's compliance with the requirements of the Federal Order and which would enable GWA to repay its debts, to finance its obligations and capital improvement needs and to cover its reasonable operating expenses, all with the least possible impact on GWA ratepayers.

8. PUC has a regulatory duty to review and approve each funding element of the Interim Plan before it is implemented by GWA. The contract review protocol, as established by PUC Order dated December 16, 2003 shall govern PUC's review of third party relationships and external financing.<sup>4</sup> Upon request PUC will provide GWA lenders and vendors with regulatory comfort that GWA will be granted appropriate regulatory relief to enable it to meet its financial and contractual commitments.
9. An initial rate award of 7.5% on current revenues [*excluding the Navy-GPA surcharge*] should be awarded, effective for meters read on and after April 1, 2004, subject to review during the September 2004 PUC regulatory session. Pursuant to the terms of 12 GCA 12004, this increase should not be applicable to GWA water and wastewater lifeline rates.

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<sup>1</sup> Attachment B summarizes the list of projects and activities, which GWA must undertake pursuant to the Federal Order.

<sup>2</sup> The term "external financing" includes vendor financing, short-term borrowing and long-term borrowing.

<sup>3</sup> The term "third party relationships" includes public private partnerships, BOTs, joint operating agreements and privatization activities.

<sup>4</sup> PUC has ruled by its April 10, 2003 Order in Docket 02-02 that project and activity procurements as required by the Federal Order shall not require PUC review and approval under 12 GCG 12004. The logic for this order was that duplicative review of should not be required of projects and activities, which under the EPA Order are subject to EPA review and approval. However, the order should not apply to external financing and third party relationships, as defined in footnotes 1 and 2 *supra* as they directly relate to the interim financial plan, for which PUC under EPA Order section 28 has been given sole primary authority.

The impact of this rate relief to GWA's existing tariffs is depicted in *Attachment C*.

10. GWA seeks rate relief to cover the mandate under P.L. 27-29 that it fund the FY04 expense of GWA and PUAG retirees' supplemental annuities, COLA and the government's portion of retirees' insurance premiums. After careful consideration of the record herein, PUC finds that: a. there is a substantial question of law regarding the legality of this mandate, on which GWA should promptly seek judicial guidance; b. retirees should not be deprived of their insurance coverage during the period that GWA obtains judicial guidance; c. it is unreasonable to burden GWA ratepayers with an additional rate increase to fund the expense of FY04 retiree supplemental annuities and COLA during the period that GWA obtains judicial guidance; and d. a separate funding mechanism should be established to enable GWA to fund the insurance premium expense.

The following protocol should be adopted to deal with this revenue requirement: a] PUC should award rate relief, in the form of a 1.89% increase on current revenues *[excluding the Navy-GPA surcharge and lifeline revenues]* to be effective for meters read on and after April 1, 2004, which should appear as a separately identified surcharge on customer bills; b] GWA should be authorized and directed to use the surcharge proceeds *only* to cover the outstanding balance of the insurance premium requirement under P.L. 27-29, provided that it receives written certification from the Guam Retirement Fund that the funds will be used only for this purpose *[a copy of said certification shall be filed with PUC]*; c] On or before May 1, 2004, GWA should initiate proceedings for declaratory relief in a court of competent jurisdiction to test the legality of the requirements imposed on it by P.L. 27-29; and f] The surcharge should terminate when either the outstanding balance of GWA's obligation for retiree insurance premiums under P.L. 27-29 has been fully funded or there is a judicial decision that the P.L. 27-29 mandate is invalid.

11. GWA's fire hydrant tariff, the payment of which is the responsibility of the Government of Guam, should be reduced from \$25 to \$7.50 per month per hydrant effective April 1, 2004.
12. GWA should be ordered to pay for PUC's expenses, including, without limitation, consulting and counsel fees and expenses and the expenses of conducting the hearing process.

## Order

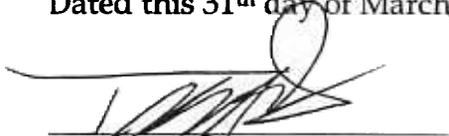
In furtherance of the above 12 determinations and in the exercise of our judgment, after considering the record, ALJ's recommendations and the arguments, reasoning and position of the parties and the public comments, and for good cause shown, PUC by the affirmative vote of the undersigned commissioners hereby **ORDERS THAT**:

1. All rulings and orders of the ALJ during the course of this proceeding are confirmed and ratified. All motions not heretofore granted or denied are denied. No other matters currently require discussion.
2. GWA and GCG are directed, under ALJ oversight, to undertake the tasks identified in attachment A to the Stipulation under the schedule described therein, subject to such amendments as ALJ may consider appropriate.
3. PUC reserves its continuing jurisdiction to review the Interim Plan and to award such additional rate relief as GWA may reasonably require there under, without additional GWA notices under 12 GCA 12001.2. Accordingly, any further rate proceedings incident to the Interim Plan shall be noticed only under 12 GCA 12016.
4. An initial rate award of 7.5% on current revenues *[excluding the Navy-GPA surcharge]* is hereby awarded, effective for meters read on and after April 1, 2004, subject to review during the September 2004 PUC regulatory session. Pursuant to the terms of 12 GCA 12004, this increase shall not be applicable to GWA water and wastewater lifeline rates.
5. GWA is awarded rate relief, in the form of a 1.89% increase on current revenues *[excluding the Navy-GPA surcharge and lifeline revenues]* effective for meters read on and after April 1, 2004, which shall appear as a separately identified surcharge on customer bills. GWA is authorized and directed to use the surcharge proceeds *only* to cover the outstanding balance of the government's portion of its retirees' insurance premium expense under P.L. 27-29, provided that it receives written certification from the Guam Retirement Fund that the funds will be used only for this purpose *[a copy of said certification shall be filed with PUC]*. On or before May 1, 2004, GWA shall initiate proceedings for declaratory relief in a court of competent jurisdiction to test the legality of the requirements imposed on it by P.L. 27-29. The surcharge shall terminate when either the outstanding balance of GWA's obligation for retiree insurance premiums under

P.L. 27-29 has been fully funded or there is a judicial decision that the P.L. 27-29 mandate is invalid.

6. GWA's fire hydrant tariff, the payment of which is the responsibility of the Government of Guam, shall be reduced from \$25 to \$7.50 per month per hydrant effective April 1, 2004.
7. GWA shall strictly observe the requirements of PUC's contract review protocol [PUC December 13, 2003 Order - Docket 00-04], which requires, within the context of this Order, that GWA obtain PUC approval before commencing the procurement process for external financing and third party relationships.
8. GWA shall pay for PUC's expenses, including, without limitation, consulting and counsel fees and expenses and the expenses of conducting the hearing process.

Dated this 31<sup>th</sup> day of March 2004.

  
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