



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE: RATE REQUEST FOR LEACHATE TREATMENT AT LAYON LANDFILL) GWA Docket No. 12-01) ALJ REPORT)

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (hereinafter referred to as the "PUC" or the "Commission") pursuant to the December 8, 2011 Order issued by Chief Judge Frances M. Tydingco-Gatewood of the District Court of Guam in U.S. v. Government of Guam, Civil Case No. 02-00022 ("U.S. v. GovGuam"). In the Order, the Court requested that the PUC "set the rate for the treatment of leachate from the Layon Landfill and address any rate issues that need to be addressed to enable [the Guam Waterworks Authority ("GWA")] to pay its obligations for waste disposal." U.S. v. Government of Guam, Civil Case No. 02-00022, Order, p. 4 (D. Guam, Dec. 8, 2011).

BACKGROUND

On December 7, 2011, the Court held a quarterly status hearing in U.S. v. GovGuam. At the hearing, the Court was updated on the progress of the Consent Decree projects by the federal receiver, Gershman Brickner & Bratton, Inc. (hereinafter referred to as the "Receiver" or "GBB"), which concern the closure of the Ordot Dump and the use of the Layon Landfill ("Layon").

On December 8, 2011, the Court issued an Order highlighting the recent accomplishments of GBB during the last quarter of 2011, as well as some issues raised at

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the December 7, 2011 status hearing and in GBB's Quarterly Report filed in the suit. In the Order, the Court noted that while GBB agreed to dispose of GWA's biosolids, GBB's fee for such disposal would be offset by GWA's treatment of leachate from Layon. *See* Order, at 4. As a result of the agreement, however, GWA has been incurring significant debt since a rate for GWA's treatment of leachate has not been set. As of September 30, 2011, GWA owed GBB \$599,643.99, and additional charges were "accumulating at a rate in excess of \$20,000 per month" resulting from GBB's disposal of GWA's biosolids. Order, at 4.

The Court expressed that "[t]o accurately weigh the feasibility of the agreement with GWA, the Receiver needs to know the rate of leachate treatment." Order, at 4. Accordingly, the Court ordered the PUC "to set the rate for the treatment of leachate from the Layon Landfill and address any rate issues that need to be addressed to enable GWA to pay its obligations for waste disposal." Order, at 4.

On December 23, 2011, J. Patrick Mason, Esq. of the Office of the Attorney General transmitted a letter to GWA, the Consolidated Commission on Utilities, and the PUC, providing the agencies with notice of the Order requiring the rate setting for GWA's treatment of leachate from Layon.

On January 24, 2012, the Administrative Law Judge of the PUC (the "ALJ") issued an ALJ Report requesting authority from the Commission to conduct a rate investigation into the appropriate rate for GWA to charge for the treatment of leachate from Layon. On February 6, 2012, the PUC authorized the ALJ to investigate and examine the rate request ordered by the Court.

On March 1, 2012, the ALJ issued a Scheduling Conference Order requiring GWA to appear at a Scheduling Conference on March 8, 2012 to discuss the rate investigation. At the March 8, 2012 Scheduling Conference, the ALJ and GWA discussed the issues concerning the rate setting for GWA's treatment of leachate as well as GWA's past due obligations to GBB for GBB's disposal of GWA's biosolids. GWA confirmed that it had reached an agreement with GBB with respect to the rate to be charged for GWA's treatment of leachate from Layon. GWA expressed that pursuant to the agreement, it would reserve its right to conduct a Cost of Service study with respect to the rate in order to formulate a rate that better reflects GWA's cost of treating the leachate. In addition, GWA agreed that it would continue working to determine what rate increase, if any, would be necessary to pay down its past due obligations to GBB.

DISCUSSION

1. **The PUC's Authority to Regulate Rates**

Guam law provides that "[t]he Commission shall have regulatory oversight supervision of rates" as set forth under Guam's Public Utilities Commission and Telecommunications Act of 2004. 12 G.C.A. §12004. "The Commission shall conduct such investigation and hearings as to any such rate changes as it deems necessary." *Id.* "The Commission may, in the exercise of its regulatory authority, order the commencement of investigations, audits, rulemaking and other proceedings, which shall be overseen and directed by the ALJ in accordance with the Rules applicable to hearings." Rule 43 of the PUC's Rules of Procedure.

Guam law further provides that "[n]o rate change may be approved by the Commission unless it is affirmatively established, by a preponderance of the evidence, that

a rate change is necessary.” 12 G.C.A. §12004. In addition, all rates and charges shall be just and reasonable. 12 G.C.A. §§12015, 12017. “[N]o rate change or charge for any public utility shall become effective without the approval of the Commission.” 12 G.C.A. §12025.

2. **GWA’s Agreement with GBB**

At the March 8, 2012 Scheduling Conference, GWA confirmed that it had reached an agreement with GBB with respect to the rate GWA should apply for its treatment of leachate from Layon. Pursuant to the terms of the agreement, GWA would assess GBB an interim rate of \$14.19 per 1,000 gallons.

In addition, GWA expressed that pursuant to the agreement, it would reserve its right to conduct a Cost of Service study with respect to the rate in order to calculate a rate that better reflects GWA’s cost of treating the leachate. GWA also confirmed that it would continue working towards determining what rate increase, if any, would be necessary to pay down its past due obligations to GBB, and that it would petition the PUC accordingly.

This interim rate is GWA’s Commercial III rate for wastewater and would be assessed through an existing wastewater master meter that measures all flow from the facility. In the event the Commercial III rate is modified by the PUC at a later time, the new rate would of course apply unless a Cost of Service study determines otherwise. The interim rate of \$14.19 per 1,000 gallons of wastewater would be charged in addition to any charges for water.

3. Proposed Rate Is Just, Reasonable, and Necessary

The interim rate proposed by GBB and GWA is both just and reasonable as the rate appears well within the range other wastewater treatment plants in other jurisdictions charge for the treatment of leachate. For instance, in the Written Testimony of David L. Manning prepared in support of the September 2010 Rate Request of the Solid Waste Management Division, dated September 28, 2010, and filed in Guam Solid Waste Authority Docket 10-01, Mr. Manning testified that “leachate treatment charges in the U.S. typically range from \$.01 to \$.05 per gallon.” See Written Testimony of David L. Manning, Guam Solid Waste Authority Docket 10-01, p. 9 (Sept. 28, 2010). Thus, Mr. Manning’s testimony proposes that rates for leachate treatment should be between \$10 to \$50 per 1,000 gallons.

In addition, in the City of Willmar, Minnesota, the Willmar Wastewater Treatment Plan set its rate for landfill leachate treatment at \$30 per 1,000 gallons for 2012, and \$32 per 1,000 gallons in 2013.¹ In 2010, the Water and Sewer Department of the City of Glens Falls, New York, charged \$.05 per gallon for leachate and industrial waste treatment, or \$50 per 1,000 gallons.² In 2008, Johnstown Regional Sewage, of the Redevelopment Authority of the City of Johnstown in Pennsylvania, charged \$.015 per

¹ Cost Comparison MCES & WWTP Leachate Transportation and Treatment (2012; accessed Mar. 15, 2012) < http://www.co.kandiyohi.mn.us/docs/Board/Agenda/BoardPacket/Leachate_Agreement.pdf>.

² 2010 Fee Schedule for the City of Glens Falls Wastewater Treatment Residuals Disposal (2010; accessed Mar. 15, 2012) <<http://www.cityofglensfalls.com/documents/Water%20and%20Sewer/2010%20Schedule%20of%20Fees%20and%20Charges.PDF>>.

gallon for landfill leachate treatment, or \$15 per 1,000 gallons.³ In Tompkins County, New York, it is reported that the cost for the treatment of leachate was at \$6.00 per 1,000 gallons in 2006.⁴ In 2003, it was estimated that in Sioux Falls, South Dakota, the treatment costs for landfill leachate was about \$1.94 per 1,000 gallons.⁵

Based on this information, the ALJ finds that the rate proposed by GBB and GWA is both just and reasonable as \$14.19 per 1,000 gallons, which corresponds with the rate for wastewater for a Commercial III account, appears to fall within the range of rates charged for the treatment of leachate in other jurisdictions. Furthermore, notwithstanding the federal Court Order requiring GWA to set a rate with respect to its treatment of leachate from Layon, this particular rate is necessary since GWA must recoup its cost for treating such leachate.

CONCLUSION AND RECOMMENDATION

Upon full consideration of the record herein, especially in light of the agreement between GBB and GWA, the ALJ finds that the proposed rate for GWA's treatment of leachate from Layon at \$14.19 per 1,000 gallons, which corresponds with the rate for wastewater for a Commercial III account, is just, reasonable, and necessary.

³ Rates, Rules and Regulations for Johnstown Regional Sewage (May 20, 2008; accessed Mar. 15, 2012) <http://www.johnstown-redevelopment.org/pdf/jrs_rates-regulations.pdf>.

⁴ "Old Landfills," Leachate Management 2006, Recycling and Solid Waste Division, Tompkins County, New York (2006; accessed Mar. 15, 2012) <<http://www.recycletompkins.org/editorstree/view/158>>.

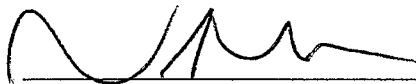
⁵ Sioux Falls South Dakota Solid Waste Masterplan Calculation Sheet, prepared by Earth Tech (2003; accessed Mar. 15, 2012) <http://www.siouxfalls.org/~media/documents/publicworks/solidwaste/solid_waste_masterplan/swmp_appendix_c.ashx>.

Accordingly, the ALJ recommends that the PUC approve this rate effective April 1, 2012, and should be applied to any past due account.

The ALJ, however, requests that GBB and GWA file with the PUC a Stipulation reflecting the terms of their agreement by March 23, 2012.

The ALJ further recommends that this docket remain open in anticipation of any rate investigation associated with GWA's repayment of its outstanding debt to GBB for GBB's disposal of GWA's biosolids. A proposed Order is attached hereto for the PUC's consideration.

Dated this 19th day of March, 2012.



DAVID A. MAIR
Administrative Law Judge

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