A. Lifeline Rate Applicability

Several approaches have been used for defining the applicability of lifeline rates. Nearly all lifeline rate programs have been applied only to residential customers, however, rarely, if ever, have the benefits of lifeline rates been made generally available to all residential customers and all levels of electric use. More commonly, lifeline rate offerings have been designed primarily to benefit (1) inelastic or essential residential uses of electricity and/or (2) the requirements of low-income customers. In this context, the definition and identification of essential uses of electricity is central to the structuring of lifeline rate proposals. Even lifeline rate programs which are designed primarily to assist to low-income customers tend to limit lifeline allowances. Thus, care is generally taken in the design of lifeline programs to ensure that lifeline benefits are not provided for any significant amounts of non-essential or inefficient uses of electricity. The encouragement of inefficient use of electricity is generally felt to be inconsistent with the sound approaches to lifeline rate design.

Essential uses of electricity are generally considered to be those over which residential customers can exercise little, if any, discretion. Included among those residential uses of electricity that are considered essential are: refrigeration, water heating, space heating, and limited amounts of energy for such activities as

lighting, cooking, and communications (e.g., TV and radio).[2] By definition, essential uses of electricity tend to be highly price-inelastic, and thus, as rates for electric service rise, residential customers tend to have little ability to restrict their use of such services to moderate the effects of rate increases.

Although measures of essential use requirements may be key inputs for the design of lifeline rates, those measures generally reflect only imprecise estimates of customers' actual essential use requirements. Furthermore, factors which influence the magnitude of individual customer essential use requirements are numerous and can be expected to vary over time. For example, essential use requirements may vary with the number of persons per household or the age and efficiency of major energy consuming appliances. Thus, tailoring lifeline rate allowances to meet individual customers' essential use requirements is generally considered impractical.

In most areas of the mainland U.S., air conditioning is not considered an essential use. Water heating and space heating requirements are only considered essential to the extent that customers have electric (as opposed to gas-fired, oil-fired, or other) heating systems for those purposes. Furthermore, since energy

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[2] Both the Edison Electric Institute (EEI) and the U.S. Government's Department of Energy (DOE) have developed data regarding typical electricity use by appliance type which may be helpful in assessing essential use requirements. However, if the Commission elects to target lifeline rates to low-income customers, it should recognize that those customers tend to have older, less-energy-efficient appliances.

requirements for space heating, lighting, and even cooking requirements tend to vary seasonally, recognition of seasonal differences in essential use allowances has been at times been considered a necessary element of lifeline rate design.[3]

B. Cost Basis for Lifeline Rates

When the lifeline rate concept surfaced during the 1970's, proposals for such rates were designed primarily to moderate the impacts of utility cost increases on residential consumers. In that context, many of the early lifeline rate proposals were perceived to represent departures from cost-based ratemaking principles. However, as the debate regarding the merits of lifeline rate proposal grew, advocates of such rates became increasingly involved in the development of cost-based rationales for the adoption of lifeline rate structures. Included among those rationales were the following:

- Properly segregated, the embedded costs of serving identified lifeline requirements would be lower than those for the residential class as a whole;

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[3] Due to climatic difference, essential use determinations for residents of Guam may need to differ markedly from those for most areas within the mainland U.S. For example, in Guam space heating is probably not an essential use of electricity. Furthermore, seasonal differences in essential use requirements are likely to be less significant for GPA customers.

- Lifeline requirements generally do not contribute proportionately to growth in system requirements, and therefore, should not carry responsibility for incremental capacity investment costs;

- The costs that a utility can avoid by not serving identified lifeline requirements are less than the average costs of providing residential service; and

- Rates which place reduced charges on comparatively inelastic, lifeline service requirements while increasing charges for more price-sensitive usage are consistent with (1) the conservation of energy resources, (2) the encouragement of increased efficiency in the utilization of energy resources, and (3) will aid the overall minimization of utility costs.

Most embedded cost class cost-of-service analyses are designed to assess the overall costs of service for classes or major subclasses of customers. Only rarely do such studies attempt to segregate a portion of the service requirements of a class or subclass of customers to determine separately the costs of serving a specific portion of their service requirements. However, the development of an embedded cost justification for lower charges for lifeline services requires that the costs of the lifeline compon-

ents of residential service be separately identified within the Company's cost-of-service allocations.

Short-run marginal cost measures establish minimum levels for pricing utility services. As long as charges for lifeline service equal or exceed the utility's marginal costs, sales to such customers can be considered economic. However, in no event should charges for lifeline services be set as levels below such measures of marginal costs. The utility must recover at least its incremental costs of energy supply on each kWh sold. Yet, considering the relative capital intensity of the electric utility industry, the pricing minimums established by short-run marginal cost measures generally provide utilities and regulators with considerable ratemaking flexibility.

C. Conservation and Price Elasticity

As noted above, lifeline rates are generally designed to maintain the affordability of price-inelastic, essential uses of electric service for residential customers. In that context, lifeline rates are generally designed to aid residential customers in their efforts to maintain their existing usage patterns, rather than encourage changes in those patterns. Yet, without affecting changes in customers' usage patterns, rates cannot be expected to have a significant influence on a utility's overall costs of providing service. Arguments that lifeline rates can be used to

encourage energy conservation are generally based on the assessments of the influences of lifeline rate offerings on the charges paid by non-lifeline customers, i.e., the effects on non-lifeline customers of reallocated revenue requirements.

Some jurisdictions in the U.S. Mainland have adopted lifeline rate as a means of encouraging conservation and improved energy use efficiency. Through a combination of price elasticity and marginal cost rationales, lower rates for less price-elastic, essential uses of electricity and higher rates for more price-elastic, discretionary uses of electricity have been assessed as being consistent with the achievement of both conservation and energy efficiency objectives. The basic economic precept on which those determinations are based is that, in the context of an increasing cost industry, efficiency in the use of resources is enhanced by pricing highly price-elastic demands at, or as close as possible to, marginal costs.

Such rate designs also recognize established relationships between customer usage and demand characteristics. That is, higher use residential and commercial customers tend to contribute disproportionately to system peak demands. For example, residential heating and/or air conditioning customers contribute more kilowatts (kW) of demand per kilowatt-hour (kWh) of annual energy use than non-heating and/or non-cooling customers. Moreover, increasing the relative charges for non-lifeline customers and/or for residential

uses in excess of lifeline allowances encourages energy conservation within ranges where customers can be expected to have some discretion and control over usage levels.

D. Costs of Unaffordable Electric Rates

Over the last several years, increasing focus has been drawn toward the costs to utilities, their customers, and the society as a whole of having rates for utility services that exceed low-income customers' ability to pay. The premise of such efforts has been that it is often more economic for the utility to provide service to low-income customers at rates below those for other residential customers than to attempt to terminate service to such customers.[4] This rationale is based in part on the realization that the costs of terminating service to customers that do not remain current in the payment of their bill can be substantial. Notifying customers of intentions to terminate service, processing appeals of such notices, physical disconnection and often subsequent reconnections are all labor intensive activities which can quickly grow out of proportion to a customer's arrearages. Thus, it has been argued that the process of disconnecting and reconnecting customers who develop arrearages in the payment of their bills is often more

[4] Studies performed by researchers from the National Consumer Law Center have provided considerable evidence that utilities may actually incur greater costs to discontinue service to payment-troubled customers than they would if they continued to serve such customers at reduced rates.

costly than the alternative of continuing to serve such customers at reduced rates.

Using the concept of "opportunity cost,"[5] it is further reasoned that a utility is better served by obtaining some contribution to its fixed costs from such customers than none. If service is terminated, all opportunity to recover fixed costs from a payment trouble customer is lost, even though the costs of plant and equipment formerly employed in the service of such customers must continue to be met. Thus, from an "opportunity cost" perspective, lower rates to payment-troubled customers can be justified as long as such rates exceed the utility's short-run marginal costs of service. However, economic theory also suggests that in no instance should a customer be served at rates which are less than the utility's short-run marginal cost levels, since such pricing practices would add to the costs which must be collected through rates for other customers.

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[5] In recent years, the concept of "opportunity costs" has been used by both electric and gas utilities primarily in the context of the pricing of services to large customers who have energy supply alternatives. Although the circumstances of those large customers differ considerably from those of low-income residential customers, the rationale which underpin the use of "opportunity cost" concepts for low-income customers are highly analogous.

IV. ASSESSMENT OF LIFELINE POLICY VARIABLES FOR GUAM

The establishment of lifeline rates must be sensitive to the environment in which such rates would be applied. GPA's customer characteristics and cost structures are, therefore, important inputs to the design of residential lifeline rates for Guam. Other key inputs are primarily policy determinations and socio-economic data. In combination, those inputs define the limits of the Commission's discretion in designing lifeline rate for application to GPA customers.

One important limit is set by GPA's marginal energy costs. In no event should a lifeline rate be set a level below GPA's marginal energy costs. Another key factor is the proportion of total sales that would be subject to lifeline. Assuming (for discussion purposes) that GPA's average fuel costs provide reasonable approximations of its average marginal energy costs,[6] current measures of average fuel costs can be used to determine a lower bound for the pricing of lifeline rates. Presently, GPA's average fuel costs are roughly $0.04 per kWh or about 40% of GPA's average charges per kWh for residential service.

Recent GPA sales estimates suggest that residential sales account for approximately 37% of its total annual energy sales

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[6] GPA's actual marginal energy costs should include non-fuel variable costs as well as fuel costs, and on average over an annual period, may or may not exceed GPA's average fuel costs.

(excluding sales to the U.S. Navy). In addition, related data indicated that GPA's average residential customer consumes over 900 kWh per month. Of those requirements, essential energy uses (excluding air conditioning) would most likely account for 200 to 400 kWh per month. Using the mid-point of that range (i.e., 300 kWh per customer per month), Exhibits A and B attached to this report provide indications of the potential impacts of alternative non-targeted lifeline rate programs. Exhibits C, D, E, and F illustrate the potential impacts of targeted lifeline program designs assuming such targeted programs would provide lifeline benefits to approximately 25% of GPA residential customers.[7] Where targeted approaches to lifeline rate implementation are considered, an allowance is also made for the additional administrative costs that are likely to be incurred to assess customer eligibility for such programs. For illustrative purposes we have assumed that GPA would incur an annual cost of $20 per lifeline customer to assess the eligibility of customers for participation in a targeted lifeline program.[8]

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7 The assumption that 25% of residential customers would qualify for lifeline service is offered strictly for discussion purposes. This assumption is not intended in any way to bias the Commission's consideration of programs which may have greater or lesser applicability.

8 The added administrative costs for targeted lifeline programs can vary widely depending on the parameters of the specific program and the extent to which eligibility can be determined by non-utility personnel. For example, in the District of Columbia, eligibility for the Potomac Electric Power Company's Residential Air Rider is determined on the basis of LIHEAP or Complimentary Energy Assistance Program (CEAP) qualification.

Exhibits C and D examine the impacts of targeted programs which provide lifeline rate benefits for the first 300 kWh of monthly use. The analyses presented in Exhibits E and F parallel those found in Exhibits C and D, but assume that the essential use block is determined to include 500 kWh per month rather than 300 kWh. Furthermore, Exhibits A, C, and E assume that lifeline rates are set one cent ($0.01) per kWh below current residential rate levels. Exhibits B, D, and F assume that charges for lifeline energy use are set five cents ($0.05) per kWh below the present residential rate levels. The kWh adjustments reflected in these sets of exhibits are intended to roughly portray the range of adjustments that may be available to the Commission. Nothing in these examples is intended to suggest either the methods that should be used to set lifeline charges or the magnitude of appropriate charges for lifeline service. The $0.05 per kWh lifeline adjustment examined in Exhibits B, D, and F roughly depicts the fixed cost component of the residential rates that GPA proposed in Docket No. 91-004, and in doing so that adjustment tends to suggest the limit of rate adjustments that might be justifiable for lifeline service.

In each exhibit (A through F), three scenarios are examined. Those three scenarios differ only in terms of the manner in which the lifeline rate program impacts the rates of non-participants. Under Scenario 1, revenues foregone as a result of lowering charges to lifeline customers, as well as any additional administrative

costs associated with the implementation of lifeline rates, are recovered through increased charges for the non-lifeline component of residential energy sales. In other words, the entire costs of implementing lifeline rates are kept within the residential class. Scenario 2, on the other hand, assumes that all foregone revenues and added administrative expenses are recovered 100% from non-residential customers. Finally, Scenario 3 spreads the burdens of lifeline rate implementation among all residential and non-residential uses on an equal cents per kWh basis.

The analyses presented in Exhibits A through F suggest that comparatively large rate reductions could be provided for substantial portions of residential use without having significant adverse impacts on charges for non-lifeline services. This is particularly true if the costs of lifeline program implementation are distributed broadly across sales for non-lifeline services. However, the overall benefits to residential customers would be greatest if the full costs of lifeline rate implementation were recovered through non-residential rates. For example, as shown in Exhibit B, a five-cent reduction in charges for lifeline service under a non-targeted program (providing 300 kWh per month of lifeline service to all residential customers) could be implemented at an added cost of less than $0.01 per kWh for non-residential customers. It can also be observed that, despite increased administrative costs for targeted lifeline programs, those programs may have less impact on charges for non-lifeline services than lifeline rate programs that

offer the same level of lifeline benefits to all residential customers.

Exhibit G translates the cents per kWh impacts of the alternative lifeline program designs into estimates of monthly bill impacts. For simplicity, an average monthly use of 900 kWh per month is used for both residential and non-residential customer bill impact calculations. Monthly bill impacts for either higher of lower levels of use can be determined through extrapolation. The comparisons provided in Exhibit G support the following findings:

- Non-targeted lifeline programs provide little net benefit to the average size residential customers when the costs of those programs are recovered fully within the residential class.

- Non-targeted lifeline programs which seek to recover the costs of those programs from non-residential are most costly for alternative for non-residential customers.

- Residential customers who do not qualify for lifeline service under targeted programs are most adversely affected when the costs lifeline rate offerings are kept within the residential class.

V. PROCEDURES FOR THE DEVELOPMENT OF LIFELINE RATES

The development of lifeline rates for GPA electric service should be accomplished in basic steps. Those steps should include:

1. Development of initial policy determinations;

2. Development of proposed lifeline rate design, implementation plan, and program budget;

3. Approval of rates and final program parameters.

The first step of the process outlined above should be initiated through the distribution of this report for comment by GPA and other interested parties. Commenting parties should be requested to focus their comments primarily on the following policy issues:

a. What should be the primary objective of lifeline policy?

   -- Should lifeline rates be structured to ensure the affordability of essential uses of electricity for all customers; or

-- Should lifeline rates be targeted to assist specific subgroups of the residential customers, such as low income or elderly persons?

b. Assuming the Commission should decide to base lifeline rates in whole, or in part, on essential use concepts, how should essential use requirements be established?

c. Assuming the Commission should decide to implement a targeted lifeline rate program, what basis should be used for determining customer qualification for service under lifeline rates?

d. What cost basis, if any, should the Commission require for the establishment of lifeline rates?

e. How should revenues losses that result from lowering rates for recipients of lifeline service be offset to ensure that GPA financial requirements are met?

-- Should lower charges for lifeline service be offset by increased charges for non-lifeline portions of residential service; or

-- Should some or all of the costs of offering lifeline service be borne by non-residential customers?

f. Are there identifiable societal costs (as opposed to utility costs) that can be reduced or avoided as a result of lifeline rate offerings, and how should those costs be considered in the development lifeline rates for GPA?

GPA and other parties should be requested to submit their comments on these issues, not latter than the end of January 1992, for consideration by the Commission in hearings to be held in February 1992.

Following the conclusion of the February 1992 hearings, the Commission should endeavor to make at least preliminary determinations regarding the policy issues listed above. It should then direct GPA to develop specific rates and implementation plans to implement those policy determinations.

GPA's task of designing lifeline rates and implementation plans would be greatly facilitate by specific determinations regarding each of the issues listed above. However, the Commission may prefer to withhold final policy determinations on certain issues pending the development of greater information regarding the

specific of such alternative for GPA. In that instance, the Commission should require GPA to develop alternative lifeline rate designs and/or implementation plans for consideration by the Commission.

GPA should be provided until late April or early May 1992 to prepare a response to the Commission directive. That response should include:

(1) A specific lifeline rate design or alternative rate designs, depending on the content of the Commission's directive;

(2) Recommendations regarding the required adjustments, if any, to the rates and charges for non-lifeline services;

(3) Assessments of the numbers of customers and kWh that would be served under the proposed lifeline rates;

(4) Assessments of the impacts of the proposed lifeline rate program(s) on both participant and non-participant customer bills;

(5) Assessments of the specific tasks and resources that GPA will require for the implementation the proposed lifeline rate program(s) including a proposed budget(s) for those activities; and

Following the submission of GPA's response to the Commission directive regarding lifeline rate design, the Commission should provide Georgetown and other interested parties approximately 30 days to comment on GPA's proposals, with another set of hearing scheduled in mid-summer for Commission consideration of those proposals.

With benefit of the record developed through that second set of hearings, the Commission should then seek to make final lifeline policy, rate design, and program structure determinations. This schedule should enable the Commission to render a final lifeline policy and rate design order in August 1992, requiring GPA to make a compliance filing for the implementation of lifeline rates with the start of its next fiscal year.

Exhibit A

GUAM POWER AUTHORITY

ASSESSMENT OF LIFELINE RATE STRUCTURE ALTERNATIVES

Illustration of the Affects of a One-Cent per kWh Reduction
in Charges for Lifeline Energy Use

	FY 92 Sales (MWH)	Percent of Total Sales	Rate Adjustment Scenarios (Rate Changes in $/kWh) 1	2	3
Residential					
Lifeline*	108,000	12.0%	-0.0100	-0.0100	-0.0100
Non-Lifeline	225,704	25.2%	0.0048	0.0000	0.0014
Total	333,704	37.2%	0.0000	-0.0032	-0.0023
Non-Residential	562,645	62.8%	0.0000	0.0019	0.0014
Total	896,349	100.0%	0.0000	0.0000	0.0000

* Assumes lifeline charges are applied to the first 300 kWh of use each month for each of 30,000 residential customers.

Scenario 1: Costs of lifeline rate reductions recovered through equal cents per increases in energy charges for non-lifeline residential energy use.

Scenario 2: Costs of lifeline rate reductions recovered through equal cents/kWh increases in the energy charges for all non-residential service.

Scenario 3: Costs of lifeline rate reductions recovered through equal cents/kWh increases in the energy charges for all non-lifeline service, resident and non-residential.

Exhibit B

GUAM POWER AUTHORITY

ASSESSMENT OF LIFELINE RATE STRUCTURE ALTERNATIVES

Illustration of the Affects of a Five-Cent per kWh Reduction in Charges for Lifeline Energy Use

	FY 92 Sales (MWH)	Percent of Total Sales	Rate Adjustment Scenarios (Rate Changes in $/kWh) 1	2	3
Residential					
Lifeline*	108,000	12.0%	-0.0500	-0.0500	-0.0500
Non-Lifeline	225,704	25.2%	0.0239	0.0000	0.0068
Total	333,704	37.2%	0.0000	-0.0162	-0.0115
Non-Residential	562,645	62.8%	0.0000	0.0096	0.0068
Total	896,349	100.0%	0.0000	0.0000	0.0000

* Assumes lifeline charges are applied to the first 300 kWh of use each month for each of 30,000 residential customers.

Scenario 1: Costs of lifeline rate reductions recovered through equal cents/kWh increases in energy charges for non-lifeline residential energy use.

Scenario 2: Costs of lifeline rate reductions recovered through equal cents/kWh increases in the energy charges for all non-residential service.

Scenario 3: Costs of lifeline rate reductions recovered through equal cents/kWh increases in the energy charges for all non-lifeline service, resident and non-residential.

Exhibit C

GUAM POWER AUTHORITY

ASSESSMENT OF LIFELINE RATE STRUCTURE ALTERNATIVES

Illustration of the Affects of a One-Cent per kWh Reduction in Charges for Lifeline Energy Use Assuming 25% of Residential Customers Qualify Based on Income Criteria

	FY 92 Sales (MWH)	Percent of Total Sales	Rate Adjustment Scenarios (Rate Changes in $/kWh)		
			1	2	3
Residential					
Lifeline*	27,000	3.0%	-0.0100	-0.0100	-0.0100
Non-Lifeline	306,704	34.2%	0.0014	0.0000	0.0005
Total	333,704	37.2%	0.0004	-0.0008	-0.0004
Non-Residential	562,645	62.8%	0.0000	0.0007	0.0005
Total	896,349	100.0%	0.0002	0.0002	0.0002

* Assumes lifeline charges are applied to the first 300 kWh of use each month for each of 7,500 residential customers with $20 per lifeline customer in additional administrative costs.

Scenario 1: Costs of lifeline rate reductions recovered through equal cents per increases in energy charges for non-lifeline residential energy use.

Scenario 2: Costs of lifeline rate reductions recovered through equal cents/kWh increases in the energy charges for all non-residential service.

Scenario 3: Costs of lifeline rate reductions recovered through equal cents/kWh increases in the energy charges for all non-lifeline service, resident and non-residential.

Exhibit D

GUAM POWER AUTHORITY

ASSESSMENT OF LIFELINE RATE STRUCTURE ALTERNATIVES

Illustration of the Affects of a Five-Cent per kWh Reduction
in Charges for Lifeline Energy Use
Assuming 25% of Residential Customers Qualify Based on Income Criteria

	FY 92 Sales (MWH)	Percent of Total Sales	Rate Adjustment Scenarios (Rate Changes in $/kWh) 1	2	3
Residential					
Lifeline*	27,000	3.0%	-0.0500	-0.0500	-0.0500
Non-Lifeline	306,704	34.2%	0.0049	0.0000	0.0017
Total	333,704	37.2%	0.0004	-0.0040	-0.0025
Non-Residential	562,645	62.8%	0.0000	0.0027	0.0017
Total	896,349	100.0%	0.0002	0.0002	0.0002

* Assumes lifeline charges are applied to the first 300 kWh of use each month for each of 7,500 residential customers with $20 per lifeline customer in additional administrative costs.

Scenario 1: Costs of lifeline rate reductions recovered through equal cents/kWh increases in energy charges for non-lifeline residential energy use.

Scenario 2: Costs of lifeline rate reductions recovered through equal cents/kWh increases in the energy charges for all non-residential service.

Scenario 3: Costs of lifeline rate reductions recovered through equal cents/kWh increases in the energy charges for all non-lifeline service, resident and non-residential.

Exhibit E

GUAM POWER AUTHORITY

ASSESSMENT OF LIFELINE RATE STRUCTURE ALTERNATIVES

Illustration of the Affects of a One-Cent per kWh Reduction
in Charges for Lifeline Energy Use
Assuming 25% of Residential Customers Qualify Based on Income Criteria
and 500 kWh Lifeline Block

	FY 92 Sales (MWH)	Percent of Total Sales	Rate Adjustment Scenarios (Rate Changes in $/kWh) 1	2	3
Residential					
Lifeline*	45,000	5.0%	-0.0100	-0.0100	-0.0100
Non-Lifeline	288,704	32.2%	0.0021	0.0000	0.0007
Total	333,704	37.2%	0.0004	-0.0008	-0.0007
Non-Residential	562,645	62.8%	0.0000	0.0007	0.0007
Total	896,349	100.0%	0.0002	0.0002	0.0002

* Assumes lifeline charges are applied to the first 500 kWh of use each month for each of 7,500 residential customers with $20 per lifeline customer in additional administrative costs.

Scenario 1: Costs of lifeline rate reductions recovered through equal cents per increases in energy charges for non-lifeline residential energy use.

Scenario 2: Costs of lifeline rate reductions recovered through equal cents/kWh increases in the energy charges for all non-residential service.

Scenario 3: Costs of lifeline rate reductions recovered through equal cents/kWh increases in the energy charges for all non-lifeline service, resident and non-residential.

Exhibit F

GUAM POWER AUTHORITY

ASSESSMENT OF LIFELINE RATE STRUCTURE ALTERNATIVES

Illustration of the Affects of a Five-Cent per kWh Reduction in Charges for Lifeline Energy Use Assuming 25% of Residential Customers Qualify Based on Income Criteria and 500 kWh Lifeline Block

	FY 92 Sales (MWH)	Percent of Total Sales	Rate Adjustment Scenarios (Rate Changes in $/kWh) 1	2	3
Residential					
Lifeline*	45,000	5.0%	-0.0500	-0.0500	-0.0500
Non-Lifeline	288,704	32.2%	0.0083	0.0000	0.0028
Total	333,704	37.2%	0.0004	-0.0067	-0.0043
Non-Residential	562,645	62.8%	0.0000	0.0043	0.0028
Total	896,349	100.0%	0.0002	0.0002	0.0002

* Assumes lifeline charges are applied to the first 500 kWh of use each month for each of 7,500 residential customers with $20 per lifeline customer in additional administrative costs.

Scenario 1: Costs of lifeline rate reductions recovered through equal cents/kWh increases in energy charges for non-lifeline residential energy use.

Scenario 2: Costs of lifeline rate reductions recovered through equal cents/kWh increases in the energy charges for all non-residential service.

Scenario 3: Costs of lifeline rate reductions recovered through equal cents/kWh increases in the energy charges for all non-lifeline service, resident and non-residential.

Exhibit G

GUAM POWER AUTHORITY

Comparison of Lifeline Program Impacts
For Residential and Non-Residential Customers

	Residential		
	Lifeline Customer Monthly Bill Impact*	Non-Lifeline ¢/kWh Impact	Non-Residential ¢/kWh Impact
Non-Targeted Program - 300 kWh per Month			
One Cent Adjustment			
Scenario 1	$0.12	$0.0048 **	$0.0000
Scenario 2	$3.00	$0.0000 **	$0.0019
Scenario 3	$2.16	$0.0014 **	$0.0014
Five Cent Adjustment			
Scenario 1	$0.60	$0.0239 **	$0.0000
Scenario 2	$15.00	$0.0000 **	$0.0096
Scenario 3	$10.92	$0.0068 **	$0.0068
Targeted Program - 300 kWh per Month			
One Cent Adjustment			
Scenario 1	$2.16	$0.0014	$0.0000
Scenario 2	$3.00	$0.0000	$0.0007
Scenario 3	$2.70	$0.0005	$0.0005
Five Cent Adjustment			
Scenario 1	$12.06	$0.0048	$0.0000
Scenario 2	$15.00	$0.0000	$0.0027
Scenario 3	$13.86	$0.0017	$0.0017
Targeted Program - 500 kWh per Month			
One Cent Adjustment			
Scenario 1	$4.16	$0.0021	$0.0000
Scenario 2	$5.00	$0.0000	$0.0007
Scenario 3	$4.72	$0.0007	$0.0007
Five Cent Adjustment			
Scenario 1	$21.66	$0.0083	$0.0000
Scenario 2	$2[illegible].00	$0.0000	$0.0043
Scenario 3	$2[illegible].66	$0.0026	$0.0026

* Bill impacts are computed based on an assumed average monthly use of 900 kWh.

** Under non-targeted lifeline program alternatives, there would be no residential non-participants.

M E M O R A N D U M

TO: Georgetown Consulting Group on behalf of the Guam Public Utilities Commission

FROM: Wilentz, Goldman & Spitzer, P.C.
By: John A. Hoffman
Hesser G. McBride, Jr.

RE: Establishment of "Lifeline" Utility Rates

DATE: October 21, 1991

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I. Introduction

On April 3, 1991 the Legislature of the Territory of Guam adopted a Resolution requesting that the Public Utilities Commission of Guam (the "Guam PUC" or the "PUC") establish "lifeline" utility rates for essential utility services.[1] (See Resolution attached) The Resolution states that Guam has experienced dramatic economic growth and development and that the costs associated with adding additional capacity and reserves for utility services should be borne by the persons most responsible for the unprecedented increase in demand on the Territory of Guam's utility services.

The Resolution indicates that the implementation of lifeline rates for residential services is necessary in order to

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[1] The Resolution indicates that lifeline rates should be established for electric, telephone and water service. Pursuant to "The Public Utilities Commission Law," 12 G.C.A. §1200 et seq. the Guam PUC does not have jurisdiction over the rates charged by the Public Utility Agency of Guam ("PUAG") for the provision of water. Accordingly, it does not appear that the Guam PUC has statutory authority to mandate that PUAG implement a lifeline rate plan. In order to implement a lifeline rate for water service, we recommend that PUAG's enabling statute be revised to authorize the implementation of such a rate.

make essential utility services affordable to the "needy, the elderly, those with fixed retirement incomes and the less fortunate." The Resolution also directs the PUC to develop standards regarding the essential services consumption patterns of average and normal families. Furthermore, the Resolution states that the establishment of lifeline rates should provide incentive to consumers to conserve energy and water.

This memorandum discusses legal issues associated with the Territory of Guam's implementation of lifeline rates for utility services.

II. Discussion

A. Institution of "Lifeline" Rates

In response to the tremendous increase in the cost of electricity during the 1970's, the United States Congress enacted the "Public Utilities Regulatory Policies Act of 1978" ("PURPA"). P.L. 95-617, November 9, 1978, 92 Stat. 3119. Section 114(b) of PURPA directed state public utility regulatory commissions to conduct evidentiary hearings to determine whether a rate which is lower than a cost of service rate (as defined by Section 111(d) of PURPA) should be implemented for residential electric consumers. 16 U.S.C. 2621(d). The "lower" rates sanctioned by PURPA, generally referred to as "lifeline rates," are designed to provide a reduced rate for the consumption of electricity up to

an amount determined as necessary to fulfill the essential meeds of residential customers.[2] Lifeline rates have been defined as:

> tariffs which provide a minimum amount of electricity to residential electric customers at low and uniform rates [so] that such rates will aid needy individuals and promote energy conservation at the same time. "Progress of Regulations," Public Utilities Fortnightly, October 1979, p.42.

In short, lifeline rates are designed to ensure that residential customers receive utility service sufficient for essential needs at a price affordable to the poor and the elderly.

Subsequent to the enactment of PURPA, several states implemented lifeline rates, or direct rate assistance programs,[3]

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[2] Although the concept of lifeline rates originated in the area of electricity, lifeline rate plans have also been implemented by regulatory commissions for natural gas and telephone service. See Great Lakes Steel Division of National Steel Corporation v. Michigan Public Service Commission, 130 Mich. App. 470, 344 N.W. 2d 321 (1983); Toward Utility Rate Normalization v. Pacific Telephone and Telegraph Company, 149 Cal. Rptr. 692, 585 P.2d 491 (1978).

[3] Direct aid programs are programs in which the legislature utilizes tax revenue to subsidize a needy customer's utility costs. Direct aid programs differ from lifeline rates in that the subsidization of rates is accomplished through tax revenue as opposed to higher charges to other utility customers. Direct aid plans can be implemented in many forms, such as direct payment by the state to the utility, payment by the state to the ratepayers, or the utilization of "energy stamps" which are similar to food stamps. Examples of direct aid programs are the "Lifeline Credit Program" provided by the State of New Jersey, N.J.S.A. 48:2-29.15 et seq., and the "Illinois Residential Affordable Payment Program" Ill. Rev. Stat, Ch. 111, 2/3, par. 1301 et seq. Under these programs, eligible residential customers receive a credit on their gas or

(continued...)

in order to make essential utility services affordable to elderly persons and persons of low income. American Hoechest Corp. v. Department of Public Utilities, 379 Mass. 408, 399 N.E. 2d 1 (1980); United States Steel Corp. v. Pennsylvania Public Utility Commission, 37 Pa. Cmnwlth. Ct. 173, 390 A.2d 865 (1978); Re Application of Hawaii Electric Light Co., 60 Hawaii 624, 594 P.2d 612 (1979); Re Montana - Dakota Utilities Co., (Montana-PUC) Docket No. 6695, Order No. 4635C, February 18, 1981; Re Lifeline Rates, (New Hampshire PUC), DP80-260 Order No. 14,872, April 13, 1981; Re Appalachian Power Co., (West Virginia PUC) Case No. 80-273-E-42T, May 8, 1991; Re Consumer Power Co., 25 PUR 4th 167 (Mich. PUC 1982); Re Gas and Electric Utility Rate Structure, 24 PUR 4th 332 (Cal. PUC 1978). However, at least an equal number of jurisdictions have refused to implement such rates. Mountain States Legal Foundation v. Public Utilities Commission, 197 Colo. 50, 590 P.2d 495 (1979); Rhode Island Consumer's Council v. Smith, 111 R.I. 271, 302 A.2d 743 (1973); Blackstone Valley Chamber of Commerce v. Public Utility Com., 121 R.I. 122, 396 A.2d 102 (1979); Citizen's Action Coalition v. Public Service Co., 450 N.E. 2d 98 (Ind. App. 1983); Mountain States Legal Foundation v. Utah Public Service Commission, 636 P.2d 1047 (Utah 1981); Re Consideration of Lifeline Rates, (Florida PUC), Docket

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[3](...continued)
electric bills. Thereafter, the state directly pays the utility the amount of the credits provided to eligible customers.

No. 80010 EU, Order No. 10047, June 5, 1981. The reasons advanced by courts or commissions rejecting lifeline rates have included the following: (1) the particular regulatory commission lacked statutory authority to implement preferential rates within a customer class; (2) public utilities are prohibited by certain state statutes from granting preferential rates; (3) regulatory commissions lack the authority to implement "social legislation" through ratemaking; (4) absence of sufficient evidence to justify the implementation of lifeline rates, and (5) lifelines rates are unreasonably discriminatory.[4]

Since utility ratemaking is generally an area of regulation which rests within the province of the states, our research has not revealed any federal circuit court or United States Supreme Court decisions which address the legality of the implementation of lifeline rates for essential utility services.[5]

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[4] An unreasonably discriminatory utility rate is unlawful in that it constitutes a violation of the equal protection clause of the United States Constitution. All persons in Guam are entitled to equal protection pursuant to the Bill of Rights in the Organic Act of Guam. See 48 U.S.C. 1421b(n).

[5] However, in Federal Energy Regulatory Commission v. Mississippi, 456 U.S. 742 (1982) the Supreme Court upheld the validity of PURPA which directed state regulatory agencies to consider the promulgation of lifeline rates. Thus, it appears that the Court does not consider the concept of lifeline rates to be unlawful. However, the legality of any particular lifeline rate must be decided on a case-by-case basis taking into consideration all relevant facts including the statutory authority of the regulatory commission and the reasonableness of the lifeline rate.

B. Statutory Authority To Implement Lifeline Rates

In order for the Guam PUC to require the Guam Telephone Authority ("GTA") and the Guam Power Authority ("GPA") to implement "lifeline rates" it will be necessary for the PUC to demonstrate that it has sufficient statutory authority to mandate such rates. Several state courts and regulatory commissions have refused to implement lifeline rates based on the conclusion that regulatory commissions lack sufficient authority to mandate lifeline rates or any preferential rates within a particular class of consumers.

For example, in Mountain States Legal Foundation, 197 Colo. 56, P.2d 495 (1979), the court held that, although the Colorado Public Utilities Commission had been granted broad ratemaking powers by the Legislature, the commission was prohibited by statute from effecting social policy through preferential ratemaking. Specifically, the court struck down a plan adopted by the commission which established a reduced gas rate for low-income elderly and low-income disabled persons. The resulting revenue loss for the discounted services was to be recovered through increased rates to all other customers.

The court explained that public utilities were prohibited by statute from granting preferential rates to any person, and that the commission was required by statute to prevent unjust discriminatory rates. The court, while acknowledging that efforts to provide economic relief to the

targeted customers were laudatory, stated that it could not empower the commission, which was an appointed, non-elected body, to create a special rate for any group it determined to be deserving. Id. at 501. The court held that a discount gas rate plan which differentiated between economically needy individuals who received the same service was unjustly discriminatory. Id. Accordingly, the court reversed the commission's decision approving the discounted rate.

Likewise, the Colorado Supreme Court in Colorado Municipal League v. Public Utilities Commission, 197 Colo. 107, 591 P.2d 577 (1979) held that a plan authorizing a telephone company to implement lower rates for coin operated telephones in neighborhoods populated by elderly and low income persons was invalid. The court concluded that the commission lacked authority to effect social legislation by ordering that pay telephone rates be reduced according to age and indigence classifications. Id. at 583.

Similarly, in Blackstone Valley Chamber of Commerce, 121 R.I. 122, 396 A.2d 102 (1979) the Supreme Court of Rhode Island held that the State public utility commission's approval of a rate design which exempted the first 300 KWH of residential electric service from an increase in rates was not supported by the evidence. The court, after acknowledging that the rate was intended to assist the elderly and the poor, held that customers of a public utility:

> cannot be compelled to devote their property in the form of utility payments for the benefit of those deemed worthy by the commission to be subsidized, particularly in the absence of any specific statutory authority for the commission to mandate such a result. Id. at 127, 396 A.2d at 105. (emphasis supplied).

The court also noted that it was not the commission's role to engage in "social engineering" and that a determination to exempt a certain amount of electricity from a rate increase must be based upon competent evidence such as cost of service principles. Id.

While upholding the determination of the State public utility commission to impose a relatively lesser burden on the first 500 kilowatt hours of monthly usage by residential customers, the court held in United States Steel Corp. v. Pennsylvania Public Utility Com. 37 Pa. Cmnwlth. 173, 390 A.2d 865 (1978), that decisions concerning the kind and extent of subsidy which should be afforded to needy residential customers should be "left by regulatory agencies and courts to the legislative branch of government". Id. at 870. (emphasis supplied) The court observed that a regulatory commission is not empowered to require one customer to pay another's utility bill, and the utility may not, and could not, be required to provide such subsidy out of its capital. Id. However, the court stated:

> it was relevant that residential customers could not pay utility bills which were beyond their means [and] that if a public utility is starved for funds, its service will deteriorate, and that commerce and industry

would not stay where costs prevent profits. Id. at 871.

Nonetheless, the court rejected the contention that poor persons should be relieved of the cost of their utility services and that these costs should be charged to other customers better able to pay. Id.

Similarly, in Mountain States Legal Foundation v. Utah Public Service Commission, 636 P.2d 1047 (1981) the Utah Supreme Court struck down a "senior citizen rate" on the basis that the utility commission was prohibited by statute from implementing rates which were preferential. The Court cited to Section 54-3-8 of the Utah Code which states that:

> [n]o public utility shall, as to rates, charges, service, facilities or in any other respect, make or grant any preference or advantage to any person, or subject any person to any prejudice or disadvantage. . . Id. at 1051 (emphasis supplied)

The court noted that because of the express statutory prohibition against preferential rates, in order to implement a lower rate for senior citizens, the commission would be required to "articulate a rational connection" why the lower average income or other characteristics unique to senior citizens warrants treating them differently from other residential customers. Id. at 1058. The court concluded that the commission had failed to identify such a rational connection.

The lack of legal authority for regulatory commissions' to implement preferential rates was established well before

Congress directed state utility commissions to consider the implementation of lifeline rates. The following are examples of cases which have rejected the implementation of preferential rates based upon need: In Re Rate Concessions To Poor Persons and Senior Citizens, 14 PUR 4th 87 (Or. 1976) (regardless of how desirable rates which benefit the poor and elderly may be, the regulatory commission had no power to adopt such rates absent authority from the legislature); In Re Public Service Co. of New Hampshire 95 PUR 3d 401 (N.H. PUC 1972) (electric utility was not permitted to provide special rates for low income customers unless the legislature acted); Pennsylvania Pub. Utility Commission v. Philadelphia Electric, 91 PUR 3d 321 (Pa. 1971) (rate discrimination to benefit any socioeconomic group is prohibited under Pennsylvania utility law prohibiting unreasonable preference or prejudice); In Re Potomac Electric Power Co., 84 PUR 3d 250 (Md. 1970) (commission lacked authority to establish a preferential rate for families of four earning less than $5,500 annually).

Although the above referenced cases rejected lifeline rates based on the lack of a commission's authority to implement preferential rates, certain states have permitted the implementation of lifeline rates despite the absence of express statutory authorization.[6] These states however generally do not have

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[6] See citations on page 4, supra, regarding jurisdictions which have implemented lifeline rates.

utility statutes which expressly prohibit preferential rates. Instead, the utility statutes in these states merely require that all rates approved by the commission be just and reasonable.

Courts and commissions which have upheld the validity of lifeline rates, despite express statutory authorization, have done so by finding that, based on substantial evidence in the record, the proposed lifeline rates are not unreasonably discriminatory. American Hoechest Corporation v. Department of Public Utilities, 379 Mass. 408, 399 N.E.2d 1 (1980); see also United States Steel Corporation v. Pennsylvania Public Utility Commission, 37 Pa. Cmwlth. 173, 390 A.2d 865 (1978). Thus, commissions have found that properly formulated lifeline rate structures can constitute a reasonable basis upon which to discriminate. The basis is usually related to cost of service principles to the extent that low usage customers generally place a limited demand on the system in contrast to high usage customers who are largely responsible for a company's need for additional generating capacity.[7]

Notwithstanding the fact that some courts have upheld lifeline rates despite the absence of express statutory authority for such rates, the optimal way for the Guam PUC to implement a lifeline rate is through express authority granted by the

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[7] However, some jurisdictions have held that low usage rates are not justified on cost of service principles and are, therefore, unreasonably discriminatory. See Kansas Power & Light Co., 20 PUR 4th 55 (Kan. 1977).

Legislature. The reason for this is two-fold. First, the Guam PUC is a regulatory agency which is a creature of the Legislature of Guam. As such, the scope of the Guam PUC's authority is proscribed by the express powers granted to it pursuant to its enabling legislation. Secondly, the GTA and GPA are public corporations which are instrumentalities of the Territory of Guam. Consequently, the only powers that the GPA and GTA possess are those powers authorized by the Legislature. The enactment of legislation mandating the implementation of lifeline rates will eliminate any uncertainties as to whether the implementation of such rates is within the scope of the PUC, the GPA and the GTA's authority.

The Guam PUC's enabling statutes provides that, with respect to ratemaking, the PUC:

> shall establish and modify from time to time, reasonable rates and charges for services, which as far as Guam Telephone Authority and Guam Power Authority are concerned shall be at least adequate to cover the full cost of service. . . Any rate change shall be considered by the commission using standards and financial criteria consistent with generally accepted rate-making practices of public utilities. 12 G.C.A. §12004 (emphasis supplied).

The Guam Public Utilities Commission Law further provides that:

> All rates, charges, all assessments, costs made or charged by any public utility shall be just and reasonable. . .
>
> The Commission, upon notice to the public utility, may suspend the operation of any proposed rate charge or assessment cost, . . . and after a public hearing by order

> regulate, fix and change all such rates, charges or assessments so that the same shall be just and reasonable, and may prohibit rebates and discrimination between localities, or between consumers, under substantially similar conditions. 12 G.C.A. §12015 (emphasis supplied).

Unlike many state utility laws, the Guam Public Utilities Law does not expressly prohibit preferential rate treatment within a customer class. Interestingly, 12 G.C.A. §12015 merely indicates that the PUC may, rather than shall, prohibit rate discrimination amongst similarly situated persons. However, since the PUC is required to implement rates based on generally accepted ratemaking practices of public utilities, the PUC is prohibited from establishing rates which are unreasonably discriminatory.

An example of a state regulatory commission which has implemented lifeline rates based on express statutory authority is the California Public Utilities Commission. In 1975, the California legislature adopted what is now widely known as the Miller-Warren Energy Lifeline Act (the "Act"). The Act required the California Public Utilities Commission to designate a life-line volume of electricity and natural gas necessary to supply the minimum energy needs of the average residential user. These minimums are referred to in the Act as "baseline quantities." Cal. Pub. Util. Code §739. The Act provides that the commission shall require every electric and gas utility to file a schedule of rates and charges providing "baseline rates". Cal. Pub. Util. Code §739(c)(1) of the Act states that:

> [t]he baseline rates shall apply to the first or lowest block of an increasing block rate structure which shall be the baseline quantity and shall be established for the residential consumption of gas and electricity. In establishing these rates, the commission shall avoid excessive rate increases for residential customers, and shall establish an appropriate gradual differential between the rates for the respective blocks of usage.

When the Act was originally implemented in 1975, §739(c) provided that the commission could not:

> authorize an increase in the lifeline rates until the average system rate in cents per kilowatt-hour or cents ha[d] increased 25 percent or more over the [then existing rate].

The Act also protects the interests of privately owned utilities by providing that:

> the commission shall assure that the rates are sufficient to enable the electrical corporation to recover a just and reasonable amount of revenue from residential customers as a class, while observing the principle that electricity and gas services are necessities, for which a low affordable rate is desirable. Cal. Pub. Util. Code §739.

If legislation authorizing the implementation of lifeline rates is approved, the Guam PUC will avoid having to defend a potential challenge alleging that, as a governmental agency, it lacks statutory authority to impose such rates. Additionally, since the GTA and the GPA are public corporations and autonomous instrumentalities of the government of Guam, a legislative mandate regarding the implementation of lifeline

rates will serve as statutory authorization for the GPA and the GTA to impose such rate structures.

Currently, the GTA and the GPA are authorized, subject to the approval of the PUC, to establish reasonable rates and charges which are at least adequate to cover the full cost of service. See 12 G.C.A. §8104(4). It is conceivable that in the event the GTA and GPA were to implement lifeline rates without express statutory authority, a party could attempt to challenge the rates on the basis that they are not based upon cost of service as arguably implied by statute.[8] The Legislature's implementation of a statute directing the PUC to require the GPA and the GTA to implement lifeline rates will most likely prevent a challenge alleging that the utilities lack the statutory authority to impose such rates.

C. The Legislature's Authority To Adopt A Lifeline Rate

The authority for a legislature to enact a statute authorizing reasonable lifeline rates flows from regulatory power emanating from the police power. The police power, which is not enumerated in the Federal Constitution, authorizes state and local governments to enact reasonable laws and regulations which are necessary to preserve the public health, safety, and morals.

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[8] For reasons immaterial to this memorandum, we do not believe that the Guam PUC's statutory scheme requires that rates for particular utility service to be based on the cost of providing that service.

16 Am. Jur. 2d §363, Constitutional Law (1976). The police power is an essential and indispensable attribute of every government.

The Territory of Guam's powers are delegated by the Congress pursuant to the Organic Act of Guam, 48 U.S.C. §1421a et seq. Since the Organic Act of Guam empowers the Legislature of Guam to enact legislation of local application, it is reasonable to conclude that the police power extends to the Territory of Guam.[9]

A statute enacted pursuant to the police power is lawful provided it is rationally related to a legitimate governmental interest. The purpose of implementing a law authorizing lifeline rates is to enable elderly persons and persons of low income to be able to obtain essential utility services. Such a law, provided it is not unlawfully discriminatory, is clearly rationally related to the legitimate governmental interest of protecting the welfare of the citizens of Guam.[10]

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[9] In Bacardi Corp. v. Domenech, 311 U.S. 150 (1940), the United States Supreme Court held that since the incorporated Territory of Puerto Rico had the power to legislate local matters, it possessed sufficient authority under its "police power" to impose legislation regarding the manufacture and traffic of liquor.

[10] Our research has not disclosed any authority which indicates that a state's reliance upon the police power to implement lifeline rates is improper.

D. Lifeline Rate Legislation Must Result In Reasonable Rates Which Do Not Violate The Right To Equal Protection

It is a generally accepted principle of utility ratemaking that public utilities cannot discriminate unjustly in rates charged to consumers similarly situated or within the same class of service.[11] See 64 Am. Jur. 2d, Public Utilities §79. A party which seeks to challenge a properly enacted statute authorizing lifeline rates will be required to demonstrate that the statute is arbitrary, capricious and unreasonable or is in violation of equal protection rights. Under either challenge, the Territory of Guam will be required to demonstrate that the legislation has a rationale relationship to a legitimate governmental purpose. See Re Consumers Power Co., 25 PUR 4th 167 (Mich 1988).

It is likely that a party seeking to oppose the legality of legislation enacted by the Legislature of Guam for the purposes of implementing lifeline rates, will rely primarily on the assertion that the lifeline rate plan approved by the Legislature violates the Equal Protection Clause of the Guam Bill of Rights. In support of such an assertion, it is likely that the party will attempt to rely on the Federal District Court of

[11] Although GTA and GPA are not public utilities, 12 G.C.A. 12004 requires the Guam PUC to make ratemaking determinations which are consistent with "generally accepted ratemaking practice of public utilities."

Guam's decision in Guam Power Authority v. Bishop of Guam, 383 F. Supp. 476 (D.C. Guam 1974).

In Guam Power Authority, the GPA brought an action challenging the legality of a public law which required the GPA to substantially reduce its charges for utility services provided to nonprofit educational facilities, churches, and publicly owned hospitals.[12] Id. at 477. The public law provided that:

> the rate for services supplied to any nonprofit educational facility, church, or publicly-owned hospital, shall not exceed one half (1/2) of the minimum rate charged to any other customer. . . Id.

The court observed that the effect of the public law was to establish a class of customers who would be charged a reduced rate for electric services supplied by the GPA, while customers who are not in the special class would be required to pay a higher rate in order for the GPA to maintain its income level. Id. at 478.

The GPA challenged the legality of the statute on several grounds including the contention that the statute was vague and ambiguous and that it denied equal protection to the GPA customers unfavorably effected by the statute. The court was persuaded by the GPA's arguments and held that the statute was invalid because it was "vague and ambiguous in several respects." Id. The court noted that the language "shall not exceed one-half

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[12] At the time this case was decided, the rates established by the GPA were not subject to the approval of the Guam PUC.

(1/2) of the minimum rate to any other customers" was ambiguous. Id. The court also noted that the GPA provides service under eight different service classifications and that, based on the subject statute, it was "impossible for the GPA, as well as the court to determine which schedules are applicable to the benefitted class of customers." Id. at 479.

Moreover, the court held that a plain reading of the ambiguous language of the statute yielded an absurd result. The court stated:

> The term "any customer" appears to mean that hospitals and large schools will be billed at one half (1/2) the rate of the smallest residence in Guam, yet such a result is not logical. Residences are billed only on their consumption of kilowatt hours of electricity, but large users, such as hospitals and schools, are billed both for their energy consumption as well as their energy demand in any 15-minute period in a given month. It is doubtful that the Legislature really considered the application of the law to the actual circumstances. The term "any customer" simply cannot be given a logical meaning by the Court. Id.

Consequently, the court concluded that the public law was so imprecisely drafted that it was virtually impossible to apply. Furthermore, the court observed that:

> [i]t would be unfair to require this Court or GPA to determine which of the many interpretations were intended by the Legislature. The law is simply too indefinite and uncertain to be valid. Id.

The court also found the public law to be invalid on the basis that it violated the Equal Protection Clause of the

Guam Bill of Rights. 48 U.S.C. 1421(b). The court, after acknowledging that there was no recent precedent regarding discounted rates by a publicly owned utility, held that:

> when a government undertakes to furnish a public service, such as the supplying of electricity to consumers other than itself, it acts in its proprietary capacity and cannot grant free or reduced rates, or otherwise make discriminations which would be unlawful if the service were rendered by an individual or private corporation. Id. at 481, citing 50 A.L.R. 126. (emphasis supplied).

In support of its conclusion, the court cited six state regulatory commissions decisions from the 1920's which held that it was impermissible for municipal utilities to provide discounted rates to publicly owned facilities. These cases concluded that the provision of reduced rates to publicly owned properties constituted unlawful discrimination in favor of taxpayers and against water consumers. See Cavanaugh v. Whitefish Municipal Water Utility, PUR 1922E, 198 (Mont. 1922).

The District Court noted that the electric bills of Guam's public schools, universities and hospitals were substantial and "[t]o place the burden of providing half of their electrical requests upon the ordinary consumer of power would be an onerous burden." Id. at 482. The court, without engaging in a discussion regarding the legal aspects of a challenge based upon equal protection grounds, concluded that:

> placing this public responsibility upon the consumer's shoulders, rather than upon the taxpayer's, is a capricious and arbitrary

> discrimination. No rational basis exists to force the consumer of electric power to subsidize the private functions of churches and private schools, or the public functions of government schools and hospitals. Id.

At first blush, the decision in Guam Power Authority seems to indicate that a lifeline rate would be unlawful. Nonetheless, it appears that if a lifeline rate is established which is grounded upon reasonable principles, and the rate only benefits specifically defined classes of persons that can demonstrate a need for the lifeline rate, the rate should withstand an equal protection challenge because it will have a rationale relation to the legitimate governmental interest of making essential services affordable. However, if the lifeline rate is vaguely defined, and if it arbitrarily benefits persons that are not in need of assistance, it is possible that the lifeline rate would be struck down on the basis that it is unreasonable and that it violates equal protection safeguards. Consequently, any lifeline legislation and related rate plans must be carefully drafted and designed only to benefit those who the Legislature reasonably believes require a minimal amount of assistance.

E. Types of Lifeline Rates

The two most basic forms of lifeline rates are "general" and "targeted" rates. A general lifeline rate is a lower than cost per unit charge for a basic amount of utility service which is applicable to all residential customers. The

subsequent blocks of energy usage are priced at a rate above the cost of service thereby permitting the utility to recoup the revenue shortfall resulting from the lower than cost rate applicable to the initial (lifeline) block of usage.

A targeted lifeline rate is also a lower than cost per unit charge for a basic amount of service. However, targeted rates are only available to specific income and/or demographic groups within the residential class. The subsequent blocks of energy usage by the targeted group and all blocks of energy usage by consumers other than the targeted group are priced at a rate above the cost of service thereby permitting the utility to recoup the revenue shortfall resulting from the lower than cost rate applicable to the initial (lifeline) block of energy usage by the targeted group. See "A Critique of Electric Utility Lifeline Rates," Arizona State Law Journal, p. 641 (1978).

Lifeline rate schemes which charge all residential consumers a low rate for a minimum amount of electricity consumed per month can sometimes be justified on the basis of traditional cost of service principles. This usually requires a factual showing that commercial and high usage residential demand are primarily responsible for additional generating capacity needed to meet an increasing peak demand. Thus, the cost based rationale for providing a lower rate for low usage residential service is that the utility's need for additional revenue has

been necessitated by the utility's need for a return on additional generating capacity.

Although the majority of decisions regarding lifeline rates arise in electric cases, lifeline rates for telephone service have also been implemented. Lifeline programs for local telephone service are similar to electric or gas lifeline rates in that they usually provide a minimum amount of usage (message units) at affordable rates to eligible persons. See Toward Utility Rate Normalization v. Pacific Telephone & Telegraph Co., 149 Cal. Rptr. 692, 585 P.2d 491 (1978).

Conclusion

Lifeline rate programs which are designed to make essential utility services affordable to elderly persons and persons of low income have been implemented in several jurisdictions throughout the United States. Conversely, many jurisdictions have rejected such rate plans on the basis that they are unreasonably discriminatory and/or that regulatory commissions, absent statutory authority, do not possess the power to mandate the imposition of lifeline rates.

The optimal way for the Guam PUC to implement lifeline rates is pursuant to specific legislation authorizing the implementation of lifeline rate plans. Without such legislation, it is uncertain whether the PUC, the GTA, and the GPA, as public bodies whose powers are proscribed by the Legislature, possess the legal authority to implement such rates.

The Guam Legislature may exercise its police power to enact lifeline legislation which promotes the health, safety and welfare of the citizens of Guam. Such lifeline legislation must not be unreasonable, arbitrary, capricious or in violation of the equal protection provisions provided by the Guam Bill of Rights. In order for such legislation to withstand a legal challenge, it will be necessary to demonstrate that the legislation has a rational relationship to a legitimate governmental purpose. Consequently, lifeline rate legislation and any plans adopted pursuant thereto, must not be arbitrary and must be designed to benefit only those classes of persons which the Legislature reasonably believes should be benefitted by lifeline rates.

TWENTY FIRST GUAM LEGISLATURE
FIRST (1991) REGULAR SESSION

Introduced
APR 03 '91
adopted 4-3-

Resolution No. 33 (COR.)

Introduced by:

J.P. Aguon
F.R. Santos
D.L.G. Shimizu

RELATIVE TO REQUESTING THE PUBLIC UTILITIES COMMISSION TO ESTABLISH "LIFELINE" UTILITY RATES.

BE IT RESOLVED BY THE LEGISLATURE OF THE TERRITORY OF GUAM:

WHEREAS, the Guam Legislature has determined that the War in the Persian Gulf and the overall situation in the Middle East, has and continues to aggravate the already high cost of services and commodities on Guam; and

WHEREAS, the Guam Legislature, demonstrating their concern for the people of Guam, appropriated Four Million Dollars ($4,000,000) through P. L. 20-219 to partially subsidize power consumers' bills until March 1, 1991 or until all the funds appropriated are expended, whichever occurs first; and

WHEREAS, the Legislature foresees another increase in power rates in the not distant future to pay for the cost, and cost overruns, of the twenty three megawatt combustion generator recently received by the Guam Power Authority; and

WHEREAS, the Guam Legislature is intensely concerned that those in need, including the elderly, those on fixed retirement incomes, those on public financial assistance and other less fortunate, will continue to be burdened with the increased utility rate after the subsidy funds are exhausted; and

WHEREAS, the Guam Legislature sees the need for "lifeline" rates for the most needy so they may continue to be served with those utility services

considered essential for an acceptable standard and quality of living, at basic and affordable rates; and

WHEREAS, the practice of establishing "lifeline" rates for utility services in other jurisdictions has been successful and has provided relief, improved standard and quality of living to the needy, the elderly, those with fixed retirement incomes and the less fortunate; and

WHEREAS, "lifeline" rates will establish real and tangible incentives for consumers to conserve energy and water thereby reducing the demands presently placed on the systems and thereby increasing system reserve capacities; and

WHEREAS, it has been the increased and, at times, uncontrolled and unmanageable, economic growth and development of Guam that has caused an increase in demand for basic utility services; and

WHEREAS, it is the intent of the Twenty First Guam Legislature to insure that the burden of the costs of increasing the island's capacity and reserve capacity is placed and shared by those most responsible for the unprecedented increase in demand on the island's capacity and reserve capacity; and

WHEREAS, standards for average and normal family usage of all utilities on Guam should and can be developed by the Public Utilities Commission as a means of establishing essential consumption patterns and needs of various household groups and sizes; now, therefore, be it

RESOLVED, that the Twenty-First Guam Legislature does hereby, on behalf of the people of Guam, respectfully requests the Public Utilities Commission to establish, develop and implement "lifeline" rates for the residential consumers in this territory; and be it further

RESOLVED, that the Speaker certify to and the Legislative Secretary attest the adoption hereof and that copies of the same be thereafter transmitted to Mr. Joseph T. Duenas, Chairman of the Public Utilities Commission; to Mr.

David Sablan, Chairman of the Board of Directors, Guam Power Authority; to Mr Edward Cruz, Chairman of the Board of Directors, Guam Telephone Authority to Mr. Joseph F. Mesa, Chief Officer, Public Utility Agency of Guam; to Mr. John Benavente, General Manager of GPA; to Mr. Jesus Manibusan, General Manager of GTA; to the Honorable Manuel Lujan, Jr., Secretary of the U. S. Department of Interior and to the Governor of Guam.

BEFORE THE GUAM PUBLIC SERVICE COMMISSION
Report on Lifeline Services
Georgetown Consulting Group
December 1991

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Report to the Guam PUC- RE:LIFELINE

I. Introduction

Georgetown Consulting Group was requested by the Commission's Administrative Law Judge to report to the Commission concerning the implementation of lifeline services for the Island of Guam. The request was precipitated by the enactment of Resolution No. 33 of the Guam Legislature. This report contains some of the history involving the implementation of lifeline throughout the United States, the reasons for that implementation, methodologies employed by different jurisdictions and preliminary recommendations to the PUC should they decide to implement such services.

II. Goal of Universal Service

One of the goals of regulation in the telecommunications industry is that of "Universal Service." Universal service is the availability of telephone service at reasonable costs to every household throughout the United States. The concept of universal service goes as far back as the passage of the Communications Act of 1934 which required regulation "to make available so far as possible to all people of the United States a rapid, efficient, nationwide, and worldwide wire and radio communication service with adequate facilities at reasonable charges." With the

advancements from that time in both the standard of living and telecommunication technology, the concept of universality of service has been nearly achieved.

The use of the telephone has evolved to a point of absolute necessity in the latter part of this century. The implementation of emergency services such as "911" made the goal of universal service even more important. Since most of the local telephone companies serving the public were shareholder held entities, usually entitled to a return, the regulatory bodies and the phone companies themselves needed to devise a plan to maintain and improve subscribership, without damaging the financial integrity of the company. Achieving the goal of universal service is most difficult among those groups with limited incomes and mobility. For most of the U.S. population, the monthly charges associated with the telephone service is not much of an imposition on their incomes. For the lower income households, this may not be the case.

Before the divestiture by AT&T of its regional telephone companies, telephone subscribership nationwide was shown to be 92.9%.[1] By April 1983, the percentage of households in the United States that subscribed to their local telephone company for service had fallen to 91.9%. While a decrease of 1% is not of itself startling, the percentage of subscribership in 1983 meant that one out of every eleven households did not have a phone in their home. Those families would need to use a pay phone or other means to contact officials concerning medical emergencies, fire reports and police matters. In 1985 the percentage of households subscribing to

[1] April 1980 Census

TWENTY-FIRST GUAM LEGISLATURE
1992 (SECOND) REGULAR SESSION

Bill No. 939
Introduced By: J. P. Aguon
(As substutited by the F. R. Santos
Committee on Energy, D. L. G. Shimizu
Utilities and Consumer Protection) A. C. Blaz

AN ACT TO ADD A NEW 12GCA 12000 (c) AND TO AMEND 12GCA 12004 AND 12015 RELATIVE TO AUTHORIZING THE PUBLIC UTILITIES COMMISSION TO ESTABLISH GENERAL LIFELINE RATES FOR RESIDENTIAL UTILITY CUSTOMERS ON GUAM

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

SECTION 1. Legislative Findings and Intent. On April 3, 1991, the Twenty-First Guam Legislature adopted Resolution No. 33 requesting the Public Utilities Commission to establish lifeline utility rates for the people of Guam, because, in part, the Legislature is deeply distressed that those in need, including the elderly, those on fixed incomes, those on public financial assistance, and those others less fortunate, will continue to be burdened with ever increasing utility rates.

The Legislature therefore finds there to be a real and justified need for lifeline rates for **residential customers** so they may continue to be served with those utility services considered essential for an acceptable standard and quality of living, at basic and affordable rates.

The Legislature further finds that, since it has been the increasing, and at times uncontrolled and unmanageable,

Exhibit "E"

economic growth and development of Guam that have caused the rise in demand for basic utility services, it is the restated opinion of the Twenty First Guam Legislature that utility rates which place a greater percentage of the burden of the costs of increasing the capacities and reserves of the islands utilities upon those most responsible for the growing demand would neither be unreasonable nor unjustified.

On July 24, 1992, the Public Utilities Commission transmitted to the Legislature the evidentiary record of Docket 92-002 and a statement indicating that the PUC agrees with the findings of their consultants that the Legislature must pass legislation expressly granting the PUC the authority to establish and implement lifeline rates.

The Legislature therefore finds that the PUC must be given the ~~authority to modify the rate~~ structure of the utilities to allow for a lifeline rate and appropriate gradual differentials between rates for respective blocks of usage in order to insure the following:

(a) Residential customers are given the opportunity to receive the lowest possible rate for a level of utility service necessary to satisfy their essential needs;

(b) That residential utility customers are not made to unreasonably pay for **incremental costs incurred as a result of** demand by large developments and other customers whose consumption requirements and habits are greater than those required to sustain the necessities of life.

The Legislature further finds that energy conservation may be a benefit of imposition of lifeline rates and appropriate gradual differentials between rates for respective blocks of usage because a greater premium placed on higher demand levels would make the rewards of conservation more visible to consumers.

The Legislature further finds that, relative to electric power utilities, general lifeline rate schemes can be justified on the basis of traditional cost of service principles which demonstrate that commercial and high usage residential demand are primarily responsible for additional generating capacity needed to meet an increasing peak demand.

It is therefore the intent of the Legislature to authorize the PUC to implement general lifeline rates and appropriate gradual differentials between rates for respective blocks of usage for utilities.

SECTION 2. A new subparagraph (c) is added to 12GCA §12000 to read:

(c) *General lifeline rate* **means a lower than average** cost **per unit charge for a level of utility service necessary to fulfill the essential needs of all residential customers.**

SECTION 3. 12GCA 12004 is amended to read:

§12004. **General Powers and Duties.**

The Commission shall have regulatory oversight supervision of rates as set forth in this Chapter over

each public utility and shall perform the duties and exercise the powers imposed or conferred upon it by this Chapter. The Commission in the discharge of any of its duties or the exercise of any of its powers, except a final determination affecting a public utility, may act through one or more of its Commissioners designated by the Commission for this purpose. The Commission shall investigate and examine any rates and charges charged by any utility, and all records pertinent thereto. The Commission may seek advice from an independent utility expert, shall approve, disapprove, increase or reduce rates for each utility. The Commission shall establish and modify from time to time, reasonable rates and charges for services, including General Lifeline Rates, which as far as Guam Telephone Authority and Guam Power Authority are concerned, when all rates for respective blocks of usage are considered together, shall be at least adequate to cover the full cost of such service or subject to any contractual agreements of the utilities to the holders of any bonds and shall increase rates or charges from time to time as may be necessary pursuant to any contractual obligations, except that General Lifeline Rates may only be increased when the **total actual overall cost of providing service to all classes of customers**, increases by no less than twenty percent. The utilities shall not, however, enter into any

contractual agreements or obligations which could increase rates and charges [as of the effective date of this Act,] prior to the written approval of the Commission. No money in any utility sinking fund may be released except for the purpose for which it is dedicated.

No 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. The Commission shall conduct such investigation and hearings as to any such rate changes as it deems necessary. As to the Guam Power Authority, the Commission shall ensure that rates will, at all times, be sufficient to enable the utility to meet its financial obligations, operating expenses, debt service and capital improvement needs. Any rate change shall be considered by the Commission using standards and financial criteria consistent with generally accepted rate-making practices of Public Utilities and in full consideration of the requirement to establish and maintain General Lifeline Rates.

The Commission shall have the power to enter into contracts and execute all instruments necessary or convenient in the exercise of its powers, adopt a seal, and sue or to be sued in its own corporate name.

SECTION 4. 12GCA §12015 is amended to read:

§12015. **Regulation of Rates.**

All rates, charges, all assessments, costs made or charged by any public utility shall be just and reasonable and in conformance with public law, and shall be filed with the Commission, and no rate, charge, or assessment cost, shall be established, abandoned, or modified, departed from or changed without a public hearing and the prior approval of the Commission. The Commission, upon notice to the public utility, may suspend the operation of any proposed rate, charge or assessment cost, or any proposed abandonment or modification thereof or departure therefrom, and after a public hearing by order regulate, fix and change all such rates, charges, General Lifeline Rates, or assessment costs so that the same shall be just and reasonable, and may prohibit rebates and discrimination between localities, or between consumers, under substantially similar conditions.

SECTION 5. Implementation of General Lifeline Rates. Upon the effective date of this act the Public Utilities Commission shall begin the process of implementing General Lifeline Rates for Guam Power Authority and Guam Telephone Authority residential customers. Such rates shall be implemented as soon as practicable, but in no case later than October 1, 1993.