



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

MAY 22 2000

The Honorable Joanne M. S. Brown
Legislative Secretary
I Mina'Bente Singko na Liheslaturan Guåhan
Twenty-Fifth Guam Legislature
Suite 200
130 Aspinal Street
Hagåtña, Guam 96910

OFFICE OF THE LEGISLATIVE SECRETARY

ACKNOWLEDGMENT RECEIPT

Received By Joanne M. S. Brown

Time 10:10am

Date May 23, 2000

Dear Legislative Secretary Brown:

Enclosed please find Substitute Bill No. 414 (COR), "AN ACT TO *REPEAL* §§3 AND 4 OF P.L. No. 24-14; TO *REPEAL* §44 OF CHAPTER X OF P.L. NO. 18-15; AND TO *REPEAL* §23 OF CHAPTER III OF P.L. NO. 24-59, RELATIVE TO THE TRANSFER OF AUTONOMOUS AGENCY REVENUES", which I have signed into law today as **Public Law No. 25-140**.

This legislation repeals requirements for autonomous agencies to contribute to the General Fund for services received from line agencies paid from the General Fund.

Very truly yours,

Carl T. C. Gutierrez
I Maga'Lahen Guåhan
Governor of Guam

Attachment: copy attached for signed bill or overridden bill
original attached for vetoed bill

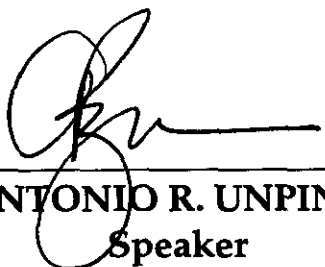
cc: The Honorable Antonio R. Unpingco
Speaker

00950

MINA'BENTE SINGKO NA LIHESLATURAN GUAHAN
2000 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUAHAN

This is to certify that Substitute Bill No. 414 (COR) "AN ACT TO REPEAL §§3 AND 4 OF P.L. NO. 24-14; TO REPEAL §44 OF CHAPTER X OF P.L. NO. 18-15; AND TO REPEAL §23 OF CHAPTER III OF P.L. NO. 24-59, RELATIVE TO THE TRANSFER OF AUTONOMOUS AGENCY REVENUES," was on the 11th day of May 2000, duly and regularly passed.


ANTONIO R. UNPINGCO
Speaker

Attested:


JOANNE M.S. BROWN

Senator and Legislative Secretary

This Act was received by I Maga'lahaen Guahan this 16th day of May, 2000,
at 2:45 o'clock P.M.


Assistant Staff Officer
Maga'lahaen's Office

APPROVED:


CARL T. C. GUTIERREZ

I Maga'lahaen Guahan

Date: 5-22-00

Public Law No. 25-140

MINA'BENTE SINGKO NA LIHESLATURAN GUÅHAN
2000 (SECOND) Regular Session

Bill No. 414 (COR)

As substituted by the Author
and amended on the Floor.

Introduced by:

E. B. Calvo
F. B. Aguon, Jr.
E. C. Bermudes
A. C. Blaz
J. M.S. Brown
M. G. Camacho
Mark Forbes
L. F. Kasperbauer
A. C. Lamorena, V
C. A. Leon Guerrero
K. S. Moylan
V. C. Pangelinan
J. C. Salas
S. A. Sanchez, II
A. R. Unpingco

**AN ACT TO REPEAL §§3 AND 4 OF P.L. NO. 24-14;
TO REPEAL §44 OF CHAPTER X OF P.L. NO. 18-15;
AND TO REPEAL §23 OF CHAPTER III OF P.L. NO.
24-59, RELATIVE TO THE TRANSFER OF
AUTONOMOUS AGENCY REVENUES.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1.** Sections 3 and 4 of Public Law Number 24-14 are hereby
3 *repealed.*

1 **Section 2.** Section 44 of Chapter X of Public Law Number 18-15 is
2 hereby *repealed*.

3 **Section 3.** Section 23 of Chapter III of Public Law Number 24-59 is
4 hereby *repealed*.

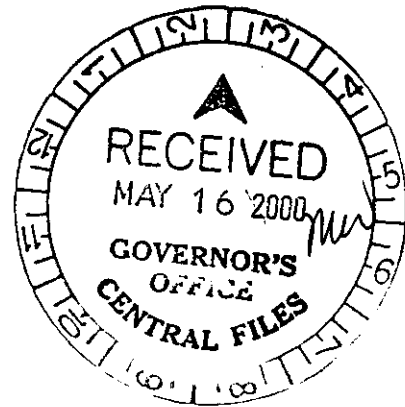


MINA' BENTE SINGKO NA LIHESLATURAN GUAHAN
TWENTY-FIFTH GUAM LEGISLATURE
155 Hesler Street, Hagåtña, Guam 96910

COPY

May 16, 2000

The Honorable Carl T.C. Gutierrez
I Maga'lahen Guahan
Ufisinan I Maga'lahi
Hagåtña, Guam 96910



Dear *Maga'lahi* Gutierrez:

Transmitted herewith are Bill No. 282(COR) and Substitute Bill Nos. 413(COR) and 414(COR) which were passed by *I Mina'Bente Singko Na Liheslaturan Guahan* on May 11, 2000.

Sincerely,


JOANNE M.S. BROWN
Senator and Legislative Secretary

Enclosure (3)

MINA'BENTE SINGKO NA LIHESLATURAN GUAHAN
2000 (SECOND) Regular Session


CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUAHAN

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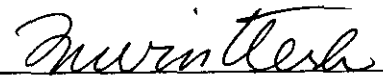
ANTONIO R. UNPINGCO
Speaker

Attested:



JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by I Maga'lahen Guahan this 16th day of May, 2000,
at 2:45 o'clock P.M.



Assistant Staff Officer
Maga'lahi's Office

APPROVED:

CARL T. C. GUTIERREZ
I Maga'lahen Guahan

Date: _____

Public Law No. _____

MINA'BENTE SINGKO NA LIHESLATURAN GUÅHAN
2000 (SECOND) Regular Session

Bill No. 414 (COR)

As substituted by the Author
and amended on the Floor.

Introduced by:

E. B. Calvo
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E. C. Bermudes
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**AN ACT TO REPEAL §§3 AND 4 OF P.L. NO. 24-14;
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3 *repealed.*

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2 hereby *repealed*.

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4 hereby *repealed*.

I MINA' BENTE SINGKO NA LIHESLATURAN GUAHAN

2000 (SECOND) Regular Session

Date: 5/11/00

VOTING SHEET

5 Bill No. 414 (COR)

Resolution No. _____

Question: _____

<u>NAME</u>	<u>YEAS</u>	<u>NAYS</u>	<u>NOT VOTING/ ABSTAINED</u>	<u>OUT DURING ROLL CALL</u>	<u>ABSENT</u>
AGUON, Frank B., Jr.	✓				
BERMUDES, Eulogio C.	✓				
BLAZ, Anthony C.		✓			
BROWN, Joanne M.S.	✓				
CALVO, Eduardo B.	✓				
CAMACHO, Marcel G.	✓				
FORBES, Mark	✓				
KASPERBAUER, Lawrence F.	✓				
LAMORENA, Alberto C., V	✓				
LEON GUERRERO, Carlotta A.	✓				
MOYLAN, Kaleo Scott	✓				
PANGELINAN, Vicente C.	✓				
SALAS, John C.	✓				
SANCHEZ, Simon A., II					EA
UNPINGCO, Antonio R.	✓				

TOTAL 13 1 _____ _____ 1

CERTIFIED TRUE AND CORRECT:

Clerk of the Legislature

* 3 Passes = No vote
EA = Excused Absence



MINA' BENTE SINGKO NA LIHESLATURAN GUAHAN
TWENTY-FIFTH GUAM LEGISLATURE
155 Hesler Street, Hagåtña, Guam 96910

May 8, 2000

(DATE)

Memorandum

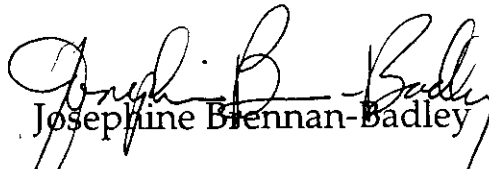
To: Senator Eduardo B. Calvo

From: Clerk of the Legislature

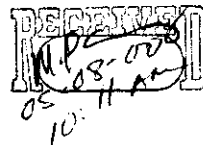
Subject: Report on Bill No. 414(COR)

Pursuant to §7.04 of Rule VII of the 25th Standing Rules, transmitted herewith is a copy of the Committee Report on Bill No. 414(COR), for which you are the prime sponsor.

Should you have any questions or need further information, please call the undersigned at 472-3464/5.


Josephine Brennan-Badley

Attachment





I Mina' Bente Singko Na Liheslaturan Guahan
TWENTY-FIFTH GUAM LEGISLATURE
SENATOR EDDIE BAZA CALVO

Chairman

COMMITTEE ON POWER, PUBLIC WORKS, TAX AND REGULATORY REFORM,
MUNICIPAL and COMMUNITY AFFAIRS

E-Mail address: sencalvo@lte.net
120 Father Dueñas Avenue, Capitol Plaza, Suite 109
Hagåtña, Guam 96910

Telephone: (671) 472-4040/4518
Facsimile: (671) 472-4100

April 27, 2000

The Honorable Antonio R. Unpingco
Speaker
Mina' Bente Singko Na Liheslaturan Guahan
155 Hesler Street
Hagåtña, Guam 96910

via: Committee on Rules

Dear Mr. Speaker:

The Committee on Power, Public Works, Tax and Regulatory Reform, Municipal and Community Affairs, to which was referred **BILL NO. 414 (COR)** "AN ACT TO REPEAL SECTION 3 AND SECTION 4 OF PUBLIC LAW 24-14; TO REPEAL SECTION 44 OF CHAPTER X OF PUBLIC LAW 18-15; AND TO REPEAL SECTION 23 OF CHAPTER III OF PUBLIC LAW 24-59 RELATIVE TO THE TRANSFER OF AUTONOMOUS AGENCY REVENUES." does hereby report back, with the recommendation **TO DO PASS AS SUBSTITUTED BY THE COMMITTEE.**

SUBSTITUTE BILL NO. 414 (COR): "AN ACT TO REPEAL SECTION 23 OF CHAPTER III OF PUBLIC LAW 24-59 RELATIVE TO THE TRANSFER OF AUTONOMOUS AGENCY REVENUES."

Votes of the Committee members are as follows:

To Pass	<u>7</u>
Not to Pass	_____
Abstain	_____
Off-Island	_____
Not Available	_____

A copy of the Committee Report is attached for your consideration.

Si Yu'os Ma'ase',


SENATOR EDDIE BAZA CALVO
Chairman

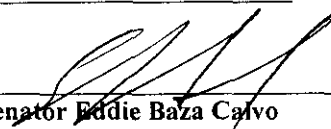
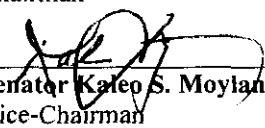
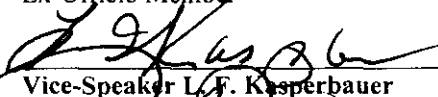
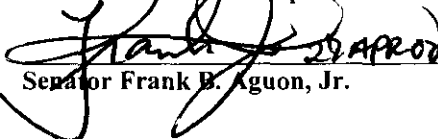
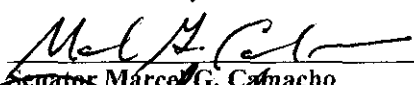
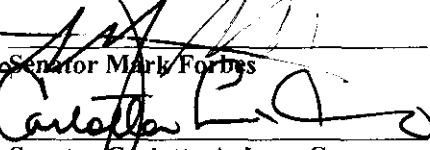
Attachments

**COMMITTEE ON POWER, PUBLIC WORKS,
TAX AND REGULATORY REFORM,
MUNICIPAL AND COMMUNITY AFFAIRS**

Mina Bente Singko Na Liheslaturan Guåhan
155 Hesler Street, Hagåtña, Guam 96910

VOTING SHEET:

SUBSTITUTE BILL NO. 414 (COR): "AN ACT TO REPEAL SECTION 23 OF CHAPTER III OF PUBLIC LAW 24-59 RELATIVE TO THE TRANSFER OF AUTONOMOUS AGENCY REVENUES."

<u>COMMITTEE MEMBERS</u>	<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>ABSTAIN</u>	<u>TO PLACE IN INACTIVE FILE</u>
 Senator Eddie Baza Calvo Chairman	✓			
 Senator Kaleo S. Moylan Vice-Chairman	✓			
Speaker Antonio R. Unpingco Ex-Officio Member				
 Vice-Speaker L. F. Kasperbauer	X			
 Senator Frank B. Aguon, Jr.	✓			
Senator Eulogio C. Bermudes				
Senator Anthony C. Blaz				
 Senator Marcel G. Camacho	✓			
Senator Mark Forbes				
 Senator Carlotta A. Leon Guerrero	✓			
Senator Simon A. Sanchez, II				

**COMMITTEE ON POWER, PUBLIC WORKS,
TAX AND REGULATORY REFORM,
MUNICIPAL AND COMMUNITY AFFAIRS**

Mina Bente Singko Na Liheslaturan Guåhan
155 Hesler Street, Hagåtña, Guam 96910

COMMITTEE REPORT

ON

BILL NO. 414 (COR)

“AN ACT TO REPEAL SECTION 3 AND SECTION 4 OF PUBLIC LAW 24-14; TO REPEAL SECTION 44 OF CHAPTER X OF PUBLIC LAW 18-15; AND TO REPEAL SECTION 23 OF CHAPTER III OF PUBLIC LAW 24-59 RELATIVE TO THE TRANSFER OF AUTONOMOUS AGENCY REVENUES.”

COMMITTEE MEMBERS

Chairman: Senator Eddie Baza Calvo
Vice-Chairman: Senator Kaleo S. Moylan
Ex-Officio Member: Antonio R. Unpingco

Senator Frank B. Aguon, Jr.
Senator Anthony C. Blaz
Senator Mark Forbes
Senator Carlotta A. Leon Guerrero

Senator Eulogio C. Bermudes
Senator Marcel G. Camacho
Vice-Speaker Lawrence F. Kasperbauer
Senator Simon A. Sanchez, II

**COMMITTEE ON POWER, PUBLIC WORKS,
TAX AND REGULATORY REFORM,
MUNICIPAL AND COMMUNITY AFFAIRS**

Mina Bente Singko Na Liheslaturan Guåhan
155 Hesler Street, Hagåtña, Guam 96910

BILL NO. 414 (COR)

“AN ACT TO REPEAL SECTION 3 AND SECTION 4 OF PUBLIC LAW 24-14; TO REPEAL SECTION 44 OF CHAPTER X OF PUBLIC LAW 18-15; AND TO REPEAL SECTION 23 OF CHAPTER III OF PUBLIC LAW 24-59 RELATIVE TO THE TRANSFER OF AUTONOMOUS AGENCY REVENUES.”

I. PUBLIC HEARING

BILL NO. 414 (COR) was introduced on April 18, 2000 and referred to the Committee on Power, Public Works, Tax and Regulatory Reform, Municipal and Community Affairs (“PPWTRRM&CA”) on April 26, 2000. A Fiscal Note was requested from the Bureau of Budget and Management Research on April 24, 2000. As of April 27, 2000 a Fiscal Note has not been received.

PPWTRRM&CA called a **public hearing** to order at 9:00 a.m., Thursday, **April 27, 2000** to hear testimony on **BILL NO. 414 (COR)**. The hearing was held in the Public Hearing Room of *I Liheslaturan Guåhan* in *Hagåtña*. Notices were placed in the *Guam Variety News and Views* on April 21, 2000 and in the *Pacific Daily News* on April 25, 2000.

The hearing was called to order by Senator Eddie Baza Calvo, Chairman of PPWTRRM&CA with Committee member, Senator Simon A. Sanchez II, in attendance.

II. TESTIMONY

T. ANN PEREZ, General Manager, Guam Power Authority submitted written testimony and stated that since the intent of the measure relates to a policy decision of the Executive Branch, she would defer comments on Bill No. 414 (COR) to the Office of the Governor.

She asked that the Committee amend Public Law 25-72 (FY 2000 budget law) to authorize the General Fund to pay for prior obligations. Past annual budget authorizations allowed for such, however, Public Law 25-72 failed to do so. She stated that amending said statute (as well as its subsequent amendments) would provide the Executive Branch a mechanism with which to ensure that prior year obligations would be paid, thus resulting in the successful collection of past due electric bills from government of Guam agencies.

TERRENCE M. BROOKS, Chairman, Public Utilities Commission, submitted written testimony on Bill No. 414 (COR). He said that it is the Commission’s position that significant policy issues relating to the taxation of autonomous agencies be left to the discretion of the Legislative and Executive Branches. He

said that the Commission is willing and able to provide regulatory assistance if deemed necessary and appropriate.

III. FINDINGS & RECOMMENDATION

The Governor executed Executive Order 99-16 relative to requesting the Guam Public Utilities Commission to make recommendations regarding the Governor's proposed assessment and collection from the Guam Power Authority of past due charges under Section 23 of Chapter III of Public Law 24-59. Section 23 of Chapter III of Public Law 24-59 empowers the Governor, by Executive Order, to assess and collect from the Guam Power Authority, an autonomous agency of the government of Guam, the following expenses which the government of Guam has provided to the Guam Power Authority: (1) past contributions of capital, (2) past transfers of physical assets, land, and equipment, (3) direct services supplied, including administrative costs of these services and (4) the proportionate cost of services maintained by the government which are essential to the operations of the Guam Power Authority.

Section 3 of Executive Order 99-16 states that pending the resolution of the matter of assessment for past transfers and receipts which is referred to the Public Utilities Commission, the government of Guam's claims against the Guam Power Authority and the Guam Power Authority's claim against the government of Guam shall remain in abeyance and neither party shall prosecute their claims against the other.

The Guam Power Authority Act of 1968 established the Guam Power Authority. Section 8113 of the Act transferred all properties, materials and other assets including working capital, cash, etc. to the newly created Guam Power Authority. There were no conditions of reimbursement or repayment stipulated in the transfers. Over the years, *I Liheslatura* appropriated sums of money to the Guam Power Authority for such purposes as power line extensions or power hookups for residential applicants. The appropriations were unconditional; that is, they did not call for reimbursement to the government of Guam by the Guam Power Authority.

The operations of the Guam Power Authority are to be funded by the sale of electric service. Over the years, the Guam Power Authority has had to borrow huge sums of money in order to continue to improve the system to meet the increasing demand resulting from the rapid growth of the island. The debt service for the loans and bonds (as required in the covenants) are the revenues of the Authority. These revenues are derived from the sale of electricity to all of the customers of the Guam Power Authority, including the government of Guam, which is the largest single customer of the Guam Power Authority.

Being an agency of the government of Guam, the Guam Power Authority has never been allowed to be a profit-making entity. The ratemaking authority, since the creation of the Guam Power Authority, has never allowed the rates to include a profit margin. The rates have always been limited to cost of service recovery.

The final impact of Executive Order 99-16 will result in the write-off of the government of Guam debt [estimated to be approximately Thirty Million Dollars (\$30,000,000.00)]. The cancellation of this debt will have a significant impact on the Guam Power Authority. It is highly possible that the bond trustee for the Guam Power Authority revenue bonds may issue a default on the Guam Power Authority. Such a default may also result in the trustee taking over control of the Guam Power Authority, which is one of the remedies in the event of a default. Such a take-over will be disastrous. The more damaging impact, however, is the possibility that the credit rating for the entire government of Guam may be jeopardized.

Legal Counsels for First Union Securities, Inc. and Georgetown Consulting Group have indicated that Executive Order 99-16 violates the bond covenants.

I Liheslatura finds that in view of the current economic conditions on Guam and the potential damage to the credit rating of the entire government of Guam, Public Law 24-59 be repealed through the enactment of Bill No. 414(COR). It should be noted here that Section 23, Chapter III of Public Law 24-59 contains a provision, that “autonomous agencies shall not increase rates to recover these contributions” which is a clear violation of bond covenants.

The Committee therefore reports out **BILL NO. 414 (COR)** to *I Liheslaturan Guåhan*, with the recommendation **TO DO PASS AS SUBSTITUTED BY THE COMMITTEE.**

IV. EXHIBITS

- A. Testimony, T. Ann Perez, General Manager, Guam Power Authority.
- B. Testimony, Terrence M. Brooks, Chairman, Public Utilities Commission.
- C. Executive Order No. 99-16.
- D. Section 23, Chapter III, Public Law No. 24-59.
- E. Correspondence from First Union Securities, Inc. dated 11/23/99.
- F. Memorandum from Klemm, Blair, Sterling & Johnson, P.C. dated 12/13/99
- G. Public Utilities Commission Order / Docket 00-02. Re: Executive Order 99-16 & 99-17.
- H. Correspondence from Klemm, Blair, Sterling & Johnson, P.C. to Attorney Frederick J. Horecky, Esq. Dated 12/21/99.

MINA' BENTE SINKO NA LIHESLATURAN GUÅHAN
2000 (SECOND) Regular Session

Bill No. 414(COR)

As substituted by the Committee on Power,
Public Works, Tax and Regulatory Reform,
Municipal and Community Affairs

Introduced by:

E. B. Calvo

F. B. Agnon, Jr. 

AN ACT TO REPEAL SECTION 23 OF CHAPTER III OF
PUBLIC LAW 24-59 RELATIVE TO THE TRANSFER OF
AUTONOMOUS AGENCY REVENUES.

- 1 BE IT ENACTED BY THE PEOPLE OF GUAM:
- 2 **Section 1.** Section 23 of Chapter III of Public Law 24-59 is hereby
- 3 repealed.

APR 18 2000

MINA' BENTE SINKO NA LIHESLATURAN GUAHAN
2000 (SECOND) Regular Session

Bill No. 4/4 (cont)

Introduced by:

E. B. Calvo *EB*

AN ACT TO REPEAL SECTION 3 AND SECTION 4 OF PUBLIC LAW 24-14; TO REPEAL SECTION 44 OF CHAPTER X OF PUBLIC LAW 18-15; AND TO REPEAL SECTION 23 OF CHAPTER III OF PUBLIC LAW 24-59 RELATIVE TO THE TRANSFER OF AUTONOMOUS AGENCY REVENUES.

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3 hereby repealed.

4 **Section 2.** Section 44 of Chapter X of Public Law 18-15 is
5 hereby repealed.

6 **Section 3.** Section 23 of Chapter III of Public Law 24-59 is
7 hereby repealed.

**TESTIMONY
BEFORE COMMITTEE ON POWER
CHAIRERD BY
SENATOR EDDIE BAZA CALVO**

Buenas Dias Todo Hamyu!

Thank you Mr. Chairman and esteemed members of your Committee on Power, Public Works, Tax and Regulatory Reform, Municipal and Community Affairs for the opportunity to provide testimony on BILL NO. 414 (COR) AN ACT TO REPEAL SECTION 3 AND SECTION 4 OF PUBLIC LAW 24-14; TO REPEAL SECTION 44 OF CHAPTER X OF PUBLIC LAW 18-15; AND TO REPEAL SECTION 23 OF CHAPTER III OF PUBLIC LAW 24-59 RELATIVE TO THE TRANSFER OF AUTONOMOUS AGENCY REVENUES.

Since this issue relates to a policy decision of the Executive Branch, the Authority defers comments on Bill 414 to the Office of the Governor. However, I respectfully request that your committee consider amending the FY2000 Budget Law.

Government of Guam FY 2000 budget authorization has no such language that authorizes the General Fund to pay for prior obligations. Unlike past annual budget authorizations, no provision was made for FY 2000. Therefore, in the interest of the Guam Power Authority, it would be prudent on the part of *I Mina Bente Sinko Na Liheslaturan Guahan* to consider amending Public Law 25-72 and its subsequent amendments, to provide appropriate language that would allow the Executive branch the mechanism to ensure that prior year obligations can be paid, thus, the Authority can be successful in collecting past due electric bills from its sister agencies. Put Respetu Yan Si Yu'os Ma'ase,



**T. ANN AGUON PEREZ
General Manager
Guam Power Authority**

**cc: Madeleine Z. Bordallo, Acting Governor
GPA Board of Directors
Gil Shinohara, Chief of Staff
Joseph Rivera, Director BBMR
Ed Untalan, Administrator GEDA**

**PUBLIC UTILITIES COMMISSION
OF GUAM**

Terrence M. Brooks, Chairman
Joseph D. Torres, Vice-Chairman
Vicente D. Gumataotao
Flomena M. Cantoria
Edward C. Crisostomo
Joseph M. McDonald
Paul E. R. Packbier

Suite 401, GCIC Building
Post Office Box 862
Hagatna, Guam 96932
Telephone: (671) 472-1907
FAX: (671) 472-1917
Email: guampuc@kuentos.guam.net

Harry M. Boertzel, Esq.
Administrative Law Judge

Monessa C. Leon Guerrero
Executive Director

April 26, 2000

VIA FACSIMILE TRANSMISSION

472-4100

Senator Eddie B. Calvo
120 Father Duenas Avenue
Capital Plaza, Suite 109
Hagatna, Guam 96910

RE: BILL 414 [COR]

Dear Senator Calvo:

Thank you for the invitation to comment on Bill 414(COR).

The Commission leaves the significant policy issue of whether the autonomous agencies should be taxed to the wisdom of the Legislative and Executive Branches. The Commission stands ready, willing and able to provide whatever regulatory assistance may be considered necessary and appropriate to implement your decision on this issue.

Cordially,

Terrence M Brooks
Terrence M. Brooks/mly

cc: Commissioners

SEARCHED
SERIALIZED
INDEXED
MAY 2 2000
4/27/00
JAN

EXHIBIT B



TERRITORY OF GUAM
OFFICE OF THE GOVERNOR
AGAÑA, GUAM 96910
U. S. A.

EXECUTIVE ORDER NO. 99-16

RELATIVE TO REQUESTING THE GUAM PUBLIC UTILITIES COMMISSION TO MAKE RECOMMENDATIONS REGARDING THE GOVERNOR'S PROPOSED ASSESSMENT AND COLLECTION FROM THE GUAM POWER AUTHORITY OF PAST DUE CHARGES UNDER SECTION 23 OF CHAPTER III OF PUBLIC LAW NO. 24-59:

WHEREAS, Section 23 of Chapter III of Public Law No. 24-59 empowers the Governor, by Executive Order, to assess and collect from the Guam Power Authority, an autonomous agency of the government of Guam, the following expenses which the government of Guam has provided to the Guam Power Authority: (i) past contributions of capital, (ii) past transfers of physical assets, land, and equipment, (iii) direct services supplied, including administrative costs of these services, and (iv) the proportionate cost of services maintained by the government which are essential to the conduct of the Guam Power Authority's operations; and

WHEREAS, the Guam Power Authority contends that the government of Guam owes past due power charges to the Guam Power Authority for the delivery of electrical energy; and

WHEREAS, the expenses provided by the government of Guam to the Guam Power Authority should be taken into account in disposing of the past due charges claimed by the Guam Power Authority against the government of Guam, and that future expenses provided by the government of Guam to the Guam Power Authority should be compensated on a continuing basis; and

WHEREAS, prior to exercising assessment authority under Executive Order, it is necessary that a comprehensive investigation be conducted to establish the basis upon which the assessment and collection process should be implemented; and

WHEREAS, the Guam Public Utilities Commission exercises regulatory oversight of the Guam Power Authority, and with its experienced team of regulatory consultants and an administrative law judge, is uniquely positioned to undertake this study, which would be essential in guiding this assessment action;

NOW, THEREFORE, I, CARL T.C. GUTIERREZ, I Maga'Lahen Guåhan, Governor of Guam, by virtue of the authority vested in me by the Organic Act of Guam, as amended, do order:

1. The Guam Public Utilities Commission is requested to open a regulatory docket to investigate and propose the basis upon which an assessment should be conducted for past transfers from the government of Guam to the Guam Power Authority, for which the government of Guam was not compensated; and



- 2. The Guam Power Authority shall fully cooperate with the Public Utilities Commission in the effort to conduct this assessment study; and
- 3. Pending the resolution of the matter of assessment for past transfers and receipts which is referred to the Public Utilities Commission, the government of Guam's claims against the Guam Power Authority and the Guam Power Authority's claims against the government of Guam shall remain in abeyance and neither party shall prosecute their claims against the other.

SIGNED AND PROMULGATED at Hagåtña, Guam this 27th day of October, 1999.

CARL T. C. GUTIERREZ
I Maga'Lahen Guåhan
Governor of Guam

COUNTERSIGNED:

MADELEINE Z. BORDALLO
Segunda na Maga'Lahen Guåhan
Lieutenant Governor of Guam



Section 22. Section 36 of Chapter III, Miscellaneous Appropriations, of Public Law Number 23-128 is hereby repealed. The Department of Education is authorized to spend all monies collected from the School Lunch and Breakfast Program.

Section 23. Section 3 of Public Law Number 24-14, amending §44 of Public Law Number 18-15 and adding a new §22421 to Title 5, Guam Code Annotated, is hereby repealed and re-enacted to read as follows:

“Section 22421. Transfer of Autonomous Agency Revenues to Autonomous Agency Collections Fund. (a) Legislative Findings and Intent. It is the Guam Legislature’s findings that the government has transferred significant assets, both physical and financial, to the autonomous agencies of the government of Guam for their benefit and use. When these agencies have had financial problems the General Fund and the taxpayers of Guam have always stepped in to help them. When they are at risk through misfortune or bad management the government of Guam has absorbed the cost.

These agencies all make use of the services of the government to perform their duties. They use, as any normal business, the services such as police, fire, highway, environmental, health, and additionally, because they are owned by the Government, they make use of the political and administrative support of the government to aid them in their dealings with the Federal government. They make use of all these services as any private company and pay no taxes. The government has always in the past, and still does, use considerable resources to aid them.

The services of the government of Guam also provide the essential framework and stability for the agencies to be financially successful, including services that must be kept available, although only used from time to time as well as those general services that enhance the business climate in the Territory.

(b) Autonomous Agency Collection Fund. There is hereby created a new fund known as the Autonomous Agency Collection Fund. All funds deposited into this account shall be kept separate and apart from the General Fund. All moneys collected under this Section shall be deposited

into this Fund. The moneys in this Fund may only be used as authorized by law.

(c) **Authority of the Governor.** The Governor is hereby authorized by executive order to assess and collect funds from the Autonomous Agencies of the government of Guam for the following:

- (1) past contributions of capital to the agencies;
- (2) past transfers of physical assets, land and equipment;
- (3) direct services supplied, including administrative costs of the services; or
- (4) a proportionate cost of services maintained by the government, which are essential to the conduct of autonomous agency operations.

(d) For purposes of this Act, Autonomous Agencies are agencies created by the government of Guam which meet the following criteria:

- (1) the agency does not receive operating revenues through direct appropriation by the Government of Guam.
- (2) the agency is governed by a Board of Directors, either appointed or elected; or
- (3) the agency is exempted from paying taxes to the Territory of Guam.

(e) The Government of Guam Retirement Fund shall not be considered an Autonomous Agency as defined in Title 5, GCA §22421, as amended by P.L. No. 24-14:3, and shall be exempt from all provisions of 5 GCA §22421.

(f) Autonomous Agencies shall not increase rates to recover these contributions, but shall only apply their best management efforts to reduce operating costs and expenditures."

NOTE: Refer to P.L. 24-34 Note.

Section 24. Creation of Notary Public Administrator Position and Appropriations to the Department of Law. The Civil Service Commission shall create and establish within the Department of Law a new Full-Time Equivalency ("FTE") position in the classified service to be known as the Notary Public Administrator. The Notary Public Administrator shall be responsible for the proper administration of Notaries Public, as described in Title 5 Guam Code Annotated,



Securities, Inc.

FIN 92

To: Ed Untalan
Lisa Taitano
Randy Weigand

From: Margaret Guarino
Will Warrick

Date: November 23, 1999

Re: Impact of Executive Order No. 99-16

It is our understanding that as of September 30, 1999, the GPA receivable from the various agencies and departments of the Government of Guam had grown to nearly \$22 million. We have reviewed Executive Order No. 99-16 received by the Guam Power Authority on October 27, 1999, from the Governor of Guam. There are several troubling issues that arise from these communications.

GPA has been asked to "fully cooperate" with a PUC proceeding "to investigate and propose the basis upon which an assessment would be conducted" upon GPA to pay back the capital contributions which were made by the Government of Guam at the inception of GPA as well as a more recent loan conversion which was effected in Public Law 21-117. The letter, the Executive Order, and the law on which they were based treat these cash infusions as a "liability" or "claim", when in reality they were grants and transfers which were made without repayment conditions. While there is precedent for repayment of capital contributions from a government agency, the timetable indicated in the letter is not typical. The letter requests that these capital contributions be offset with current power bills owed by the government. Capital liabilities of this type are normally scheduled for amortization over a period of 20-30 years.

The letter also proposes that on-going payments of a 4% gross receipts tax be initiated immediately.

Both of these requests are made based on Public Law 24-59, which restricts GPA from seeking a rate increase to pay for the assessments. This is not only in direct conflict with the GPA bond covenants that the government approved, but is not practical. It is our opinion that it would be impossible for any agency or business the size of GPA to increase annual expenditures by nearly \$10 million annually at a time when staffing levels are near recent lows and GPA is facing scheduled increases in bond payments without entertaining a rate increase.

The Executive Order contains a prohibition against GPA prosecuting its claims against the government until the issue of the appropriate assessment amount is determined by the Public Utilities Commission. Typically matters such as this can take up to six months or more to be settled through the regulatory process. Thus, it is unlikely the matter will be resolved prior to the issuance of the GPA annual audit report. Without identifying a

repayment stream, the independent auditor will likely be forced to write-off the amount owed by the government of Guam. Under the continuing disclosure agreement entered into under Securities and Exchange Commission Rule 15c2-12 in connection with GPA's recent bond issue, the annual audit will be promptly filed with the national investor information services. Such a write-off will call into question GPA's compliance with the bond indenture debt service coverage ratio, which requires rates to be set at levels that would result in net revenues being at least 130% of debt service.

In addition, the investor community would view this claim negatively, since there is no mention of this in the Official Statement as recently as June. Finally the prohibition against recovering any such payments to the government through adjustments in rates violates the regulatory process that establishes the PUC as the sole authority with respect to GPA's rates.

In recent weeks, a representative from Moody's Investors Service has contacted us regarding the GPA and has requested a conference call to review GPA's financial and operational conditions. How GPA responds to this inquiry could have long-term impact on the credit rating of the entire government and its ability to borrow money in the capital markets.

The Governor should be advised as to the seriousness of this situation.

RECEIVED
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MY
PUBLIC UTILITIES
COMMISSION

MEMORANDUM

TO: GEORGETOWN CONSULTING GROUP, INC.

FROM: KLEMM, BLAIR, STERLING & JOHNSON, P.C.

SUBJECT: EXECUTIVE ORDERS 99-16 AND 99-17

DATE: DECEMBER 13, 1999

You have requested our opinion regarding certain provisions of Executive Orders 99-16 and 99-17 promulgated by Governor Carl T. C. Gutierrez on October 27, 1999. (Copies of the executive orders are attached hereto as Exhibits "A" and "B" for convenient reference.)

The two executive orders seek to implement the authority granted to the Governor by the Guam Legislature under 5 GCA Section 22421, as amended by Guam Public Law 24-59, to assess and collect funds from certain autonomous agencies of the Government of Guam, including the Guam Telephone Authority ("GTA") and the Guam Power Authority ("GPA"), as compensation for past contributions of capital and assets and the cost of the ongoing provision of services by the Government of Guam to such autonomous agencies. Before exercising this authority, the Governor has determined that it is necessary that the Guam Public Utilities Commission ("PUC") first conduct a comprehensive investigation in order to establish the basis upon which the assessment and collection process should be implemented. The decision to refer the matter first to the PUC for investigation was based upon the Governor's recognition of the fact that GTA and GPA are both subject to the regulatory oversight of the PUC and that the PUC is, as a consequence, uniquely qualified to undertake this task. The Governor has by executive order referred the matter to the PUC with a request that the PUC establish regulatory dockets to investigate and propose the basis upon which the assessments authorized by the Legislature should be made.

In addition to referring the matter of the assessment (hereinafter referred to as the "Section 22421 Assessment")

EXHIBIT F

to the PUC to investigate and make proposals with regard to its implementation, the Governor, by his executive orders, has ordered that, pending resolution of the Section 22421 Assessment, claims by GTA and GPA for compensation for services provided by them to the Government of Guam are to "remain in abeyance" and neither the Government nor either of the two utilities are to prosecute their claims against one another. It is these latter provisions of the two executive orders on which you have asked us to focus our inquiry inasmuch as the gravamen of these provisions of the Governor's executive orders is that the agencies and instrumentalities of the Government of Guam have been instructed not to pay the cost of the electrical and telephone services provided to them by GPA and GTA. If this order were to be carried out, the easily foreseeable consequences would be immediate and harmful, particularly for GPA.¹

BACKGROUND

The 24th Guam Legislature repealed and reenacted 5 GCA Section 22421 in its present form in 1997.² The legislative findings and statement of intent of the Legislature reflect its determination that the Government of Guam had provided significant assets, both physical and financial, to the various autonomous agencies, including GTA and GPA. In addition, those agencies have made and continue to make use of services provided by the Government of Guam at no cost to them inasmuch as the agencies pay no taxes. In light of those findings, the Legislature determined that the agencies should be assessed an amount to reflect the Government's past and continuing contributions of assets and provision of services.

¹ EO 99-16 relates to GPA, while EO99-17 relates to GTA. Based on our firm's experience in PUC-related matters, we are more familiar with issues related to GPA, as opposed to GTA. As a consequence, there is a more particular focus on GPA in this memo. It should be understood, though, that our general analysis and conclusions apply equally to GTA.

² The section was originally enacted as Section 6127 of the Government Code of Guam by the 18th Guam Legislature, amended a couple of times, but never implemented.

The Governor is authorized to make and collect the Section 22421 Assessments by executive order. 5 GCA 22421(c). No guidelines or criteria are provided to aid the Governor in determining the amount of the assessments or the manner in which they are to be collected. However, the Legislature expressly provided that all funds collected under the Section 22421 Assessment are to be deposited into a new fund to be known as the Autonomous Agency Collection Fund, such fund to be kept separate and apart from the General Fund of the Government of Guam and used only as authorized by law. 5 GCA 22421(b). The Legislature, moreover, has prohibited the autonomous agencies from seeking to recover the assessments through increases in the rates charged by them to their customers; rather, the agencies are charged with funding the assessments through reduced operating costs and expenditures to be achieved by application of optimal management efforts. 5 GCA 22421(f).

ANALYSIS

No liability reflecting the Section 22421 Assessment is or ever has been reflected in the financial statements of GPA or, to our knowledge, in the offering statements or other disclosures provided to the underwriters or purchasers of GPA's revenue bonds. In these circumstances, an assertion now by the Governor of such a liability, though perhaps authorized by the Guam Legislature, seems on its face to be problematic. Nonetheless, for the purposes of this analysis, we will assume that it would be within the powers of the Government of Guam, and the Governor, pursuant to the authority delegated to him by Section 22421, to make a retrospective (as opposed to prospective) assessment of GPA (and GTA). We would caution, however, that this is an issue which must be more fully addressed in the comprehensive investigations called for under EO 99-16 and EO 99-17.

While conceding, for the sake of analysis, the validity of an assessment being made based upon past contributions of capital and equipment, we believe there are serious legal obstacles to making the assessment effective retroactively so as to create a current liability which could be used as an offset against the current

liabilities of the Government of Guam to GTA and GPA. Furthermore, there are vital public policy issues which should be taken into consideration before any such offset should be asserted, given the deleterious effects non-payment by the Government of its current and past due financial obligations to GTA and GPA will unquestionably cause.

1. THE UNILATERAL ASSERTION BY THE GOVERNOR OF AN OFFSET OF A YET-TO-BE-ESTABLISHED LIABILITY AGAINST GOVERNMENT OF GUAM LIABILITIES TO GTA AND GPA WOULD BE UNLAWFUL.

Paragraph 3 of each of the executive orders mandates that, pending the resolution by the PUC of the matter of assessment for past transfers and receipts, the claims of GPA and GTA against the Government of Guam shall be held in abeyance. If enforced, this would, in effect, mean that the agencies and instrumentalities of the Government of Guam would not, for an indefinite period of time, pay GTA and GPA for the telephone and electrical power services provided to them by GTA and GPA. We have not exhaustively researched the issues raised by this provision, but we have already formed the opinion that in issuing these particular provisions of the executive orders they are in excess of the Governor's lawful authority.

A. DEBTS TO BE PAID BY FUNDS APPROPRIATED BY THE LEGISLATURE FROM THE GENERAL FUND CANNOT BE OFFSET AGAINST DEBTS DUE TO THE AUTONOMOUS AGENCY COLLECTION FUND

The authority of the Governor to assess and collect funds from GTA and GPA derives solely from Section 22421. Section 22421(b) establishes a new fund to be known as the Autonomous Agency Collection Fund (hereinafter the "AACF"). This fund is to be kept separate and apart from the General Fund of the Government of Guam. All moneys collected pursuant to Section 22421 Assessments are to be deposited into the AACF and may only be used as authorized by law.

On the other hand, the Legislature has appropriated from the General Fund moneys necessary to pay GTA and GPA for the cost of the utility services provided by them to

the Government of Guam. The Legislature has not authorized the payment for those services from the AACF.

By declaring that the Government of Guam intends to offset the unmatured, contingent and unliquidated amounts that might become due to the AACF under Section 22421 against the matured, uncontingent and liquidated obligations of the Government to GPA and GTA, the Governor has, in effect, attempted to use the AACF to satisfy the Government's obligations without first having been authorized by the Legislature to do so.

B. THE UNILATERAL ASSERTION OF AN OFFSET BY THE GOVERNOR CONSTITUTES A VIOLATION OF THE GOVERNMENT OF GUAM'S RATE COVENANT WITH GPA'S BONDHOLDERS

Section 6.20 of GPA's 1992 bond indenture, which is incorporated into GPA's supplemental bond indentures, provides as follows:

The Government [of Guam] hereby pledges 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 [GPA] and its rates. [GPA] includes this pledge of the Government in this indenture as authorized by Section 8113.3 of the [Guam Power Authority Act of 1973].

This covenant binds the entire Government of Guam itself, not just GPA. It constitutes the promise of the Government of Guam to the purchasers of GPA's revenue bonds that the Government of Guam would not interfere with the power of the PUC to set rates for GPA which will generate the revenues necessary for GPA to meet its obligations to its bondholders. As the Governor himself has previously recognized, the PUC regulates the rates charged by the utilities subject to its jurisdiction "to keep them at a level which only covers their needs..." [See paragraph 1(b) of the letter, dated March 21, 1997, from Gov. Carl T.C. Gutierrez to Antonio R. Unpingco, Speaker of the 24th Guam

MEMORANDUM

TO: EC. TOWN COUNSELING GROUP, IN
DATE: DECEMBER 13, 1999
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Legislature, transmitting Substitute Bill 133 (COR), which the Governor had signed into law as Public Law No. 24-14 (hereinafter, the "PL 24-14 transmittal letter"), a copy of which is attached to this memorandum as Exhibit "C".] "By definition," the Governor then stated, "rates are set for the rate-charging autonomous agencies only up to the level which covers their operating expenses. They do not show any 'operating surplus' which can be tapped to fund the provisions of this bill." PL 24-14 transmittal letter, paragraph 1(a).³ Moreover, Gov. Gutierrez stated,

The reason that the deletion [of a provision prohibiting the autonomous agencies from increasing their rates to recover contributions to the Government] is necessary is that the [PUC] sets rates to recover the costs of operating the agencies subject to its jurisdiction, but current rates are already set with only currently paid expenses taken into account.

PL 24-14 transmittal letter, paragraph 1 (c).

Implicit in the Government of Guam's rate covenant with GPA's bondholders is the promise of the Government not to take any action which would jeopardize the revenue stream of GPA which is pledged as security for the payment of the bonds or otherwise adversely affect GPA's ability to meet its various other covenants, including its maintenance covenant. GPA bond indenture, Section 6. See also, letter, dated March 14, 1997, from Stanley R. Dirks, Esq., of the law firm of Orrick, Herrington & Sutcliffe, GPA's bond counsel, to David Sasai, Economics and Public Finance Manager for GEDA. Mr. Dirks' letter also was sent in reference to Bill No. 133. A copy of Mr. Dirks' letter is attached hereto as Exhibit "D".

The current liability of GPA to pay a Section 22421 Assessment asserted by the Governor as the basis for an off-set is not included in the recognized revenue

³ PL 24-14 amended a previous version of Section 22421. The Legislature subsequently passed PL 24-59 in an apparent effort to address, in part at least, the concerns raised by Gov. Gutierrez.

TO: P. B. STONE CONSULTING GROUP, L
DATE: DECEMBER 13, 1999
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requirements of GPA which were used by the PUC to set GPA's currently effective rates, including the rates charged to the Government of Guam and its agencies and instrumentalities for the electricity consumed by them. On the other hand, GPA's current rates have been established by the PUC based on the assumptions that the Government of Guam not only pays its obligations, but also pays them on time. Late payments by the Government of Guam themselves create a revenue requirement for GPA which has deliberately not been recognized by the PUC in GPA's rates.

By mandating a suspension of payments to GPA (and forbidding any attempts by GPA to enforce payment), the questioned provisions of the Governor's executive orders have, to use the Governor's own words, "by definition" ensured that GPA's revenues will be insufficient to meet all of GPA's obligations under its various bond covenants.⁴ The Governor's executive order, if enforced, would thus undermine the effectiveness of the entire ratemaking process which the Government of Guam is obligated to maintain under its rate covenant.⁵

⁴ All of GPA's revenues are pledged as security for payment of the bonds. "Revenues" are defined by both statute and GPA's bond indenture to include receivables, such as those due to GPA from the Government of Guam. 12 GCA § 8202(1)(i) ("Revenue" means and includes (i) any and all rates and charges received or receivable in connection with . . . the operation of the [electric power system of the Authority]"; GPA bond indenture. Section 1.01. We would note that four of the five largest customers of GPA are line agencies or autonomous instrumentalities of the Government of Guam. The only larger customer is the United States Navy.

⁵ If the questioned provisions of the executive orders were heeded by GPA, it would appear to us GPA would be in violation of numerous of its bond covenants.

C. TO THE EXTENT PROVISIONS OF THE EXECUTIVE
ORDERS CONFLICT WITH APPLICABLE GUAM
LAWS THEY ARE IN VIOLATION OF THE ORGANIC
ACT OF GUAM

Section 6 of the Organic Act (48 USC 1422) grants the Governor general supervision and control of all of the departments, bureaus, agencies and other instrumentalities of the executive branch of the Government of Guam. The Organic Act also places upon the Governor the responsibility faithfully to execute the laws of Guam.

While Section 6 of the Organic Act delegates to the Governor of Guam the authority and power to issue executive orders and regulations such executive orders may not be in conflict with any applicable law. GMHA v. Health Management Int'l, et al. (Super.Guam 1982) Civ. No. 640-82. The provisions of EO 99-16 and EO 99-17 which purport to hold in abeyance any claims of GPA and GTA against the Government and to bar GPA and GTA from enforcing lawful obligations due to them by the Government directly conflict with a number of Guam statutes and are thus void.

In our opinion, the provisions of paragraph 3 of the two executive orders conflict with the following laws: 12 GCA § 8104 (4), which requires GPA to establish rates at least sufficient to cover the full cost of electric service and to collect payment for customers using such service, all subject to any contractual obligations to any bondholders; 12 GCA § 8104 (5), which gives GPA the right to sue in its own name; 12 GCA § 8210 (e), which authorizes the GPA board to enter into bond covenants which require the board to preserve and protect the security of bonds and the rights of the bondholders and defend such rights, GPA's bond indentures containing such covenants; Guam Public Laws 21-117, 21-133 and 22-136, approving the issuance by GPA of revenue bonds and the terms of the bond covenants; and the comparable provisions of Guam Telephone Authority Act of 1973, as amended (12 GCA, Chapter 7). We believe that further research would merely expand this list. The bottom line, in our opinion, is that the Governor has overreached his authority.

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D. AS A GENERAL LEGAL PROPOSITION, IT IS QUESTIONABLE WHETHER UNMATURED, CONTINGENT AND UNLIQUIDATED OBLIGATIONS CAN BE OFFSET AGAINST MATURE, CURRENTLY DUE AND LIQUIDATED CLAIMS

All other legal issues aside, there is a basic issue as to whether a set-off is proper in the first place. Any suspension of payments to GPA and GTA would be based on the assumption that the Government of Guam can utilize funds expected one day to be owed to it under the yet-to-be-established Section 22421 Assessment as a set-off against both current and past due obligations of the Government of Guam to GTA and GPA.

The general rule is that unmatured, contingent and unliquidated claims may not be used as a set-off against matured liquidated claims. See 20 Am. Jur. 2d, Counterclaim, Recoupment and Set-Off, Sections 19, 23; Wightman v. Franchise Tax Board, 202 Cal. App. 3d 966, 981 (1988) ("unliquidated claims are not generally available at law as a setoff"); Haines v. Fisher, 305 P.2d 124 (Cal. App. 1957). The Section 22421 Assessments against GTA and GPA are contingent upon the Governor making assessments, which have been deferred pending a comprehensive investigation by the PUC; they are unmatured in that payment cannot be due until after the assessments have been made; and they are unliquidated in that the amount of the assessments have not yet been established, pending the investigation and report of the PUC requested by the Governor.⁶

We would also point out that establishing an effective procedure for payment of any assessment of GTA and GPA may not be possible in view of the constraint imposed by the Legislature in Section 22421 that the amount of the

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We again note that GPA receivables from the Government of Guam have, pursuant to law, already been pledged as security for the payment of GPA's bonds. We have not yet examined what impact this additional factor might have, but it would almost certainly affect any equitable right to set-off the Government might assert against GPA.

TO: GEORGETOWN CONSULTING GROUP, 2.
DATE: DECEMBER 13, 1999
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assessments cannot be recovered through rate increases. It is conceivable that it will ultimately be concluded that no assessment can, as a practical matter, ever be collected under the current legislative scheme. (In this regard, the results may even vary, depending on the differing financial and business particulars of GTA and GPA and the regulatory environments in which they operate.) This makes it all the more improbable that the Government could successfully assert a set-off if GTA or GPA sought to enforce its rights against the Government.

POLICY CONSIDERATIONS

Although we have been merely tasked to provide our legal opinion with regard to the questioned provisions of the executive orders, we feel obliged, based on the experience we have had as legal counsel to Georgetown for over a decade now, to comment upon certain policy considerations which we believe ought to be taken into account in reviewing this matter.

It is a matter of public knowledge that the continuing failure of the Government of Guam and its agencies to pay their power bills is harming GPA and, as a consequence, its other ratepayers. As previously noted above and acknowledged by the Governor himself previously, the PUC attempts to set GPA's rates with as little fat in them as is reasonable. Moreover, those rates are and have been set on the assumptions that the Government will not only pay its bills, but also pay them on time. If the Government does not pay, or even if it is merely late in paying, GPA is deprived of the revenues which the PUC has determined GPA needs to perform its mission properly. Something has to give. Historically, what has too often been sacrificed in such situations is necessary preventive maintenance, repairs and upgrades. The suspension by the Government of Guam of the payment of its bills to GPA, pending the uncertain outcome of the requested PUC investigation and the establishment of a justifiable (and somehow recoverable) Section 22421 Assessment, raises the spectre that this sad history, from which it has cost Guam and GPA's ratepayers so much to recover, might be repeated.

TO: GEORGETOWN CONSULTING GROUP,
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As stated above, we are firmly of the opinion that the provisions of the executive orders mandating a suspension of payments to GPA and the barring of any enforcement actions violate many of the covenants of GPA's bond indentures, including the rate covenant made by the Government of Guam directly to the bondholders. It should be assumed that the apparent disregard of the obligations of the Government of Guam to those same bondholders which the questionable provisions of the executive orders evidence will not escape the scrutiny of the U.S. investment community. GPA (and the Government of Guam generally) has struggled mightily to restore the confidence of the rating agencies and underwriters in Guam. This restored confidence has paid valuable dividends to our island in the form of lowered financing costs. The investor community's confidence in the independence and effectiveness of PUC has had, in our view, much to do with this improved atmosphere (ergo, the rate covenant). The disruption of the rational ratemaking process which a suspension of payments to GPA and GTA would necessarily cause would put this progress in jeopardy.

SUMMARY

In summary, we are of the opinion the attempts by the Governor in EO 99-16 and EO 99-17 to order suspension of further payments to GTA and GPA pending implementation of a lawful assessment under 5 GCA 22421 and to prohibit GTA and GPA from seeking to enforce the outstanding obligations of the Government of Guam to them are void and ineffectual under a number of legal theories. Moreover, if complied with, they would result in violations of both the bond covenants and of the rights of the bondholders. Lastly, they reflect policy decisions which could jeopardize the financial well-being of the two utilities, as well as possibly erode the restored, but fragile, confidence of the U.S. investment community in GPA, GTA and the Government of Guam generally.

ATTACHMENTS: EXHIBITS "A" TO "D"

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RE EXECUTIVE ORDERS

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF GUAM

EXECUTIVE ORDER 99-16)
and 99-17) DOCKET 00-02
_____)

ORDER

WHEREAS, Governor Carl T.C. Gutierrez, by Executive Orders 99-16 and 99-17, dated October 27, 1999 has requested the Guam Public Utilities Commission [Commission] to study and recommend a basis for him to make assessments against Guam Power Authority [GPA] and Guam Telephone Authority [GTA] under 5 GCA section 22421;

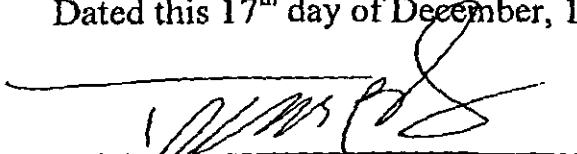
WHEREAS, after due consideration, the Commission determines that it is appropriate and consistent with its statutory mission of regulating GPA and GTA to accept the Governor's request;

NOW, THEREFORE, on motion duly made, seconded and carried by the undersigned Commissioners at a duly convened and noticed meeting on December 17, 1999, the Commission **HEREBY ORDERS THAT:**


1. The Commission respectfully accepts Governor Gutierrez's request that it study and recommend a basis for him to make assessments against GPA and GTA under 5 GCA section 22421.
2. The Commission's administrative law judge, with assistance from Georgetown Consulting Group and its sub-consultants, is hereby authorized and directed to undertake the study requested by the Governor, to provide the study to GTA and GPA for comment and then to present the study and comments to the Commission for its consideration. The study and utility comments shall be presented to the Commission for consideration no latter than the April/May, 2000 regulatory session. Reasonable efforts shall be used to expedite this timeline. The Commission, after reviewing and approving the study, shall transmit it to the Governor, GTA and GPA.

3. GTA and GPA are hereby ordered to share the Commission's fees and expenses in this docket.
4. The Commission, by attachment to this order, respectfully presents the legal opinion of Georgetown Consulting Group's Guam counsel, which reviews the legality of paragraph 3 of the executive orders. Paragraph 3 mandates that pending the resolution of the matter of assessment, the government of Guam's claims against the utilities and their claims against the government shall remain in abeyance and neither shall prosecute their claims against the other.
5. A copy of this order shall be provided to Governor Gutierrez, GTA and GPA.

Dated this 17th day of December, 1999.



Terrence M. Brooks



Joseph D. Torres




Vicente D. Gumataotao



Edward C. Crisostomo



Filomena M. Cantoria



Joseph M. McDonald



Paul E. R. Packbier

LAW OFFICES

KLEMM, BLAIR, STERLING & JOHNSON

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 (671) 477-2904
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December 21, 1999

VIA FACSIMILE
 (671) 472-8403

Frederick J. Horecky, Esq.
 LAW OFFICES OF HORECKY & ASSOCIATES
 First Floor Jay Perez Building
 138 Seaton Boulevard
 Hagatña, Guam 96910

RE: EXECUTIVE ORDER 99-016
 AND SECTION 22401 ASSESSMENT

Dear Fred:

By now you should have been provided with a copy of the legal opinion my firm rendered with regard to whether the Governor acted within his authority to order a suspension of payments to GPA and to order GPA to take no steps to enforce collection of the amounts due to it from the Government of Guam. We concluded the Governor acted in excess of his authority.

In our opinion we referenced only a few of the bond covenants we felt were implicated. There are several more which appear, on their face, to be applicable. More significantly, though, some of them call for vigorous action by GPA to contest the Governor's actions. We alluded to them in footnote 5 of the opinion which was provided to the PUC.

Although I am sure you (and bond counsel) have already focused on GPA's obligations, I feel obliged to point out a couple which we believe may require prompt action if the Governor does not immediately rescind his orders and the Government does not recommence making payments.

Bond indenture Section 6.05 obligates GPA to pay all "lawful" assessments imposed on the Revenues pledged under the indenture, "after notice to each Credit Provider and an opportunity to the contest the same." I do not know if notice has been provided by GPA.

EXHIBIT H

To Frederick J. Horecky, Esq. Date December 21, 1999 Page 2

Section 6.03 obligates GPA not to create, or permit the creation of, any pledge, lien, charge or other encumbrance upon GPA's Revenues. It is not entirely clear how a claim of offset for the Section 22401 Assessment might be characterized, but the Governor's executive order not only attempts to create a charge against Revenues, but also to enforce it by claiming a set-off. Section 6.04 affirmatively obligates GPA to at all times defend, preserve and protect the pledge of its Revenues and the rights of the Bondholders against all claims and demands of all persons whatsoever. GPA must, therefore, contest the assertion of the set-off and the attempt to prohibit enforcement of its claims. Section 6.07 similarly obligates GPA not to at any time voluntarily do, suffer or permit any act or thing the effect of which would be to imperil either the payment of the debt evidenced by the Bonds or the observance of any of the covenants of the Indenture.

Stated plainly, GPA cannot, in our view, acquiesce to the Governor's actions; to the contrary, GPA must itself affirmatively challenge them if need be. Hopefully, the Governor and whoever may be advising him on these matters will recognize the dilemma in which they have placed the GPA board and themselves take appropriate corrective actions before GPA suffers any further harm.

Very truly yours,

KLEMM, BLAIR, STERLING & JOHNSON
A Professional Corporation



WILLIAM J. BLAIR

cc: Mr. Jamshed K. Madan

G22\24931-58
\\PMB2\CABINET\WORD97\OFFICE\WORDDOC\DCG\LTR\022-P. HORECKY
RE EX. ORDERS

The following **Public Hearing Notice**
was published in the **Guam Variety**
Newspaper on page 14 of the
Friday, April 21, 2000 edition

14-GUAM VARIETY NEWS AND VIEWS-FRIDAY, APRIL 21, 2000

NOTICE OF PUBLIC HEARING



Mina' Bente Singko Na Liheslaturan Guáhan
Committee on Power, Public Works, Tax and Regulatory
Reform, Municipal and Community Affairs

-Chairman, Senator Eddie Baza Calvo-

9:00 A.M.,


THURSDAY, APRIL 27, 2000

OVERSIGHT:
GUAM POWER AUTHORITY

Bill No. 414 (COR): AN ACT TO REPEAL SECTION 3 AND SECTION 4 OF PUBLIC LAW 24-14; TO REPEAL SECTION 44 OF CHAPTER X OF PUBLIC LAW 18-15; AND TO REPEAL SECTION 23 OF CHAPTER III OF PUBLIC LAW 24-59 RELATIVE TO THE TRANSFER OF AUTONOMOUS AGENCY REVENUES.

Hearing will take place into the Public Hearing Room of
I Liheslaturan Guáhan, 155 Hester Street, Hagatña, Guam
Those in need of Special Accommodations please
Call 472-4040/4518 or fax us at 472-4100
THE PUBLIC IS ENCOURAGED TO ATTEND

The following **Public Hearing Notice**
was published in the **Pacific Daily**
Newspaper on **page 44** of the
Tuesday, April 25, 2000 edition

Pacific Daily News, Tuesday, April 25th, 2000 

NOTICE OF PUBLIC HEARING



Mina Bente Singko Na Liheslaturan Guåhan
Committee on Power, Public Works,
Tax and Regulatory Reform,
Municipal and Community Affairs
-Chairman, Senator Eddie Baza Calvo-

9:00 A. M., THURSDAY, APRIL 27, 2000

OVERSIGHT:
GUAM POWER AUTHORITY

Bill No. 414 (COR): AN ACT TO REPEAL SECTION 3 AND SECTION 4 OF PUBLIC LAW 24-14; TO REPEAL SECTION 44 OF CHAPTER X OF PUBLIC LAW 18-15; AND TO REPEAL SECTION 23 OF CHAPTER III OF PUBLIC LAW 24-59 RELATIVE TO THE TRANSFER OF AUTONOMOUS AGENCY REVENUES.

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I Liheslaturan Guåhan, 155 Hesler Street, Hagåtña, Guam
Those in need of Special Accommodations please Call
472-4040/4518 or fax us at 472-4100
THE PUBLIC IS ENCOURAGED TO ATTEND



I Mina Bente Singko Na Lingsaturan Guanan
TWENTY-FIFTH GUAM LEGISLATURE
SENATOR EDDIE BAZA CALV
Chairman

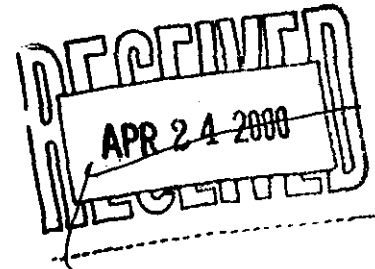
DUPLICATE

COMMITTEE ON POWER, PUBLIC WORKS, TAX AND REGULATORY REFORM,
MUNICIPAL and COMMUNITY AFFAIRS

E-Mail address: sencalvo@lte.net
120 Father Dueñas Avenue, Capitol Plaza, Suite 109
Hagåtña, Guam 96910

Telephone: (671) 472-4040/4518
Facsimile: (671) 472-4100

April 21, 2000



MEMORANDUM

TO: Mr. Joseph Rivera
Director
Bureau of Budget and Management Research

FROM: Senator Eddie Baza Calvo
Chairman
Committee on Power, Public Works, Tax and
Regulatory Reform, Municipal and Community Affairs

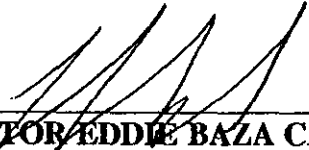
SUBJECT: REQUEST FOR FISCAL NOTE ON BILL NO. 414 (COR)

The Committee on Power, Public Works, Tax and Regulatory Reform, Municipal and Community Affairs will hold a **Public Hearing on Thursday, April 27, 2000 on Bill No. 414 (COR)**. I am respectfully requesting your expedient assistance in facilitating Fiscal Note for the aforementioned bill.

Should you have any questions, please do not hesitate to call me at 472-4040/4518.

Your expedient attention to this request is greatly appreciated.

Sincerely,



SENATOR EDDIE BAZA CALVO

Attachment

MINA' BENTE SINKO NA LIHESLATURAN GUAHAN
2000 (SECOND) Regular Session

APR 18 2000

Bill No. 414 (coe)

Introduced by:

E. B. Calvo *EB*

AN ACT TO REPEAL SECTION 3 AND SECTION 4 OF PUBLIC LAW 24-14; TO REPEAL SECTION 44 OF CHAPTER X OF PUBLIC LAW 18-15; AND TO REPEAL SECTION 23 OF CHAPTER III OF PUBLIC LAW 24-59 RELATIVE TO THE TRANSFER OF AUTONOMOUS AGENCY REVENUES.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 **Section 1.** Section 3 and Section 4 of Public Law 24-14 is
3 hereby repealed.

4 **Section 2.** Section 44 of Chapter X of Public Law 18-15 is
5 hereby repealed.

6 **Section 3.** Section 23 of Chapter III of Public Law 24-59 is
7 hereby repealed.