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May 1, 2024

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**Subject: Testimony of Chairman Jeffrey C. Johnson, Guam Public Utilities Commission**

**Re: Bill No. 273-37 (COR), An Act to Add a New §14104(p) to Article 1, Chapter 14, Division 1 of Title 12, Guam Code Annotated, Relative to Authorizing Guam Waterworks Authority to Establish a Customer Assistance Program to Promote Water Conservation and to Facilitate Repairs on Private Property.**

Dear Senator Perez:

### **INTRODUCTION**

The Guam Public Utilities Commission ["PUC"] appreciates the opportunity to comment on proposed Bill No. 273-37 (COR).

In the 36<sup>th</sup> Guam Legislature a very similar plan for a "Customer Assistance Program" (CAP) was introduced. PUC Administrative Law Judge (ALJ) Frederick Horecky filed testimony opposing the adoption of such Bill. For the reasons set forth in ALJ Horecky's testimony, which is attached hereto and incorporated herein, and for the reasons set forth herein, the PUC does not

support this Bill. At this time there is no information concerning the cost of the program and what the rate impact would be upon GWA ratepayers. Its adoption would likely lead to a further increase in water rates for GWA customers. The PUC requests that the Legislature defer action on this Bill and allow GWA and PUC to work collaboratively upon the development of a CAP.

**I.**  
**THE BILL DOES NOT PROVIDE ANY DETAILS CONCERNING THE COST OF THE PROGRAM OR ITS IMPACT UPON THE RATES OF GWA CUSTOMERS.**

The Bill establishes a program whereby Guam Waterworks Authority would be required to provide “leak detection and repair services” to “low-income” ratepayers on their private properties. No standards for “low-income” are established in the Act, but such standards are left to the determination of GWA. In its Analytical Study #4, Affordability/Rate Design, dated May 2021, GWA indicated that as many as 18,684 households, or 53,968 eligible persons, could be defined as “low-income” under the SNAP, DPHSS Division of Public Welfare. What would be the cost to GWA of providing repair and replacement of leaking pipes on private property to such households?

This could be a huge expense to GWA, but the Bill seeks to establish a CAP program without a precise determination of what the applicable costs would be. The provision of these free services would entail substantial employee time and expense to GWA. There is a likelihood that these personnel and equipment costs would be included in GWA’s operating expenses and included in rates paid for by the ratepayers of Guam.

When this program was last brought before the Legislature in 2021, GWA was requesting that all the ratepayers of Guam pay the cost of this CAP program in an amount of \$5.2 million, and that amount had been added into GWA’s rate request.

In Section 2, this Bill indicates that “financial and other assistance to eligible ratepayers” “**shall be funded through grants and/or Legislative appropriation.**” To begin with, nothing in the new proposed 12 GCA§14104(p) would preclude GWA from seeking funds for the CAP program through rate funds. The sources referred to by the Bill, “Grants and/or Legislative appropriation” are entirely speculative and uncertain. A customer assistance program should not be established until clear and specific sources of funding are identified. We cannot merely assume that grants or “Legislative appropriation” will be available to fund this program.

Also, there is also no indication that a fiscal note has been prepared and filed concerning the cost of the CAP.

**II.**  
**THE PUC, NOT THE GUAM LEGISLATURE, SHOULD BE RESPONSIBLE FOR ESTABLISHING ANY CUSTOMER ASSISTANCE PROGRAM.**

In 2020, during the prior 5-year rate case in GWA Docket 19-08, GWA had brought the idea of establishing a CAP before the PUC for review. GWA prepared an analysis of “affordability.” It was recognized that the CAP would require PUC approval prior to implementation. However, the PUC did not approve the program in that docket, as no clear definition of the cost or extent of

the program had been developed. The PUC was not willing to add an additional \$5.2M to customer rates in order to fund the program.

Every element of the CAP contained in the Bill requires PUC approval, including discounts or credits to low-income customers, financial assistance, bill assistance for hardship, and “a volumetric discount for water and wastewater services.” Volumetric discounts would require the PUC to create and approve a specific volumetric rate for low-income customers. A better approach with a CAP would be to have PUC and GWA work on a program and determine if there can be a resolution. The Legislature could then address the program through legislation, if necessary.

The Bill infringes on the rate making authority of the PUC by requiring the provision of discounts, rebates and volumetric discounts without the prior approval of the PUC. If the Legislature nevertheless decides to proceed with a CAP, it should first add the following sentence at the end of 12 GCA §14104(p)(1): **“No ratepayer revenue shall be used by GWA to fund a CAP program without the express prior approval of the PUC.”**

No such amounts can be authorized, or paid by GWA, without the prior approval of the PUC. By law, the PUC must approve all rates and charges for services of GWA. 12 GCA §12105(e). All the matters included by the Bill in the CAP, volumetric discount for water and wastewater services, “supplemental bill assistance for hardship”, and “the reduction or waiver of fees” require review and approval by the PUC before they can be implemented.

12 GCA §14104(d) requires that GWA establish reasonable rates, **“with the approval of the PUC, for water and wastewater services... adequate to recover the full cost of providing such services and to collect money from the customers using such services...”** The present law does not allow for free services or the failure to collect the full cost of services from ratepayers. Also, GWA’s bond covenants prevent the provision of free service.

The following language should be added to 12 GCA §14104(p)(4): “None of the assistance to low-income ratepayers provided for in this section may be authorized or implemented without the express approval of the PUC.”

### **III.**

#### **ALL OF THE PROGRAMS PROVIDED IN THIS BILL WILL INCREASE THE RATES OF CUSTOMER CLASSES OTHER THAN LOW INCOME**

In the current 5-year rate case pending before the PUC, GWA seeks to increase the rates of its ratepayers cumulatively by over 71% over the next five years. The compounded rate increase over the five years would be 93.2%. All the programs proposed in this Bill will increase the rates for rate classes other than low income. Given the magnitude of the proposed rate increases, this is simply not an appropriate time to add even more expensive programs to the GWA services.

What this Bill proposes is a substantial reduction in the revenues that GWA will receive from as many as 18,000 customers. Funds spent on this program will cause a loss of GWA revenues.

The question is how will GWA make up this loss, and what class or classes of ratepayer will have to make up the difference?

In many respects, this program is contrary to sound ratemaking principles. To begin with, with both GPA and GWA, the PUC has, over the last few years, been moving to rates that are based on “cost of service.” There has been an effort to reduce rate subsidies, not to increase them. The principle is that ratepayers who use utility services should pay the cost of such services. The water rates already have substantial subsidies for low-income residents and residential customers that reduce the costs of their bills.

This Bill will likely shift the cost of low-income service to other residential and non-residential ratepayers. The program requirements may be discriminatory and violate the law in accordance with 12 GCA §12115, the PUC is empowered to prohibit “rebates and discrimination... between consumers...”.

**IV.**  
**THE PROGRAM PROPOSED BY BILL NO. 273-37 WILL NOT NECESSARILY PROMOTE THE CONSERVATION OF WATER RESOURCES IN GUAM.**

This Bill is premised upon certain legislative findings and intent. The Intent section states that, during weather and El Niño events, and abnormally dry spells, GWA has on occasion been unable to produce enough water to meet customer demand. The “solution” recommended is to increase the water supply, and protect the water resource from depletion, by providing free repair and replacement of leaking pipes to low-income customers. The Legislature contends that assisting low-income residents to address water leaks on private property and facilitating “efficient use of water” would mitigate these hardships and “conserve our water resources.”

At the same time, the Legislature proposes that GWA pay for water services of low-income customers through a volumetric discount for water and wastewater services, free leak detection and repair services, bill assistance for hardship, and reduction or waiver of fees. In other words, the rates that low-income customers presently pay for water services would be considerably reduced.

Contrary to the legislative findings, it is more likely that reduction of the cost of water services for low-income customers will not encourage conservation but will lead to higher water usage because of the lower rate cost. Changes in rates send signals to the ratepayers, according to PUC Consultant Concentric Energy Advisors in their report, EVALUATION OF GWA’S RATE DESIGN PROPOSALS, GWA DOCKET 19-08. Where charges are increased to ratepayers for volumetric charges for water or wastewater services, the incentive to conserve water and reduce resulting wastewater are enhanced for residential customers. The point is that reduction of water and wastewater fees for low-income fees may encourage higher water and wastewater usage.

V.  
**THE PUC REQUESTS THAT THE LEGISLATURE NOT PASS BILL NO. 273-37,  
BUT ALLOW THE PUC AND GWA TO FURTHER DISCUSS THE CUSTOMER  
ASSISTANCE PROGRAM AND DETERMINE WHETHER A WORKABLE  
SOLUTION CAN BE DEVELOPED.**

For the reasons stated herein, the Bill should not be enacted. The program content and details need to be carefully examined. The details of the program, including eligibility, must be further refined and the cost for such a program determined. It makes sense for the Legislature to defer any action on this matter until the PUC and GWA have had a full opportunity to address and discuss a CAP program. The PUC recommends that the Guam Legislature not pass Bill No. 273-37.

Thank you for your consideration of this Testimony.

Sincerely,



Jeffrey C. Johnson  
Chairman  
Guam Public Utilities Commission

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March 22, 2022

Senator Sabina Flores Perez  
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Committee on Environment, Revenue and Taxation,  
Labor, Procurement, and Statistics, Research and Planning  
Guam Legislature  
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Re: Testimony of Chief Administrative Law Judge Frederick J. Horecky, Guam Public Utilities Commission, on Bill No. 266-36

Dear Senator Perez:

I submit the enclosed testimony on my behalf.<sup>1</sup> These comments are mine and have not been reviewed or approved by the Guam Public Utilities Commission ["PUC"]. Unfortunately, neither the PUC nor its Commissioners can comment on the "Customer Assistance Program" ("CAP") at the present time." Whether a CAP should be established, how it would be funded, if at all, and what the elements of the program would be, are all issues pending decision before the PUC in GPA Docket 19-08, which is Phase II of the GWA Rate Case proceedings. Phase II, as well as the issues involving the CAP, are now before the PUC Administrative Law Judge. Once he issues a recommended Order, the PUC will then issue its Decision establishing rates for FY2022-2024 and determine whether the CAP will be authorized or funded. For the reasons stated herein, I do not support the adoption of Bill No. 266 by the Legislature or the establishment of a CAP at the present time.

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<sup>1</sup> I was the Administrative Law Judge who heard Phase I of the Rate Proceeding in GPA Docket 19-08. I prepared the Decision which the PUC adopted. The parties reached a stipulated settlement. However, I have not been involved in the current ongoing Phase II proceedings, which are being heard before another Administrative Law Judge.

**I. The Guam Legislature should defer any action on Bill No. 266, or the establishment of a Customer Assistance Program, until the PUC issues its decision in Phase II of the rate proceeding in GWA Docket 19-08. Furthermore, the Legislature should not implement a CAP, which involves the setting of rates for low-income customers, without the concurrence of the PUC. All rate-setting matters require authorization and approval of the PUC. PUC, GWA, and the Legislature should work collaboratively to determine whether a lawful program, at appropriate cost, can properly be developed. In its testimony, PUC Consultant Georgetown Consulting Group [“GCG”] has outlined some of the legal revisions which must be implemented before such a program can even be established.**

The present GWA Rate Case, GWA Docket 19-08, has been pending before the PUC since July 23, 2019. In Phase I of that docket, GWA proposed that a “CAP” be included in the GWA rate case plan and be addressed by the parties. In the FY20 rate decision, the parties stipulated to water rates for FY2020 and 2021. In Phase II, which would establish rates for FY2022-2024, GWA agreed, among other matters that it would submit “an Affordability Study” (concerning the ability of low-income ratepayers to afford the rapidly increase in water and wastewater). GWA agreed to submit a study on such issue on or before May 1, 2021; GWA did submit the study in a timely manner.

In the Phase II proceedings, which are currently pending before the PUC, GWA and the PUC Consultant, Georgetown Consulting Group, have had extensive discussion and exchanges concerning the CAP, whether it should be implemented at the present time, appropriate cost, and what the elements of such a program would be. On October 22, 2021, GCG submitted testimony to the PUC which outlined, among many issues, its position on the present establishment of a CAP program. GCG found that “this new program would increase expenses and rates to all consumers by \$5.2 million in Test-year FY2022, almost half of the entire increase amount, and would provide a subsidy to

as many as 15,000 low-income residential consumers at the expense of causing some residential rates to increase significantly.”

A CAP program should not be established at the present time because GWA has not set up any procedures for administration of the program nor established how eligibility as “low-income” would be determined. GCG indicated that a CAP where “one subset of a class of customers (low-income) be subsidized by all customers and to have a regulatory commission approve such an expense is not the norm.” GCG recommended against implementing the CAP at this time.

GCG believes that it is not possible to implement the CAP program in FY2022. The issue of charging ratepayers \$5.2 million annually to provide a subsidy to some undetermined number of a yet undefined class of low-income customers has not been vetted by the PUC. There will be a need for a reasonable amount of time for PUC to fully consider all the issues surrounding the creation of a CAP program and to establish the guidelines and conditions under which such a program should be established. GCG recommended that there be further analysis by the parties where alternatives could be evaluated and public hearings held on the issue,

## **II. The CAP Program proposed by Bill No. 266 is not feasible or practical at the present time and is potentially discriminatory and unlawful.**

Bill No. 266 mandates that the Guam Waterworks Authority [“GWA”] shall establish a “rate-funded” Customer Assistance Program to provide financial and other assistance to eligible ratepayers. The term “rate-funded” requires that GWA fund the CAP through rates. Implicit in this mandate is a requirement that PUC would be obligated to provide rate funds for the establishment of such a program. Otherwise, the program could not be established. For many reasons, it is not appropriate for the Legislature to mandate the use of rate funds for the establishment of the CAP program.

Determinations that rate funds must be used for a CAP program can only be made by the PUC.



12 GCA §12105(e) provides that the PUC “shall establish and modify ...**reasonable rates and charges for services, including General Lifeline Rates**, which as far as.... the Guam Waterworks Authority...are concerned, when all rates for respective blocks of usage are considered together, shall be at least adequate to cover the full costs of such service...”. The Legislature has delegated its power to address water rates, as well as Lifeline Rates, to the PUC. Lifeline rates are exactly the type of rates contemplated by a CAP program.

The Guam Legislature has previously delegated full rate making authority for GWA from itself to the PUC. 12 GCA §14104(d) requires that GWA establish reasonable rates, **with the approval of the PUC**, for water and wastewater services “adequate to recover the full cost of providing such services, **and to collect money from the customers using such services...** GWA must apply to the PUC “for approval for its rates for its services.” To obtain such approval, GWA must demonstrate to the PUC that there is a public need for the services being provided and that the Authority’s provision of such services benefits the community. 12 GCA §14112(a).

Thus, present law requires that rates charged must cover the full cost of providing such service, and that the cost must be recovered from those customers that use such services. The free or discounted services provided for in Bill No. 266 do not appear to be authorized in the present law. This language is an impediment to many provisions of Bill No. 266, which would provide reduced rates, financial assistance, discounts, fee reductions and waivers, and free services to low-income customers.

GCG has a concern that setting lower rates for one subclass of residential ratepayers. i.e., low-income ratepayers, could constitute discriminatory rate setting. Guam legislation does not currently permit individual customers within a class (i.e., residential) to be treated differently from each other. Here the “rate-funding” mechanism contained in Bill 266 would require a subsidization by non-low-income ratepayers of low-income water rates. Under present law, the only mechanism for funding the free service, discounts, and financial assistance for low-income customers would be to increase the rates of non-low-income customers.

For FY2022, GWA requested a rate increase of \$12.031 million. Nearly one-half of the increase, \$5.25 million, would pay for the initial year expenses of the CAP. In other words, GWA proposed to almost double the requested rate increase in Test-year FY2022 to make water rates “more affordable”. Under the “rate funded” approach of Bill No. 266, the only option for funding the CAP is to place the burden on non-low-income customers and substantially increase their rates.

GCG concluded that a basic principle of utility rate making is that rates not be “unduly discriminatory.” In accordance with 12 GCA §12115, PUC is empowered to prohibit “rebates and discrimination...between consumers...”. The Commission may not currently have the authority to provide a discount targeted to low-income residential customers as Guam Statute requires all customers within a rate category to be treated identically. GCG concludes that the CAP requested by GWA in the rate proceeding should be denied, and that both the process and price are unacceptable and unreasonable.

### **III. Bill No. 266, if implemented, could result in a substantial increase for all ratepayers in water and wastewater rates.**

According to GCG, the current CAP advocated by GWA would result in an approximately 5% rate increase in the pending rate proceeding to take the total rate increase proposed to over 10%. There is a major issue and concern with shifting the cost of low-income service to other residential and non-residential ratepayers. The CAP proposed in Bill No. 266 does not identify the costs that will be imposed upon GWA and ratepayers through adoption of the program. Not only is there no estimation in the legislation of the costs that the CAP would impose, but there is also no source of funding provided other than “rate funded.”

By supporting this legislation, Senators would be approving a considerable rate increase for all GWA customers. There must be a much better understanding of the costs involved before the Legislature imposes such a burden upon the ratepayers.

Before such a program should be mandated through legislation, there should be a far more accurate analysis of how many “low-income” residents would be included in the program, what the eligibility standards are, what program GWA would set up to administer CAP, and the overall program cost.

As GCG points out, there may well be other methods of funding than through rates. Current Lifeline regulations could be modified to permit targeted tariffs to a specific group identified by the Commission. There could be funding through federal agencies, such as the Federal Communications Commission did with telecom lifeline rates. There are also rate design alternatives that could be adopted through legislation. In its testimony, GCG has suggested many different legislative approaches that could be utilized to develop a CAP program.

There is also no indication of the amount of the various costs which would be imposed by Bill No. 266 upon ratepayers. Section 2 of Bill No. 266 provides financial assistance to low-income ratepayers, discounts for water and wastewater services, free leak detection and repair services, reduction or waiver of fees, and rebates and discounts. However, we have no idea what the cost of any of these benefits will be. Without an understanding of what the actual costs will be, it is unjust and inequitable to impose such costs upon ratepayers.

The same cost issues arise regarding the administrative program that GWA will need to determine the standards for low-income eligibility. An extremely far-reaching element of the Bill is to require GWA to include in its program “leak detection and repair services.” The Bill intends that GWA would assist residents “who have economic difficulty in addressing water leaks on private property...”. Essentially, Bill 266 would require non-low-income residents to fund leak detection and repair services on private property of low-income residents. GWA would be transformed into the nature of a commercial company which provides leak detection and repair services to customers on private property, although such services would be “free” to the low-income customer (but not to all other ratepayers). There should be far more consideration of the legal implications and potential financial consequences of requiring GWA to act as a private

company in repairing leaks on private customers' property. There are serious liability issues that should be addressed.

Bill No. 266 would require GWA to establish a CAP program "on or before July 1, 2022." Considering the potential harm of imposing unknown costs upon ratepayers, and the lack of information on so many relevant issues, such a time frame is not realistic.

#### **IV. The Requirement in Bill No. 266-36 that the CAP be a "rate-funded" program would likely interfere with the independent powers of the Guam Public Utilities Commission and violate Bond Covenants.**

The concern in Bill No. 266-36 is that it mandates the use of rate funds to establish a CAP. The establishment of a CAP clearly impacts rates and appears to require the creation of rate subsidies. Such a CAP can only be implemented upon the review and approval of the PUC. The Legislature has delegated whatever rate making authority it had to the PUC. The PUC has previously presented a substantial amount of testimony to the Legislature indicating that legislation should not interfere with the rate setting functions and authorities of the PUC. I will not repeat that argument in detail here.

However, pursuant to 48 USC 1423a, the PUC is an "**independent rate-making authority.**" Interference with the rate setting authority of the PUC would also violate GWA Bond Covenants. §6.17 of GWA's bond indenture requires the government to maintain the rights, powers, and duties of the Guam Public Utilities Commission. The Legislature should allow the PUC rate making process in GWA Docket 19-08 to proceed ahead without imposing a mandatory CAP at the present time; GCG and GWA can continue to discuss and negotiate whether there should be a CAP program, how such program should be funded, and the elements of the program.

**V. Conclusion**

I do not object to the development of a well-crafted CAP program that is done collaboratively, or to possible legislative actions that could benefit low-income customers. If such a program is to be adopted at all, it should be done through a collaborative approach between GWA, the PUC, and the Legislature. Since the CAP program involves rate-setting, ultimately any such program must be reviewed and approved by the PUC. The Legislature should not create a CAP which imposes significant new expenses upon ratepayers without careful consideration and review/approval by the PUC.

Bill No. 266-36 should not be adopted by the Legislature. Thank you for your consideration of this testimony,

Sincerely,

Frederick J. Horecky  
Chief Administrative Law Judge  
Guam Public Utilities Commission