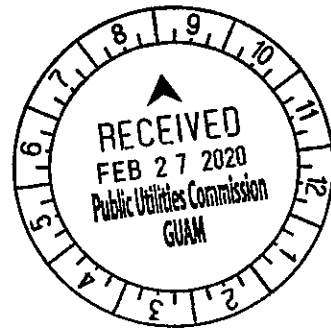


BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

PETITION FOR APPROVAL OF
GWA'S THIRD FIVE-YEAR
FINANCIAL PLAN AND BASE RATE
RELIEF

)
) GWA DOCKET 19-08
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ADMINISTRATIVE LAW JUDGE REPORT

Background

Beginning in April of 2019, the PUC, through its Administrative Law Judge, GWA and its officials, and the PUC Consultant, Georgetown Consulting Group Inc., commenced discussions and planning for the rate case that GWA indicated it would file. GWA provided copies of its Twenty-Year Water Resources Master Plan Update and the GWA Five Year Rate Plan to the ALJ and the PUC Consultant for review. On April 8, 2019, GWA published Public Notice in the Pacific Daily News indicating its intent to submit a proposed rate increase to the PUC on July 6, 2019. GWA held three village meetings and six public meetings between May and July of 2019.¹ In compliance with 12 GCA § 12102.2(e) GWA also published additional public notices indicating the rates it intended to seek over a five-year period.

On June 5, 2019, the Guam Consolidated Commission on Utilities, in GWA Resolution No. 36-FY2019, approved GWA's 5-Year Financial Plan and Capital Improvement Program. The CCU authorized GWA to file its Five-Year Financial Plan with the PUC. On July 6, 2019, GWA filed with the PUC its Petition for Approval of Guam

~~Waterworks Authority's Five-Year Financial Plan and Rate Relief. The rates requested~~
in the Petition, if granted, would have resulted in base rate increases of 10% in FY2020, 8.5% in FY2021, 8% in FY 2022, 6.5% FY2023, and 5% in FY2024. The overall requested

¹ GWA Presentation to the Consolidated Commission on Utilities, Regular Meeting, January 28, 2019, at p. 60 of CCU Board Packet.

increase for the 5-year period was 38%; with compounding, the overall increase would be roughly 44%.

In accordance with Rule 5 of the PUC Rules for Practice and Procedure, Georgetown Consulting Group [“GCG”], who serves as PUC’s independent regulatory consultant, joined as the representative of the PUC in the proceeding. Over the next few months, the ALJ, GWA, and GCG participated in numerous scheduling conferences to resolve various issues concerning the proceeding. Although the U.S. Navy was provided an opportunity by the ALJ to join the proceeding, it never did so. The Parties agreed to a schedule for the rate proceeding, which included exchange of Requests for Information, a discovery conference, exchange of outlines of issues, submission of testimonies, holding of PUC village hearings, evidentiary hearings before the ALJ, and final determination by the PUC.² A number of further revisions to the Schedule were made by the Parties with approval of the ALJ.³ The Parties exchanged detailed Requests for Information, and the Parties provided responses to said requests.

From the commencement of the proceedings, the Parties have engaged in ongoing, continuous, and extensive discussions and negotiations. GWA has been represented by its General Manager, Miguel Bordallo, Legal Counsel Kelly Clark, Consultant Eric Rothstein, CFO Taling Taitano and Assistant CFO Gilda Mafnas. GCG had been represented by Jim Madan, Larry Gawlik, Dan Stathos, Robert Young, and Bill Norris. A broad range of issues has been extensively addressed by the Parties, including capital infrastructure investment, bond issuances, capital requirements, cost allocation, water leakage and loss, consumer demand, system development charge and many others.

On September 18, 2019, GWA and GCG met in San Francisco for a Discovery Conference. The Parties engaged in a discussion of numerous issues, which included the Rate Case Model and Mechanics, the rate change implementations standard, rate

² SCHEDULING ORDER, GWA Docket 19-08, dated July 29, 2019.

³ Second Scheduling Order, GWA Docket 19-08, dated August 22, 2019.

setting history, the GWA Bond Resolution, reserve Funds, capital investments, review of capital projects, consumer demand, water loss impacts, capital financing requirements, O&M expense levels, cost of service allocation, and the ratepayer affordability of rates.⁴ GCG provided an Outline of Issues dated October 2, 2019, and GWA provided responses.⁵

On October 28, 29, and 30, the PUC conducted public hearings on the rate increases requested by GWA, in Agana, Dededo, and Asan.

The Parties conducted further conferences on the impacts of improvements to non-revenue water on capital, financing/bond projects, and the debt service coverage for the 5-Year Financial Plan. GCG prepared statements/issue outlines on these issues. GCG also provided GWA with proposed labor/benefit expense adjustments to revenue requirements. GWA and GCG met again for a settlement conference in Seattle, Washington between December 16 and 18, 2019. A copy of the Conference Agenda is attached hereto as Exhibit "1". The Parties also agreed to further amendments to the rate case Schedule. Further discussions of the Parties related to the rate case model, a revised settlement model and further revisions. It is difficult to capture the true depth and intricacy of these proceedings in a short narrative background; the preparation, involvement, and commitment of the Parties was one of the most extensive in PUC rate case history.

Public Hearings

The PUC conducted three public hearings on GWA's rate application. At the PUC Public Hearing on October 28, 2019, PUC conference room, Hagatna, there was no public testimony or written comments provided concerning the rate case. At the Public hearing on October 29, 2019, Dededo Senior Citizens Center, there was also no public testimony or written testimony. At the October 30, 2019, PUC Public Hearing, Asan

⁴ Preliminary Agenda for GWA Rate Proceeding Conference, September 18, 2019.

⁵ Letter from GWA to ALJ Horecky, GWA Docket 19-08, GWA's Response to GCG's Outline of Issue, dated October 4, 2019.

Community Center, one Guam resident appeared: Doris Flores Brooks.⁶ At the public hearing, Ms. Brooks requested that she be allowed to ask GM Miguel Bordallo certain questions concerning the rate case. The ALJ concurred.⁷

Ms. Brooks indicated that the Consolidated Commission on Utilities had approved GWA's rate case by a 3-2 vote. She asked what the rationale was for the "nay" votes. GM Bordallo could not say why two Commissioners opposed the rate plan; he thought they believed that GWA could obtain the same objectives with cumulatively lower rate increases. GM Bordallo indicated that the five-year rate plan, which sought a cumulative 38% increase, was lower than the 42% and 57% increases in the two prior five-year rate plans. GWA stayed with its plan to avoid a "spike" in rates in the sixth year for debt service coverage. Ms. Brooks indicated that she calculated a 43.4% rate increase over the five years. GM Bordallo indicated that GWA did not take "compounding" into consideration in calculating the 38% five-year increase.

Ms. Brooks indicated that GWA's 20 Year Water Resources Master Plan adopted by the CCU in 2018 normally included a 4 – 4 ½% rate increase per year for the first seven years. Why was the 5-Year rate plan proposed by GWA so significantly higher than the 20-Year plan? GM Bordallo indicated that GWA did not take into account regulatory issues such as the consent decree negotiations with USEPA, and the needed capital improvement projects, when the 20-Year Water Resources Master Plan was developed. Consent Decree programs are now included in the 5-Year Plan.

~~Ms. Brooks focused on GWA water losses, and asked GM Bordallo what GWA's game~~ -----
plan was to mitigate average water losses per year of 58%. She indicated that GWA has had the same water loss rate for more than 20 years. GM Bordallo distinguished

⁶ Ms. Brooks had already been appointed as a Commissioner of the PUC prior to the Public Hearings; she was later confirmed by the Guam Legislature as a PUC Commissioner and now serves in that capacity.

⁷ George Castro, the Court Reporter for the proceeding, provided the ALJ with an audio file of the proceeding on "We Transfer."

between non-revenue water and water loss—what GWA produces versus what it bills. According to him, water loss does not take into account authorized consumption that isn't metered or billed. He believed that the line loss in leakage was less than 50%, i.e. 48-49%. Ms. Brooks indicated that was still high. GM Bordallo stated that in prior years there had not been a systematic approach to water loss – leak detection had been undertaken in projects, but not on a sustained basis. The current approach was more systematic, with water loss control being viewed as a process and not as a project. The backlog of water leaks has been reduced from 200 to 20, a 90% decrease. There was a more systematic approach to pressure zone alignment, and reduction of high pressure. Satellite imagery was being used for leak detection. In a pilot project, water loss was being quantified by a master meter. The pilot projects have resulted in 20% improvement in water loss. However, Ms. Brooks indicated that the percentage of water loss has not gone down.

GM Bordallo was hopeful that, when the pilot project system is implemented system-wide, there will be double-digit reductions in water loss. Ms. Brooks requested that GWA show measurable reductions in water loss, i.e. 5%. GM Bordallo stated that the ultimate goal was reduction to 20% water loss.

Ms. Brooks raised the issue of GWA's use of expensive Navy water. GM Bordallo indicated that the CCU had insisted on a reduction of Navy water usage by GWA. There was a period of reduction of Navy water. However, Navy increased its rates. Previously GWA was not properly filling its reservoirs, and the reservoirs were below a safe level. Navy water had to be increased slightly. He believes that GWA is now at the right level in terms of water purchased from Navy. Because Navy prices have gone up, the dollar amount of usage appears to be increasing, but consumption is really stable, maintaining at the same level.

Ms. Brooks felt that GWA's audit, which indicated that projects could have a financial impact of \$450-\$500M, was inconsistent with GWA's statement that 90% of the Stipulated Order projects were complete. GM Bordallo indicated that there were 10 projects remaining to be completed with bond borrowing to date in the range of \$450-\$500 million. There were other projects in the Consent Decree that GWA was still negotiating and attempting to extend the period in which such projects could be completed. The goal by GWA was to obtain a credit rating that would reduce the cost of borrowing and maintain debt service coverage at 1.5%.

Ms. Brooks asked about the System Development Charge; there is approximately \$10M in the account, but no expenditures out of the account. What is the cash being accumulated for? GM Bordallo indicated GWA's plan was not to accommodate cash; there is a plan to spend the money, but expansion plans have been delayed by land acquisition issues. GWA does intend to expend the money, and the SDC Rules were revised to allow line replacements such that funds can rapidly be placed into projects. Ms. Brooks also noted that power purchases from GPA by GWA were increasing. She wondered whether the purchases of kilowatts were going up or whether the dollar amount was increasing. Assistant CFO Mafnas indicated that the price for power purchases were stable, based on production.

Ms. Brooks wondered what the cost was for GPA power to produce a gallon of water. GM Bordallo indicated it was dependent upon the price of electricity, but that the cost was not out of line with the prior power purchase costs. The discussion between Ms. Brooks and GM Bordallo illustrated many of the significant and important questions that were addressed in considerable detail by Georgetown Consulting Group and GWA in this rate proceeding, and, subsequently, in their Stipulations.

On February 19, 2020, the PUC held a special meeting at the GPA/GWA Conference Room. The purpose of this meeting was to provide the PUC Commissioners an

opportunity to question GWA and members of GCG, the PUC Consultant, concerning the Stipulation and the justifications for the joint resolution to this rate proceeding offered by the Parties. The Parties provided the Commissioners with copies of their presentations; all Commissioners had an opportunity to question GWA management and GCG fully concerning the Stipulations.

Stipulations

On January 17, 2020, GWA and GCG entered into Stipulations.⁸ The Parties intend such Stipulations to be a resolution of current issues concerning the rate case. The Stipulations provide fixed rate increases for FY2020 and FY2021 of 5.00% per year. Projections are established for an increase of 5.50% in FY2022, 3.00% in FY2023, and 2.50% increase in FY2024. The target rate increases for 2022-2024 are subject to review and reevaluation by the PUC based upon numerous studies that GWA will conduct, and upon further review and updating by GCG and the PUC in 2021. The PUC Commissioners had a full opportunity to review the Stipulations and to present questions to GWA and GCG at the Work Session on February 19, 2020. Therefore, the ALJ will not detail every provision of the Stipulations, but will provide an overview of the Stipulations. A comparison of the GWA Petition Schedule A, as originally filed, and the Stipulation Schedule A as agreed to, is attached hereto as Exhibit "2".⁹

1. GWA will be required to undertake various analytical studies to support the FY2022 Comprehensive Review and Update of GWA's Financial Plan and subsequent annual rate review processes for FY2023 and FY2024. The studies include:
 - a. Demand Forecasting, a comprehensive econometric forecast of water sales volumes (kGal) by customer class.
 - b. Water Loss Reduction; a comprehensive system-wide water loss reduction program designed to provide meaningful reductions in annual water loss volumes (kGal) deemed to be economically justifiable. An analytical

⁸ Stipulation of the Guam Waterworks Authority and Georgetown Consulting Group on behalf of the Public Utility Commission of Guam, GWA Docket 19-08, dated January 17, 2020.

⁹ GWA Presentation to the Consolidated Commission on Utilities, Regular Meeting, January 28, 2019.

study will be conducted. GWA will continue field work with Water Systems Optimization Inc. or other experts, for the purpose of identifying implementable loss reduction measures and appropriate loss reduction targets for its water system. Annual water loss reduction targets for FY2022-2026 will be developed using appropriate industry standard metrics. Annually, GWA will provide PUC information on results achieved.

- c. Cost of Service/Rate Design. GWA did not include a Cost of Service Study with its present rate case, which is usually a requirement for requesting rate relief. It will conduct such a study examining the allocation of costs to all customer classes of both the water and wastewater systems, employing standard analysis methodologies of the American Water Works Association.
- d. Affordability; there are concerns as to whether low income ratepayers can afford the rapidly increasing water and wastewater rates. GWA will prepare an evaluation of household water affordability and will prepare a Financial Capability Assessment. The purpose will be to address options for low-income water affordability challenges through both a design of a Customer Assistance Program and revision of its current residential lifeline rate structure. GWA will seek to improve affordability of basic water service for low-income customers.
- e. Financing Alternatives; GWA will pursue legislative and other actions necessary to enable access to certain financing tools, as alternatives to bond issuance, such as letters of credit, commercial paper and alternative debt instruments, to finance its ongoing Construction programs following issuance of the Series 2020 revenue bonds.
- f. Capitalized Labor; GWA will undertake a review of its current capitalized labor expense protocol.

- g. Cesspool/Septic Tank elimination; the purpose of this initiative will be to hook up more customers to the sewer system. GWA will identify all residential facilities within 200ft. of an existing GWA sanitary sewer line or within 100ft. of a GWA water well that requires specific action steps to be taken by GWA in accordance with 10 GCA Chapter 48, Toilet Facilities and Sewage Disposal. GWA will evaluate the potential of using SDC Funds and other funding mechanisms for this purpose.
- h. FY2022 Comprehensive Review and Update to GWA's 5-Year Financial Plan; GWA will make filings with the PUC by May 1, 2021, which compare its forecast with actual performance of GWA revenue and expense categories. GWA will submit proposed updates to its 5-year Financial Plan for FY2022-2024 and a supporting rate model. It will indicate how its demand forecast, analyses concerning water loss reduction, cost of service, affordability, capital financing, and other analyses, should be incorporated into its Five-year Financial Plan.

2. GWA and GCG have reached various agreements concerning GWA's FY2020-FY2024 Financial Plan:

- a. The Proforma results of operations contained in Attachment A for the period FY2020-2021 are agreed to.
- b. There will be stipulated water and wastewater base rate increases of 5.0% in FY2020 and 5.0% in FY2021.
- c. ~~The projected Debt Service Coverage Ratio (DSCR) for FY2020-2021 is~~ below the target of 1.75x that the PUC has set to be achieved for rate making purposes.
- d. A series of policy changes shall be undertaken in order to reduce the Debt Service Coverage Ratio to a minimum 1.40x debt service coverage ratio. These steps include revision of CCU and PUC policies.

- e. For purposes of FY2020-2021 revenue requirements, the kGal Water Sales in GWA's rate application will be utilized. However, based on GWA's studies, such results will be incorporated into the FY2022 Comprehensive Review and update to GWA's Five-Year Financial Plan.
- f. Water Loss Reduction Program; FY2020 production volumes will be adjusted based on a projected reduction of non-revenue water by 2.00% of actual FY2019 production. FY2021 production volumes will be adjusted based on a projected non-revenue water reduction of an additional 2.75% of actual FY2020 production for a cumulative total of 4.75% non-revenue water reduction. GWA will include planned water loss reduction project spending for FY2020-2021 of no less than \$14 million.
- g. Labor/Benefits Expenses; GWA has agreed to projected annual expense reductions in FY2020 of \$2,248,207 and \$1,958,153 for FY2021.
- h. Variable Operations and Maintenance Expenses; GWA has agreed to reductions in expenses of \$2,030,877 for FY2020 and \$3,703,629 for FY2021.
- i. Capital Financing Programs; GWA's financial plan will be based upon a projected fund balance target of not less than \$3M and a debt service coverage ratio of 1.40x-1.50x. GWA's \$134 million Series 2020 bond issue is to be structured with a term of thirty (30) years, two (2) years of capitalized interest, with an average coupon rate of five percent (5%) and a cost of issuance equal to two percent (2%) of par. Principal payments will be deferred for a five (5) year period on the Series 2020 bonds.

3. Based on Potential Capital Financing Program Revisions, the targeted debt service coverage ratio of 1.40x-1.50x may be adjusted. GWA will consider use of up to \$50M in commercial paper or lines of credit to the extent allowable. GWA will seek to lower financing costs for the capital funding of debt service reserve funds or subsequent borrowings by using letters-of-credit or surety bonds as allowed by GWA enabling legislation and/or revisions to current law.

4. For its Water Loss Reduction Targets, GWA will prioritize water loss reduction projects based on their respective benefit-cost ratios. The reduction target should reflect an aggressive approach to water loss management with the objective to have GWA's water loss rates compare favorably with established industry benchmarks as soon as reasonably possible within a twenty (20) year period.
 - a. GWA will use best efforts to enter into a zero-cost "water exchange" program with Navy; absent the ability to do so, GWA will prioritize reducing the amount of water purchased from the U.S. Navy. It will undertake construction efforts to eliminate Navy Water.
 - b. GWA will ensure that the new SCADA system is designed to assist GWA in identifying and detecting water losses and prioritizing and targeting water loss projects.
 - c. For the FY2020-2024 period, GWA will determine water loss reduction targets through its study, and utilize designated benchmarks to reduce water losses by 20% as compared to its 2019 water loss level.
5. Upon completion of substantive Consent Decree negotiations with USEPA, GWA will provide a detailed briefing on the proposed decree to the PUC. The briefing will outline, among other matters, potential GWA spending commitments that will impact future rate revenue requirements, and GWA will provide a comparison to what was projected in GWA's Five-Year Financial Plan.
6. The PUC is required, pursuant to 12 GCA § 12102.2(d), to conduct studies comparing the staffing pattern and manpower levels of GWA and other utilities (at least four (4) mainland utilities providing similar services with a comparable number of customers).
 - a. GCG has conducted a staffing study comparing GWA to a large cost-section of water utilities. The results indicate GWA is "an outlier" when compared directly to this cross-section of mainland water/wastewater utilities and has a greater manpower level than participating utilities.

- b. The data in AWWA Benchmarking and Review is not comparable to GWA, as many mainland water systems are a part of city or county governments and have various services such as IT/Procurement/HR/Finance and other services provided to them from the county or municipal government.
 - c. The staffing study performed should not be used by the PUC at the present time given the unique nature of Guam's water systems inherited as legacy systems from the U.S. Navy.
 - d. Analytical studies should be undertaken, and a more detailed staffing study performed by the PUC as part of the FY2022 Comprehensive Review and Update of GWA's financial plan.
 - e. No adjustment should be made to GWA staffing for FY2020-2021.
7. The FY2022 Comprehensive Review and Update to GWA's Five-Year Financial Plan will be an abbreviated proceeding taking into consideration all the required studies that are to be submitted by March 31, 2021 including any necessary legislative statutory changes GWA has pursued. GWA will file its proposed FY2022 Comprehensive Review and Update to its Five-Year Financial Plan for PUC review no later than May 1, 2021.

Analysis

1. Recommended Approval of the Stipulations

On February 12, 2020, GWA and GCG both submitted detailed briefs which more fully explain the Stipulations entered into and the justifications for their provisions.¹⁰ The analyses contained therein adequately explain the bases for the Stipulations. The Parties also presented excellent summaries of their positions at the PUC Work

¹⁰ GCG GPUC Workshop Briefing, GWA Docket 19-08, dated February 12, 2020; GWA Position Statement on Stipulation re GWA Financial Plan and Capital Improvement Program, GWA Docket 19-08, dated February 12, 2020.

Session on February 19, 2020. Although there are some differences of opinion by the Parties, they both agree that they will steadfastly adhere to the Stipulations entered into. At the Work Session scheduled on February 19, 2020, GWA and GCG confirmed on the record that they will adhere to every provision in the Stipulations and carry out their obligations under the Stipulations.

The Stipulations were bargained at arms-length by the Parties and represent a full and final resolution of presently pending issues in the rate case. There are numerous policy issues addressed, including matters such as appropriate debt service coverage ratios and different methods of financing GWA capital projects. On the policies suggested, the Parties have reached full agreement. Issues or questions could be raised concerning certain stipulations, but the ALJ cannot say that any of the Stipulations are without a reasonable basis or plausible justification. Since most of these issues involve policy, the ALJ believes that the agreements reached by the Parties are appropriate and supportable. The PUC should defer to such agreements in accordance with the provisions of the Stipulations.

2. Compliance with Requirements of the Ratepayer Bill of Rights.

There is a requirement under the Ratepayer Bill of Rights that must be satisfied before the PUC can properly address a petition for rate increase. 12 GCA § 12102.2(d) requires that the PUC, in determining approval of any proposed rate increase, take into account the results of required staffing pattern and manpower studies. The statute requires that GWA be compared with at least four (4) comparable utilities in the U.S. Mainland.¹¹ The statutory requirements were complied with: on February 18, 2020, GCG filed the Guam Waterworks Authority Staffing Study in this Docket.¹² GCG compared GWA to a cross-section of AWWA water and

¹¹ Id.

wastewater utilities. Although GCG found that GWA may be overstaffed in comparison to the mainland utilities, it determined that, for various reasons, the study results were not reliable at the present time.

GCG recommends at this time that no adjustment to the staffing related revenue requirements be made for FY 2020-2021, and that an alternative approach be undertaken to assess GWA staffing levels. GWA is not comparable to mainland water/wastewater utilities, as city or county governments often provide services to such entities (unlike with GWA). A more detailed staffing study will be performed to support the FY2022 Comprehensive Review and Update of GWA's financial plan. The study will be completed by March 31, 2021.

3. GWA Issues concerning Delay in the Proceedings and the 120- Day Rule.

In its brief, GWA addressed certain procedural aspects of the process concerning the rate case proceedings and was concerned about the length of time that it has taken to resolve the case and the level of scrutiny. GWA submits that time to resolve this case will be 236 days from the filing of its petition on July 6, 2019, implying that there was inordinate delay in resolving the case. Given the complexity of this case, the ALJ does not believe that there was any inordinate delay. Furthermore, the 120-day provision in the statute does not afford GWA any rights or remedies. The applicable statute merely provides that: **"Failure of the Commission to act upon a rate request change within one hundred twenty (120) days of final filing shall be deemed a final order denying said rate request change for the purposes of this Section."**¹³ (emphasis added). If GWA claims that PUC decision has been untimely, the statute provides it no relief but states that its rate application is deemed denied.

¹² Georgetown Consulting Group, Inc., Guam Waterworks Authority Staffing Study, GWA Docket 19-08, filed February 18, 2020.

¹³ 12 GCA Sec. 12119.

Rule 24 (e) of the PUC Rules of Practice and Procedure provides that “the Commission shall act on a utility’s application for rate change within one hundred twenty days after the **final filing by the utility of all documentation, including responses to discovery**, as may be necessary to support the application; provided, however that **the ALJ shall make the determination of when this “final filing” has occurred.**” (emphasis added). There was a discovery conference between the Parties on **September 18, 2019**. As late as **October 16, 2019**, GCG was sending discovery responses to GWA’s Requests for Information. Furthermore, the Combined Proposed Schedule of the Parties provided for filing by GWA of a second set of Requests for Information on **January 6, 2020**, and GCG responses to GWA’s second set of RFI’s by **January 22, 2020**.

There is no “final filing” which commences the running of the 120 days until all responses to discovery are filed. Arguably, the one hundred and twenty days did not even start to run until all of these discovery activities were completed. It would not even start to run until GCG submitted responses to discovery on January 22, 2020. But the salient fact is that GWA never requested a determination from the ALJ as to when a “final” filing occurred, which is required under Rule 24 of the PUC Rules for Practice and Procedure.

More fundamentally, as GCG outlined at the Work Session on February 19, 2020, GWA did not provide a Rate Study (rate design analysis) or a cost of service analysis in this Docket. It has long been established that a rate study and cost of service analysis are fundamental to regulatory rate proceedings. Both GCG and the ALJ indicated on the record in this proceeding that these studies should ordinarily be a part of a petition to increase rates. GCG has indicated that the length of these proceedings was caused by the need to supplement the record with information that GWA did not provide. Although GWA claims that it met all of the filing

requirements, in the 2009 rate case, GWA committed to future rate design changes based upon a Cost of Service Study by July 2011.¹⁴ No such study was provided.

Given the complex number of issues in the case, the ALJ does not believe that the length of the proceedings has been unreasonable. The Financial Plan included three new debt series issued in 2019, 2022 and 2023. The proceeding included such diverse issues as the magnitude of recurring user rate increases, large debt financings, construction budget prioritization, water loss reduction measures and consumer affordability. There were issues concerning alternative debt financing measures, reduction of debt service coverage ratios, and capitalized interest and principal deferral in bond issuances.¹⁵ Other than a TELRIC rate proceeding in a telecommunications docket, this is the most complex utility rate proceeding that has been before the Commission since 2008.

GWA has also expressed concerns about the high level of PUC scrutiny in this case. In prior GWA rate cases PUC has not always engaged its off-island consultant GCG. However, in this case, it was felt that a third GWA rate plan, which would increase rates by 44% over five years, had to be examined carefully and critically. GWA's Twenty-Year Water Resources Master Plan Update proposed a continuing series of rate increases of between 4 and 4 and one-half percent annually. Another major concern was that the 58% non-revenue water loss has not improved over many years. Thus, this case justified a high level of PUC scrutiny. It would obviously take the Parties considerable time to develop a fully adequate plan and framework for dealing with the water loss issue. The long-standing water loss issue has to be resolved in a comprehensive and thorough manner.

¹⁴ GWA Docket 09-03, July 27, 2009, GPUC Rate Decision and supporting July 14, 2009, Stipulation, paragraph 8.

¹⁵ GCG Presentation before the PUC on February 19, 2020.

The Parties have now been engaged in ongoing and detailed negotiations concerning this rate case for over 7 and a half months after the Rate Petition was filed. The broad range of issues involved is staggering, including proposed rate increases, high water loss levels, the need for substantial capital improvement projects, bond issuance and finance issues, the need for a staffing study, and various other matters. It is possible that some of these issues were not as fully addressed as they could have been in prior cases. Given the substantial number of issues, it is commendable that the Parties have been able to reach Stipulations in this case. When viewed overall, the Stipulations reach comprises that are beneficial to both the ratepayers and GWA.

4. Discussion of Rate Impact and Major Issues addressed in the Stipulations; GWA's Compression Request should be denied.

Here the ALJ will not cover every aspect of the Stipulations, but will present major areas which the Stipulations address and reasons why the PUC should adopt the Stipulations. The ALJ believes that the Stipulations embody workable solutions which will provide GWA with sufficient revenues to fund its capital improvement programs. A very detailed plan has been adopted to address the water loss issue.

Prior to this case, GWA's last two Five Year Rate Plans imposed water rate increases of 42% and 57% on the ratepayers. The cumulative increase for the proposed third Five Year rate plan would be 44%. To address the record of large increases, the ALJ felt that it was necessary to retain PUC Consultant GCG to thoroughly investigate a third proposed substantial increase. In its Petition, GWA had originally proposed a rate increase of 10% for FY2020 and 8.5% for 2021. The Stipulation now provides that the agreed increase for Water and Wastewater base rates for FY2020 will be 5%

and 5% for FY2021. All FY2020-2021 rates are to be applied across-the-board to all rate classes with no change in the lifeline rates during FY2020 or FY2021.¹⁶

GWA agrees that these rate revenue increases will be adequate to support GWA operations and maintenance and enable GWA capital program financing, in particular the planned \$134 million Series 2020 Debt Financing.¹⁷

The two-year cumulative increase has been reduced from 18.5% to 10%, a 45% decrease. Jim Madan of GCG has estimated that the reduction of the original rate request of GWA will result in savings to the ratepayers of \$10 to \$15 million.¹⁸ This reduction was the result of compromise and negotiation between the Parties. GWA also agreed to reductions in operations and personnel expenses. At the same time, GCG recognizes that there are stipulated court order project expenses that GWA must incur and likely consent decree project expenses.

An issue that GWA raised for the first time in its February 12, 2020, brief, and its presentation before the PUC on February 19, 2020, was that the PUC should grant it “compression” on the rate increase for FY2020. According to GWA, if a 5% rate increase were now granted by the PUC effective March 1, 2020, GWA will have been denied the benefit of the increase for the first five months of FY2020. Since five months of the year have already elapsed, there is an issue of whether the FY2020 rate increase of 5% should be “compressed” over the remaining seven months in the fiscal year. Therefore, to provide GWA with a full 5% rate increase for entire FY2020, GWA contends that the increase must be effective October 1, 2019, the beginning of FY2020.

Issues of “compression” often arise in rate cases where rates cannot be provided over an entire year but must be recovered in a shorter period. Based upon approval

¹⁶ GCG Presentation before the PUC on February 19, 2020.

¹⁷ GWA Position Statement on Stipulation, pg. 3.

¹⁸ GCG Presentation before the PUC on February 19, 2020.

by the PUC effective March 1, 2020, GWA is requesting that an increase of 8.57 percent to basic charges and non-lifeline rates be effective on that date and an FY2021 increase of 2%.¹⁹

A problem with GWA's "compression" request is that GWA never presented this request to GCG in the negotiations of the Stipulations. Larry Gawlik of GCG stated at the February 19, 2020, Work Session that there was no discussion on compression included in the Stipulations.²⁰ GWA GM Miguel Bordallo admitted during the Work Session that it was an "oversight" not to include "compression" in the Stipulations. The ALJ submits that since the Parties did not discuss compression or include it in the Stipulations, it is not appropriate to impose compression when it was not specifically referenced or agreed to by the Parties.

The specific provision in the Stipulation which addresses when the FY2020 Base Rate Increase will become effective states as follows: **"The rate increase for FY2020 will take place upon the PUC issuing a final order in Docket No. 19-08..."**.²¹ (emphasis added). GWA's position would essentially make the rate increase effective October 1, 2019, which is directly contrary to the express language of the Stipulation as to the effective date of the increase. GWA further claims that the rates must be compressed because the Parties agreed to a base rate increase of 5.0% in FY2020. However, that sentence indicating that the Parties agree to a 5.0% rate increase in FY2020 does not indicate when the base rate becomes effective. The specific language in the second sentence as to when the rate increase is effective controls the general language in the first sentence concerning a 5% increase in FY2020.²² The FY2020 rate increase is effective is **upon the PUC issuing a final order in Docket No. 19-08.**

¹⁹ GWA Position Statement on Stipulation, pg. 3.

²⁰ GCG Presentation before the PUC on February 19, 2020.

²¹ Stipulations, pg. 7.

²² Id.

The Appendix A Proforma does not specifically address compression nor indicate when the FY2020 proposed rates will go into effect. It is only an estimate of revenues and expenses, and is not necessarily a statement of actual results. On its face the Proforma is a “projection” only and not a guaranty of any specific results.

The PUC should deny GWA’s request for compression and adopt the position of GCG. GWA claims loss of \$2.2 million in revenues, but has not carried its burden of proof to demonstrate such a loss. Under the Proforma, GWA still has an ending cash balance of almost \$4.2 million at the end of FY2020, so it will still have a positive cash balance after the claimed “loss.” No actual results to date have been provided by GWA. Had the Parties discussed and agreed to “compression” there would have been a Stipulation on this issue. The fact that there was not a stipulation indicates that there was no such agreement. An 8.57% rate increase implemented now, immediately, would not be in the best interest of ratepayers.

The original Rate Petition requested rate increases of 8.5% in FY2022, 6% in FY2023, and 5% in FY2024. The target increases now provided for in FY2022 through 2024 are 5.50% for FY2022, 3% for FY2023, and 2.5% for FY2024. However, such rates are “subject to Adjustment.”²³ The FY2022 through FY2024 rates are “proforma”, “based on the best estimates that the Parties currently have.”²⁴ However, these “proforma” rates will be “subject to redetermination after the analytical studies in FY2021 are completed and the FY 2022 Comprehensive Review and Update of GWA’s Financial Plan completed.”²⁵

The reasons that rates cannot be set now for FY2022-2024 is that there is simply an insufficient record to enable the Parties to set such rates at present. That is why

²³ GWA Presentation to the Consolidated Commission on Utilities, Regular Meeting, January 28, 2019, at p. 64 of the CCU Board Packet.

²⁴ GCG GPUC Workshop Briefing, pg. 3.

²⁵ Id.

GWA is being required to conduct the six analytical studies set forth in the Stipulations.²⁶ GCG indicates that the Proforma rates for FY2022-2024 will be subject to redetermination after the analytical studies in FY2021 are completed and the FY2022 Comprehensive Review and Update of GWA's Financial Plan are completed.²⁷

The PUC should approve the rates of 5% for FY2020 and 5% for 2021 as "just" and "reasonable" pursuant to 12 GCA §§ 12116 and 12118. They appear to be based upon a reasonable estimate of GWA's revenue needs. The agreement of the Parties to reduce the original rate requests indicate that the interests of the ratepayers have been considered and respected. With the present targets for FY2022, 2023, and 2024, the overall rate increase presently contemplated is roughly 50% of that originally sought in the GWA Petition. Of course, the actual rates for the last three years of the five-year plan will depend upon the results of the studies to be performed. The final rates could be substantially different from the "proformas."

The Water loss Reduction Program is one of the most significant aspects of the Stipulations. GWA's Rate petition did not include a defined water loss reduction program for the purposes of reducing water loss levels. The Stipulation deals with the substantial problem of water loss at a level of 55-58% that has adversely affected GWA's operations for over 20 years. GCG has indicated that water revenue loss is the most significant and substantial problem facing GWA. While there have been prior PUC Orders and Stipulations addressing water loss, there has never been an agreement with the detailed solutions and plan of action as is included in the

²⁶ See GWA Presentation before the PUC on February 19, 2020, Stipulation: Analytical Studies (Cost of Service Analysis, Demand Forecast, Staffing Study, Water Loss Control Plan, Alternative Capital Financing, Labor Capitalization Review, Cesspool/Septic Elimination, and Affordability Program). In response to a question from Commissioner Perez Camacho, GWA GM Bordallo indicated that GWA will finish all of the studies by March 31, 2021.

²⁷ GCG GPUC Workshop Briefing, pg. 3.

Stipulations. There has been no prior PUC Order or Stipulation that has included so substantial a planned program to reduce water loss.

The program includes a comprehensive systemwide water loss reduction assessment and program designed to provide meaningful reductions in water loss volumes (kGal). Specific water loss reduction projects will be identified. Water loss reductions achieved will be documented. A water loss reduction plan, including annual loss reduction targets, will be completed and submitted by March 31, 2021, to be considered by PUC in the update to GWA's five-year plan.²⁸ In FY 2020-2021, GWA will include water loss reduction project spending of no less than \$14M.²⁹ FY2020 and FY2021 production volumes will be adjusted based on projected non-revenue water reduction of 2% of actual FY2019 production and 2.75% of actual FY2020 production respectively.³⁰ Measures agreed to in the Stipulations will be undertaken to reduce GWA water loss by 20% over the five-year period.

GWA has launched a few new initiatives to address water loss, such as pressure zone realignment and District Metered Areas.³¹ The Parties should be commended for agreeing to a substantial program that will finally address this problem. Thus, a substantial benefit for ratepayers is the inclusion of measures in the Stipulations for reduction of non-revenue water loss. As GCG indicated, water loss "is the most critical issue facing GWA and is costing consumers serious money."³²

A third major area that the Stipulations address is GWA's Capital Financing process. Three issues addressed by the Parties in the Stipulations are Debt Service Reserve Funds and Applicable Coverage Calculations, Revenue Bond Debt Structure, and

²⁸ Id. at pg. 9.

²⁹ Stipulations, pg. 9.

³⁰ Id.

³¹ GWA Position Statement on Stipulation, pg. 6.

³² GCG GPUC Workshop Briefing, pg. 9.

Tax-Exempt Commercial Paper. There are presently two separate debt service coverage ratio calculations applicable to GWA's debt borrowing: the bond indenture coverage ratio of 1.25x coverage and the PUC 1.75x coverage target pursuant to the PUC's FY 2005 Rate Order, with the inclusion of Working Capital Reserve fund balances per CCU policy.³³

The Parties have agreed that the dual calculations are "uncommon among water system debt issuers"³⁴, and that a simpler debt service coverage ratio standard should be adopted. The PUC 1.75x standard may exceed coverage levels required for comparable and even more favorably rated water system issuers.³⁵ Such a standard is a difficult barrier to meet, and in this case would require tremendous rate increases.³⁶ Therefore, the Parties both recommend that the CCU and PUC provide any necessary policy changes that will allow for the adoption of a 1.40x debt service coverage ratio. Net revenues would not continue to be supplemented by working capital and debt service reserve.³⁷

The PUC Consultant has recommended that PUC adopt this policy change. GCG was previously instrumental in PUC's adoption of the 1.75x standard. The ALJ believes that adoption of this 1.40x standard will end certain confusion that presently exists, and further provide a standard that is easier to apply and is more acceptable in the national credit market. Both CCU and PUC will be required to further evaluate this matter and to adopt appropriate policy changes.³⁸

The Parties have further adopted certain agreements as to the Revenue Bond Debt Structure that will be used for the proposed \$134M bond issuance. The first is that

³³ GWA Position Statement on Stipulation, pg. 10.

³⁴ Id.

³⁵ Id.

³⁶ Statement of Larry Gawlik at PUC Work Session on February 19, 2020.

³⁷ Stipulations, pg. 8.

³⁸ GWA Position Statement on Stipulation, pg. 12.

the bond issuance will be structured with two years of capitalized interest. In the past PUC has viewed capitalization of bond interest with some skepticism. Some initial utility bonds were issued with three years of capitalized interest, and PUC sought to reduce the capitalization period to two years. There are arguments for and against capitalization of interest. Such capitalization more closely aligns ratepayer benefit from capital projects with their actual availability. Capitalized interest is generally accepted in regulatory settings as a means to align debt payment obligations to asset in-service dates, and thereby nominally matches revenues and expense.³⁹

However, capitalizing costs may place additional pressure on rates outside the current rate application period.⁴⁰ Such capitalization merely defers principal payments and will thereafter result in a rate bump or increase when principal/interest payments become due.⁴¹ It is clear that, without such capitalization, there would be a more immediate rate impact, and rates would have to increase to enable the bond debt service to be paid. For that reason, the ALJ can recommend PUC approval of this provision, which PUC's Consultant has also recommended.

Similarly, the Parties assume that principal payments will be deferred for five years with the upcoming bond issuance. Again, this will only defer the rate impact. In this case, if principal payments were not deferred, there would be a "rate bump" in FY2022. The purpose of deferral is "rate smoothing."⁴² However, deferral of principal will result in interest being paid on the deferral. Deferral of principal payments for 5 years is forecasted to increase debt service obligations by

³⁹ Id. at p. 11.

⁴⁰ Id.

⁴¹ Statement of Larry Gawlik at PUC Work Session on February 19, 2020.

⁴² Id.

approximately \$2.8 million in FY2025.⁴³ In the opinion of the ALJ, the five-year deferral of principal payments is justified as a part of the overall rate package. Such deferral will avoid an immediate rate impact during this five-year rate period. It is an appropriate part of the overall rate plan that the Parties have crafted.

Thirdly, the Parties have agreed that GWA will explore alternatives to bond financing, such as tax-exempt commercial paper and lines of credit, for future capital borrowing needs. It makes sense for GWA to consider other forms of financing that could reduce the cost of borrowing. However, these alternatives will require further consideration and approval by CCU, PUC, and possibly the Guam Legislature. There is no assurance that these alternatives will be feasible, but such alternatives could possibly reduce the cost of GWA's debt borrowing.

5. Issue concerning Prior PUC Approval of Consent Decree Settlement between GWA and USEPA.

A looming issue in the five-year Rate Plan of GWA is the impact of a Consent Decree between GWA and the USEPA. GWA will likely agree with USEPA to capital programs and projects with spending commitments that will impact future rate revenue requirements. In the Stipulations, the Parties have agreed that, upon completion of substantive Consent Decree negotiations with USEPA, GWA will provide a detailed briefing on the proposed decree to the PUC. The briefing will outline, among other matters, potential GWA spending commitments that will impact future rate revenue requirements and provide a comparison to what was projected in GWA's Five-Year Financial Plan.⁴⁴ The ALJ concurs with this stipulation and recommends its approval.

⁴³ Statement of Eric Rothstein at PUC Work Session on February 19, 2020.

⁴⁴ Stipulations, pg. 11.

However, the Stipulation does not address the issue of whether GWA is required to obtain prior approval of its settlement agreement with USEPA before entering into the Consent Decree. It is the ALJ's position that prior PUC approval of such settlement agreement is required under Guam statute and the GWA-PUC Contract Review Protocol. 12 GCA Sec. 12105 (e)(1) requires PUC approval of any contract or obligation which could increase rates prior to entry into such contract by GWA. Furthermore, the Contract Review Protocol requires prior PUC review of any contract or obligation which exceeds \$1,000,000.⁴⁵

At present, the ALJ and GWA do not agree on whether PUC prior approval of a consent decree settlement is required. The ALJ notes that GPA did obtain prior approval of its consent decree settlement in GPA Docket 20-01. Attached hereto as Exhibit 3 are emails between the ALJ and GWA Legal Counsel Kelly Clark indicating their respective positions on this issue. Because PUC and GWA are still discussing and addressing this issue, the ALJ has decided not to ask for a PUC Order at the present time requiring PUC prior review of the consent decree settlement. The ALJ presently desires to maintain the PUC focus upon approval of the Stipulations. However, this remains an open issue in this docket, and the ALJ reserves the right to bring this issue before the PUC at a later time to require PUC approval of the Consent Decree Settlement.

6. Continued Proceedings in this Docket.

Due to the extensive nature of the studies and reporting requirements imposed upon GWA herein, this docket will need to be kept open for the duration of the five-year rate plan period. Over the next few years it is contemplated that the Parties will be


⁴⁵ Administrative Docket Contract Review Protocol for the Guam Waterworks Authority, Docket 00-04, dated October 27, 2005.

required to conduct various substantial amounts of study and work to complete the requirements of the Stipulations.

Recommendation

For the foregoing reasons, the Administrative Law Judge recommends that the Stipulations of GWA and GCG be adopted by the Guam Public Utilities Commission. The ALJ recommends that the PUC review and adopt the proposed Decision, which is submitted herewith.

Dated this 24th day of February, 2020.


Frederick J. Horecky
Chief Administrative Law Judge

Settlement Conference Agenda

December 16 – 18, 2020 – Seattle Washington

December 16, 2019

8:30 – 9:30 a.m. ***Introductions / Conference Objectives / Agenda Review***

9:30 – 11:30 a.m. ***Water Production and Billable Volumes Forecasting***

- Sales forecast analysis and basis / calculations supporting proposed adjustments by forecast year
 - Outline of key points to be addressed in stipulation
- Non-Revenue Water
 - Analysis and basis / calculations supporting proposed 5% per annum reduction target and resultant adjustments to water production forecast
 - Identification of O&M expense and capital project spending adjustments by forecast year (required to achieve target reduction)
 - Outline of key points to be addressed in stipulation

11:30 a.m. – 12:30 p.m.
(working lunch)

Administrative Matters – Studies Supporting Future Rate Adjustments

- GCG suggested supporting analytical studies
 - Cost of Service Analysis / Rate Design study
 - Price elasticity of demand study
 - Non-Revenue Water management study
 - Alternative financing options review
 - short term instruments, reserve funding, variable rate debt
 - Outline of key points to be addressed in stipulation including timing, scope, cost ranges and impacts on forecasted O&M expense, use in true-up process

12:30 – 2:30 p.m. ***Operations & Maintenance Expenses***

- Labor and Employee Benefit Expenses and Capitalized Labor - analysis and basis / calculations supporting proposed adjustments by forecast year
- PUC commissioned staffing study (due 12/12/19)
 - Outline of key points to be addressed in stipulation

- Power and Purchased Water Expenses adjustments by forecast year - analysis and basis / calculations supporting proposed adjustments by forecast year
 - Outline of key points to be addressed in stipulation

2:30 - 2:45 p.m. **Break**

2:45 - 4:45 p.m. **Capital Program Review**

- Review GWA project prioritization and schedule, cost estimation (including contingency) procedures
- Adjustments to project costs and spending plan - analysis and basis / calculations supporting proposed adjustments by forecast year
 - Non-revenue water management
- Outline of key points to be addressed in stipulation - revised CIP spending schedule by forecast year

December 17, 2019

8:30 – 9:30 a.m. **Other Concerns Potentially Impacting Capital Plan and Financing**

- Discussion of cesspool/septic tank policies
- Discussion of pressure zones and reservoirs
 - Outline of key points to be addressed in stipulation - further revision to CIP spending schedule by forecast year, O&M expense forecast, use of SDCs

9:30 – 10:30 a.m. **Capital Financing Plan**

- Fund balance amounts and amounts available for re-allocation – review GWA provided information on potential balance re-allocations
- Adjustments to GWA project funding plan by project by forecast year
 - Timing/sizing of prospective debt issues, debt instruments and structuring
 - PayGO amounts by forecast year
- Outline of key points to be addressed in stipulation – analysis / basis of proposed revision to prospective debt financing program

11:30 a.m. – 12:30 p.m.

(working lunch) **Water Affordability / Rate Design**

- Discussion of rate design options
- Discussion of programmatic options and implementation challenges
 - Outline of key points to be addressed in stipulation

12:30 – 2:30 p.m. *Debt service coverage*

- Discussion of applicable calculations (traditional vs. CCU delineated DSRF adjusted), applicable minimums and targets
- Proposed / potential adjustments to DSC targets – analysis / basis for DS coverage targets
 - Outline of key points to be addressed in stipulation

2:30 – 2:45 p.m. *Break*

2:45 - 4:00 p.m. *Rate Plan Scenario Development*

- Discussion / confirmation of rate plan input revisions to reflect stipulations
- Discussion of protocols for development of rate plan alternatives
 - Outline of key points to be addressed in status report to ALJ on information to be developed in support of future settlement / evidentiary hearing

4:00 p.m. *GWA Series 2020 Finance Team Conference Call*

December 18, 2019

8:30 – 9:30 a.m. *Rate Plan Period*

- Discussion of period for GWA rate application / Series 2020 pro forma modifications
- Discussion of GCG proposed rate trajectory / ranges
 - Outline of key points to be addressed in status report to ALJ on information to be developed in support of future settlement / evidentiary hearing

9:30 – 11:30 a.m. *Stipulation Review / Development Process / Schedule Review*

- Review and refinement of outlines of stipulation points identified / agreed
- Develop schedule for development / review of stipulation language:
 - GWA draft text by _____
 - GCG review and comment by _____
 - Final reviews and submittals
- Scoping of issues for future settlement conference / evidentiary hearing
- Overall rate plan / bond financing schedule review
- Assessment of settlement conference
 - Review based on objectives identified in opening session
 - Scoping of remaining issues

Settlement Conference Issues Listing

December 16 – 18, 2020 – Seattle Washington

Administrative Matters

- **Rate Plan Period / Series 2020 Pro Forma structure**
 - GWA rate application modifications
 - GCG proposed rate trajectory / ranges
- **Supporting analytical studies**
 - PUC commissioned staffing study (due 12/12/19)
 - Cost of Service Analysis / Rate Design study
 - Price elasticity of demand study
 - Non-Revenue Water management study
 - Alternative financing options review
 - short term instruments, reserve funding, variable rate debt

Water Production / Sales

- **Billable Volumes forecast assumptions**
 - Adjustments by customer class by forecast year
- **Non-Revenue Water**
 - Annual reduction targets by forecast year
 - O&M expense adjustments by forecast year
 - Capital project expenses adjustments by forecast year

Operations & Maintenance Expenses

- **Labor and Employee Benefit Expense adjustments (incl for Capitalized Labor) by forecast year**
- **Power Expense adjustments by forecast year**
- **Purchased Water expense adjustments by forecast year**

Capital Program and Financing

- **Capital Program and Financing Plan**
 - GWA identified fund balance amounts and amounts available for re-allocation
 - Adjustments to GWA project prioritization and schedule by forecast year
 - Adjustments to spending plan by project by forecast year
 - GCG concerns regarding pressure zones and reservoirs – CIP impacts by FY
 - GCG concerns re: Cesspool/Septic Tank policies – adjustments for potential use of SDCs
 - Adjustments to GWA project funding plan by project by forecast year
 - Timing/sizing of prospective debt issues
 - PayGO amounts by forecast year
- **Debt service coverage**
 - Applicable calculations (traditional vs. CCU delineated DSRF adjusted)
 - Applicable minimums and targets
 - Rate Plan DSC target (traditionally calculated) by forecast year

Water Affordability / Rate Design

- **Water Affordability**
 - Rate design options
 - Programmatic options

GUAM WATERWORKS AUTHORITY

Petition vs Stipulation Comparison

GWA Petition Schedule A

Stipulation Schedule A

	GWA FY20-FY24 Petition Cumulative (\$)					Stipulation FY20-FY24 Fixed FY22-FY24 Subject to Adjustment				
	2020	2021	2022	2023	2024	2020	2021	2022	2023	2024
Rate Increase at Year										
Basic Charge - Water	10.00%	5.50%	8.00%	6.50%	5.00%	5.00%	5.00%	5.50%	3.00%	2.50%
Lifeline Increase	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	2.50%
Non-Lifeline Increase	10.00%	8.50%	8.00%	6.50%	5.00%	5.00%	5.00%	5.50%	3.00%	2.50%
Legislative Surcharge	3.60%	3.60%	3.50%	3.40%	3.45%	3.60%	3.60%	3.50%	3.40%	3.45%
Customer Growth	0.50%	0.50%	0.50%	0.50%	0.50%	0.50%	0.50%	0.50%	0.50%	0.50%
Demand Growth	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Total Operating Revenues	\$ 128,397,745	\$ 135,982,780	\$ 148,643,136	\$ 155,158,107	\$ 162,286,353	\$ 121,354,609	\$ 126,778,476	\$ 133,313,225	\$ 136,900,232	\$ 140,470,940
Total Operating Expenses	\$ 85,844,680	\$ 100,618,503	\$ 103,977,291	\$ 107,897,983	\$ 113,657,588	\$ 91,483,090	\$ 95,696,362	\$ 97,453,007	\$ 99,145,822	\$ 102,741,110
INCREASE (DECREASE) in Capital	\$ 38,918,619	\$ 44,649,072	\$ 42,867,000	\$ 49,194,881	\$ 21,300,653	\$ 38,278,987	\$ 40,426,908	\$ 38,316,739	\$ 11,848,108	\$ 12,716,771
BOND DEBT SERVICE	\$ 34,175,188	\$ 34,229,950	\$ 43,204,135	\$ 43,195,705	\$ 47,217,036	\$ 34,175,188	\$ 34,229,950	\$ 40,934,350	\$ 40,928,625	\$ 40,935,013
DSGR (1.75%) - PUC	1.53	1.88	1.51	1.82	1.54	1.52	1.55	1.42	1.48	1.51
Requested Balance for Debt Svc	1.86	2.81	1.85	2.06	2.85	1.84	1.89	1.70	1.75	1.79
Amount at 1.4						\$ 51,760,874	\$ 53,360,988	\$ 58,273,942	\$ 60,520,445	\$ 61,949,686
Reduced Revenues						\$ 47,845,263	\$ 47,821,930	\$ 57,308,090	\$ 57,301,475	\$ 57,309,018
% of revenues						3.3%	4.3%	0.7%	2.4%	3.3%
Ending Balance	\$ 3,250,272	\$ 3,759,207	\$ 4,595,226	\$ 5,168,846	\$ 5,733,524	\$ 4,391,406	\$ 5,167,481	\$ 6,590,167	\$ 10,404,414	\$ 18,278,950

Fred Horecky

From: Fred Horecky <horeckylaw@teleguam.net>
Sent: Friday, February 14, 2020 4:41 PM
To: 'koclark@guamwaterworks.org'
Cc: 'Miguel C Bordallo'; 'gwalegal@guamwaterworks.org'
Subject: RE: CD approval discussion

Dear Kelly:

I am in receipt of your email dated January 30, 2020, wherein you indicated that GWA would decline to file its settlement agreement with the USEPA for prior approval by the Guam Public Utilities Commission prior to entering into a Consent Decree.

GWA's position contradicts the position taken by the Guam Power Authority, which is under the management of the same body as GWA, the Consolidated Commission on Utilities. In GPA Docket 20-01, GPA submitted its proposed settlement agreement with USEPA to the PUC for approval prior to entering into a Consent Order with USEPA. GPA filed a "Petition for Contract Review," and stated as follows therein: "GPA hereby petitions the PUC pursuant to the Contract Review Protocol for the Guam Power Authority, approved by the PUC, to review and approve the Consent Decree with the United States Environmental Protection Agency (EPA).

GPA's Petition made it clear that it was seeking review and approval of a "proposed settlement". In GPA's view, a proposed settlement for a consent decree is required to be reviewed by the PUC under the Contract Review Protocol. The proposed settlement was required to be reviewed and approved by the PUC before GPA could enter into it. The PUC approved GPA's settlement and the Consent Decree in its Order in GPA Docket 20-01, dated December 5, 2019. GWA proposed settlement with USEPA must be reviewed by PUC under the Contract Review Protocol.

Under Guam Law and GWA's Contract Review Protocol, GWA is required to have prior PUC approval before it enters into a settlement agreement and a consent decree. GWA would violate Guam Law and the Contract Review Protocol by failing to seek prior PUC approval of its settlement. As a policy matter, it makes sense that the PUC would review a proposed settlement that could obligate ratepayers to pay hundreds of millions of dollars.

12 GCA Sec. 12105(e)(1) requires PUC approval of any GWA "contract" or "obligation" which "could increase rates" prior to GWA's entry into such contract.: "The utilities shall not, however, enter into any contractual agreements or obligations which could increase rates and charges prior to the written approval of the Commission." A settlement agreement by GWA with USEPA to enter into a consent decree is a contract, and a contract which "could increase rates." There is no question but that the settlement agreement that GWA enters into with USEPA and the consent decree will obligate GWA to spend many millions of dollars on consent decree water and wastewater projects. The Contract Review Protocol between GWA and the Guam Public Utilities Commission requires GWA to seek prior approval before entering into any contract which could increase rates.

Pursuant to its authority under 12 GCA Section 12004, the Guam Public Utilities Commission [PUC] established a protocol to identify and review regulated contracts and obligations of Guam Waterworks Authority [GWA]:

"1. The following GWA contracts and obligations shall require prior PUC approval under 12 GCA 12004, which shall be obtained before the procurement process is begun:

- a) All capital improvement projects (CIP) in excess of \$1,000,000 whether or not a project extends over a period of one year or several years; b) All capital items by account group, which in any year exceed \$1,000,000; c) All professional service procurements in excess of \$1,000,000; d) All externally funded loan obligations and other financial obligations such as lines of credit, bonds, etc. in the excess of \$1,000,000 and any use of said funds; e) Any contract or obligation not specifically referenced above which exceeds \$1,000,000, not including individual contracts within an approved CIP or contract; f) Any internally funded procurement in excess of a CIP expenditure ceiling, which PUC shall establish on or before November 15 of each fiscal year. g) Any agreement

to compromise or settle disputed charges for services by GWA, when the amount of the waived charges would exceed \$1,000,000.

As a matter of law, a settlement agreement by GWA with USEPA and a subsequent Consent Decree are "contracts" and "obligations" which require prior PUC review:

The U.S. Supreme Court has determined that agreements of parties for consent decrees, as well as consent decrees themselves, are "contracts": "To be sure, consent decrees bear some of the earmarks of judgments entered after litigation. At the same time, because their terms are arrived at through mutual agreement of the parties, consent decrees also closely resemble contracts. See *United States v. ITT Continental Baking Co.*, 420 U.S. 223, 235–237, 95 S.Ct. 926, 933–35, 43 L.Ed.2d 148 (1975); *United States v. Armour & Co.*, 402 U.S. 673, 91 S.Ct. 1752, 29 L.Ed.2d 256 (1971). More accurately, then, as we have previously recognized, consent decrees "have attributes both of contracts and of judicial decrees," a dual character that has resulted in different treatment for different purposes. *United States v. ITT Continental Baking Co.*, supra, 420 U.S., at 235–237, and n. 10, 95 S.Ct., at 934, and n. 10. The question is not whether we can label a consent decree as a "contract" or a "judgment," for we can do both." *Local No. 93, Int'l Ass'n of Firefighters v. City of Cleveland*, 478 U.S. 501, 106 S.Ct. 3063, 92 L.Ed. 2d 405 (1986).

Consent decrees have elements of both contracts and judicial decrees. *Firefighters v. Cleveland*, 478 U.S. 501, 106 S.Ct. 3063, 92 L.Ed.2d 405 (1986). A consent decree "embodies an agreement of the parties" and is also "an agreement that the parties desire and expect will be reflected in, and be enforceable as, a judicial decree that is subject to the rules generally applicable to other judgments and decrees." *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 378, 112 S.Ct. 748, 116 L.Ed.2d 867 (1992)." *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 124 S.Ct. 899, 903, 157 L.Ed. 2d 855 (2004).

Rulings in the Ninth Circuit Court of Appeals are to the same effect: "We begin our analysis of this issue by noting that consent decrees are essentially contractual agreements that are given the status of a judicial decree. Contract principles are generally applicable in our analysis of consent decrees, provided contract analysis does not undermine the judicial character of the decree. See, e.g., *Thompson v. Enomoto*, 915 F.2d 1383, 1388 (9th Cir.1990), cert. denied, 502 U.S. 1071, 112 S.Ct. 965, 117 L.Ed.2d 131 (1992). Key to the present case, consent decrees are construed as contracts for purposes of enforcement. *United States v. ITT Continental Baking Co.*, 420 U.S. 223, 238, 95 S.Ct. 926, 935, 43 L.Ed.2d 148 (1975); see also *Martin v. Wilks*, 490 U.S. 755, 788 n. 27, 109 S.Ct. 2180, 2198–99 n. 27, 104 L.Ed.2d 835 (1989) (Stevens, J., dissenting)." *Hook v. State of Ariz., Dept. of Corrections*, 972 F.2d 1012, 1014 (9th Cir. 1992); see also 819 U.S. v. FMC Corp., 531 F. 3d 813, 819 (9th Cir. 2008).

Guam Law is in accord with the foregoing principles; settlement agreements and consent decrees are interpreted as "contracts": "Principles of contract interpretation are legal questions reviewed de novo. *Aetna Cas. & Sur. Co., Inc.*, 948 F.2d at 1511. "A divorce decree incorporating a settlement agreement is simply a consent decree." *Leon Guerrero*, 2000 Guam 28 ¶ 8 (citing *Richardson v. Edwards*, 127 F.3d 97, 101 (D.C.Cir.1997)). Rules of construction for contracts are used to interpret the consent decree according to the parties' intent. *Id.*; see also *Camacho*, 1997 Guam 5 ¶¶ 30–35." *Blaz v. Cruz*, 2009 Guam 12 [19].

In sum, any proposed settlement agreement between GWA and USEPA is a contract. Such settlement agreement and a consent decree are contracts which could increase rates by obligating GWA to expend substantial sums of money. A settlement agreement and consent decree would impose financial obligations upon GWA in excess of \$1,000,000. PUC review is required under Guam statute and the Contract Review Protocol.

You argue that PUC has not been a party in the negotiations, and will not be a named defendant in a complaint. It is further contended that negotiations have been going on for years, and that "PUC...now would take months of review to be meaningful in any sense..." Regarding GPA, PUC was not a party, was not named as a defendant, and was not involved in the negotiations. None of those "facts" precluded expeditious and reasonable review by PUC of the GPA-USEPA settlement agreement and the consent decree. The entire review process took approximately one month.

Your GWA EPA Counsel claims that no other regulatory commissions have exercised prior review for a negotiated consent decree. That is incorrect. GPA's EPA Counsel indicated that state regulatory commissions have reviewed

settlements relative to power authorities for entry of a consent decree. However, such point is irrelevant. Other jurisdictions may not have the same laws and contract review protocol that Guam has. Review of utility settlements for consent decrees in Guam is required by law.

You also argue that GCG has "accepted" all GWA consent decree projects. PUC has not accepted any of those projects. The issue of review of any proposed GWA settlement and the consent decree must be resolved in the present rate proceeding.

As I have indicated, I believe that it is in GWA's interest to have its consent decree settlement reviewed by PUC. It will give further legitimacy to such a settlement in the eyes of the public and ratepayers. More importantly to GWA, it may result in a streamlining of the PUC regulatory approval process for consent decree projects. It is not appropriate or reasonable that GWA obligate PUC, through a consent decree, to burden ratepayers with increased rates for consent decree ordered projects without prior PUC review and approval. If GWA does not agree to PUC review of its proposed settlement prior to entering into a consent decree with USEPA, I will advise PUC that it is not bound by any agreements by GWA concerning specific projects ordered and is not obligated to fund those projects. Also, compliance with the Contract Review Protocol will be required for each consent decree project.

Please let me know if you have any questions in this regard.

Sincerely,

Fred Horecky
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From: koclark@guamwaterworks.org <koclark@guamwaterworks.org>
Sent: Thursday, January 30, 2020 2:54 PM
To: 'Fred Horecky' <horeckylaw@teleguam.net>
Cc: Miguel C Bordallo <mcbordallo@guamwaterworks.org>; gwalegal@guamwaterworks.org
Subject: CD approval discussion

Fred,

It is GWA's position that for a host reasons, the Authority does not intend to petition the PUC for approval of the USEPA GWA Consent Decree.

Initially, the PUC is not now and has not been in the past, a party to the negotiations and will not be a named defendant in the complaint. The defendants will be the Government of Guam and GWA just as it is in the 2011 Court Order. The citizens of Guam are represented by the Government of Guam in the matter and the ratepayers are represented by the

Authority. GWA, and the AG in a limited role, have been involved in these negotiations for two and a half years with the EPA and the DOJ which includes nearly 30 meetings and thousands of pages of documentation exchanged. To inject the PUC and/or GCG into this process now would take months of review to be meaningful in any sense. At any rate, GCG had no exceptions to the CIP GWA anticipates will be approved by the EPA in the decree.

There is no statutory authority that I have found that requires or allows the PUC to review regulatory mandate negotiations. GWA negotiates NPDES permits with the USEPA and other environmental regulatory matters with GEPA regularly, and there has never been any oversight by the PUC on any of these matters. I spent a considerable amount of time doing internet searches for EPA consent decrees that have been subject to the approval of the applicable regulatory commission and was only able to find one, the recent GPA approval.

I have presented this subject to GWA's EPA counsel and was informed that in her view such approval requirement is unprecedented, and unwise. Further, she has represented numerous utilities in consent decree negotiations in many jurisdictions and knows of no other utility that is subject to a regulatory commission that has included such commission as a signatory or sought prior approval from such commission for a negotiated consent decree.

As you know, once the CD is executed by the parties, the complaint and Consent Decree will be lodged with the District Court which will allow at minimum, 30 days for public comment. It seems to me that this would be the time for the PUC to address any particular issues the commission finds with the CD.

Lastly, any discussion regarding the Consent Decree should not be included in discussions relating to GWA's petition for the Five Year Financial Plan and CIP (FY20-FY24) except to the extent CIP projects overlap with what are considered Consent Decree projects. As GCG has accepted all projects in the five-year CIP, there is no dispute regarding the CIP requiring their input or discussion on the Consent Decree matter in tomorrow's teleconference. If you feel further discussion on this matter is necessary, we are open to a separate meeting or conference with you.

Respectfully,

Kelly