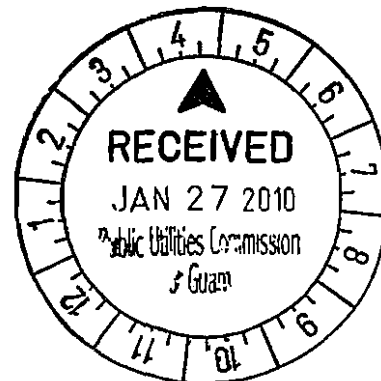


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January 27, 2010

Jeffrey C. Johnson
Chairman
Guam Public Utilities Commission
Suite 207, GCIC Building
414 W. Soledad Avenue
Hagatna, Guam 96910



Re: **PDS Docket 09-02 (Proposed Rule Making); PDS Docket 08-11**

Dear Chairman Johnson:

I understand that at the Commission meeting on January 29, 2010, the Commission will consider adopting a new rule which provides the Commission with discretion in allocating regulatory expenses and costs between the parties in a PUC regulatory proceeding. This is to replace the current rule which provides that regulatory expenses must be divided equally between the parties to the proceeding. As attorney for Pacific Data Systems, Inc. ("PDS"), I previously expressed support for this rule change and now reiterate this support on behalf of PDS.

I also understand that at the Commission's meeting on January 29, the Commission will consider entering its Order based upon ALJ's Order dated January 20, 2010 in Docket No. 08-11. I note that ALJ Mair determined in his Order that GTA had "failed to act in good faith" on multiple grounds, and as a consequence awarded PDS its attorneys' fees. See ¶¶ 22-24 of Order of January 20, 2010. However, ALJ did not believe he had authority to assess the PUC regulatory expenses and costs against GTA only, although he expressed his opinion that the Commission should amend its procedures to authorize an award of costs against a utility that has acted wrongfully. See ¶ 20. His Order provides that GTA and PDS be ordered to pay equally the regulatory expenses and costs of the PUC associated with this dispute. See Conclusion ¶ 4.

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PDS respectfully requests that at the January 29 meeting the Commission consider first enacting the proposed rule change before considering entering its Order based on ALJ Mair's Order of January 20, 2010. Once the rule change is approved, it is the position of PDS that the Commission then has authority to either (1) enter its Order assessing all of the Commission's regulatory expenses and costs in docket 08-11 against GTA, or alternatively (2) to remand the matter to the ALJ for his consideration of the appropriate allocation of the PUC's regulatory expenses and costs.

By way of analogy, court rules of procedure are amended from time to time. The default rule is that the amendments do apply to cases that are pending at the time of amendment, unless that result would not be feasible or would work injustice. For example, effective June 1, 2007, the Supreme Court of Guam amended the Guam Rules of Civil Procedure. The Court's Promulgation Order enacting the amendments specifically provided that the amendments would apply to pending cases except to the extent that application of the amendments "... would not be feasible, or would work injustice ...", in which event the old rules would apply. This Promulgation Order is attached as Exhibit "1". To like effect is Federal Rule of Civil Procedure 86(a)(2)(B), which provides that amendments to the rules apply to pending cases except to the extent that "... the court determines that applying them in a particular action would be infeasible or work an injustice."

Various cases have considered whether application of a new rule or amendment should be applied to a pending case. The case of Solomon v. Welch, 28 F.Supp. 823 (S.D. Cal. 1939) is on point. After a case had been appealed, but prior to the appeal court decision, the rule regarding the taxation of costs was changed. The court held that the new rule was applicable to the case. This case is relevant since the issue here is essentially the taxation of the costs in docket 08-11. It is generally held that a change in the law that only affects procedures or remedies is applied retroactively. See State of Maryland Commission on Human Relations v. Amecon Division of Litton Systems, 360 A.2d 1, 4 (Md. App. 1975).

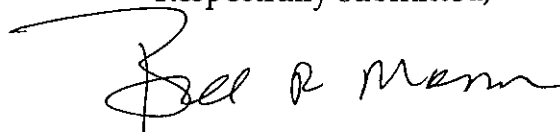
In general, an argument can be made that a new or amended rule should not apply to a pending matter in circumstances where a party might have behaved differently had it known the different rule would be applied to its conduct. See Bradley v. School Board of City of Richmond, 416 U.S. 696, 721 (1974) (Supreme Court sustains award of attorneys' fees incurred prior to change in the law allowing award of attorneys' fees, noting that knowledge of the change would not have caused the defendant to behave differently). However, such an argument is not open to GTA in this case. GTA cannot reasonably argue that had it been aware that regulatory expenses and costs could be assessed entirely against it, it would not have failed to act in good faith.

Moreover, this rule change should come as no surprise to GTA. It was first recommended by Georgetown Consulting Group in its letter of September 23, 2008. Former ALJ Boertzel likewise recommended that the Commission considering amending the rule in his Arbitration Report of October 21, 2008. Finally, when no action in that regard had been taken, PDS specifically requested on September 4, 2009 that the Commission undertake a rule making proceeding. Thus GTA has long been on notice that a new rule may be promulgated which could result in the assessment of the regulatory expenses and costs against it.

The GPUC has assessed substantial regulatory expenses and costs against PDS and GTA in Docket 08-11. PDS has itself paid the PUC to date \$34,148.68 in docket 08-11. PDS believes this was the result of GTA's repeated attempts to avoid the impact of the Commission's Order of November 4, 2008 by various means, such as its request for reconsideration, and other actions that increased the regulatory expense as described in the ALJ's Order of January 20, 2010.

PDS submits it would be unfortunate and unfair to PDS if the proposed rule change came too late to benefit PDS in docket 08-11. Thus, PDS respectfully requests the Commission to first adopt the proposed new rule, and then to either enter its Order allocating GPUC's regulatory expenses and costs in this docket entirely to GTA, or alternatively to adopt the new rule and remand this case to the ALJ for the limited purpose of making the appropriate allocation of said regulatory expenses and costs.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bill R. Mann". The signature is written in a cursive style with a large, sweeping initial "B".

Bill R. Mann

FILED

JUN 21 2007

SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

6	RE:)	Supreme Court Case No.
7	ADOPTION OF THE GUAM)	PRM 06-006
8	RULES OF CIVIL PROCEDURE and)	PROMULGATION ORDER
9	LOCAL RULES OF THE)	NO. 06-006-02
	SUPERIOR COURT OF GUAM)	

10 The Subcommittee on Rules of Civil Procedure and Rules of Court Revisions came before
 11 this Court on May 3, 2007, on a motion to promulgate the revised Guam Rules of Civil Procedure
 12 and Local Rules of the Superior Court of Guam. The Supreme Court approved the promulgation
 13 under Promulgation Order No. 06-006-01 on that date, on the condition that all new rules would take
 14 effect on June 1, 2007, subject to the following transitional language:

15 The Guam Rules of Civil Procedure and the revised Rules for the Superior Court of
 16 Guam, as adopted by the Supreme Court of Guam through this Promulgation Order
 17 Number 06-006-02 apply to all actions, cases and proceedings brought after the Rules
 18 take effect pursuant to the terms of the Promulgation Order takes effect and to all
 19 actions, cases and proceedings commenced prior to the effective date of June 1, 2007,
 20 except to the extent that application of the Guam Rules of Civil Procedure or the
 21 Rules for the Superior Court of Guam to those pending actions, cases and
 22 proceedings would not be feasible, or would work injustice, in which event the prior
 23 valid Guam Rule of Civil Procedure or Rule for the Superior Court of Guam shall
 24 apply.

25 After the promulgation hearing on May 3, 2007, the Subcommittee held two subcommittee
 26 meetings and on May 22, 2007, the Subcommittee presented a forum to the Guam Bar Association.
 27 Finally, on May 25, 2007, subcommittee representatives gave a presentation to all Superior Court
 28 of Guam judges and Supreme Court of Guam justices. As a result of these further meetings and
 forums, minor adjustments in the rules were made by the Subcommittee at its final meeting on May
 30, 2007.

Upon the recommendation of the Subcommittee, and under the authority to "make and
 promulgate rules governing the administration of the judiciary and the practice and procedure in the

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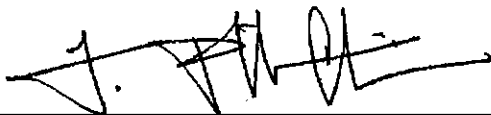
ORIGINAL EXHIBIT "1"

1 courts of the judicial branch of Guam," 48 U.S.C. § 1424-1(a)(6), the Supreme Court hereby adopts
2 the Guam Rules of Civil Procedure attached hereto as Exhibit A and the Local Rules of the Superior
3 Court of Guam, attached hereto as Exhibit B which shall apply to all actions, cases and proceedings
4 brought after these Rules take effect on June 1, 2007, and to all actions, cases and proceedings
5 commenced prior to the effective date of June 1, 2007, except to the extent that application of the
6 Guam Rules of Civil Procedure or the Local Rules of the Superior Court of Guam to those pending
7 actions, cases and proceedings would not be feasible, or would work injustice, in which event the
8 prior valid Guam Rule of Civil Procedure or Rule of the Superior Court of Guam shall apply.

9
10 **SO ORDERED**, this 31st day of May, 2007.

11 
12 _____
13 **KATHERINE A. MARAMAN**
Justice Pro Tempore

11 
12 _____
13 **ROBERT J. TORRES**
Associate Justice

14 
15 _____
16 **F. PHILIP CARBULLIDO**
Chief Justice