



BEFORE THE GUAM PUBLIC UTILITES COMMISSION

IN RE: REQUEST BY THE GUAM)
WATERWORKS AUTHORITY FOR) GWA Docket 10-01
APPROVAL OF CONTRACT)
DOCUMENTS RELATIVE TO GWA'S)
\$30M SHORT-TERM LOANS)
_____)
_____)

PUC COUNSEL REPORT

Introduction

This matter comes before the Guam Public Utilities Commission [PUC] upon the Guam Waterworks Authority's [GWA] Petition for Approval of Contract Documents relative to GWA's \$30M Short-Term Loans.¹ GWA seeks approval of its \$30M Short-Term Loans in accordance with the PUC's Contract Review Protocol, which requires prior PUC approval of all GWA externally funded loan obligations in excess of \$1,000,000, and any use of said funds.² In CCU Resolutions No. 18-FY2009 and 20-FY2009, the Consolidated Commission on Utilities [CCU] authorized GWA to issue a short-term credit facility (or facilities) in a total principal amount not to exceed \$30 Million for the following purposes:

- i. funding the O&M and OMRRF funds specified in the 2005 series Bond Indenture to their required limits; and
- ii. funding bridge financing for the Moratorium Project until GWA issues the additional bonds...³

¹ GWA's Petition for Approval of Contract Documents relative to GWA's \$30M Short-Term Loans, GWA Docket 10-01, filed May 18, 2010.

² Contract Review Protocol for Guam Waterworks Authority, Docket 00-04, issued October 27, 2005.

³ See CCU Resolution No. 20-FY2009, adopted July 1, 2009.

GWA needs approximately \$12.0 Million to fill the OMRRF reserve, \$8.0 Million to fill the O&M 55 day reserve pursuant to its bond indenture, \$5.0M for the Moratorium Project, and \$5.0 for payment of outstanding liabilities.⁴

GWA indicates that it cannot issue bonds without the loan; otherwise it will be unable to fully fund its required bond reserves in the amounts necessary to come into compliance with the Indenture.⁵

Background

The necessity for authorizing GWA to obtain this \$30M loan was previously duly considered by the Public Utilities Commission. On July 27, 2009, the PUC issued its FY09 Rate Decision in GWA Docket 09-03, GWA Petition for Rate Relief.⁶ Therein, the Commission approved a five year plan of rate relief for GWA; PUC authorized GWA to issue "Moratorium" project bonds and revenue finance bonds in an approximate amount of \$114 Million.⁷ As a part of the rate relief package, PUC specifically authorized GWA to incur short term debt of up to \$30 Million for the following purposes:

"(a) provide bridge financing for the moratorium project; (b) fund the OMRRRF (this portion of the short term debt shall have a term of 5 years and provide for a level interest and principal payment); (c) fund the O&M Reserve Fund (this portion of the short term debt shall have a term of 5 years and provide for a level interest and principal payment); and (d) fund approximately \$5 Million in FY2009 accounts payables (this portion of the short term debt also having a term of 5 years and provide for a level interest and principal payments)."⁸

Through the enactment of various public laws, both the Executive and Legislative branches of the government of Guam have authorized GWA to borrow \$30M.⁹ With regard to GWA's \$30M loan, the government of Guam has guaranteed all payments due

⁴ Id. at Exhibit B.

⁵ GWA Petition for Approval of Contract Documents, p. 2.

⁶ PUC FY09 Rate Decision, GWA Docket 09-03, issued July 27, 2009.

⁷ Id. at p. 5.

⁸ Id.

⁹ See Public Laws No. 29-130, 30-55 (Section 28), enacted September 4, 2009, Public Law 30-101 (Sections 29-31), enacted March 12, 2010, and Public Law 30-146 (Section 29), enacted May 17, 2010.

under the \$30 Million credit facility. The government has also waived immunity from suit by the lender relative to GWA's loans.¹⁰

In Public Law 30-055, enacted September 4, 2009, the Guam Legislature increased the borrowing limit of GWA from \$5M to a total cumulative amount not exceeding \$30 M.¹¹ In addition, the Legislature approved specific purposes for which GWA could use the loan proceeds:

“to fund GWA’s required operating account and operating reserve account balances, to pay past due operating expenses incurred by GWA, to provide interim financing for a portion of the costs of the moratorium project as defined in §1421(g), Article 2, Chapter 14, Title 12, Guam Code Annotated, and to pay expenses incurred in an existing appropriation for *or* in the regular budget of any government agency *or* instrumentality *or* public corporation providing any service in connection with the issuance of such bonds, but *not to exceed* an aggregate principal amount of Thirty Million Dollars (\$30,000,00).”

After it had obtained authorization to obtain a \$30M loan from both the PUC and the Legislature, GWA, through the Guam Economic Development Authority, issued a Request for Proposals No. 09-011, for a \$30M loan to GWA for purposes indicated. Only one respondent supplied a responsible and conforming offer of finance, which was the Bank of Guam.¹² By Resolution, the CCU authorized GWA to continue its negotiations with the lender as to the final terms and conditions of the agreement. The CCU determined that the proposed terms and conditions in the loan documentation from the lender are fair and reasonable, and that GWA was authorized to negotiate final terms and conditions for the final contract and to submit the documents to the Guam Public Utilities Commission for review.¹³

Statutory Obligation of the PUC to review Terms and Conditions of the Loans

In its Petition, GWA indicates that, although the PUC has authorized GWA to enter into a \$30M short-term loan obligation, the particular loan terms and conditions have not yet

¹⁰ Id., Public Laws Nos. 30-101 and 30-146.

¹¹ Public Law 30-55 (Section XII:28), enacted September 4, 2009.

¹² Guam Consolidated Commission on Utilities Resolution No. 16-FY2010, enacted April 20, 2010.

¹³ Id. at p. 2.

been reviewed and approved by the PUC. Therefore, GWA submits various loan documents to PUC for its review and consideration, including Pledge and Assignment (Exhibit G), Loan Agreements (Exhibit H), Guaranty by the Government of Guam (Exhibit I), Promissory Notes (Exhibit J), and various draft legal opinions (Exhibit K). Under both the Contract Review Protocol, pursuant to 12 GCA §12004, and Public Law 30-055, the PUC is obligated to review the issuance, terms and conditions of the debt. As a "condition precedent" to GWA's authority to enter into such loan, the law provides that "the issuance, terms, and conditions of the debt, the indenture or loan agreement pursuant to which the bonds are to be issued, and any reimbursement agreement shall have been approved by the Guam Public Utilities Commission...such debt shall have a final maturity not later than ten (10) years after its date of issuance, shall bear interest at such rate or rates, and be sold for such price or prices as may be approved by the Guam Public Utilities Commission, and shall have such other terms and conditions as are consistent with the requirements and limitations provided in said §14235."¹⁴

PUC Counsel has fully reviewed the above referenced documents for the purpose of making recommendations to the PUC. The PUC must review the loan documents and determine whether to approve the issuance, terms and conditions thereof. Furthermore, the PUC must determine whether the Loan Documents comply with the requirements of the statute.

Analysis of the Loan Documents

The Loan Agreement between Bank of Guam, as Lender, and GWA as "Borrower", indicate that there are two Loans:

- (1) a loan in the principal amount of \$5M ("Loan 1") and
- (2) a loan in the principal amount of \$25M ("Loan II").¹⁵

Both Loans have a five year maturity and an interest rate of 7.75% per annum.¹⁶ Terms and interest rates are set forth in separate Promissory Notes.¹⁷ The Loans are secured by revenues of GWA, and by a guaranty of the government of Guam.¹⁸ The Loan Agreement specifies the uses of the loan funds by GWA. The proceeds of Loan 1 (\$5M)

¹⁴ 12 GCA §14235(2), as amended by Public Law 30-055.

¹⁵ Draft Loan Agreement between Bank of Guam and GWA, p. 1.

¹⁶ Id.

¹⁷ Exhibits A and B to the Loan Agreement.

¹⁸ Id.

are to be utilized to pay a portion of the cost of the Moratorium Project; the proceeds of Loan II (\$25M) shall be utilized to fund deficiencies in the Operation, Maintenance, Renewal and Replacement Reserve Fund, as defined in the Bond Indenture, and the Operations and Maintenance Fund as defined in the Indenture; in addition, up to \$5M to pay accounts payable of GWA and for any other purposes permitted by 12 GCA §14235, including the payment of expenses incurred in connection with the issuance of the Notes and the Loans.

The Loans are further conditioned, among other things, upon approval of the terms and conditions thereof by the PUC.¹⁹ The interest on the Loans paid to the Lender (BOG) is tax exempt both from Guam income tax and the business privilege tax.²⁰ While the Loans are outstanding, GWA may issue "Additional Bonds", as the term is defined under the existing Bond Indenture in accordance with conditions contained in Public Law 28-71.²¹ This provision comports with the requirement of the Consolidated Commission on Utilities, in Resolution No. 16-FY2010, that execution of the Loan Agreement and Promissory Notes by GWA not interfere with its ability to issue bonds or other necessary financings during the term of these notes.²²

GWA will also execute a "Pledge and Assignment" to Bank of Guam, wherein its revenues will be pledged toward satisfaction of the Loan, however, subject to the Consent Decree and the prior pledge and lien and other provisions concerning the 2005 Bond Indenture.²³ Payments from GWA will be placed in a "Subordinate Securities Fund", and the Trustee under the Bond Indenture will transfer revenues to the secured party(lender) to pay loan amounts due monthly.²⁴ GWA must also maintain a required reserve in the "Note Reserve Fund" which includes principal and interest due plus aggregate payments due on the loans within a 90 day period.²⁵ With certain exceptions (such as for "Additional Bonds"), GWA may not place further pledges, liens, charges, or encumbrances upon its revenues while the Loans remain outstanding.²⁶

¹⁹ Id. at p. 2.

²⁰ Id. at p. 4.

²¹ Id. at p. 5.

²² CCU Resolution No. 16-FY2010, p. 3, adopted April 20, 2010

²³ Draft Pledge and Assignment to be entered into between GWA and Bank of Guam, pgs. 2-3.

²⁴ Id. at p. 3.

²⁵ Id. at p. 4.

²⁶ Id. at p. 4.

Recommendation

PUC Counsel recommends that the PUC approve the contract documents relative to GWA's \$30M short-term loans, as submitted to PUC, in the Petition filed May 18, 2010. The Loan Agreement, Pledge and Assignment, Guaranty, Promissory Notes and other documentation submitted by GWA should be approved by the PUC under the Contract Review Protocol.

As previously discussed, the PUC has already authorized GWA to borrow \$30M, and has authorized the specific uses for which GWA seeks to utilize the loan proceeds. In accordance with 12 GCA §14235, wherein the Legislature authorizes GWA to borrow \$30M and specifies the purposes for the loan, the PUC should approve the issuance, terms and conditions of the loan documents (as submitted in the Petition) proposed to be entered into between GWA and the Bank of Guam.

However, there is one possible use of funds by GWA that PUC has not yet approved. In CCU Resolution No. 16-FY2010, the CCU authorized GWA to "fund COLA payments to those persons specific in P.L. 30-101."²⁷ While such payment is a statutory requirement, the PUC has not approved this specific use of loan funds. PUC Counsel is discussing this issue with GWA and will recommend an appropriate disposition thereof at the PUC meeting.

The Loan documentation is also in compliance with the requirements of 12 GCA §14235. The PUC should approve the loans with regard to the final maturity date, the interest rate, and the amount.²⁸ The maturity of the debt is five years, as originally approved by the PUC in the FY09 Rate Decision. There the PUC requested that GWA to advise the PUC if the interest rate on such borrowing was greater than 12%. The interest rate agreed to by GWA and BOG on the loans, 7.75%, is within the limitation imposed by the PUC. Both loans provide for level interest and principal payments on a monthly basis. Therefore, the loan terms and conditions are within the parameters established by the PUC.

While the loan documents have been crafted with the intent to provide strong protection and security for the Lender, the Bank, the terms and conditions thereof appear to be commercially reasonable and do not take undue advantage of GWA.

²⁷ CCU Resolution No. 16-FY2010, p. 1, adopted April 20, 2010

²⁸ See 12 GCA §14235(2).

PUC Counsel Report
Request by GWA for Approval of Contract Documents
relative to \$30M Short-Term Loans
GWA Docket 10-01
May 25, 2010

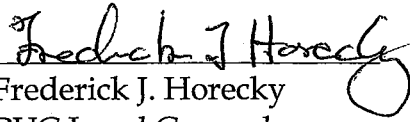
With one possible exception, the PUC has also approved the specific purposes for which GWA seeks to undertake the loans. The FY09 Rate Decision recognized the importance of the Moratorium Project and authorized borrowing for such project. The need for GPA to pay certain accounts payable, as well as to fill the O&M fund and the OMRRF fund with regard to its Bond Indenture, has also been previously acknowledged by the PUC. GWA has established that the purposes for which it seeks to borrow funds are reasonable, prudent, and necessary.

Another important consideration is the potential rate impact of these loans upon ratepayers. In GWA Docket 09-03, the PUC approved a five year rate plan for GWA which included the principal and interest payments due on the \$30M loans for FY10 through FY13. Thus, presumably, the principal and interest payments have already been built into the rate increases for those years which were previously approved by the Commission. Counsel is continuing to investigate this issue and will provide any additional information obtained to the Commissioners at the meeting on May 27.

GWA has also established, by a preponderance of the evidence, that it will be unable to issue the bonds approved by the PUC unless it obtains the \$30M loan proceeds. The purposes for which GWA seeks to undertake the loans are justified and in the best interests of ratepayers.

To date, the loan documentation between GWA and PUC has not yet been formally approved by the Attorney General of Guam and the Governor of Guam. The PUC Order Approving the \$30M Loans should be issued subject to the approval of the loans by the Attorney General of Guam and the Governor of Guam. The undersigned recommends that the PUC review the proposed Order, which is made Exhibit "A" hereto and make the determinations necessary to reach a decision upon the request of GWA for contract approval of its \$30M loan documentation.

Dated this 25th day of May, 2010.


Frederick J. Horecky
PUC Legal Counsel