

GUAM CONSOLIDATED COMMISSION ON UTILITIES
RESOLUTION NO. 34 - FY2012

**RELATIVE TO AUTHORIZING THE GUAM WATERWORKS AUTHORITY
TO EXTEND THE NAVY SURCHARGE TO PAY AMOUNTS OWED TO THE
GUAM SOLID WASTE RECEIVER**

WHEREAS, under 12 G.C.A. § 14105, the Consolidated Commission on Utilities (“CCU”) has plenary authority over financial, contractual and policy matters relative to the Guam Waterworks Authority (“GWA”); and

WHEREAS, GWA is a Guam Public Corporation established and existing under the laws of Guam; and

WHEREAS, in 2009, GWA and the solid waste receiver, GBB (“GBB”) entered into an agreement whereby GWA’s costs for disposal of biosolids from its wastewater facilities that are deposited in the landfills of Guam would be offset against charges incurred by GBB for leachate that is discharged from the Layon Landfill into GWA’s wastewater system; and

WHEREAS, notwithstanding the Offset Agreement between GWA and GBB, the United States District Court in Civil Case 02-00022 ordered the Guam Public Utilities Commission to establish a rate for Layon's leachate that would allow GWA to pay GBB the large outstanding balance that GWA had accrued with GBB for the disposal of biosolids at the Layon facility; and

WHEREAS, according to GBB, as of January 2012, the balance that GWA had accrued for biosolid disposal at Layon was approximately Six Hundred Seventy-Eight Thousand Dollars (\$678,000) and this amount is undisputed by GWA (see Exhibit A attached hereto); and

WHEREAS, on March 26, 2012, the PUC approved a new rate for the Layon leachate of Fourteen Dollars and Nineteen Cents (\$14.19) per 1,000 gallons that equates to a Commercial III rate for wastewater (see Exhibit B), however, despite the rate approval, GWA will not generate sufficient amounts to repay the outstanding debt with GBB since the new rate will only generate approximately Two Thousand Dollars (\$2,000) per month and GWA is incurring approximately Twenty Thousand Dollars (\$20,000) a month in charges for biosolid disposal; and

1 **WHEREAS**, given the Court’s Order, and the high unpaid balance with GBB, GWA’s
2 Management has determined that the best manner to repay the outstanding balance with GBB is
3 to use the amounts generated by the “Navy Surcharge” which expires in July of 2012 (see
4 Exhibit C); and

5
6 **WHEREAS**, GWA is seeking authorization from the CCU to seek the approval of the
7 PUC to extend out the Navy Surcharge by whatever legal means are available at its disposal in
8 order to repay the outstanding balance with GBB; and

9
10 **WHEREAS**, the CCU has determined that GWA should be allowed to seek the approval
11 of the PUC to extend out the “Navy Surcharge” to pay the outstanding balance owed to GBB for
12 biosolids disposal; and

13
14 **NOW BE IT THEREFORE RESOLVED**, the Consolidated Commission on Utilities
15 does hereby approve the following:

16
17 1. The recitals set forth above hereby constitute the findings of the CCU.
18 2. The CCU finds that in light of the United States District Court’s Order GWA
19 should take all reasonable steps to repay the outstanding balance owed to
20 GBB for biosolids disposal.
21 3. The CCU further finds that using the “Navy Surcharge” which is set to expire
22 in July of 2012 to repay the outstanding balance owed to GBB is reasonable as
23 it will not be an additional burden on GWA ratepayers.
24 4. GWA is authorized to seek PUC approval to use the “Navy Surcharge” to pay
25 for past due biosolids disposal at Layon by whatever method GWA
26 determines is best.

27
28 **RESOLVED**, that the Chairman certified and the Board Secretary attests to the adoption
29 of this Resolution.

1
2 **DULY AND REGULARLY ADOPTED**, this 27th day of March 2012.
3
4

5 Certified by:
6

7 
8

9 **SIMON A. SANCHEZ, II**
10 Chairperson

11 Attested by:
12

13 
14

15 **GLORIA B. NELSON**
16 Secretary

17 I, Gloria B. Nelson, Board Secretary of the Consolidated Commission on Utilities as evidenced
18 by my signature above do hereby certify as follows:

19 The foregoing is a full, true and accurate copy of the resolution duly adopted at a regular
20 meeting by the members of the Guam Consolidated Commission on Utilities, duly and
21 legally held at a place properly noticed and advertised at which meeting a quorum was
22 present and the members who were present voted as follows:

23 AYES: 5

24 NAYS: 0

25 ABSTENTIONS: 0

26 ABSENT: 0



EXHIBIT A



GUAM WATERWORKS AUTHORITY
"Good Water Always"“
578 North Marine Corps Drive
Tamuning, Guam 96913
Phone: (671) 647-2603 Fax: (671) 646-2335

March 26, 2012

Consolidated Commission on Utilities
P. O. Box 2977
Hagatna, Guam 96932

Subject: Unpaid Tipping Fees

Dear Commissioners:

This letter is to apprise the CCU of recent developments affecting GWA as a result of a recent District Court of Guam Order.

On December 8, 2011, the District Court of Guam issued an Order directing the Guam Public Utilities Commission to address an obligation of GWA to the Landfill Receiver Gresham, Brickner & Bratton, Inc. for outstanding and unpaid tipping fee charges in connection with bio-solid disposals at the Landfill.

The Order was brought about in response to a quarterly status hearing before the District Court in December 2011, wherein the Receiver reported a GWA outstanding receivable for tipping fees related to bio-solid disposals at the Landfill by GWA.

The receivable stemmed from a 2009 agreement between GBB and GWA whereas the party's entered into an agreement to offset each respective costs relative to the treatment of leachate at the WWTP and the cost for the disposal of bio-solids at the Landfill. However, due to the absence of a rate in GWA's tariff for leachate treatment, the offsets were not taking place thus the receivable began to accumulate. As of January 2012, the balance has accumulated to approximately \$678,000.

The Court expressed concern over the reasonableness of the 2009 agreement and

accumulation of the GWA receivable and thus on December 8, 2012, ordered the PUC to conduct a rate investigation.

On February 6, 2012, the PUC authorized the ALJ to conduct a rate investigation of GWA and on March 19, 2012, the ALJ's report was issued with the recommendation of a Commercial III class rate and GWA to conduct a cost of service study to evaluate the true cost of treating leachate. The report further recommended that the rate investigation case remain open in anticipation of a rate investigation on the repayment of the GBB obligation.

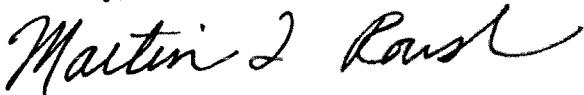
Regarding the repayment provision of the report, Management has looked into several repayment options and believes a surcharge is the appropriate mechanism, given the general purpose of a surcharge is for a specific purpose and for a limited period of time. It is Management's desire to petition the PUC to conduct a rate investigation for consideration of Management's proposal and for the CCU to authorize Management to proceed with the petition.

An opportunity to utilize an existing surcharge may be an option if the PUC approves a rollover of the GBB obligation into the "PUC surcharge". The surcharge was established for the most part to retire GWA's debt to the Navy for past unpaid water purchases. The Navy debt is projected to be paid off August 2012 at which time having fulfilled its purpose, it will automatically expire.

The surcharge rate is currently at 2% and generates approximately \$75K per month. Assuming a \$75K per month amortization rate, an accumulated balance of \$900K and October 2012 implementation date, the GBB obligation can be retired in 1 year. The enclosures provide an amortization table of the Navy obligation and proposed amortization schedule for the GBB obligation based on these assumptions.

I'm available to answer questions on this regard and should you require more information, I would be happy to provide them.

Sincerely,



MARTIN L. ROUSH, P.E.
General Manager

Enclosure

EXHIBIT B



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE: RATE REQUEST FOR) GWA Docket No. 12-01
LEACHATE TREATMENT)
AT LAYON LANDFILL) ORDER
)
)

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (hereinafter referred to as the "PUC" or the "Commission") pursuant to the December 8, 2011 Order issued by Chief Judge Frances M. Tydingco-Gatewood of the District Court of Guam in U.S. v. Government of Guam, Civil Case No. 02-00022. In its Order, the Court requested that the PUC "set the rate for the treatment of leachate from the Layon Landfill and address any rate issues that need to be addressed to enable GWA to pay its obligations for waste disposal."

BACKGROUND

On January 24, 2012, the Administrative Law Judge of the PUC (the "ALJ") issued an ALJ Report requesting authority from the Commission to conduct a rate investigation into the appropriate rate for the Guam Waterworks Authority ("GWA") to charge for the treatment of leachate from Layon. On February 6, 2012, the PUC authorized the ALJ to investigate and examine the rate request ordered by the Court. On March 1, 2012, the ALJ issued a Scheduling Conference Order requiring GWA to appear at a Scheduling Conference on March 8, 2012 to discuss the rate investigation.

At the March 8, 2012 Scheduling Conference, the ALJ and GWA discussed the issues concerning the rate setting for GWA's treatment of leachate as well as GWA's past due obligations to the federal receiver, Gershman Brickner & Bratton, Inc. (the "Receiver" or "GBB") for GBB's disposal of GWA's biosolids. GWA informed the ALJ that it had reached an agreement with GBB with respect to the rate to be charged for GWA's treatment of leachate from Layon. On March 19, 2012, the ALJ issued an ALJ Report finding that the rate proposed by GBB and GWA was just, reasonable, and necessary, and subsequently recommended that the PUC approve such rate proposal.

DETERMINATIONS

In the March 19, 2012 ALJ Report, the ALJ found that GWA and GBB had reached an agreement concerning the interim rate GWA should apply for its treatment of leachate from Layon. Pursuant to the terms of such agreement, GWA would assess GBB a fee of \$14.19 per 1,000 gallons via the existing waste water master meter that measures all flow from the facility. This rate is the Commercial III rate for wastewater, and in the event the Commercial III rate is modified by the PUC at a later time, then the new Commercial III rate would apply unless a Cost of Service study determines otherwise. The \$14.19 per 1,000 gallons of wastewater is in addition to the charges for water. The ALJ further found that, under the agreement, GWA would reserve its right to conduct a Cost of Service study to formulate a rate that better reflects GWA's cost of treating the leachate; and, that GWA would continue to work towards determining what rate increase, if any, would be necessary to pay down its past due obligations to GBB.

The ALJ, thereafter, found that the rate proposed by GBB and GWA was just and reasonable as \$14.19 per 1,000 gallons under the Commercial III rate for wastewater appeared to fall within the range of rates charged for the treatment of leachate in other jurisdictions. The ALJ cited the Written Testimony of David L. Manning, which was prepared in support of the September 2010 Rate Request of the Solid Waste Management Division, as well as researched some rates charged for the treatment of leachate in other jurisdictions. The ALJ further found that the rate was necessary in light of both the federal Court Order requiring GWA to set a rate with respect to its treatment of leachate, but also because GWA must recoup its cost for treating such leachate.

Accordingly, the ALJ recommended that the PUC approve the rate proposed by GBB and GWA effective April 1, 2012. Finally, the ALJ recommended that the instant docket remain open to facilitate any rate investigation associated with GWA's repayment of its outstanding debt to GBB for GBB's disposal of GWA's biosolids.

The Commission hereby adopts the findings made in the March 19, 2012 ALJ Report and, therefore, issues the following:

ORDERING PROVISIONS

Upon careful consideration of the record herein, the March 19, 2012 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 the following:

1. The rate of \$14.19 per 1,000 gallons which corresponds with the rate for wastewater for a Commercial III account shall be applied for the treatment of leachate

from the Layon Landfill effective April 1, 2012, and shall also be applied retroactively for any treatment of leachate from Layon during 2011.

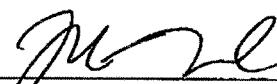
2. The instant docket shall remain open in anticipation of any rate investigation associated with GWA's repayment of its outstanding debt to GBB for GBB's disposal of GWA's biosolids.

3. 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 conducting the rate investigation and hearing process. Assessment of the PUC's regulatory fees and expenses is authorized pursuant to 12 G.C.A. §12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the PUC.

SO ORDERED this 26th day of March, 2012.



JEFFREY C. JOHNSON
Chairman



JOSEPH M. MCDONALD
Commissioner



ROWENA E. PEREZ
Commissioner



FILOMENA CANTORIA
Commissioner



MICHAEL A. PANGELINAN

PI24022.JRA

EXHIBIT C

Amortization Schedule -Navy
FY2012

	Principal	Interest	Balance
Balance as of March 5, 2012- Navy statement			\$ 270,861.49
April, 2012	75,473.10	282.14	195,670.53
May, 2012	75,551.42	203.82	120,322.93
June, 2012	75,629.91	125.33	44,818.35
July, 2012	44,865.03	46.68	0.00