



**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

<b>RE: PETITION TO CREATE A NEW</b>	)	<b>GWA DOCKET 23-08</b>
<b>AND SPECIFIC RATE</b>	)	
<b>CLASSIFICATION FOR</b>	)	
<b>WASTEWATER DISCHARGE</b>	)	<b>ORDER</b>
<b>FOR LEACHATE</b>	)	
_____	)	

**INTRODUCTION**

This matter comes before the Guam Public Utilities Commission (hereinafter referred to as the “PUC” or the “Commission”) pursuant to the Petition to Create a New and Specific Rate Classification for Wastewater Discharge for Leachate filed by the Guam Waterworks Authority (“GWA”) on July 6, 2023 (the “Petition”).

On August 30, 2023, the Administrative Law Judge of the PUC (the “ALJ”) assigned to this matter filed an ALJ Report that included his findings and recommendations based on the administrative record before the PUC. The ALJ found the following.

**DETERMINATIONS**

Back in 2011, the PUC was tasked by the District Court of Guam, in U.S. v. Government of Guam, Civil Case No. 02-00022, “to set the rate for the treatment of leachate from the Layon Landfill . . . .” Order, U.S. v. Government of Guam, Civil Case No. 02-00022, p. 4 (Dec. 8, 2011). Thereafter, GWA Docket 12-01 was established to specifically allow the Commission to investigate and examine the rate requested by the District Court of Guam. Subsequently, upon the proposal by Guam Solid Waste Authority’s (“GSWA”) receiver, Gershman Brickner & Bratton (“GBB”), and GWA, the



PUC approved an interim rate of \$14.19 per 1,000 gallons (kgal), which corresponded with the wastewater sewer rate for Commercial 3. *See* PUC Order, GWA Docket 12-01, pp. 2-4 (Mar. 26, 2012). In those proceedings, GWA indicated that it would reserve its right to conduct a Cost of Service study with respect to the rate, in order to formulate one that better reflects GWA's cost of treating the leachate. PUC Order, GWA Docket 12-01, p. 2 (Mar. 26, 2012). Since that time, GWA has been applying the wastewater sewer rate for Commercial 3 for handling the leachate.

On May 10, 2023, the District Court of Guam held a Status Hearing in Civil Case No. 02-00022, United States of America v. Government of Guam. There, the District Court raised the issue of GSWA's efforts in obtaining a GWA rate for leachate treatment. The court thereafter directed GBB, to work with GWA to promptly resolve this issue. Order After Hearing, U.S. v. Government of Guam, Civil Case No. 02-00022, p. 2 (May 18, 2023).

**A. The PUC's Authority to Regulate Rates**

Guam law provides that "[t]he Commission shall have regulatory oversight supervision of rates" as set forth under Guam's Public Utilities Commission and Telecommunications Act of 2004. 12 G.C.A. §12105.

Guam law further provides that "[n]o rate change may be approved by the Commission unless it is affirmatively established, by a preponderance of the evidence, that a rate change is necessary." 12 G.C.A. §12105. In addition, all rates and charges shall be just and reasonable. 12 G.C.A. §§12116, 12118. "[N]o rate change or charge for any



public utility shall become effective without the approval of the Commission.” 12 G.C.A. §12126.

**B. GWA’s Request for New Landfill Leachate Rate**

In its Petition, GWA requests authorization to reclassify the wastewater disposal rate currently applied to solid waste facilities from a Commercial 3 rate to a specific leachate disposal rate.<sup>1</sup> According to GWA, if approved by the PUC, the new rate will be much lower, specifically \$14.72 per kgal, as compared to the current Commercial 3 rate of \$28.92 per kgal. GWA submits however, that this new rate, while much lower than the current rate, aligns with the cost of providing the service.<sup>2</sup> In support of its request, GWA has submitted a Stipulation, executed by GWA, GSWA, the Government of Guam, and the federally appointed receiver, GBB, which endorses the application of the new leachate rate.

**C. Cost of Service Analysis**

Pursuant to the rate proceedings in GWA Docket 19-08, GWA submitted to the PUC a Cost of Service Analytical Study on May 15, 2021 (hereinafter referred to as the “COSA Study”). As part of this study, GWA’s consultants, FG Solutions, a sub-consultant to Brown and Caldwell, performed a wastewater cost of service analysis, which broke down GWA’s wastewater system service components.

According to the COSA Study, “[t]he service characteristics used in the wastewater COSA are related to wastewater flow, biochemical oxygen demand (BOD), total

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<sup>1</sup> Petition, p. 5.

<sup>2</sup> Petition, p. 5.



suspended solids (TSS),<sup>3</sup> customer, and administration.”<sup>4</sup> “BOD and TSS are measured parameters in wastewater that [Wastewater Treatment Plants] are designed to remove. The amount of BOD and TSS in wastewater is one factor that determines the cost to build, operate, and maintain wastewater system infrastructure, particularly at WWTPs.”<sup>5</sup>

In its study, GWA’s consultants determined that a new customer class, “Landfill Leachate,” is more appropriate because while Leachate is currently charged as Commercial, landfill leachate “has lower TSS than commercial wastewater.”<sup>6</sup> Accordingly, a new stand-alone rate should be applied to this customer class.<sup>7</sup> And according to the COSA Study, the leachate rates (under Commercial 3) “collect more than the leachate cost of service.”<sup>8</sup>

Based on these findings, along with the directives given by the District Court of Guam in U.S. v. Government of Guam, Civil Case No. 02-00022, GWA has submitted its proposal for a cost-of-service rate for leachate disposal. According to GWA, its leachate disposal rate is determined by dividing the **total cost for the service** by the **wastewater flow**. Based on this analysis, the cost of GWA performing the function of disposing

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<sup>3</sup> “BOD is the amount of dissolved oxygen needed by aerobic biological organisms to break down organic material present in a water sample at a certain temperature over a specific time period. TSS is a water quality parameter representing the quantity of material suspended in a known volume of water that is trappable in a filter.” COSA Study, p. 2-6.

<sup>4</sup> COSA Study, p. 2-6.

<sup>5</sup> COSA Study, p. 2-6.

<sup>6</sup> COSA Study, p. 3-14.

<sup>7</sup> “There are two leachate customers, the Ordot Landfill and the Layzon [*sic*] landfill. Both landfills are connected to the collection system via a pipe, where the leachate is transported to a wastewater treatment plant.” COSA Study, p. 3-14.

<sup>8</sup> COSA Study, p. 3-18.



leachate, which GWA has calculated as \$327,305 for FY2023, divided by a projected wastewater flow of 22,239.5 kgal, is \$14.72 per kgal.<sup>9</sup> According to GWA, based on its projections for FY2024 under the Commercial 3 rate, the resulting leachate rate assessed would be around \$36.73 per kgal.<sup>10</sup>

#### **D. Stipulation**

As indicated above, GWA, GSWA, GBB (the receiver), and the Office of the Attorney General (on behalf of the Government of Guam), have entered into a Stipulation, which was filed in this docket. The Stipulation expressly authorizes the following: that GWA implement a new and specific leachate rate for leachate disposal, effective no sooner than July 31, 2023; and that GWA implement and assess the proposed specific leachate disposal rate of \$14.72 per kgal, effective no sooner than July 31, 2023, and allow for any rate relief (beginning FY2025) that may be recommended to the PUC in rate applications or annual true-up reviews.<sup>11</sup>

In addition, while arguably not required in this instance,<sup>12</sup> the Stipulation further waives the PUC's Ratepayers' Bill of Rights notice requirements, found at 5 G.C.A. §12102.2, indicating that the proposed rate changes solely affect GSWA as the present and

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<sup>9</sup> Petition, pp. 6-8.

<sup>10</sup> Petition, p. 8.

<sup>11</sup> Stipulation, p. 1.

<sup>12</sup> The provisions of the Ratepayers' Bill of Rights expressly applies to "rate increases." In 12 G.C.A. §12102.1, the Guam Legislature stated that it shall be "abundantly clear that no Public Utility shall submit a proposal for a **rate increase** without first giving the people of Guam more than ample opportunity to exercise their fundamental rights as ratepayers. Those fundamental rights of the ratepayers include: (1) the right to receive clear and adequate notice of any proposed rate increase; (2) the right to be fully informed about and to fully evaluate any proposed rate increase, as well as the finances of a Public Utility; and (3) the right to give input and participate in any proposed rate increase." 12 G.C.A. §12102.1(b) (emphasis added).



single ratepayer for leachate disposal in GWA's wastewater collection system.<sup>13</sup> The Stipulation further noted that an issue regarding a potable water leak, which contributed to an increase in leachate, would be investigated and resolved at a later time.<sup>14</sup>

**E. Proposed Rate Is Just, Reasonable, and Necessary**

Based on this record, the new rate and rate classification proposed by GWA, with the consent of GSWA, GBB, and the Government of Guam, is just, reasonable, and necessary because a new, stand-alone Landfill Leachate rate more appropriately and correctly attempts to capture and reflect GWA's cost in performing the function of disposing leachate, which the Commercial 3 rate did not. As identified above, Landfill Leachate "has lower TSS than commercial wastewater."<sup>15</sup> The leachate rate (under Commercial 3) collects "more than the leachate cost of service."<sup>16</sup> The new rate class of Landfill Leachate, along with the proposed rate for GWA's disposal of such landfill leachate at \$14.72 per 1,000 gallons, therefore, should be implemented as petitioned by GWA, and that the Commercial 3 rate should no longer be assessed for this particular service.

**CONCLUSION**

Upon full consideration of the record herein, especially in light of the Stipulation between GSWA, GBB, the Government of Guam, and GWA, the ALJ found that the new

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<sup>13</sup> Stipulation, p. 1.

<sup>14</sup> Stipulation, p. 1.

<sup>15</sup> COSA Study, p. 3-14.

<sup>16</sup> COSA Study, p. 3-18.



rate class of Landfill Leachate, along with the proposed rate for GWA's disposal of such Landfill Leachate at \$14.72 per 1,000 gallons, is just, reasonable, and necessary.

Accordingly, the ALJ recommended that the PUC approve the new GWA wastewater rate classification and rate fee.

The Commission hereby adopts the findings in the August 28, 2023 ALJ Report and therefore issues the following.

### **ORDERING PROVISIONS**

Upon careful consideration of the record herein, and for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby ORDERS the following:

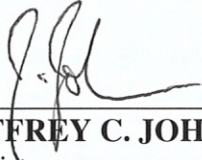
1. That the instant Petition is hereby APPROVED; and that GWA is authorized to reclassify its current leachate disposal rate from Wastewater "Commercial 3" facility rate, to "Landfill Leachate," which shall be set at \$14.72 per 1,000 gallons, effective August 1, 2023.

2. GWA is ordered to pay the PUC's regulatory fees and expenses, including and without limitation, consulting and counsel fees, and the fees and expenses associated with this matter. Assessment of the PUC's regulatory fees and expenses is authorized pursuant to 12 G.C.A. §§ 12103(b) and 12125(b), and Rule 40 of the Rules of Practice and Procedure before the PUC.

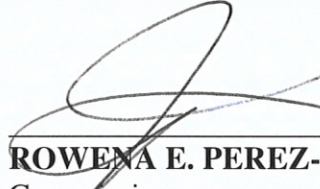
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**SO ORDERED** this 31<sup>st</sup> day of August, 2023.



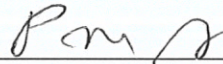
**JEFFREY C. JOHNSON**  
Chairman



**ROWENA E. PEREZ-CAMACHO**  
Commissioner



**JOSEPH M. MCDONALD**  
Commissioner



**PEDRO GUERRERO**  
Commissioner

**MICHAEL A. PANGELINAN**  
Commissioner

**PETER MONTINOLA**  
Commissioner

**DORIS FLORES BROOKS**  
Commissioner

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