



1 **D GRAHAM BOTHA, ESQ.**
2 **Legal Counsel**
3 **Guam Power Authority**
4 **1911 Route 16, Suite 227**
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8
9 **BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

10 IN THE MATTER OF:)

10 **DOCKET NO. 94-04**

11 Guam Power Authority's Request to Enter into)

11 **PETITION FOR CONTRACT REVIEW**
12 **TO PROCURE A BANK LOAN TO**
13 **PAYOFF EXISTING CATHAY BANK**
14 **LOAN**

15 Loan Agreement)

16 **COMES NOW**, the GUAM POWER AUTHORITY (GPA), by and through its counsel of
17 record, D. GRAHAM BOTHA, ESQ., and hereby files GPA's Petition for the Public Utilities
18 Commission of Guam to review and approve GPA's request to enter into a bank loan agreement
19 for the purpose of paying off its current \$20 million loan with Cathay Bank, as follows:

20 **BACKGROUND**

21 Guam Power Authority previously received PUC approval to amend its Credit
22 Agreement with Cathay Bank to convert the existing Line of Credit into a three year loan. The
23 credit rating of GPA's bond insurer caused GPA to be in technical default and required an
24 immediate remedy. The Cathay Bank existing loan cured the default, and GPA now desires to
25 procure a commercial loan at more favorable terms than the current Cathay Bank loan.

26 **DISCUSSION**

27 GPA hereby petitions the PUC, pursuant to the Contract Review Protocol for the Guam
28 Power Authority to review and approve the procurement of a bank loan at terms for favorable
than the existing Cathay Bank loan. The proposed new bank loan would be a five year term with
standard terms and conditions including a debt service coverage pledge not to exceed 1.3x, a

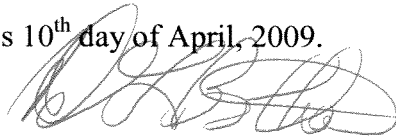
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1 subordinate pledge of revenues, and an interest rate capped at 8% for the purpose of replacing
2 the \$20 million owed under the existing Cathay Bank Credit Agreement. In support of this
3 Petition, GPA hereby provides the PUC with Consolidated Commission on Utilities (CCU)
4 Resolution No. 2009-01, which authorizes the General Manager to enter into a loan agreement
5 with Cathay Bank to pay off its \$20 million commercial paper line of credit. Said resolution and
6 its exhibits are attached herein as Exhibit A, and incorporated by reference herein as if fully set
7 forth.

8 **CONCLUSION**

9 The PUC should approve GPA's request for approval to enter into a loan agreement with
10 a bank for the purpose of paying off its current \$20 million loan with Cathay Bank, as this is
11 reasonable, prudent, and necessary.

12 **RESPECTFULLY SUBMITTED** this 10th day of April, 2009.

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15 **D. GRAHAM BOTHA, ESQ.**
16 GPA Legal Counsel
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GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN
P.O. BOX 2977 HAGATNA, GUAM U.S.A. 96932-2977

01 April 2009

Mr. Frederick J. Horecky, Legal Counsel
Public Utilities Commission
643 Chalan San Antonio, Suite 102B
Tamuning, Guam 96913

SUBJECT: Docket No.: 94-04
Petition Request to Enter into Loan Agreement
Ref: Cathay Bank - \$20 Million (Payoff)

Dear Mr. Horecky:

The Guam Power Authority wishes to petition the Public Utilities Commission to enter into a loan agreement with a bank for the purpose of paying off its current \$20 million loan with Cathay Bank.

The PUC recently authorized GPA to amend its Credit Agreement with Cathay Bank to convert the existing Line of Credit into a three year loan. The need to convert the line into a loan came about because the credit rating of GPA's bond insurer dropped below AA and the Authority was unable to find a replacement insurer. The drop in credit rating caused GPA to be in a default situation and required an immediate remedy. Now that the default situation has been remedied and the need for urgent action is no longer in effect, GPA desires to execute procurement for a loan provider at more favorable terms than those obtained from Cathay Bank.

BACKGROUND

The Guam Power Authority's Commercial Paper Notes were first issued in 1998 to provide funds to pay a portion of the costs of acquisition, construction, reconstruction and improvements to GPA's electric power system and to pay for certain operation and maintenance expenses. The initial offering was \$65 million. The \$45 million portion which was dedicated to construction projects was refunded by GPA's 1999 bond issuance. The remaining \$20 million has served as a working capital line for the Authority. At the time of the initial Commercial Paper issuance, GPA had a fully drawn \$15 million working capital Line of Credit and a \$10 million fuel credit facility of which \$5 million had become institutionalized working capital debt. The working capital Line of Credit and the \$5 million of the fuel facility were replaced by the working capital portion of the tax exempt Commercial Paper.

Since that time, the line has been fully drawn. GPA's program was backed up by a Letter of Credit from a financial institution that will be available to pay off the required interest payments in the event that GPA fails to make its interest payment. Furthermore, the

program was supported by an insurance guarantee from a financial insurance institution.

In 2004, Cathay Bank became the new Letter of Credit provider for the Commercial Paper program. In 2007, Cathay Bank expressed their desire to get out of the credit agreement. At that time, GPA issued a Request for Proposals for a Line of Credit provider, but received only one response which was later withdrawn. GPA continued a search for an alternative Line of Credit provider but was unsuccessful at finding a substitute. During 2008, GPA was unable to market its Commercial Paper and the Line of Credit with Cathay Bank became fully drawn. In August 2008, GPA reached an agreement with Cathay Bank that no later than October 1, 2009; GPA would either find a replacement provider or would begin a three year payoff of the loan. In November 2008, GPA was notified that it was in default with a provision in its credit agreement requiring it to provide insurance on the program with an insurer rated AA or better. The default was triggered by AMBAC Assurance Corporation having its rating downgraded. GPA was unable to find a replacement insurer and immediately began discussions with AMBAC and Cathay for possible loan terms. On March 30, 2009, GPA amended its credit agreement with Cathay Bank to require immediate payments by GPA with the following terms:

Interest:	Banks prime rate plus 2% with a floor of 6.5%
Principal:	\$5 million per year
Term:	3 years
Collateral:	\$5 million which becomes the final payment
Default Provision:	A default condition is created if there are any further downgrades of AMBAC

GPA utilized all of its bargaining power to get to these terms; however, GPA was not in a strong position to bargain. GPA believes all of these terms are onerous for the following reasons:

Interest:	GPA prefers a fixed rate loan
Principal and Term:	GPA believes it would be more manageable to pay the \$20 million over a five year period.
Collateral:	GPA did not intend for its money in a certificate of deposit to be claimed as collateral. GPA believes these funds could be freed up for the purposes intended if a new loan arrangement were secured.
Default Provision:	GPA is concerned that a worsening of the economy could place GPA right back into a default condition.

GPA is petitioning the PUC to enter into a loan agreement with the following terms:

Term:	Five years
Principal and Interest:	Paid evenly over the five year period
Security:	Subordinated Pledge of Revenues
Insurance:	None
Default Provisions:	Standard

GPA believes the likelihood of achieving a loan has increased in recent months. A large New Zealand bank has recently purchased a local bank. The bank considers one of its specialties to be government markets.

Additionally, Standard & Poor's upgraded GPA's credit rating to investment grade status in December 2008. In January 2009, Fitch Ratings Service confirmed GPA's rating at BB+/positive outlook and suggested a follow up review should be made in July 2009. It is unusual for a rating agency to schedule two reviews so close together and GPA believes Fitch may be seriously considering an upgrade to GPA's credit rating. GPA's crisis was triggered by events taking place in the credit markets in the mainland. GPA believes as the economy improves over the next few months, banks may be more willing to enter into a loan with GPA than they were a few months ago.

PETITION

GPA is now petitioning the Public Utilities Commission for authorization to enter into a five year loan with a bank or another financial institution with standard terms and conditions including a debt service coverage pledge not to exceed 1.3x, a subordinate pledge of revenues, and an interest rate capped at 8% for the purpose of replacing the \$20 million owed under the Credit Agreement with Cathay Bank.

Your favorable consideration of this matter is greatly appreciated.

Yours truly,



Joaquin C. Flores, P.E.
General Manager

cc: CCU Board of Directors
Mr. Randall V. Wiegand, Chief Financial Officer
Mr. Graham Botha, Legal Counsel
CFO 079 09

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**GUAM CONSOLIDATED COMMISSION ON UTILITIES
RESOLUTION NO. 2009-01
RELATIVE TO THE AUTHORIZATION TO ENTER INTO A LOAN AGREEMENT
WITH CATHAY BANK TO PAY OFF ITS \$20 MILLION COMMERCIAL PAPER
LINE OF CREDIT**

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WHEREAS, in 1998, the Guam Power Authority established a commercial paper program of which \$20 million was dedicated to short term/working capital borrowing; and

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WHEREAS, the agreement required that GPA would maintain bond insurance on the program which would be at a credit rating of AA or equivalent or better; and

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WHEREAS, since the program has been in existence AMBAC Assurance Corporation has provided the bond insurance for the program and AMBAC's credit rating has been AAA; and

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WHEREAS, approximately six months ago, AMBAC's rating was downgraded from AAA to AA or equivalent and on November 6, 2008 the rating was further downgraded to BBB or equivalent; and

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WHEREAS, under the terms of GPA's credit agreement with Cathay Bank, the line of credit provider under the commercial paper program, the bank has made an claim against GPA for the immediate payment of the \$20 million outstanding;

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WHEREAS, GPA has advised Cathay Bank it is unable to make a \$20 million payment at this time leaving the bank with a right to make a claim on the existing insurance policy with AMBAC; and

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WHEREAS, a claim on GPA's policy would create a black mark on GPA's credit profile and would lead to a claim on the part of AMBAC to have the \$20 million loan paid over a 12 month period; and

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WHEREAS, such a requirement would require extreme cuts to GPA's budget in order to meet these requirements out of GPA's revenues and would pose a significant hardship to GPA's customers as well as impacting economic development on the island; and

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2 **WHEREAS**, GPA has been working on a settlement agreement in which GPA enters
3 into a loan with AMBAC for a period of longer than a one year term, however, based on recent
4 discussions, it does not appear such a loan will be offered by AMBAC; and
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6 **WHEREAS**, the Cathay Bank Vice President who has been working on the GPA account
7 developed a positive credit profile of the Guam Power Authority and prepared a case for the
8 Cathay credit review committee wherein Cathay would enter into a three year loan with the
9 Authority at a market based interest rate; and
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11 **WHEREAS**, the credit profile was bolstered by the recent news from Standard and
12 Poor's that GPA has had its investment grade credit rating restored; and
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14 **WHEREAS**, the Vice President was successful in getting the Cathay Bank credit
15 committee to reverse its previous position on the GPA credit and extend a loan to the Authority
16 for a three year period.
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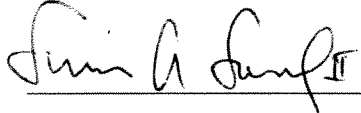
18 **NOW, THEREFORE BE IT RESOLVED**, the following policy is adopted by the
19 Consolidated Commission on Utilities:
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- 21 1. The General Manager of the Guam Power Authority is authorized to take all actions
22 necessary to convert the existing line of credit agreement with Cathay Bank into a loan
23 agreement with Cathay Bank for a \$20 million loan with a three year term, principal
24 payments of \$5 million per year, and an interest rate of the Cathay Bank Prime Rate plus
25 2% with a floor of 6.5%. The loan will be secured by a pledge of revenues subordinated
26 to GPA's bond indenture agreement and a \$5 million deposit maintained at the bank. The
27 loan parallels the loan the bank was entitled to under the credit agreement between GPA
28 and Cathay bank prior to the downgrade of AMBAC only with terms more favorable to
29 GPA and is in effect a negotiated settlement of the existing credit agreement with the
30 Bank. AMBAC will continue to provide an insurance policy on behalf of the Authority.

31 **RESOLVED**, that the Chairman certifies and the Board Secretary attests to the adoption of
32 this Resolution.

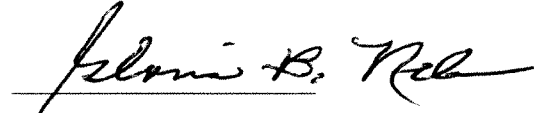
1 **DULY AND REGULARLY ADOPTED AND APPROVED THIS 6th DAY OF**
2 **JANUARY, 2009.**

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4 Certified by:

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7 **SIMON A. SANCHEZ, II**
8 Chairperson

Attested by:

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11 **GLORIA B. NELSON**
12 CCU Board Secretary

13 APPROVED:

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15 **FELIX P. CAMACHO**
16 Governor of Guam

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SECRETARY'S CERTIFICATE

I, **Gloria B. Nelson**, Secretary for the Consolidated Commission on Utilities do hereby certify that the foregoing is a full, true, and correct copy of the resolution duly adopted at a meeting of the members of the Consolidated Commission on Utilities duly and legally held at the regular meeting place thereof on January 6, 2009, at which meeting all said members had due notice and at least a majority thereof were present.

At said meeting said resolution was adopted by the following vote:

Ayes: 5

Nays: 0

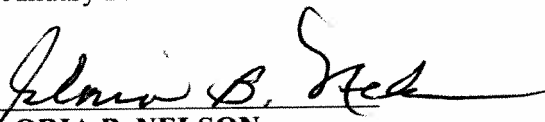
Absent: 0

Abstain: 0

As of the date of this certification, said original resolution has not been amended, modified, or rescinded since the date of its adoption, and the same is now in full force and effect.

SO CERTIFIED this 6th day of January 2009.




GLORIA B. NELSON
Secretary
Consolidated Commission on Utilities