

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:) GPA Docket 21-15
)
The Application of the Guam Power)
Authority to Approve a Bond Issuance to) **ALJ REPORT**
Refinance a Portion of the Outstanding)
Revenue Bonds.)
_____)



INTRODUCTION

This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Guam Power Authority's ["GPA"] Application for PUC Approval of a Bond Issuance to Refinance a Portion of the Outstanding 2012 Series A Revenue Bonds.¹

BACKGROUND

GPA indicates that it has worked with Barclays, GPA Bond Counsel, and GEDA to pursue strategies for reducing debt service payments.² The Petition states that, "as a result of historically low interest rates, GPA may be able to refund a portion of GPA's 2012 Series A Revenue Bonds for interest rate savings.³ GPA "expects that opportunities will arise from time to time to refund all or a portion of its then outstanding revenue bonds for debt service savings, which is expected to result in potential savings to ratepayers."⁴

¹ GPA Petition to Approve a Bond Issuance to Refinance a Portion of the Outstanding Revenue Bonds, GPA Docket 21-15, dated June 11, 2021.

² Id., at p. 1.

³ Id., at p. 1.

⁴ Id.

GPA has attached to its Petition Guam Consolidated Commission on Utilities Resolution No. 2021-08, which authorizes the approval of a bond issuance to refund the outstanding revenue bonds.⁵

Also attached to the Petition is a draft Bill by which the Guam Legislature would authorize the bond issuance; however, the “Bill” is only a draft, has not actually been introduced in the Guam Legislature, has no indicated Sponsors, and has not been approved by the Legislature or signed into law by the Governor. No GEDA Resolution has been provided by GPA which indicates that GEDA has approved the proposed refinancing.

The Petition further does not include any specifics concerning a proposed bond refinancing. No timeline for the refinancing is indicated. Neither the amount nor value of the bonds to be refinanced is stated. There is no information provided concerning the proposed amount of interest savings, the interest rate for the bonds, or Total Interest Cost [TIC]. There is simply no proposal presented in the Petition that the PUC could evaluate.

After the Petition was filed, the ALJ contacted GPA CFO John Kim and indicated that there was no specific bond refunding proposal included in GPA’s Petition. In response, the CFO did provide the ALJ with additional information concerning the Bond Refunding which had been provided to the CCU at its April 27, 2021, Meeting; however, such material was not included in the Petition. Also, the CCU Resolution did not approve any specific bond refunding proposal, nor was the information provided by the CFO attached to the CCU Resolution or referenced therein.

⁵ Guam Consolidated Commission on Utilities Resolution No. 2021-08, Authorizing the Approval of a Bond Issuance to Refund the Outstanding Revenue Bonds, adopted and approved on April 27, 2021.

ANALYSIS

- A. IN ACCORDANCE WITH THE PUC ORDER IN GPA DOCKET 17-20, IT WOULD BE PREMATURE FOR THE PUC TO ADDRESS GPA'S PETITION FOR BOND REFINANCING. THE PROPOSED REFINANCING HAS NOT BEEN APPROVED BY THE GUAM LEGISTURE, GEDA, OR THE GOVERNOR OF GUAM.

Attached hereto as Exhibit "1" is the PUC Order in GPA Docket 17-20, dated September 28, 2017. There, as in the instant case, GPA sought PUC approval to refinance portion of an outstanding Series of Revenue Bonds (2010). The PUC concluded that it would be illegal for the PUC to approve the bond refunding without prior authorization from the Legislature, GEDA, and the Governor of Guam. The same reasoning adopted by the PUC in GPA Docket 17-20 is directly applicable to GPA's present request for approval of such refinancing.

GPA is only authorized to issue bonds and obligations through the agency of the Guam Economic Development Authority ["GEDA"]. GEDA is not authorized to sell any bonds **without the approval by I liheslaturan Guahån of the terms and conditions of the bonds.** 12 GCA §50103(k). GEDA can only authorize the issuance of GPA revenue bonds "under the terms and conditions as the Guam Legislature, by appropriate legislation, may prescribe."

GPA also has no authority to issue revenue bonds without the prior approval of the Governor. 12 GCA §8203.

The PUC has always taken the position that it should not approve any bond refunding by the utilities until all approvals required have been first obtained, including approval through Public Law and issuance by GEDA of an appropriate resolution approving the issuance. GPA has previously confirmed that “legislative authority is required before going to market, and that the PUC “has the discretion to wait for such legislation to become law...”⁶ In discussing bond refunding in GPA Docket 17-20 on September 28, 2017, the PUC Commissioners agreed that the PUC needed the Legislature’s prior approval and the Governor’s approval to act upon a proposed bond refinancing.

Requesting PUC approval of a proposed bond refinancing prior to approval by the Legislature and the Governor was placing “the cart before the horse.” Commissioner Pangelinan presented the rationale for requiring prior Legislative approval. If the PUC approved the bond refinancing, and then the Legislature subsequently changed the conditions and terms of the refinancing, the PUC would again be asked to review the matter and approve it. It was not the position of the PUC “to convince the Legislature to do something on the bond refinancing.” The PUC should undertake an action which was “potentially unlawful by approving a bond refinancing which lacks Legislative approval.”⁷

**B. BASED UPON THE PETITION FILED, THE PUC DOES NOT HAVE
SUFFICIENT FACTS TO MAKE A DETERMINATION ON BOND
REFUNDING AT THE PRESENT TIME.**

As indicated the Petition does not contain any specifics concerning the proposed

⁶ GPA’s Response to PUC’s Data Requests, GPA Response No. 23, GPA Docket 17-20, dated August 17, 2017.

⁷ Minutes of PUC Regular Meeting of September 28, 2017, at pg. 16.

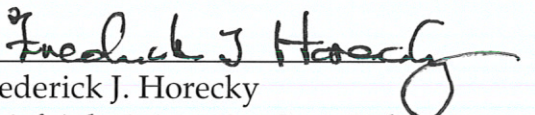
refunding. However, even if the supplemental information supplied by the CFO provided a refunding plan, PUC should not act upon it until the refunding is approved by the Legislature, the Governor, and GEDA. Within its discretion, and pursuant to its past precedent, the PUC is fully authorized to deny the refunding request pending Legislative authorization.

RECOMMENDATION

The Administrative Law Judge recommends that the GPA's Petition for Approval of Bond Issuance to Refinance a portion of the 2012 Revenue Bonds be denied at the present time. The PUC should not consider GPA's proposed refunding any further unless and until there is legislation authorizing the refunding and approval by both GEDA and the Governor.

A Proposed Order is submitted herewith for the consideration of the Commissioners.

Dated this 26th day of July 2021.


Frederick J. Horecky
Chief Administrative Law Judge

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN THE MATTER OF:) GPA Docket 17-20
)
The Application of the Guam Power)
Authority to Approve A Bond Issuance to) **ORDER**
Refinance a Portion of the Outstanding)
Revenue Bonds.)

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Guam Power Authority's ["GPA"] Application for PUC approval of a Bond Issuance to Refinance a Portion of the Outstanding 2010 Series A Revenue Bonds.¹

BACKGROUND

2. The PUC adopts the statement of Background in the ALJ Report dated September 26, 2017, and incorporates the same by reference herein.²

DETERMINATIONS

- A. APPROVAL OF THIS BOND REFUNDING BY THE PUC WOULD BE ILLEGAL: NEITHER THE LEGISLATURE NOR THE GOVERNOR OR GEDA, HAVE APPROVED THE REFUNDING.
3. GPA admits that there is, at present, no Legislation authorizing GPA to issue its proposed Bond Refunding.³
 4. The GPA Bond refunding is dissimilar from the GWA Bond Refunding which the PUC recently approved; with the GWA Bond Refunding, there was Legislation specifically authorizing it.
 5. Without the prior approval by the Governor and the Legislature of the proposed bond refunding, it would be illegal for the Guam PUC to approve any such refunding.

¹ GPA Petition to Approve Bond Issuance to Refinance a Portion of the Outstanding Revenue Bonds, GPA Docket 17-20, filed July 28, 2017.

² ALJ Report, GPA Docket 17-20, dated September 26, 2017.

³ GPA's Response to PUC's Data Requests, GPA Response No. 22, GPA Docket 17-20, August 17, 2017.

6. GPA has no authority to issue revenue bonds without the prior approval of the Governor. 12 GCA § 8203. The Guam Consolidated Commission on Utilities has the power to incur indebtedness “by the issuance of revenue bonds, **with the approval of the Governor.**” 12 GCA §8203 (d).
7. Historically, approval by the Governor has come in the form of execution of legislation which approves a bond issuance by a particular agency or entity.
8. GPA is only authorized to issue bonds and obligations through the agency of the Guam Economic Development Authority (“GEDA”). GEDA is not authorized to sell any bonds **without the approval by I Liheslaturan Guåhan of the terms and conditions of the bonds.** 12 GCA § 50103.
9. GEDA is authorized to issue revenue bonds “**under such terms and conditions as the Guam Legislature, by appropriate legislation, may prescribe.**” 12 GCA §50103 (f). (emphasis added).
10. GEDA specifically acts as a central financial manager for the Guam Power Authority. GPA can only issue bonds through the agency of GEDA. However, “[T]he Corporation shall not issue...any bond without the approval of *I Liheslatura* of the terms and conditions of the bonds.” 12 GCA §50105 (k). (emphasis added).
11. To date, GEDA has not approved GPA’s bond refunding.
12. With regard to every Bond Issuance or refunding/refinancing by GPA in its history, review or approval by the PUC has been preceded by legislation authorizing such action and approval by the Governor and GEDA. Over the years Bond Counsel for GPA has been extremely particular about the specific form of legislative approval for bond issuances. He has repeatedly made it clear that there can be no bond issuance without approval of the Guam Legislature.
13. Since there has been no approval by the Guam Legislature or the Governor of this proposed Bond Refunding, it would be completely inappropriate, as well as illegal and contrary to law, for the PUC to approve the Bond Refunding requested by GPA.
14. GPA admits that “legislative authority is required before going to market.” Furthermore, GPA fully admits that the PUC “has the discretion to wait for such

legislation to become law..."⁴ PUC should fully exercise its discretion on this matter and take no action until the Legislature has approved bond refunding.

15. However, GPA further claims that PUC could "allow the re-financing subject to Legislative approval."⁵ There has been no instance in history where PUC has approved a bond issuance or refunding without prior approval by the Governor and the Legislature.
16. It would be contrary to precedent and inappropriate for the PUC to approve a bond refunding in advance of approval by the executive and legislative branches. PUC is an administrative agency and a "creature of statute." It has no authority to presume what actions the Legislature might or might not take with regard to bond issuance/refunding. GPA's agent, GEDA, has no authority to undertake bond issuance without prior approval of the Legislature and the Governor.
17. As a prudential matter of work commitment and time allocation, it makes no sense for the PUC to expend its time and resources upon a proposed bond refunding that may never be approved by the Legislature or the Governor.
18. An administrative agency such as the PUC cannot act without statutory support; its powers are limited to those which "have been conferred upon them by law expressly or by implication"... *Guam Federation of Teachers v. Government of Guam*, 2013 Guam 14, ¶ 64. PUC has no statutory or implied authority to approve a bond refunding without prior approval by the Legislature and Governor.
19. Undoubtedly, GPA will allege that the Legislature did not entertain the legislation because the PUC Chairman filed testimony opposing the bond refunding. The Speaker suggested that PUC and GPA could discuss this matter in advance of legislation being approved.
20. However, PUC have never previously discussed terms and conditions of a bond issuance in advance of passage legislation approving bond issuance. PUC has no authority to discuss with GPA terms or conditions of the bond refunding prior to legislative approval. It is the Legislature, not PUC, which initially establishes the terms and conditions of the refunding. If the Legislature feels that Bond Refunding

⁴ Id. at GPA Response No. 23.

⁵ Id.

is appropriate, it should approve the same and establish the terms and conditions thereof in legislation.

21. The PUC has been and is always willing to assist the Legislature in reviewing any bill which affects the utilities. It can provide advice on bond issuance or the appropriate terms of the proposed legislation. However, it cannot usurp a legislative function prior to action by the Legislature establishing the terms and conditions of bond issuance.
- B. EVEN WERE IT NOT CONTRARY TO LAW FOR PUC TO APPROVE THE REFUNDING, GPA HAS ADMITTED THAT PUC MAY, WITHIN ITS DISCRETION, DENY THE REFUNDING PENDING LEGISLATIVE AUTHORIZATION. PUC SHOULD TAKE NO ACTION ON THE PROPOSED REFUNDING UNTIL LEGISLATION IS ENACTED.
22. Daymark Energy Advisors, in its Report, has “conditionally” approved the GPA refunding subject to certain terms and conditions.⁶
23. The Daymark Report does not address the inability of the PUC to approve GPA bond refunding without legislation which approves the issuance, establishes the terms and conditions of such refunding and secures approval by the Governor. Daymark claims that “Bill 139-34 [COR] submitted by the Legislature July 6, 2017, while still pending, **“expresses conditional approval for the refunding.”**”⁷ (emphasis added).
24. A “bill” is in no manner constitutes “conditional approval” by the **Legislature** for any bond refunding by GPA. A “bill” is simply an expression by its sponsors, but in no manner constitutes “conditional approval for the refunding” by the Legislature. It has no legal weight or authority until it is enacted into law.
25. The Daymark Report does not address the legal issues of approval by the PUC without proper legislation and approval by the Governor.

⁶ Daymark Energy Advisors, Bond Refunding Analysis: Guam Power Authority Request to Refund the 2010 A Series Revenue Bonds, September 11, 2017.

⁷ Id. at p. 6.

26. PUC should not address or consider any Bond Issuance, including Refunding/Refinancing, unless there is duly enacted Legislation by the Guam Legislature approving the same, and approval of such legislation by the Governor.
27. It is also not appropriate for the PUC to address any conditions for this particular refunding unless and until it is approved by the Legislature. Without knowing what requirements the Legislature will impose on bond refunding, it would be pure speculation for the PUC to establish any conditions in advance of approval by the Legislature.
28. For the PUC to establish conditions for a refunding in advance of legislative authorization would be premature, an unauthorized "advisory opinion."

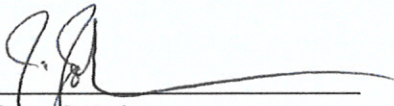
ORDERING PROVISIONS

Upon consideration of the record herein, the Petition of GPA, and the ALJ Report, and for good cause shown, on motion duly made, seconded, and carried by the affirmative vote of the undersigned Commissioners, the Commission **HEREBY ORDERS** that:

1. The PUC declines to consider GPA's proposed refunding any further at present. Further consideration at present would be premature, unless and until there is legislation authorizing the refunding and approval by both the Governor and GEDA.
2. GPA is ordered to pay the Commission's regulatory fees and expenses, including, without limitation, consulting and counsel fees and the fees and expenses of conducting the hearing proceedings. Assessment of PUC's regulatory fees and expenses is authorized pursuant to 12 GCA §§12103(b) and 12125(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

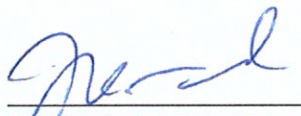
Order
Proposed GPA Bond Issuance to
Refinance a Portion of the
Outstanding Revenue Bonds
GPA Docket 17-20
September 28, 2017

Dated this 28th day of September, 2017.




Jeffrey C. Johnson
Chairman

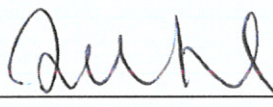
Rowena E. Perez
Commissioner



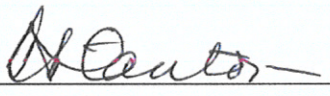
Joseph M. McDonald
Commissioner



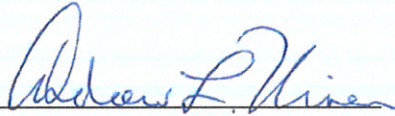
Michael A. Pangelinan
Commissioner



Peter Montinola
Commissioner



Filomena M. Cantoria
Commissioner



Andrew L. Niven
Commissioner