

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:

PETITION FOR RATIFICATION AND
APPROVAL OF INCREASED
SPENDING FOR CONFLICTS / LEGAL
COUNSEL PURSUANT TO GWA-RFP-
2018-01 FOR CV1198-18

GWA DOCKET 24-01

PUC COUNSEL REPORT



INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] pursuant to the Guam Waterworks Authority's ["GWA"] Petition for Ratification and Approval of Increased Spending for Conflicts / Legal Counsel Pursuant to GWA-RFP-2018-01 for CV1198-18.¹
2. GWA requests that the PUC ratify the amount of \$438,021.20 that it has currently spent over GWA's PUC Contract Review threshold of \$1,000,000, and that the PUC authorize GWA to spend up to \$1,000,000 on this contract for anticipated future legal work in CV1198-18.²

BACKGROUND

3. *The Government of Guam, Michael B. Borja as Director of the Department of Land Management, and Guam Waterworks Authority v. Core Tech International Corporation and Younex Enterprises Corporation*, CV1198-18 (Superior Court of Guam, 2018) [CV1198-18] is a complex lawsuit concerning a land dispute wherein GWA is seeking quiet title to real property where its northern water treatment plant and other infrastructure are located and wherein the Department of Land Management, Government of Guam, is attempting to rescind and correct certificates of title given to the defendants in that case. A defendant or the defendants have filed counter-claims against GWA alleging inverse condemnation and ownership of a portion of the real property where GWA's northern treatment plant is located and there is a claim of approximately \$220,000,000 in damages against GWA.³

¹ Petition for Ratification and Approval of Increased Spending for Conflicts / Legal Counsel Pursuant to GWA-RFP-2018-01 for CV1198-18 filed on November 14, 2023 [GWA Petition] at 1.

² GWA Petition at 3.

³ *Id.*, at 4.

4. The Guam Consolidated Commission on Utilities [CCU], the Guam Power Authority [GPA], and GWA issued RFP-2018-01 for Conflicts / Outside Counsel and on May 21, 2018, they awarded a contract for legal services with the law firm of Vincent E. Leon Guerrero on May 21, 2018. Under this contract, the CCU, GPA, and GWA separately request and pay for legal services from their respective funds and GPA and GWA each pay 50% of the legal work required by the CCU under the contract.⁴
5. GWA authorized Attorney Leon Guerrero to appear as co-counsel with GWA's in-house attorney in CV1198-18. The contract between Attorney Leon Guerrero and GWA states that the contract will continue until the attorney-client relationship is terminated or until CV1198-18 or any related appeals conclude.⁵
6. GWA has paid the following legal fees under the contract. From May, 2018 to May, 2019, GWA paid \$6,316.50. From June, 2019 to May, 2020, GWA paid \$235,643. From June, 2020 to May, 2021 GWA paid \$85,337.20. From June 2021 to May, 2022 GWA paid \$429,672.47. From June, 2022 to November, 2023 GWA paid \$681,052. Hence, since May, 2018, GWA has paid the total amount of \$1,438,021.17 in legal fees under the contract and the majority of these legal fees arose from CV1198-18.⁶
7. On July 25, 2023 the CCU passed GWA Resolution No. 32-FY2023 which ratified the amount of \$438,021.20 that GWA has currently spent over GWA's PUC Contract Review threshold of \$1,000,000, and which authorized GWA to spend up to \$1,000,000 on this contract for anticipated future legal work in CV1198-18 subject to the PUC's approval.

ANALYSIS

8. GWA must obtain the PUC's authorization to pay the amount of \$438,021.20 that it has currently spent over GWA's PUC Contract Review threshold of \$1,000,000, and GWA must obtain the PUC's authorization for GWA to spend up to an additional

⁴ GWA Petition at 4. NOTE: Page numbers listed herein are the PDF page numbers of the Petition and its exhibits due to the internal page numbers of the petition and its exhibits not being continuous.

⁵ Id., at 5.

⁶ Id.

\$1,000,000 on this contract for anticipated future legal work in CV1198-18. The PUC's Contract Review Protocol mandates that GWA obtain PUC approval for any contract that exceeds the amount of \$1,000,000.⁷ Here, as stated above, GWA's existing legal services contract has exceeded the review amount because GWA has spent the total amount of \$1,438,021.17 for work arising from the contract. Further, GWA is prohibited from incurring expenses for PUC approved contract and obligations in excess of 20% over the amount authorized by the PUC without prior PUC approval.⁸ Here, GWA has failed to comply with this requirement because it has spent the amount of \$438,021.17 in excess of the \$1,000,000 review threshold without obtaining the PUC's prior approval. Additionally, it should be noted that GWA knew or should have known that it would or did exceed the contract review threshold around November, 2022 and this petition was not filed until approximately 1 year later.

9. GWA's requests that the PUC ratify the amount of \$438,021.20 that it has currently spent over GWA's PUC Contract Review threshold of \$1,000,000, and that the PUC authorize GWA to spend up to \$1,000,000 on this contract for anticipated future legal work in CV1198-18 are reasonable. GWA's legal costs under the contract are being driven by CV1198-18 which is a complex litigation that threatens GWA's ownership of the northern wastewater treatment plant, and which may subject GWA to approximately \$220,000,000 in liability if the defendant or the defendants prevail in the counter-claim. Further, it appears that Attorney Leon Guerrero is providing GWA with the additional legal representation in CV1198-18 that it requires. Finally, if the Court denies the Defendant or Defendants' motion to dismiss, GWA will need the additional \$1,000,000 authorization to cover the additional legal costs that will arise from litigating CV1198-18 and litigating any resulting appeals from a judgement in that case. Despite the reasonableness of the requests, the PUC must make these authorizations conditional on GWA's adherence to the Contract Review Protocol Process. Generally, for multi-year contracts with fixe terms and variable annual costs such as the legal services contract at issue here, on each anniversary date during the term of the contract, GWA will file a cost estimate for the coming year of the contract, and GWA shall seek PUC approval in the event the contract's cost should exceed 120% of the

⁷ Contract Review Protocol for GWA, Administrative Docket 00-04 dated October 27, 2005 at Par.1(e).

⁸ Id., at Par: 9.

aggregate cost initially approved by the PUC.⁹ Here, to avoid future payments that exceed this threshold, the PUC should require GWA to file a cost estimate on May 21st of each year of the contract, and the PUC should require GWA to seek PUC approval if the contract should exceed 120% of the \$1,000,000 contract limit authorized by the PUC for the upcoming year.

10. GWA's requests that the PUC ratify the amount of \$438,021.20 that it has currently spent over GWA's PUC Contract Review threshold of \$1,000,000, and that the PUC authorize GWA to spend up to \$1,000,000 on this contract for anticipated future legal work in CV1198-18 are prudent. As stated above, if GWA does not prevail in this litigation, GWA might lose ownership of the northern wastewater treatment plant and GWA may be subject to approximately \$220,000,000 in liability if the defendant or the defendants prevail in the counter-claim. Albeit GWA has spent the amount of \$1,438,021.17 for work arising from the contract, this expenditure is prudent because GWA may lose real estate and infrastructure assets that are worth far more than these legal fees and it may be subject to hundreds of millions of dollars' worth of liability if it does not prevail in CV1198-18. Thus, GWA's requests are prudent.
11. GWA's requests that the PUC ratify the amount of \$438,021.20 that it has currently spent over GWA's PUC Contract Review threshold of \$1,000,000, and that the PUC authorize GWA to spend up to \$1,000,000 on this contract for anticipated future legal work in CV1198-18 are necessary. The northern water treatment plant is a critical asset for GWA's wastewater system and GWA must engage in litigation to clear GWA's title to the real property on which that asset is located. Additionally, GWA must do all it can to defend against the counter-claim to prevent an additional \$220,000,000 in liability. Therefore, GWA's requests are necessary.
12. Based on the foregoing, GWA's requests that the PUC ratify the amount of \$438,021.20 that it has currently spent over GWA's PUC Contract Review threshold of \$1,000,000, and that the PUC authorize GWA to spend up to \$1,000,000 on this contract for anticipated future legal work in CV1198-18 are reasonable, prudent, and necessary.

⁹ Id., at Par: 4(d).

RECOMMENDATION

13. Counsel recommends that the PUC approve GWA's Petition for Ratification and Approval of Increased Spending for Conflicts / Legal Counsel Pursuant to GWA-RFP-2018-01 for CV1198-18 on condition that GWA file a cost estimate on May 21st of each year of the contract, and that GWA seek the PUC prior approval if the contract should exceed 120% of the \$1,000,000 contract limit authorized by the PUC in the upcoming year.
14. A Proposed Order is submitted herewith for the consideration of the Commissioners.

Dated this 16th day of December, 2023.

Anthony R. Camacho

Anthony R. Camacho, Esq.
PUC Legal Counsel