



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:

GTA Docket 18-02

ORDER

Request for Investigation of Certain Transfers of Money from the Enhanced 911 Emergency Reporting System Fund.

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Order dated August 30, 2018, approving the request of Senator Telenia Nelson, Chairperson of the Utilities Committee, that the PUC investigate certain transfers of funds from the E911 Fund to the General Fund of the Government of Guam.¹
2. Senator Nelson's Request for Investigation alleged that certain transfers of E911 funds to the General Fund violated Guam law by allowing the use of E911 funds for purposes other than those authorized by law, which include the upgrade and modernization of Guam's Emergency response system.²
3. The Request alleged that "\$4 million was taken from the E911 Fund apparently without any notification to the Public Utilities Commission or *I Liheslaturan Guahan*."³
4. Under Title 12 GCA, Article 3, "911" Surcharge (hereinafter referred to as "the Act" or the Surcharge Law), the PUC is granted broad regulatory authority to determine whether "any person or entity" has violated any provision of the "Act".⁴
5. The PUC instructed its Administrative Law Judge to conduct an investigation of the relevant facts concerning transfers of E911 funds to the General Fund, to determine whether such transfers violated the Act, and to consider appropriate remedies.⁵
6. The ALJ submitted his Report on the E911 Fund Transfer Investigation, dated January 15, 2019, to address the issues set forth in PUC Order of August 30, 2018.

¹ Letter from Senator Telena Cruz Nelson to PUC Chairman Jeffrey Johnson, dated June 26, 2018, concerning Transfers of Money from the Enhanced 911 Emergency Reporting System.

² Id.

³ Id.

⁴ 12 GCA §12302(a).

⁵ PUC Order, GTA Docket 18-02, dated September 30, 2018; see also 12 GCA §12302(c).

BACKGROUND - THE FACTS

7. The PUC adopts the BACKGROUND - THE FACTS as set forth in the ALJ Report, and the Analysis/Recommendations contained in the Report.

DETERMINATIONS

8. The four transfers of funds by the Department of Administration from the E911 fund to the General Fund between FY2014 through FY2017 were in violation of 12 GCA §12301 at *et. seq.*, Article 3, "911" Surcharge. The transfers were contrary to both the intent of the law and the specific prohibitions in the law.
 - A. E911 FUNDS ARE NOT MAINTAINED "SEPARATE" AND "APART" FROM THE GENERAL FUND. E911 FUNDS MAY ONLY BE UTILIZED FOR THE EXPRESS STATUTORY PURPOSES. DOA HAS NO AUTHORITY TO TRANSFER E911 FUNDS TO THE GENERAL FUND. NO E911 FUNDS CAN BE EXPENDED WITHOUT AN APPROPRIATION BY THE LEGISLATURE AND ITS EXPRESS APPROVAL.
9. Initially, one must consider the nature and intent of the E911 Fund. The 911 surcharge itself was created by the Guam Legislature through Public Law 25-055 on June 30, 1999, **"to fund the just and reasonable expenses of operating and maintaining the "911" system..."**.⁶
10. The Guam Public Utilities Commission established the 911 surcharge in the amount of \$1.00 per month per subscriber line and per line number for commercial mobile radio service.⁷ From the inception of the surcharge, the E911 Funds were collected by telecom companies from subscribers for the specific purpose of operating and maintaining the "911" system. When the E911 Fund was created, neither the Legislature nor the PUC intended that the E911 funds would be used by the Government of Guam for expenditures other than those directly related to the operation and maintenance of the 911 System.
11. There is also no intent in the applicable statutes that officials of the Government of Guam would have the discretion to utilize E911 for purposes other than those specifically set forth. Transfers of E911 funds to the General Fund are directly contrary to the specific legislative intent of 12 GCA § 12302(d).

⁶ 12 GCA § 12302(d).

⁷ 12 GCA § 12302(c).

12. The evidence in this matter demonstrates that nearly \$4 Million transferred by the Department of Administration to the General Fund was never used for the purpose mandated by the statute, the operation and maintenance of a 911 system. E911 funds can never be used for a purpose contrary to that expressly authorized in the law.

13. 12 GCA § 12304(b) states that the Enhanced 911 Emergency Reporting System Fund is a fund **“created, separate and apart from all other funds of the government...”**. The “E911 Fund” is not fully maintained “separate and apart” from the General Fund of the Government of Guam. The E911 funds are actually deposited into the General Fund, so that the funds of these accounts, as well as others, are commingled together:

DOA reminds that this fund does not have its own bank account, nor is it required to have one. Therefore, all transactions go through the General Fund Account.⁸

Although DOA contends that it is not required to have a separate account for E911 Funds, there is a legitimate issue as to whether the E911 Fund is truly separate and apart if its funds are all within the General Fund Account.

14. The inclusion of E911 funds in the General Fund Account could exacerbate the possibility that such funds will be used for purposes other than E911. E911 funds should be maintained in a separate bank account. The E911 Fund, as currently managed and operated, may not be consistent with 12 GCA § 12304(b).

15. Other provisions of law also prohibit the transfer of E911 funds for expenses other than those related to E911. Under the law, the fund was only created to provide a source of funding **“for costs associated with an Enhanced 911 Emergency Reporting System.”**⁹ The transfers of E911 funds in this case allowed for such funds to be used for funding of costs other than those associated with an Enhanced 911 Emergency Reporting System, in violation of 12 GCA § 12304(b).

16. Further in this regard, 12 GCA § 12304(c) requires that all 911 surcharges collected by each LEC, VOIP, and CMRS provider **shall be deposited in the fund.**¹⁰ At present E911 funds are deposited in the General Fund, which may not be consistent

⁸ Email from the Governor of Guam’s Chief Legal Counsel Sandra C. Miller to PUC ALJ Frederick Horecky, dated October 29, 2018.

⁹ 12 GCA § 12304(b).

¹⁰ 12 GCA § 12304(c).

with this provision. The provision implies the existence of a separate fund for E911 deposits.

17. The law is very specific as to the use of E911 funds: “the money collected and the interest earned *shall* be used by the Department *solely* for enhanced 911 equipment and system costs as described in this Act and for the following:
 - (1) operations of the 911 call/dispatch center,
 - (2) the purchase/lease/maintenance of E911 hardware/software, to include video security cameras and related equipment, supplies, installation and maintenance services; and
 - (3) system/engineering services related to the installation, maintenance and upgrade of E911 hardware/software.¹¹
18. The transfers of E911 funds by the Department of Administration violated 12 GCA § 12304(d) by allowing E911 funds to be used for purposes other than those E911 purposes expressly set forth in 12 GCA § 12304(d).
19. 12 GCA § 12304(e) also provides that: “notwithstanding any other provision of law, **no monies in the Fund shall be expended without appropriation by I Liheslatura.**”¹² The Department of Administration violated this provision by allowing the transfer and expenditure of funds from the E911 Fund for purposes other than E911 without appropriation by the Legislature.
20. Finally, “notwithstanding any other provision of law, **no monies in the Fund shall be expended for purposes other than provided for in this Section, without the expressed approval of I Liheslatura.** The fund is *exempt from any transfer authority.*”¹³ Unless the Legislature approves an expenditure, the Department of Administration and Government of Guam are prohibited from expending E911 funds for any other purpose. The Legislature never approved the expenditures made by the Department of Administration for non-E911 purposes.
21. The facts indicate herein that nearly \$4 million was transferred from the E911 fund and expended for purposes other than those expressly provided for in 12 GCA § 12304. There is no indication that the Guam Legislature approved these transfers of approximately \$4 million, as referenced in the testimony of Acting Fire Chief San Nicolas and the letters of Senator Nelson, FCC Commissioner O’Rielly, and Speaker Cruz.

¹¹ 12 GCA § 12304(d).

¹² 12 GCA § 12304(e).

¹³ 12 GCA § 12304(f).

22. The transfer of any E911 funds is clearly inconsistent with, and in violation of, numerous provisions of 12 GCA § 12304. Not only is the transfer of E911 funds from the E911 Fund violative of the purpose for which the E911 fund was established, and in derogation of legislative authority, the enhanced E911 system, which GFD so urgently needs, could have been purchased with E911 funds accumulated in prior years had such funds not been transferred out of the E911 Fund.
23. There are clearly needs for which transferred funds could have been spent to improve the E911 system, such as for an adequate and functional recording system to record E911 calls, which has not existed for many years. In addition, to date, there has been no progress in obtaining the equipment for a new E911 System. On December 17, 2018, the Guam Fire Department cancelled its RFP for the Design, Installation, and Maintenance of a Next Generation 911 System.¹⁴ The RFP was recently reissued, thus starting the process over again from the beginning.
24. As pointed by FCC Commissioner O’Rielly in his June 20, 2018 Letter to the Governor:

“beyond the transition to NextGen 911, budgetary shortfalls can lead to longer wait times, delayed emergency responses, greater public safety risk to Guam’s citizen’s, and lower morale among emergency personnel.”

B. TRANSFERS OF FUNDS FROM THE E911 FUND TO THE GENERAL FUND WERE NOT AUTHORIZED AS “UNAPPROPRIATED OR LAPSED” FUNDS. THE DEPARTMENT OF ADMINISTRATION, GOVERNMENT OF GUAM, AND PRIOR DIRECTORS OF ADMINISTRATION BENITA MANGLONA AND CHRISTINE BALETO, VIOLATED 12 GCA, ARTICLE 3, “911” SURCHARGE, BY TRANSFERRING E911 FUNDS TO THE GENERAL FUND.
25. Section 22 of Public Law 34-42, Chapter XIII, does not authorize the transfers of E911 funds that occurred between FY2014 and FY2017. It has been argued that transfers from the special fund known as the E911 Fund was authorized on the grounds that appropriations for the E911 Funds were “not in conformance with the statutory uses of said funds”, and were therefore “authorized for use in FY2018.” The theory is that “unappropriated” or “lapsed” E911 funds were available for use

¹⁴ NOTICE OF CANCELLATION, dated December 17, 2018, from Deputy Fire Chief Joey C. San Nicolas to All Registered Potential Offerors, cancelling RFP No. GFD-001-2018: “Procurement of Professional Services for the Design, Installation, and Maintenance of a Next Generation 9-1-1 System.

in FY2018. However, nothing suggests that the E911 funds appropriated for FY2018 were “not in conformance with the statutory uses of said funds.”

26. As Speaker Benjamin J.F. Cruz pointed out in his letter of June 22, 2018, Section 13 of Public Law 34-42, Chapter XIII, provided that the Guam Fire Department was authorized to expend **all revenues** collected by its designated Special Fund for “the purposes authorized by statute for those funds...”. Thus, all funds appropriated for the E911 Fund were authorized for use in FY2018 in conformance with the statutory uses of such funds.
27. Allowance of transfers of E911 funds for purposes other than the operation and maintenance of the E911 system would seriously undermine the intent and goals of 12 GCA § 12301 *et. seq.*, “911” Surcharge. In any event, the specific restrictions on the expenditure of E911 funds only for operation and maintenance of the E911 system is controlling over, and paramount to, the general language of Public Law 34-42, Chapter XIII, regarding authorization to expend special funds for FY 2018,
28. There is a four- step process by which the PUC performs its regulatory duties in determining violations of 12 GCA §12301 *et. seq.*, Article 3, “911” Surcharge, and determining what corrective action should be taken:
 - (1) The PUC determinates whether any person or entity” has violated any provision of the Act;
 - (2) If the PUC determines that there has been a violation of the “911” Surcharge law, it is required to give “proper notice” and a “reasonable opportunity to cure” to “any person or entity” which it determines has violated the law.¹⁵ “Cure” means to remove or remedy a condition or defect that exists. ¹⁶ In this case, a “cure” would be a remedy for the unlawful transfers of E911 Funds that occurred;
 - (3) If any persons or entities who have violated the Act fail to “cure” such violations, after a “reasonable opportunity” to do so, then the Commission determines whether a violation should be referred to the Attorney General’s Office (referral is discretionary with the PUC);¹⁷ and
 - (4) Any person or entity who has the responsibility of complying with the Act and fails to cure such violation “shall be fined a civil penalty *not* to exceed Ten Thousand Dollars (\$10,000.00) per infraction.

¹⁵ 12 GCA §12311(a).

¹⁶ Def. of “cure” in Black’s Law Dictionary, 2nd ed.

¹⁷ 12 GCA §12311(b).

29. There have been violations of numerous provisions of 12 GCA §12301 *et. seq.*, as previously set forth in the Determinations Section of this Order. The issue arises in this matter as to which “person” or “entity” should be determined to have violated the law by improperly or illegally transferring E911 Funds, and to give each such person or entity an opportunity to “cure” the violation or violations.
30. Each of the transfers of E911 funds to the General Fund were authorized by past Directors of the Department of Administration. Benita Manglona was the Director of Administration when the FY2014 Fund transfers was made. Tony Blaz was the Director of Administration when the FY 2015 Fund transfer was made. Christine Baleto was the Director of Administration when the FY 2016 and 2017 E911 Fund transfers were made.¹⁸
31. For FY 2014 through 2016, there are memoranda from the Fire Chief to the Director of Administration acknowledging that E911 funds were permanently transferred to the General Fund. See Exhibits 1-3 attached to the ALJ Report. Each Director was clearly aware that the transfers had been made. On January 9, 2018, Director of Administration Christine Baleto signed a memorandum giving notice that a permanent transfer had been initiated for E911 funds to the General Fund in the amount of \$839,583.00. See Exhibit 4 attached to the ALJ Report.
32. The Department of Administration Journal Voucher included within Exhibit 1 indicates that \$1,839,854.00 was transferred from the E911 Fund to the General Fund effective September 30, 2014. Benita Manglona was Director of Administration when this transfer occurred.
33. The Department of Administration Journal Voucher included within Exhibit 2 indicates that \$712,500.62 was transferred from the E911 Fund to the General Fund effective September 30, 2015. Tony Blas was Director of Administration when the transfer occurred.
34. The Department of Administration Journal Voucher included within Exhibit 3 indicates that \$488,779.00 was transferred from the E911 Fund to the General Fund effective September 30, 2016. Christine Baleto was Director of Administration when the transfer occurred.

¹⁸ An email from Governor’s Chief Legal Counsel Sandra Miller to PUC ALJ Horecky dated December 31, 2018, indicates the following dates for Employment of prior Directors of Administration:
“You also asked DOA to confirm the dates of employment of its previous directors. Here are the dates:
Benita Manglona: June 20, 2011 to February 1, 2015;
Tony Blaz: February 9, 2015 to January 30, 2016;
Kathy Kagigi (Acting): February 1, 2016 to February 23, 2016;
Christine Baleto: February 23, 2016 to February 2, 2018.”

35. The Department of Administration Journal Voucher included within Exhibit 4 indicates that \$839,582.81 was transferred from the E911 Fund to the General Fund effective September 30, 2017. Christine Baleto was Director of Administration when the transfer occurred.
36. Exhibit "5" attached to the ALJ Report is a "Enhanced 911 Emergency Report System FY2013 to FY 2017 Details". The Report was provided to the ALJ by the Governor's Chief Legal Counsel on October 26, 2018. It further indicates that some E911 revenues were permanently transferred from the E911 Fund and were not used for E911 purposes.¹⁹
37. Director of Administration Edward Birn became Director in 2018; there is no indication that E911 funds were transferred to the General Fund during his Directorship.
38. The laws governing the Department of Administration and its Directors establish that it is appropriate to hold such Directors responsible for transfers of E911 Funds that occurred during their terms. The Director of Administration "is the head of the Department of Administration."²⁰ Each division and organizational unit within the Department "shall be subject to the supervision and direction of the Director..."²¹
39. Furthermore, the Director administers the Department²²; he "shall exercise and discharge the powers and duties of the Department through such divisions or other organizational units as he may establish pursuant to this Division or as otherwise provided by law..."²³. The Director "shall enforce the provisions of this Division and of any other laws imposing any power, duty or other function upon the Department..."²⁴
40. Directors Manglona, Blaz and Baleto violated 12 GCA §12301 *et. seq.*, Article 3, "911" Surcharge by transferring E911 Funds to the General Fund. However, Director Blaz passed away in 2016.

¹⁹ Email from Sandra C. Miller, Chief Legal Counsel to the Governor, to PUC ALJ Frederick Horecky, dated October 29, 2018.

²⁰ 5 GCA §3101.

²¹ 5 GCA §20105.

²² 5 GCA §20106(a).

²³ 5 GCA §20106(b).

²⁴ 5 GCA §20106(c).

41. The Department of Administration is an entity “within the Executive Branch of the government of Guam.”²⁵ The Governor of Guam is responsible for appointing the Head of an executive agency such as the Department of Administration.²⁶ The ALJ concludes that the Government of Guam has violated 12 GCA §12301 *et. seq.*, Article 3, “911” Surcharge, through the acts of its agency, the Department of Administration, and its agent, the Director of Administration, in permanently transferring E911 Funds to the General Fund.
42. On the other hand, Fire Chief San Nicolas is not responsible for the transfers of E911 funds to the General Fund, as he only acknowledges that such funds were transferred and has no personal responsibility for actually transferring such funds.

C. THE PUC REJECTS THE JUSTIFICATIONS OFFERED BY THE
DEPARTMENT OF ADMINISTRATION FOR THE TRANSFERS OF E911
FUNDS; SAID TRANSFERS WERE ILLEGAL.

43. On December 31, 2018, the Governor’s Chief Legal Counsel submitted a “revised” draft ALJ Report on behalf of the Department of Administration.²⁷ A true and correct copy thereof is attached to the ALJ Report as Exhibit “6”. The revised ALJ Report, as proposed by DOA, altered the draft ALJ Report to conclude that there was no violation by DOA resulting from the “transfer” of funds from the E911 Fund to the General Fund and expenditure of E911 funds for purposes with no relation to E911.
44. The revised ALJ Report would find that the Department of Administration did not violate 12 GCA § 12301 *et. seq.* by virtue of the four transfers of funds from the E911 Fund to the General Fund between FY2014 through FY2018.²⁸
45. DOA claims legal authority to transfer funds from the E911 Fund to the General Fund as “interfund receivables” under GASB Statement No. 34. “GASB” refers to the Government Accounting Standards Board. The Board established generally accepted accounting principles for state and local government entities to “guide the preparation of external financial reports of those entities.”²⁹
46. DOA points out that Guam law requires the Government of Guam to comply with the GASB standards. 5 GCA §22204 provides: “Unless otherwise found to be

²⁵ 5 GCA §3101.

²⁶ 48 U.S.C. §1422c

²⁷ Email from Governor’s Chief Legal Counsel Sandra Miller to PUC ALJ Frederick Horecky re: Response to draft ALJ Report, dated December 31, 2018.

²⁸ *Id.*

²⁹ <https://searcherp.techtarget.com/definition/GASB>

impracticable, such rules and regulations shall provide that the principles of the governmental accounting and reporting, classification of funds and accounts, and accounting terminology shall conform to those recommended by the National Committee on Governmental Accounting.”

47. 5 GCA §22204 refers to accounting and reporting standards for the Government. GASB 34 is an accounting standard as to how a local government reports revenues, receipts and other transactions. GASB does not, nor does it purport to, create independent legal authority for transfers or expenditures of E911 funds that violate Guam law and 12 GCA § 12301 *et. seq.*
48. DOA further claims that, under GASB 34, “an *interfund receivable* is a legally permissible short-term loan made between individual funds where monies are transferred between the funds, usually for working cash purposes.” However, interfund receivables of E911 funds are not authorized under Guam law and violate the express provisions of the E911 Surcharge Law, 12 GCA § 12301 *at et. seq.* Transfer authority for E911 Funds is expressly prohibited under the Surcharge Law.
49. The transfers by DOA of E911 Funds out of the E911 Fund to the General Fund violate numerous provisions of the E911 Surcharge Law. The law requires that all 911 surcharges “*shall* be deposited in the Fund.”³⁰ Nothing in the surcharge law allows “interfund” transfers of E911 funds from the E911 fund to the General Fund.
50. In addition, DOA is only authorized to use money collected from the surcharges *solely* for enhanced 911 equipment and system costs.³¹ There is no authorization or authority for DOA to *loan* money from the E911 fund to the General Fund. In DOA’s view, GASB 34 authorizes it to “pay an interfund loan withdrawn from a special fund.” No provision of the Surcharge Law or other law of Guam authorizes DOA to use E911 funds for “loans.” Numerous provisions of the Surcharge Law expressly provide that E911 funds may only be used for purposes related to the operation and maintenance of E911 system.
51. DOA maintains inconsistent positions on the “transfer authority” of the Governor. Initially it claims that the Governor is authorized to transfer funds from a special fund to the General Fund, citing 4 GCA § 4103.1. Subsequently, however, DOA’s position claims that the Governor’s transfer authority is not applicable to E911 funds as “the E911 Fund is primarily funded by telecom surcharge collections and not by budgetary appropriations to which the transfer authority would apply.”

³⁰ 12 GCA § 12304(c).

³¹ 12 GCA § 12304(d).

52. 5 GCA § 4103.1 does not authorize the Governor to transfer funds from the E911 Fund to the General Fund. 12 GCA § 12304 expressly *exempts* the E911 Fund from any transfer authority of the Governor. Where a specific statute appears to conflict with a general statute, the more specific statute prevails. *In re I Mina' Trentai Dos Na Liheslaturan Guahan*, 2014 Guam 24 ¶12. By prescribing the uses for E911 Funds, the Legislature never contemplated that E911 funds would be transferred to the General Fund for non-E911 uses.
53. Under the DOA “loan” theory, DOA would be entitled to transfer funds from the E911 Fund to the General Fund for any purpose and at any time it felt that the General Fund needed a “loan.” Administrative power to loan E911 Fund would frustrate the statutory purpose that E911 funds only be used to maintain and operate the E911 system; the E911 Fund would become an unrestricted fund for **any and all** General Fund purposes.
54. The Department of Administration not only made a series of “loans” of E911 Funds to the General Fund; when it became evident to the Department that the General Fund would not be able to repay the “loans” from the E911 Fund, it determined that the “loans” would be converted into “permanent transfers” from the E911 Fund to the General Fund. See Exhibits 1 through 4 attached to the ALJ Report. Thus, nearly \$4 Million was “permanently transferred” from the E911 Fund to the General Fund.
55. The funds permanently transferred from the E911 Fund to the General Fund were not used for the purposes intended under Guam or Federal law, that is the operation and maintenance of an E911 system. The nearly \$4 Million transferred to the General Fund was expended for non-E911 purposes. Expenditure of funds by the Department of Administration which were clearly E911 Funds, intended for the operation and maintenance of the E911 system, violates the requirement of law that the Department of Administration use all surcharge monies collected *solely* for enhanced 911 equipment and system costs.³²
56. The very nature of the E911 fund establishes that DOA has no authority to transfer E911 Funds to the General Fund. E911 Funds are “separate and apart from all other funds of the government...”. All E911 surcharges are required to be deposited in the E911 Fund; there is no statutory authority for the transfer of any E911 Funds to the General Fund.³³

³² 12 GCA § 12304(d).

³³ 12 GCA § 12304(a) and § 12304(c).

57. The Department of Administration further claims that it did not violate 12 GCA § 12304(e) and § 12304(f) “because no monies in the Fund were “expended”, claiming that “Interfund loans are not expenditures”. As previously established “Interfund loans” are not authorized at all under the 911 Surcharge Law, whether they are “expenditures” or not. E911 funds that are transferred to the General Fund retain their character as E911 funds and continue to be “E911” Funds.
58. As Speaker Cruz indicated during the FY2019 Budget Hearing for the Guam Fire Department, the E911 Funds which DOA transferred to the General Fund could have been used to purchase a new E911 system. Chief San Nicolas stated that the Fire Department was prevented from purchasing equipment or using those E911 funds as a result of non-availability of funds. DOA also violated the prohibition on expenditure of E911 Funds without the express approval of *I Liheslatura*.
59. In the meeting between the ALJ and officials of the Government on December 13, 2018, the Director of Administration indicated that E911 Funds had been used for other purposes, and stated that such E911 Funds could be used by the General Fund for purposes other than E911.
60. The holding of the Supreme Court of Guam *In Re Request of I Mina’ Trentai Dos Na Liheslaturan Guahan*, relative to the Use of Funds from the Tax Refund Efficient Payment Trust Fund, 2014 Guam 15, is directly contrary to the position that the Department of Administration argues in this case. There the Supreme Court held that the Government could not use monies in a Trust Fund designed to pay Income Tax Refunds for any other obligations, including those of the General Fund.³⁴
61. Similarly, in this case, a plain reading of 12 GCA § 12301 *et. seq.* makes it clear that no E911 Funds may be committed to pay other obligations of the General Fund. Contrary to DOA’s assertion that no “expenditures” were made from the E911 Fund, the Supreme Court held even if there are fund advances or withdrawals of restricted funds, any disbursement would still constitute an “expenditure.”³⁵
62. Here, as in the above Supreme Court case, the maintenance of the E911 Fund “separate and apart from all the other funds of the Government”, and the prohibitions on uses of such funds except for the operation and maintenance of the E911 system, indicate the Legislative intent to restrict the use of such E911 Funds.³⁶

³⁴ Id. at [61].

³⁵ Id. at [63].

³⁶ Id. at [64].

63. The PUC must take strong remedial action to ensure the sanctity of the E911 Fund and to ensure that such funds are only used for the upgrade and operation of the enhanced E911 emergency system, and for other permitted statutory purposes. E911 revenues are not funds generated for expenditure by the Government of Guam, the Department of Administration, or its Directors for any purposes desired. Both the Guam Legislature and the PUC, in establishing the E911 surcharge, intended that the funds would only be used for the express purposes set forth in the statute.

ORDERING PROVISIONS

Upon consideration of the record herein, the ALJ E911 Investigation Report, and for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby **ORDERS** that:

1. The Department of Administration must establish a separate bank account for the E911 Fund. Checks issued shall be signed by the authorized signatories for the Department of Administration and the Fire Chief of the Guam Fire Department.
2. Pursuant to 12 GCA § 12311, the PUC hereby determines that the Government of Guam, the Department of Administration, and Department of Administration Directors Benita Manglona and Christine Baleto, have violated the provisions of 12 GCA §12301 *et seq.*, Article 3, "911" Surcharge, as set forth in this Report, by unlawfully transferring nearly \$4 Million from the E911 fund to the General Fund in fiscal years 2014 through 2017.
3. The Government of Guam, Department of Administration, through its current Director Edward Birn, and Directors of Administration Benita Manglona and Christine Baleto shall be given proper notice and allowed a reasonable opportunity, within a period of one hundred and twenty (120) days from the date of the PUC Order herein, to cure the violations of 12 GCA §12301 *et. seq.*, Article 3, "911" Surcharge, as set forth in this Report, by transferring, reimbursing, and redepositing the amount of \$3,880,714.62 back into the E911 Fund. Any "cure" remedy must make the E911 Fund "whole" for the illegal transfer of funds to the General Fund.
4. Copies of the PUC Order herein should be served upon the Government of Guam, Department of Administration through its present Director, and to former Directors Benita Manglona and Christine Baleto.

5. If the Government of Guam, the Department of Administration, and former Directors of Administration Benita Manglona and Baleto do not cure such violations, and transfer the amount of \$3,880,714.62 back to the E911 Fund within one hundred and twenty (120) days from the date of the PUC Order herein, the Commission shall then, at its next meeting: (1) determine whether the violations of 12 GCA §12301 *et. seq.*, Article 3, "911" Surcharge, upon the failure to cure such violations, should be referred to the Attorney General's Office for Prosecution; and (2) further consider the imposition of civil penalties, not to exceed Ten Thousand Dollars (\$10,000.00) per infraction, upon the Government of Guam, the Department of Administration, and former Directors of Administration Manglona and Baleto.
6. If the violations are not cured, the ALJ shall prepare further recommendations for the Commissioners, in subsequent proceedings before the PUC, for determination of whether to refer the violations to the Attorney General's Office for prosecution, upon which persons or entities civil penalties should be imposed, and the recommended amount(s) of such civil penalties.
7. In accordance with law and Commission past practice, the PUC expenses in conducting the investigation hereunder shall be deducted from the E911 Fund.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

SO ORDERED this 17th day of January, 2019.


JEFFREY C. JOHNSON
Chairman
ROWENA E. PEREZ
Commissioner
JOSEPH M. MCDONALD
Commissioner
FILOMENA M. CANTORIA
Commissioner
MICHAEL A. PANGELINAN
Commissioner
PETER MONTINOLA
Commissioner
MARK MILLER
Commissioner