



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:) GWA Docket 22-09
)
REQUEST BY THE GUAM)
WATERWORKS AUTHORITY FOR) **ORDER**
APPROVAL TO REALLOCATE A)
PORTION OF GWA'S SERIES A BOND)
PROCEEDS)
_____)

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Petition of the Guam Waterworks Authority ["GWA"] for PUC Approval to Reallocate a Portion of GWA's Series 2020A Bond Proceeds.¹
2. The objective of the bond proceeds reallocation is to allocate additional funding regarding the Court-Ordered tank/reservoir projects.²
3. GWA's management seeks to reallocate \$30,425,000 of the 2020 A Bond Proceeds from projects which already been completed or can be deferred and for which funds are not immediately needed.³

BACKGROUND

4. The authorization by the Guam Legislature for the issuance of GWA's Series 2020A Bonds is set forth in Public Law No. 32-069. The highest cost project, at a cost of

¹ GWA Petition for Approval to Reallocate a Portion of GWA's Series A Bond Proceeds, GWA Docket 22-09, filed September 16, 2022.

² Id., at Exhibit B-01.

³ Id.

\$153.4 Million Dollars, was “repair or rebuild all GWA water storage tanks island-wide...”.⁴

5. In GWA Docket 20-03, the PUC authorized GWA to issue Bonds in an amount not to exceed \$134,400,000.00 [the Series 2020A Water and Wastewater System Revenue Bonds].⁵
6. Attached to the Order in GWA Docket 20-03 as Exhibit “A” is a “Table of Projects Funded by Series 2020A Bonds.” Exhibit A is attached to the ALJ Report as Exhibit “A”.⁶ The net amount of the Bonds available for projects was \$103,672,000.00.
7. The “Exhibit A Projects List” includes project descriptions and funding amounts per project for FY2020, FY2021, and FY2022. One approved project is “PW09-11 Water System Reservoirs 2005 Improvements.” The amount of \$25M was allocated to such project.⁷
8. GWA now seeks to reallocate the additional amount of \$30,425,000 from other projects to PW09-11 “Water System Reservoirs 2005 Improvements.”⁸
9. The Bond Reallocation Schedule now proposed by GWA is attached to the ALJ Report as Exhibit “B”. It indicates that GWA proposes to add \$30,425,000 to the

⁴ Public Law No. 32-069, Section 1, enacted November 5, 2013.

⁵ PUC Order Approving Long-Term Debt, GWA Docket 20-03, Request by the Guam Waterworks Authority for Approval of the Issuance of Water and Wastewater System Revenue Bonds and to approve the Associated Documents, dated March 26, 2020 at p. 1.

⁶ Id., at Exhibit A attached to the ALJ Report.

⁷ GWA Petition for Approval to Reallocate a Portion of GWA’s Series A Bond Proceeds, GWA Docket 22-09, filed September 16, 2022, at Exhibit A-11.

⁸ Id., at p. 3.

project for Water System Reservoirs 2005 Improvements. The total expenditure for these Water Tanks will be increased from \$25,702,005 to \$56,127,005. The reallocated amount will be deducted from other proposed bond projects as set forth in Exhibit “B” attached to the ALJ Report.⁹

10. Before GWA can reallocate/reprogram any projects or associated proceeds of the 2020 Bonds, it must obtain the prior approval of the PUC.¹⁰

11. On August 23, 2022, the Guam Consolidated Commission on Utilities, in GWA Resolution No. 29-FY2022 approved the reallocation of \$30,425,000 of 2020A Bond proceeds from various CIP line items to the CIP line item PW09-11 “Water Systems Reservoirs 2005 Improvements”.¹¹

12. The Administrative Law Judge [“ALJ”] filed his Report in this Docket dated September 24, 2022.¹² The PUC adopts the recommendations and conclusions in the ALJ Report.

DETERMINATIONS

13. The water tanks/reservoir projects are “Court-Ordered” projects, which were ordered by the U.S. District Court in its 2011 Order.¹³

⁹ See Exhibit “B” attached to the ALJ Report.

¹⁰ PUC Order, GWA Docket 20-03, dated March 26, 2020, at par. 3, p.1.

¹¹ CCU GWA Resolution No. 29-FY2022, Relative to Approval of Series 2020A Bond Proceeds Reallocation, approved and adopted on August 23, 2022.

¹² ALJ Report, GWA Docket 22-09, dated September 24, 2022.

¹³ GWA Petition for Approval to Reallocate a Portion of GWA’s Series A Bond Proceeds, GWA Docket 22-09, filed September 16, 2022, at p. 2.

14. GWA indicates that it has completed a majority of the Court-Ordered compliance requirements with respect to the Repair Rehabilitation, Relocation or Replacement of GWA's water storage reservoirs. However, a smaller number of reservoirs must still be replaced and rehabilitated, and those projects remain outstanding.¹⁴
15. The estimated costs for the construction and rehabilitation of the remaining tanks/reservoirs have significantly increased requiring additional funding prior to project procurement and contracting. "Increased costs are a direct result of global supply chain issues, increased demand in the local construction market resulting from the military buildup, and other geopolitical impacts on the cost of energy and materials."¹⁵
16. These "Court-Ordered" projects have deadlines and are definitely a priority; on the other hand, GWA management has identified several non-Court Ordered projects in the current CIP that can be deferred.¹⁶ The CCU justification for the bond reallocation for the Court-Ordered Water Tank Projects is convincing.¹⁷
17. For the non-Court-Ordered projects which will be deferred, the CCU intends that funding "will need to be obtained through future capital financing resources."¹⁸
18. GWA and its Bond Counsel have addressed the issue of whether this proposed reallocation requires an "opinion of Bond Counsel." Section 3.03 of the Guam

¹⁴ Id.

¹⁵ Id. and footnote 2.

¹⁶ CCU GWA Resolution No. 29-FY2022, relative to Approval of Series 2020A Bond Proceeds Reallocation, approved and adopted on August 23, 2022, at p. 2.

¹⁷ Id., at p. 3.

¹⁸ Id., at p. 2.

Waterworks 2005 Bond Indenture requires that, where GWA modifies “the specifications or description of any Project or Projects”, it must obtain “an opinion of Bond Counsel” that the transfer and use of such bond amounts “will not adversely affect the exclusion, if any, of interest on any Bonds from gross income for federal income tax purposes.”¹⁹

19. In a series of emails between September 8, 2022, and September 15, 2022, GWA and Bond Counsel, Orrick Herrington, and Sutcliffe, determined that an opinion of Bond Counsel is not required for GWA to proceed with this bond reallocation. No new bond projects are being proposed. Proceeds will be reallocated from projects already listed in the approved PUC list to a single project already within the approved list of projects for the 2020A Bonds. Neither the project descriptions nor the present project specifications have changed.²⁰

20. Bond Counsel Christine Rankin confirmed that “Solely with respect to the matter of the reallocation of proceeds within the 2020A group of projects, and based on the responses from the GM that GWA is wanting to reallocate the bond proceeds from projects already listed in the approved list to a single project already within the approved list of projects for 2020A bonds and that the project descriptions are not changing and that present project specifications or scopes will not change materially, “no opinion is necessary under the Indenture” for the re-allocations to be requested.”²¹

¹⁹ Guam Waterworks 2005 Bond Indenture, Section 3.03, dated December 1, 2005.

²⁰ Email from GWA Counsel Theresa Rojas to PUC ALJ Fred Horecky dated September 15, 2022, which includes the relevant email chain between GWA management and Bond Counsel, the Orrick Firm.

²¹ GWA’s Response to Request for Information on GWA Petition, GWA Docket 22-09, dated September 22, 2022, Response No. 1 at p. 1.

21. In the Request for Information, the ALJ raised a concern with GWA as to whether the deferral of the projects for which bond funds are reallocated would cause any adverse impact or harm to GWA or its ratepayers.²²

22. GWA has confirmed that there will be minimal to no adverse effect from the deferral of projects:

“The projects selected will see minimal to no adverse effects. Several have already been completed, and others can be deferred for a number of reasons. These reasons include but are not limited to delays in resolving land issues, re-prioritization of projects receiving USEPA grant funding allowing reduced bond funding, or having an extended window to complete the project (e.g., within 5-years). Finally, some projects may no longer need bond funding as projects will be completed by private developers, or through other CIPs. A complete table of the deferred projects and the reasons they were selected and whether any or minimal adverse effects exist are included in Attachment B.”²³

23. GWA’s Attachment B-1 is attached to the ALJ Report as Exhibit “C”. The deferred projects can be funded from other grant sources, can be delayed with no adverse effect, or potentially be subsequently funded through other capital financing resources.

24. GWA has justified the bond reallocation to a priority Court-Ordered project. It has further demonstrated that an opinion of Bond Counsel is not necessary, and that there will be minimal to no adverse effect from deferral of certain projects. The reallocation should be approved.

²² Email from PUC ALJ Fred Horecky to GWA Legal Counsel Theresa Rojas Re: Additional Information Requested on Bond Reallocation, dated September 22, 2022.

²³ GWA’s Response to Request for Information on GWA Petition, GWA Docket 21-09, dated September 22, 2022, Response No. 2 at p. 2.

ORDERING PROVISIONS

Upon consideration of the record herein, the Petition of GWA for Approval to Reallocate a Portion of GWA's Series A Bond Proceeds, 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 reallocation of \$30,425,000 of the Series 2020A Bond proceeds from various deferred CIP line items to increase funding for the CIP line item for PW09-11 "Water System Reservoirs 2005 Improvements", as requested in the GWA Petition, is approved.
2. GWA 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 are 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.

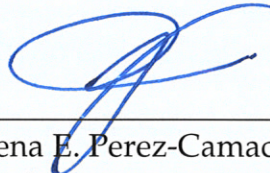
[SIGNATURES TO FOLLOW ON NEXT PAGE]

Order
Approval to Reallocate a portion
of Series A Bond Proceeds
GWA Docket 22-09
September 29, 2022

Dated this 29th day of September 2022.



Jeffrey C. Johnson
Chairman

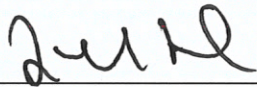


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