

expenses by giving it authority over all expenses regardless of whether or not such expenses could increase rates.

The implications of this additional grant of authority to the Commission are far reaching. It is, in effect, a transfer of authority. It is not simply a matter of GPA continuing as at present but with an added layer of authority created such that the Commission establishes some sort of mechanism to review and approve or disapprove Board actions with respect to expenses of GPA. This grant of new authority to the Commission is unqualified and without limitation. Under such circumstances, such authority over expenses of GPA cannot co-exist, and is totally inconsistent and incompatible, with the present authority of the GPA Board.

Even though Bill No. 548, Section 3, does not purport to amend provisions of the Guam Power Authority Act with its grant of powers to GPA and its Board, this grant of authority to the Commission over expenses of GPA is so wholly inconsistent with existing power of GPA and its Board as to repeal by implication the power and authority of GPA and its Board over GPA expenses. The latest declaration of the legislature prevails.

In other words, it would appear that by enactment of Bill No. 548, Section 3, GPA and its Board would no longer have any authority over GPA expenses and that major critical element of authority would pass to the Commission.

While it may be argued that the authority so granted to the Commission is simply authority for some sort of discretionary review, the word "authority" or "authorized" has been construed to mean that a public officer "authorized" is an officer commanded in a matter of public concern.

Accordingly, the effect of Bill No. 548, Section 3 would appear to be that of repealing the powers of GPA and its Board over GPA expenses and a transfer of all such power to the Commission.

For all practical purposes, the GPA Board of Directors would cease to exist except to the extent its members may choose to continue in what, in effect, would be an advisory capacity to the Commission with respect to GPA matters.

The obvious question raised is that with this transfer to the Commission of administrative authority over GPA, who will now regulate the regulators? 12 GCA Section 12001(j) provides that no Commissioner may serve on any other board or commission of the government of Guam during his term

as Commissioner of the Public Utilities Commission. Bill No. 548, Section 3, would gut the intent, if not the letter, of this provision, effectively repealing it by implication since Commissioners, in exercising authority over GPA expenses, would, in effect, be acting as directors of GPA.

This proposed legislative transfer from GPA to a third party of authority over GPA expenses gives rise to a concern that such, if enacted, may constitute an event of default under the 1992 Series A Revenue Bonds Indenture.

Indenture, Section 6.07, Maintenance of Powers, requires the Authority at all times use its best efforts to preserve its existence as a public corporation and autonomous instrumentality of the Government; not to lose any rights necessary to enable it to maintain and operate the System; and to maintain the powers, functions, duties and obligations now reposed in it pursuant to law.

Further, by Indenture, Section 6.20, Pledge by Government, the Government pledged to the holders of all Bonds that the Government will not repeal, amend or modify Chapter 12, Title 12, Guam Code Annotated, in any way that would substantially impair the powers, duties or effectiveness of the Public Utilities Commission thereunder in relation to the Authority and its rates.

Clearly, GPA would no longer be autonomous. Also, while impairment most directly usually involves an express reduction of authority and not an increase of authority, the transfer of expenditure authority from GPA to the Commission could be construed to impair the effectiveness of the Commission by casting it directly into an administrative role which conflicts with its regulatory role.

Very truly yours,



Raymond C. Camacho  
Acting General Manager

RCC:nbd

**PUBLIC UTILITIES COMMISSION  
OF THE TERRITORY OF GUAM**

Joseph T. Duznas, Chairman  
Simon A. Sanchez II, Vice-Chairman  
Terrence M. Brooks, Esq., Member  
Mary Louise Anderson, Member  
Vicente D. Gumatatiao, Member  
Raymond K.S. Lum, Member

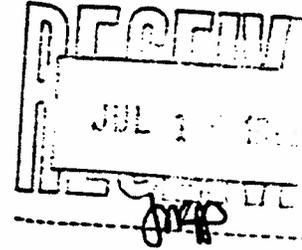
SUITE 400, G.C.I.C. BUILDING  
P.O. BOX 862  
AGANA, GUAM 96910  
TELEPHONE: (671) 477-9708/472-8868  
FAX: (671) 477-0783/2511

Harry M. Boertzel, Esq.  
Administrative Law Judge

Joseph A. Calvo, Esq.  
Assistant Administrative  
Law Judge

July 16, 1993

Senator Thomas C. Ada  
COMMITTEE ON WATER UTILITIES &  
ELECTRONIC COMMUNICATIONS  
155 Hesler Street  
Agana, Guam 96910



**RE: BILL 548 [AN ACT TO AMEND SECTION 8113.3 OF P.L. 21-117  
AND TO AMEND SECTION 12004, CHAPTER 12, 12 GUAM CODE  
ANNOTATED.]**

Dear Senator Ada:

By your July 12, 1993 letter, you have requested that the Commission comment on Bill 548. The Commission appreciates the promptness with which you have responded to the recommendations contained in our counsel's June 30, 1993 letter to Senator Parkinson.

Bill 548, as drafted, raises several concerns for the Commission:

1. Section 2 of the bill would mandate that the Commission approve a baseload unit of at least 35 megawatts. You should be aware of the fact that this restriction may impact on the Commission's ability to order what it concludes is the most appropriate next generation step. For example, suppose as a result of our deliberations on GPA's baseload application, the Commission were to conclude that a two phased and staged baseload plan [say two units of 15 to 20 MW each] would best meet GPA's generating needs, bill section 2 would prevent the Commission from taking this approach. Accordingly, we renew our recommendation that the bill confirm the Commission's authority and flexibility to determine the size and timing of the next baseload unit/s, as is proposed by our counsel's letter.



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WITNESS SHEET

TESTIMONY RELATIVE TO:

COMMITTEE ON WATER UTILITIES & ELECTRONIC COMMUNICATIONS

PH - Bill 539 & 540  
9/19/73

NAME	AGENCY / BUSINESS / SELF / ORGANIZATION	TOPIC	WRITTEN TESTIMONY	ORAL TESTIMONY	REMARKS
1 Karen Worthington	PUC	PUA 6 Base load			
2 Tom Peitz	Perez Bros. Inc	Bill 539	✓	✓	
3 Phil Torres	TH. CORP.				
4 Sh. Khosrowpanah	WERI, WOG	Northern Bils 39 Globe Lens	✓	✓	
5 PAT BURKE	GOLF			✓	
6 A. FURUTA	TH CORP				
7 J SAHNI	TH CORP	Bills 539 540			
8 P / CAAC	CPA	Bill 540			Legal Council
9 JASJEH F. MESA / ALBY CHAM	PUIA/A	BILLS 540 539 & 547	✓	✓	
10 DARRY BARBEL	FOREMOST FOODS	539 547	✓	✓	

6



WITNESS SHEET

TESTIMONY RELATIVE TO:

COMMITTEE ON WATER UTILITIES & ELECTRONIC COMMUNICATIONS

NAME	AGENCY / BUSINESS / SELF / ORGANIZATION	TOPIC	WRITTEN TESTIMONY	ORAL TESTIMONY	REMARKS
1 MARK LANDER	U.O.G. / WERI			✓	METEOROLOGICAL ASPECTS / PREDICTIONS
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**WITNESS SHEET**  
**COMMITTEE ON WATER UTILITIES & ELECTRONIC COMMUNICATIONS**

**TESTIMONY RELATIVE TO STATUS OF GUAM'S (PUBLIC) TELEPHONE SYSTEM**

NAME	AGENCY / BUSINESS / SELF / ORGANIZATION	TOPIC	WRITTEN TESTIMONY	ORAL TESTIMONY	REMARKS
1 JIERE JOHNSON	HAWAIIAN ROCK PRODUCTS	Bill 539 544	✓	✓	
2 JOSEPH T. DUEVAS / SIMON SANDERSON	PUC	94 540 548	✓	✓	
3 ANGELES N. PORTIN	TRUKAYAMA GOLF	539	✓		
4 MAFNAS, M	"	"	"		
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9					
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3

COMMITTEE ON WATER UTILITIES & ELECTRONIC COMMUNICATIONS

TESTIMONY RELATIVE TO:

WITNESS SHEET

REMARKS	ORAL TESTIMONY	WRITTEN TESTIMONY	TOPIC	AGENCY / BUSINESS / SELF / ORGANIZATION	NAME
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WITNESS SHEET

TESTIMONY RELATIVE TO: PH - Bill # 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

COMMITTEE ON WATER UTILITIES & ELECTRONIC COMMUNICATIONS

NAME	AGENCY / BUSINESS / SELF / ORGANIZATION	TOPIC	WRITTEN TESTIMONY	ORAL TESTIMONY	REMARKS
1 H. HARADA	MIDI GUAM		✓		
2 Raymond C. Camacho	Guam Power Authority		✓	✓	
3 Karen Storts	Guam Contractors Assoc	S39	✓	✓	
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COMMITTEE ON WATER UTILITIES & ELECTRONIC COMMUNICATIONS

WITNESS SHEET  
TESTIMONY RELATIVE TO:

REMARKS	ORAL TESTIMONY	WRITTEN TESTIMONY	TOPIC	AGENCY / BUSINESS / SELF / ORGANIZATION	NAME
	✓	✓	SSS 547	LEPA	1 FRED GASTON & SONS
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TWENTY-SECOND GUAM LEGISLATURE  
1993 (FIRST) REGULAR SESSION

AUG 19 '93

Bill No. 548 (LS)  
Introduced By:D. Parkinson  
T. E. Adair**AN ACT TO AMEND SECTION 8113.3 OF P.L. 21-117 AND TO  
AMEND SECTION 12004, CHAPTER 12, 12 GUAM CODE ANNOTATED**1 **BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:**

2 **Section 1.** Legislative findings and intent. The  
3 Legislature finds that Section 8113.3 of Public Law is  
4 restrictive in that it limits the purchase of new base load  
5 generation to 35 Meggawatts. It is the intent of the  
6 Legislature that the purchase of new base load generation be  
7 not less than 35 meggawatts. The Legislature also finds  
8 that the Public Utility Commission authority to regulate  
9 utilities under its control is weakened by the lack of  
10 express authority. It is the intent of the Legislature that  
11 the Public Utility Commission be empowered to regulate  
12 public utilities under its control.

13 **Section 2.** Section 8113.3 of Public Law 21-117, 4. is  
14 amended to read "Next baseload unit (not less than 35 MW)."

15 **Section 3.** Section 12004, Chapter 12, 12 Guam Code  
16 Annotated is amended to read:

1           "Section 12004. **General Powers and Duties.** The  
2 Commission shall have the regulatory oversight supervision  
3 and authority over the of rates and expenses of each public  
4 utility under its jurisdiction, including, without  
5 limitation, the authority to issue such orders as may be  
6 necessary to keep utility expenses within reasonable limits,  
7 and shall perform the duties and exercise the powers imposed  
8 or conferred upon it by this Chapter. ~~as set forth in this~~  
9 ~~Chapter over each public utility and shall perform the~~  
10 ~~duties and exercise the powers imposed or conferred upon it~~  
11 ~~by this Chapter.~~ The Commission in the discharge of any of  
12 its duties or the exercise of any of its powers, except a  
13 final determination affecting a public utility, may act  
14 through one or more of its Commissioners designated by the  
15 Commission for this purpose. The Commission shall  
16 investigate and examine any rates and charges charged by any  
17 utility, and all records pertinent thereto. The Commission  
18 may seek advice from an independent utility expert, shall  
19 approve, disapprove, increase or reduce rates for each  
20 utility. The Commission shall establish and modify from  
21 time to time, reasonable rates and charges for services,  
22 which as far as Guam Telephone Authority and Guam Power  
23 Authority are concerned shall be at least adequate to cover  
24 the full cost of such service or subject to any contractual  
25 agreements of the utilities to the holders of any bonds and  
26 shall increase rates or charges from time to time as may be  
27 necessary pursuant to any contractual obligations which

1 could increase rates and charges as of the effective date of  
2 this Act, prior to the written approval of the Commission.  
3 No money in any utility sinking fund may be released except  
4 for the purpose for which it is dedicated.

5 No rate change may be approved by the Commission unless  
6 it is affirmatively established, by a preponderance of the  
7 evidence, that a rate change is necessary. The Commission  
8 shall conduct such investigation and hearings as to any such  
9 rate changes as it deems necessary. As to the Guam Power  
10 Authority, the Commission shall ensure that rates will, at  
11 all times, be sufficient to enable the utility to meet its  
12 financial obligations, operating expenses, debt service and  
13 capital improvement needs. Any rate change shall be  
14 considered by the Commission using standards and financial  
15 criteria consistent with generally accepted rate-making  
16 practice of Public Utilities.

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**O**RRICK, HERRINGTON  
& SUTCLIFFE

September 14, 1993

Direct Dial

(415) 773-5828

Senator Vicente C. Pangelinan  
130 Aspinall Avenue, Suite 301  
Agana, Guam 96910

Re: The Compromise Version of Bill No. 548

Dear Senator Pangelinan:

Enclosed is a copy of my letter of yesterday to the PUC's administrative law judge, Harry Boertzel. It further explains, at least in part, my views of the proposed legislation.

Frankly, if the PUC is to be given the additional proposed powers (which I would still recommend against at this time), I would prefer the bill in the form that does not have the new phrases concerning the impairment of contracts clause or the new section authorizing direct agreements between the PUC and bondholders. The reason is that the additional language highlights the developing adversarial nature of the relationship between the PUC and GPA, and makes it appear as if conflict over the matter is guaranteed, which is not a very pretty picture to present to the credit rating agencies or to potential bondbuyers. (Besides, if the legislation does violate the impairment of contracts clause, the legislation will be of no effect without itself saying so.) The legal issues (possible violation of a bond covenant and the impairment of contracts clause) are far less significant here than the perceptions of the financial community.

I am not saying that a savings of \$19,000,000 over the course of four years, if it can be achieved, is not an appropriate goal. However, that amount of savings would represent less than three percent (3%) of total projected revenues over that period and, in the view of a credit analyst, would have far less positive impact (for example, on the ability

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**O**RRICK, HERRINGTON  
& SUTCLIFFE

Senator Vicente C. Pangelinan  
September 14, 1993  
Page 2

of customers and the economy to pay) than the negative impact of  
the potential conflict between GPA and its rate regulator.

Very truly yours,

*Stanley J. Dirks*  
Stanley J. Dirks

cc: Kathy Maraman

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**O**RRICK, HERRINGTON  
& SUTCLIFFE

September 13, 1993

Direct Dial

(415) 773-5828

Harry M. Boertzel, Esq.  
Public Utilities Commission  
of the Territory of Guam  
P. O. Box 862  
Agana, Guam 96910

Re: Bill No. 548

Dear Harry:

This letter is in response to your request that I clarify my views concerning the impact, if any, that the passage of Section 3 of Bill No. 548 (amending Section 12004 of the PUC statute) would have on the marketability of the bonds proposed to be issued to finance new baseload capacity. Please permit me also to provide some background for the statement of my views.

The origins of PUC regulation of GPA lie in the financial problems that GPA had in the late 1970's and early 1980's. One of the conditions of the Federal Financing Bank loan (which was needed to refund certain short term GPA debt that was not refundable in the conventional tax-exempt bond market) was the implementation of PUC regulation of GPA's rates in order to insulate GPA from what was perceived by federal officials as being undue interference by the legislature in GPA's rate-making function. Frankly, the PUC was expected to permit rates to be higher than the legislature would have permitted, resulting in a financially healthier GPA. (An unregulated GPA must have been considered politically unacceptable.)

For these historical reasons, I believe the prevailing view among bond market participants who have followed these developments from afar is that the implementation of PUC regulation was a "good" development, in that the PUC is seen as being more of an ally to GPA than an adversary. The first point, then, is that the amendment of the statute in the manner proposed may be taken by some to foreshadow a more adversarial relationship between GPA and the PUC than has been presumed.

Second, although there may be a few other examples in addition to Guam, there is no well-tested model (in the American

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ORRICK, HERRINGTON  
& SUTCLIFFE

Harry M. Boertzel, Esq.  
September 13, 1993  
Page 2

experience, at least) for the regulation of a governmentally-owned utility (with an appointed board) by a public utilities commission (whether elected or appointed). In most cases, utilities that are governmentally-owned set their own rates and otherwise manage their businesses by board action without any additional level of review of rates or other management policies. As a result, bond market participants do not have a ready basis upon which to project the expected impact of additional PUC regulation under these circumstances and the passage of the legislation would create uncertainty in that regard.

Third, the traditional model of regulation with by far the most testing and theoretical analysis consists of the regulation of investor-owned utilities ("IOUs"). In that model, the question of the advisability of particular expenses or categories of expenses generally arises in the context of a rate-making proceeding, the question being whether to "allow" or "disallow" a particular expense in determining whether the IOU needs a level of rates sufficient to pay such an expense (among other revenue needs). (Disallowing a particular expense causes that expense, in effect, to be paid by the IOU's stockholders, rather than by the IOU's ratepayers.) Normally, to disallow an expenditure, a commission must prove an abuse of discretion on the part of management of the utility. Management is not required to prove that its performance has been perfect, but simply that expenditures are reasonable. Otherwise, a commission would essentially be substituting its own business judgment for that of the IOU and would be duplicating managerial functions under circumstances in which the commission is likely to have less complete information and less experience than utility management has. I think that there is some risk that bond market participants will perceive the proposed authorization of PUC to regulate particular expenses as being a risk to GPA's ability to manage itself in the manner necessary to respond to what is an admittedly challenging environment.

Please understand that I am not saying that GPA's management has been perfect or is not capable of being improved, that passage of the legislation would necessarily result in the suspension of GPA's credit rating, or that GPA's bonds would be unsaleable even if unrated. I am saying that we are dealing with a credit with a troubled history (especially in the rate-making area), that we are dealing with a credit that has the lowest investment grade rating (not much cushion for experimentation),

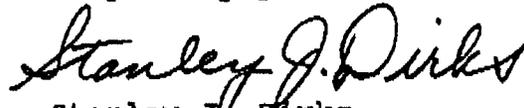
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ORRICK, HERRINGTON  
& SUTCLIFFE

Harry M. Boertzel, Esq.  
September 13, 1993  
Page 3

that we are in the middle of a financing program (not the best time for experimentation), that the type of regulation proposed would be, at least to some degree, experimental, and that the situation is such that passage of the legislation would create a material risk that the bonds will bear interest at rates higher than would otherwise be obtainable. We are meeting at the end of this week with Standard & Poors to update them on recent developments and to request a rating for the new issue. I would recommend that the issues raised by the legislation be dealt with at a later date and with additional input on the expected effects and objectives.

Very truly yours,

  
Stanley J. Dirks

SJD/ejp

cc: Carl Taitano