## BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

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IN THE MATTER OF: Guam Power Authority's 2011 Multi-Year Base Rate Filing

GPA Docket 11-09

ORDER RE: PRELIMINARY ISSUES

This matter came before the Administrative Law Judge ["ALJ"] on January 10, 2012 for a presentation by the parties as to issues which could be deferred in this rate proceeding until a "PHASE II". There has been a suggestion that basic rate issues should be first considered in a "PHASE I" of this proceeding, with remaining issues addressed in a "PHASE II".

On January 9, 2012, the Georgetown Consulting Group Inc., the PUC's Consultant, submitted a listing of issues that could potentially be deferred until PHASE II. During the hearing, the parties, GCG, the Guam Power Authority [GPA], and the Department of Defense [Navy] presented their respective positions on issues which could be "deferred". The ALJ, having heard the positions of the parties, and for good cause shown, hereby orders that the following issues will be deferred until PHASE II of this proceeding:

- 1. Payment in Lieu of Taxes [PILOT]
- 2. Self Insurance and all issues relating thereto
- 3. A clarification of Procedures and Requirements relating to the Working Capital Fund.
- 4. LEAC Period [whether the LEAC period should be reduced from six months to three months]

The issues herein deferred will be addressed and resolved in PHASE II. This proceeding must be streamlined in order to expeditiously resolve the numerous, complicated base rate issues. Upon final approval of a PHASE I Order by the PUC, the ALJ will schedule a PHASE II scheduling conference to address the resolution of the deferred issues.

At the hearing, the parties further indicated that the ALJ was requested to make a ruling on an issue relating to the interpretation of the "General Lifeline Rate", as set forth

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in 12 GCA §12004. 12 GCA §12004 provides in pertinent part: "...General Lifeline Rates may only be increased [by the PUC]when the total actual overall cost of providing service to all classes of customers, increases by no less than twenty percent (20%)."

The question is whether the 20% requirement is a onetime event, after which the lifeline rate may be increased at the discretion of the PUC ("one time event"); or whether, after the 20% requirement is initially satisfied, it must be satisfied each time again thereafter before the PUC again raises the lifeline rate (the "ratchet" approach). At the hearing, GCG indicated that, in prior rate proceedings involving the Guam Waterworks Authority, it had been assumed that once the overall cost of providing service exceeds twenty percent, the general lifeline rates could not be increased again until the twenty percent threshold was again met. GPA does not concur with such position.

The parties were instructed that they would have five days each from the date of the hearing to submit their positions as tothe proper interpretation of the lifeline rate "threshold" issue. No party submitted a statement.

Initially, the ALJ believes that he may submit a preliminary ruling on this issue, but any final determination regarding the proper interpretation as to the "threshold" for increasing the lifeline rates must be rendered by the PUC Commissioners. In the meantime, to provide guidance to the parties in this proceeding, the ALJ will provide a preliminary determination on this issue. For purposes of this proceeding, the "ratchet" interpretation will be adhered to and observed. The statutory framework establishes that, once the total actual overall cost of providing service to all classes of customers has increased by no less than 20%, the general lifeline rates may be increased.

However, no language in the statute suggests that, once the 20% requirement is met, the Commission may thereafter increase the lifeline rate at its discretion. Even after the 20% requirement is initially met, the Commission is confronted with the same statutory requirement that it may not increase the general lifeline rates until the 20% requirement is satisfied. The statutory language does not disappear after the 20% requirement is met initially for the first time. For any increase thereafter, the Commission cannot again increase the general lifeline rates until the 20% requirement is again satisfied.

To hold that the 20% requirement is only "a onetime threshold" would rewrite the statute. 12 GCA §12004 supports such interpretation. The PUC is generally granted the authority to establish and modify rates for GPA, including lifeline rates. However, the

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statute specifically restricts the authority of the PUC to modify lifeline rates. The general lifeline rates "**may only be increased**" when the total actual overall cost of providing service to all classes of customers increases by no less than 20%. The 20% requirement must be interpreted in the context of a provision which is designed to limit the general rate making authority of the PUC by restricting its powers with regard to general lifeline rates.

The present general lifeline rates for GPA are not "need-based", which may be good or bad policy. However, it is not the role of the ALJ, or the PUC, to alter legislative requirements. Substantive changes in the requirements for general lifeline rates, or the policy governing such rates, should be the province of the Guam Legislature.

SO ORDERED this 8<sup>th</sup> day of February, 2012.

Frederick J. Horecky Administrative Law Judge Public Utilities Commission