

**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

IN RE: ) GWA Docket 19-08  
)  
GWA DOCKET 19-08 SEPTEMBER 28, )  
2023 ORDER FOR TRUE-UP FOR FY2024 ) **ALJ REPORT**  
GWA RATES )  
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**INTRODUCTION**

This matter comes before the Guam Public Utilities Commission ["PUC"] pursuant to the Petition of the Guam Waterworks Authority ["GWA"] to amend the PUC's September 28, 2023 Order Re Filing Deadlines, Review Timeframes, and Submittals Required for GWA's FY2025-FY2029 Rate Application Case.<sup>1</sup>

**SUMMARY OF GWA REQUESTS**

GWA makes two requests in its Petition: (1) Extension of Deadline for Filing of its FY2025-2029 Multi-Year Rate Plan. On September 28, 2023 the PUC ordered: "GWA shall file its next multi-year rate plan on or before April 1, 2024."<sup>2</sup> GWA claims that the filing deadline ordered by the PUC "is not tenable" because the Ratepayer Bill of Rights acquires GWA "to publish a January 1, 2024, public notice informing the public of "any proposed rate increase". GWA requests that the filing deadline be extended to June 3, 2024; (2) Confirmations and Restrictions upon PUC's right to require further Analytical Staffing Studies. Six and one-half months before GWA even files its rate case, it

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<sup>1</sup> GWA Petition, Petition to Amend the PUC's Sept. 28, 2023, Order Re Filing Deadlines, Review Timeframes, and Submittals required for GWA's FY2025-FY2029 Rate Application Case, GWA Docket 19-08, dated December 7, 2023.

<sup>2</sup> PUC Order Re: Annual True-Up for FY2024 Rates, GWA Docket 19-08, dated September 28, 2023 at Ordering Provision No. 4.



requests that the PUC approve certain “confirmations”, restrictions, and prerequisites upon the authority of the PUC to order additional analytical studies.<sup>3</sup>

An extension of the Filing Deadline for the next five-year multi-year rate plan should be granted, but not for the reason requested by GWA (i.e., that filing is “non-tenable”). At the present time, no “confirmations” or actions by the Commission or the ALJ concerning “additional studies” are required. Such actions are premature, inappropriate and unnecessary.

### **DISCUSSION**

#### **1. Extension of the Filing Deadline for the multi-year rate plan from April 1, 2024, to June 3, 2024, should be granted.**

GWA's Petition does not provide an appropriate explanation for extending the filing deadline for the FY2025-2029 Multi-Year Rate Plan. The only statement is that filing “is not **tenable**.” The Petition does not state why filing in accordance with the PUC ordered deadline is not tenable. The Petition states that “GWA’s annual budget and capital program and update processes will require the remainder of CY2023 for completion...”<sup>4</sup> If GWA can complete its budget, capital program, and update processes by the end of 2023, the ALJ sees no reason why GWA would be unable to file the public notice informing the public of any proposed rate increases by January 1, 2024. The required public notice is short, specific, and uncomplicated. GWA has known for nearly three months, since September 28, 2023, that it was required to file its multi-year rate plan by April 1, 2024. It also knew that public notice had to be filed three months before the rate plan was filed, by January 1, 2024.

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<sup>3</sup> GWA Petition at p. 1.

<sup>4</sup> Id. at p. 2.



In addition, GWA already has developed substantial information of its revenue/rate requirements for FY2025-2029. Even during the True-Up proceedings for FY2024 rate increases, beginning June 2023, GWA repeatedly referenced rate increases required during the 2025-2029 period as justification for the true-up requests for increased rates for FY2024.<sup>5</sup> GWA was actively considering its FY2025-2029 rate requirements throughout 2023. Attached hereto as Exhibit “1” are excerpts of its True-Up filing which indicated GWA’s consideration of its FY2025-2029 rate requirements (“GWA’s FY2024 rate increases will need to be complemented by further, significant rate adjustments in GWA’s forthcoming FY2025-2029 five-year financial plan and rate relief application...GWA is in precarious financial position with daunting requirements on the FY2025-FY2029 horizon).”<sup>6</sup>

However, although the ALJ believes that GWA could file its rate plan by April 1, 2024, other considerations dictate that GWA be given additional time to file its plan if it feels that it will not have complete or sufficient information to file its final rate plan by April 1. The Ratepayer Bill of Rights restricts the filing of a rate case by a utility until certain public notice requirements are complied with but leaves any decision as to the date upon which a rate filing will be submitted to the PUC up to the discretion of the utility. 12 GCA § 12102.2. 12 GCA §12116 does require that rate applications “shall be filed with the Commission” but does not dictate the timing of filing.

GWA is the “applicant” for rate relief under Rule 1 of the Commission's Rules for Practice and Procedure and is the party filing an “application for rate change.” Again, nothing in the Commission’s Rules for Practice and Procedure requires that a petition be filed upon any particular date or otherwise limits the date upon which a rate application may be filed. GWA should be given some leeway in determining when it is

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<sup>5</sup> GWA Annual True-Up Submission, Projection, and Request for Fiscal Year 2024 Rates, GWA Docket 19-08, dated June 1, 2023.

<sup>6</sup> Id. at pgs. 10-11.



able to file a petition. There are standard filing requirements which a utility must meet to file a rate petition, including testimony of utility personnel or other expert witnesses, revenue requirements, revenues, operating expenses, debt service, construction etc.<sup>7</sup> The Commission should extend the Filing Deadline for the multi-year rate plan from April 1, 2024, to June 3, 2024.

It is somewhat ironic that GWA is filing for an extension of the deadline. All along, GWA has been extremely concerned that the PUC complete its deliberations on the upcoming multi-year rate case by September 30, 2024, so that the new rates can be fully in effect by October 1, 2024 (FY2025). The reason that the PUC established the April 1, 2024 rate plan filing deadline was to provide sufficient review time to allow this rate case to be decided by the end of September, 2024.

If GWA does not file its “final multi-year rate plan” until June 3, 2024, it assumes the risk of delay in the proceedings. GWA runs the risk of delaying the proceedings beyond September 30, 2024. It does indicate that it will file an “advance draft petition” on March 4, 2024. However, it is impossible to determine at present the extent to which the “advanced petition” will be the same as the final petition and “final multi-year rate plan” filed on June 3, 2024. There could be substantial changes or new information in the “final petition” that were not included in the “advance petition”. This is exactly what happened in the last rate case with the filing of an “Amended Petition” by GWA during the evidentiary hearing on the rate case. This two-pronged filing of advance and final petitions is a procedure that has never previously been used in the history of PUC - GWA rate adjudication.

If there are any changes or new matters in the June 3 Petition, such may well require additional discovery by the PUC and delay the resolution of the proceedings. This is a risk that falls squarely on the shoulders of GWA and would be the result of

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<sup>7</sup> Rules for Practice and Procedure Before Commission, Administrative Docket No. 00-04, dated February 25, 2000.



GWA's failure to file a final Petition by April 1, 2024. GWA itself recognizes that the extension of the filing deadline for the five-year plan until June 3, 2024, may cause delay: "GWA is clear that any continued review necessary to complete the PUC's review may be performed following GWA's multi-year rate plan submission."<sup>8</sup>

GWA claims that an advance draft filing "should also permit and **trigger** PUC staff and PUC consultant review to send request for information, comments on package, completeness, and clarification requests ahead of GWA's final multi-year rate plan filing."<sup>9</sup> PUC does not need any "Triggers" from GWA. PUC staff and consultants are fully able to determine when discovery should be filed and have the authority to determine when and to what extent discovery is conducted.

**2. GWA's Requests regarding "Analytical Studies" should be denied in their entirety.**

GWA claims that, in the last rate case, "GWA's rate application was interspersed with delays and pauses due to additional requests, discovery, studies, and financial schedules which were not anticipated from the start."<sup>10</sup> GWA is apparently still seeking to assess blame with the PUC for delay in the last rate case.

GWA agreed by stipulation to file the seven Analytical Studies by May 31, 2021. GWA also took actions that delayed the resolution of the prior rate proceedings. PUC Staff undertook its review of the testimony and supporting information contained in the Analytical Studies and a review of the RAM ("Rate Application Model"). Staff was impeded by GWA having password protected the RAM from being able to use the full functionality of the RAM. GWA continued to resist full access to PUC Staff to the

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<sup>8</sup> GWA Petition at p. 3.

<sup>9</sup> GWA Petition at pgs. 2-4.

<sup>10</sup> Id. at pgs. 1-2.



RAM during the proceedings, and the ALJ noted that there was “much controversy on this issue” in the Rate Decision.”<sup>11</sup>

A further reason for delay was that, after the case had been pending for five months, GWA presented a new “Revised Rate Application and Modified Financial Plan” during the November 21, 2021, evidentiary hearing on the rate case. The evidentiary hearing in a rate proceeding is like a trial in a civil case. PUC staff objected to the amendments as untimely. New information was presented that GWA would receive \$14.4M in American Rescue Act Funding, and that there were substantial changes to the amount of rates that GWA was requesting. The revisions included: (1) an Update of forecasted FY2022 through 2024 water demand; (2) Revised Navy wastewater rates; (3) Reduction in Navy water purchase expenses; (4) Reduction in GWA’s Salaries and benefits expenses; (5) FY2022 CAP (“Customer Assistance Plan”) expenses revision; (6) Application of ARPA funds; and (7) Elimination of the water lifeline volumetric rate increase in FY2024.<sup>12</sup>

GWA had a role in delaying the resolution of the case.

GWA has not yet filed its rate case. It will not file an “advance petition” until nearly three months from now or its final multi-year rate plan until nearly six months later. Yet, it is requesting PUC to address hypothetical, conjectural issues that are not even before the Commission at the present time concerning analytical studies. GWA requests: “confirmation that no additional studies shall be ordered without a determination on whether the studies are necessary to support GWA’s next rate application before action on its rate application can be taken.” GWA further requests that “if the completion of any additional study is ordered requiring additional time and costs GWA requests to be informed as early as possible and further requests the PUC confirm that it shall consider whether there is a need to delay action on GWA’s rate

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<sup>11</sup> RATE DECISION, GWA Docket 19-08, dated September 22, 2022, at p. 25.

<sup>12</sup> Id. at P. 11.



application requests if the study or studies cannot realistically be completed before GWA's final multi-year plan comes due (proposed to be June 3, 2024).

Presently there is no issue pending before the PUC concerning "analytical studies" (the parties have already agreed to a staffing study). Because GWA has not filed anything regarding its upcoming rate case, the PUC, the ALJ, and the PUC Consultant do not know what will be in GWA's advance petition or its final multi-year rate plan, or whether further analytical studies will be necessary. Whether new analytical studies would be required depends on what matters are included in GWA's Petition and new multi-year rate plan.

What GWA is requesting is akin to a party requesting a court to decide matters even before the case is filed. Any "confirmation" at this time would be premature and inappropriate. None of these issues need to be addressed at all unless the ALJ decides that further analytical studies are necessary after the advance petition or final multi-year rate plan are filed. These issues should not now be addressed by the Commission, but by the ALJ in the first instance in the context of a rate case that has been filed. If the ALJ determines that there is a need for additional analytical studies, he can address such issue in a scheduling order. Any rulings on these issues raised by GWA are unnecessary unless and until the ALJ orders that further analytical studies are necessary.

GWA's request for "confirmations" before a case is filed, advance requirements for notice to GWA, and restrictions on PUC's right to conduct discovery are also illegal. Applicable law gives the PUC the unrestricted, unfettered right to conduct discovery or order analytical studies whenever it deems appropriate, "at all times, upon request" "that it may require". When PUC informs GWA of a need for additional analytical studies, what considerations PUC makes, and what notice PUC provides are up to the PUC. Such matters are not determined by GWA.



The PUC can conduct any discovery it requires in a rate case, or require any studies or financial schedules, at any time that it desires, without any restriction or limitation by GWA. 12 GCA §12108, Public Utilities to Furnish Information, states: (a) **Every public utility shall at all times, upon request furnish to the Commission all information that it may require respecting any of the matters concerning rates and charges, revenues and expenditures which it is given power to investigate...**<sup>13</sup>

All action requested by GWA concerning analytical studies and requested “determinations” should be denied at the present time. Whether further studies will be required, if at all, will be determined after the advance petition and multi-year rate filings are made by GWA in the rate case.

### **RECOMMENDATION AND CONCLUSION**

The Administrative Law Judge recommends that GWA’s request to extend the filing deadline for its five-year rate plan to June 3, 2024, with the recognition that there is a risk that such extension could delay the final resolution of the rate case. The PUC Order Re: Annual True-Up for FY2024 Rates, dated September 28, 2023, should be amended to provide for the new petition filing deadline, but to also require an advance draft petition filing on March 4, 2024 (not on March 4, 2023, as requested in GWA’s Petition). All requests of GWA concerning “analytical studies” are premature, inappropriate and unnecessary and should be denied. Whether such studies are required is purely conjectural at the present time and will be considered in the context of the rate case.

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<sup>13</sup> 12 GCA §12108(a).

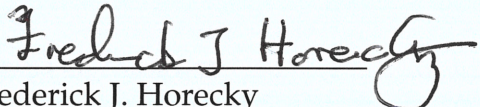


ALJ Report  
Re: September 28, 2023  
Order re Annual True-Up  
GWA Docket 19-08  
December 15, 2023

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A proposed order is submitted herewith for the Commissioners' consideration.

Respectfully submitted this 15th day of December, 2023.

  
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Frederick J. Horecky  
Chief Administrative Law Judge



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10 **BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

11 } GWA DOCKET NO. 19-08

12 IN RE: PUC PETITION FOR APPROVAL OF  
13 GWA'S THIRD FIVE-YEAR FINANCIAL PLAN  
14 (BASE RATE INCREASES)

15 } ANNUAL TRUE-UP SUBMISSION,  
16 PROJECTION, AND REQUEST  
17 FOR FISCAL YEAR 2024 RATES


18 **COMES NOW**, the GUAM WATERWORKS AUTHORITY ("GWA"), by and through  
19 its counsel of record, THERESA G. ROJAS, ESQ., and hereby files GWA's Annual True-up  
20 Submission, Projection, and Request for approval of Fiscal Year 2024 rates. The following  
21 Attachments, in compliance with the September 22, 2022, Rate Decision, ordering provision  
22 seven (7), are enclosed:

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|---------------------------|--|
| 23 1. <b>Attachment A</b> | GWA General Manager Transmittal Letter |
| 24 2. <b>Attachment B</b> | True-Up Projection for FY2024 Report   |
| 25 3. <b>Attachment C</b> | True-Up Schedules                      |
| 26 4. <b>Attachment D</b> | CCU GWA Resolution No. 33-FY2023       |

27 In support of this submission, the Guam Consolidated Commission on Utilities has duly  
28 passed and adopted GWA Resolution 33-FY2023 attached herein and incorporated by reference  
as if fully set forth.

29 **RESPECTFULLY SUBMITTED** this 1<sup>st</sup> day of June, 2023.

30 By: \_\_\_\_\_

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32 **THERESA G. ROJAS, ESQ.**  
33 GWA Legal Counsel



In short, GWAs FY2024 budgeted O&M expenses, excepting Power Purchases, are well below that anticipated in either the PUC's FY20 Rate Decision or CRU adjudication. Non-power O&M expense has increased at a compound annual growth rate of 1.2 percent since FY2019 while GWA has new operational requirements and is subject to inflationary pressures. Significant further O&M expense reductions are simply unsustainable.

## V. Capital Financing

Capital financing related expenses, as shown on Schedule A, include debt service payments and Internally Financed Capital Improvement Projects (IFCIP). For FY2024, scheduled debt service on existing debt is \$39.0 million reflecting expiration of the capitalized interest period associated with GWA's Series 2020 bond issues (which increased debt service by \$5.6 million in FY2023). This debt service level is the denominator of GWA's debt service coverage ratio such that Net Operating Revenues Available For Debt Service<sup>17</sup> must be at or above \$52.7 million to reach a coverage target of 1.35x. GWA's proposed 27.0 percent rate increase for all rate components—basic, lifeline and non-lifeline—is necessary to achieve that level of Net Operating Revenues Available For Debt Service based on the enhanced revenue forecasting described above.

GWA's FY2024 budgeted IFCIP level of \$8.8 million does not drive the FY2024 rate increase requirement of 27 percent. Rather, this is a use of funds required to achieve target coverage and reduces the amount of capital project funding that will be required to be debt financed in the FY2025 – FY2029 period. GWA's FY2024 capital financing includes use of available bond proceeds, application of SRF and DOD<sup>18</sup> grant proceeds, application of System Development Charge revenues, and IFCIP.

Importantly, the FY2024 True-Up schedules do not directly outline the implications of GWA's prospective capital financing needs. Ongoing CIP planning<sup>19</sup> indicates that GWA's capital encumbrance requirements over the next five years will exceed \$900 million (current dollars), most of which will require new bonded indebtedness authorization<sup>20</sup> and new money transactions that will impose significant additional debt service payment and coverage-related revenue requirements in GWA's forthcoming FY2025 – FY2029 financial plan. These prospective requirements are among the primary reasons for (at least incremental) replenishment of GWA's rate stabilization reserves.

## VI. Rate Case Dynamics

As noted, GWA's current precarious financial position that necessitates a 27 percent increase to basic, lifeline and non-lifeline rates and charges is a predictable consequence of a series of unfortunate

<sup>17</sup> Net Operating Revenues Available For Debt Service equals Total Sources of Funds (Operating Revenues, Interest and Investment Income, Rate Stabilization Fund Transfers In) less System Development Charges, plus Capitalized Labor expense, plus retiree, COLA, and end-of-year pension and OPEB adjustments.

<sup>18</sup> State Revolving Fund (SRF) and Department of Defense (DOD)

<sup>19</sup> To update the Integrated Water Resources Master Plan and evaluate potential implications of the proposed Partial Consent Decree with USEPA.

<sup>20</sup> Whether implemented with traditional revenue bonds or a combination of construction period financing (e.g., Tax-Exempt Commercial Paper) and later "take-out" refunding bonds as outlined in the Capital Financing analytical study submitted in conjunction with the CRU.



Consulting Group's (GCG) position and GWA's CRU requests<sup>24</sup> centered on the question of uses of ARPA funds and RSF reserves. Unforeseen power expenses, other inflationary pressures and limited post-pandemic economic recovery through the current fiscal year have made that question moot for FY2023. GWA will deplete its reserves in FY2023 and is still expected to miss, though not by much, the temporarily reduced debt service coverage target of 1.30x. GWA's proposed 27 percent rate increase that anticipates partial replenishment of RSF reserves in advance of the FY2025 – FY2029 again seeks to ensure GWA has some flexibility, as was needed in FY2023, to respond to adverse conditions without requiring mid-year rate relief or falling into technical default.

## VII. FY 2025 – FY2029 Outlook and Asymmetric Risks

GWA's proposed FY2024 rate increases are projected to increase system revenues by \$28.8 million and will allow GWA to fund necessary O&M expenses and internally financed capital improvements, as well as enable incremental improvement in debt service coverage and reserve levels. Notwithstanding these incremental improvements, GWA's FY2024 rate increases will need to be complemented by further, significant rate adjustments in GWA's forthcoming FY2025-FY2029 five-year financial plan and rate relief application. GWA's proposed FY2024 rates are projected to replenish less, roughly 65%, of the reserve levels held prior to adjudication of GWA's CRU between June 2021 and September 2022. GWA's FY 2025 – FY 2029 financial plan will need to provide for financing, largely through debt issues, of substantial capital improvements (many of which may be required under federal enforcement actions), will need to further replenish reserves, and will need to achieve PUC policy-prescribed minimum debt service coverage levels of 1.40x.

The pendency of GWA's need to substantially increase rates in FY2025 – FY2029 underscores asymmetric risks associated with the PUC's FY2024 rate decision. With the absence of available reserves and current debt service coverage only marginally above the PUC's temporary target of 1.30x, a decision to award lower rate relief than requested invites the potential for technical default of GWA's bonds<sup>25</sup> and underfunding of required utility operations and/or capital spending that is subject to regulatory enforcement actions. On the other hand, if the PUC approves GWA's requested rate relief and its cash-flow projections turn out to be overly conservative, GWA's depleted cash reserves will only be replenished more rapidly than forecast and its FY2025 - FY 2029 rate relief adjusted downward accordingly. The precarious nature of GWA's current financial position – with depleted reserves and diminished debt service coverage performance – argue for effective risk management.

## VIII. Conclusions

GWA has responded to the pandemic with a series of austerity measures and atypical actions, most notably use of ARPA and RSF reserves, to fund needed utility operations, advance its capital program and avoid technical default on its bonds. With usage patterns still well below pre-pandemic levels, increasing

<sup>24</sup> Whether developed before or after affirmation of the availability of American Rescue Plan Act (ARPA) funds.

<sup>25</sup> Given covenants that prescribe a minimum coverage target of 1.25x.



O&M and capital expenses, and now depleted reserves, GWA is in a precarious financial position with daunting requirements on the FY2025 – FY2029 horizon.

GWA's proposed 27 percent rate increase is necessary to reverse the drain of GWA resources and incrementally improve GWA's financial position. This improvement is critically important in advance of the FY2025 – FY2029 financial planning period that must enable financing of important system improvements required to comply with federal regulatory mandates. GWA's recent uses of reserves to bridge gaps in revenue recovery have deferred rate relief that is now unavoidable. Profoundly difficult and confusing rate case dynamics have exacerbated these challenges with additional delays in rate relief and unfortunate deferral of rate design reforms and customer assistance program development that could have mitigated impacts for GWA's economically disadvantaged customers.

GWA is at an inflection point with respect to the PUC's FY2024 rate decision. An inflection point characterized by asymmetric risks. If the PUC elects to grant GWA's requested rate relief and GWA's financial performance is better than projected, GWA will be able to reduce its FY2025 – FY2029 rate relief request accordingly. If the PUC elects to grant rate relief below GWA's requested levels,<sup>26</sup> risks of technical default and/or mid-year rate increase requirements prevail.

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<sup>26</sup> And GWA's forecasts turn out not to be overly conservative but rather reasonable and accurate.