



Office of the Governor of Guam

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Felix Perez Camacho
Governor

Kaleo Scott Moylan
Lieutenant Governor

29 DEC 2006

The Honorable Mark Forbes
Speaker
Mina' Bente Ocho Na Liheslaturan Guåhan
155 Hessler Street
Hagåtña, Guam 96910

Dear Mr. Speaker:

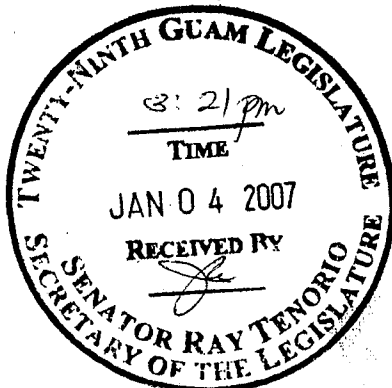
Transmitted herewith is Bill No. 357(LS), "AN ACT TO APPROVE THE GUAM POWER AUTHORITY AND THE GUAM WATERWORKS AUTHORITY PERSONNEL RULES AND REGULATIONS GOVERNING THE SELECTION, COMPENSATION, PROMOTION, PERFORMANCE EVALUATION, DISCIPLINARY ACTION, AND TERMS AND CONDITIONS OF EMPLOYMENT FOR CERTIFIED, TECHNICAL AND PROFESSIONAL PERSONNEL" which I signed into law on December 29, 2006, as **Public Law 28-159**.

Sinsert yan Magåhet,

FELIX P. CAMACHO
I Maga'låhen Guåhan
Governor of Guam

Attachment: copy attached of signed bill

cc: The Honorable Eddie Baza Calvo
Senator and Legislative Secretary



0004

Office of the Speaker
MARK FORBES
Date: 1/3/07
Time: 1:50
Rec'd by: Liz R.
Print Name: Liz R.

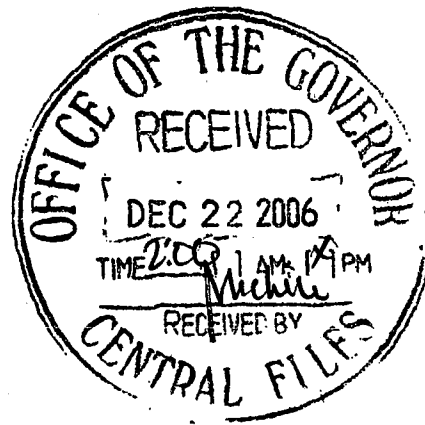
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cc: legal



MINA' BENTE OCHO NA LIHESLATURAN GUÅHAN
TWENTY-EIGHTH GUAM LEGISLATURE
155 Hessler Place, Hagåtña, Guam 96910

December 22, 2006



The Honorable Felix P. Camacho
I Maga'laken Guåhan
Ufisinan I Maga'lahi
Hagåtña, Guam 96910

Dear *Maga'lahi* Camacho:

Transmitted herewith is Substitute Bill No. 357(LS), which was passed
by *I Mina' Bente Ocho Na Liheslaturan Guåhan* on December 19, 2006.
20th of

Sincerely,

EDWARD J.B. CALVO
Senator and Secretary of the Legislature

Enclosure (1)

CP1-1206 4164

MINA'BENTE OCHO NA LIHESLATURAN GUÅHAN
2006 (SECOND) Regular Session

Bill No. 357 (LS)

As substituted by the Committee
on Judiciary, Governmental
Operations & Reorganization
and amended.

Introduced by:

J. M.S. Brown
F. B. Aguon, Jr.
Edward J.B. Calvo
B. J.F. Cruz
Mike Cruz
Mark Forbes
L. F. Kasperbauer
R. Klitzkie
J. A. Lujan
A. B. Palacios, Sr.
R. J. Respicio
Ray Tenorio
J. T. Won Pat
A. R. Unpingco

**AN ACT TO APPROVE THE GUAM POWER
AUTHORITY AND THE GUAM WATERWORKS
AUTHORITY PERSONNEL RULES AND
REGULATIONS GOVERNING THE SELECTION,
COMPENSATION, PROMOTION, PERFORMANCE
EVALUATION, DISCIPLINARY ACTION, AND
TERMS AND CONDITIONS OF EMPLOYMENT FOR
CERTIFIED, TECHNICAL AND PROFESSIONAL
PERSONNEL.**

1 **Section 1. Amendment of Administrative Rules.** The Guam Power
2 Authority (GPA) and the Guam Waterworks Authority (GWA) filed their proposed
3 Personnel Rules, Regulations & Policies for Certified, Technical & Professional
4 positions at GPA and GWA (hereafter referred to as the "Proposed Rules") on or
5 about July 26, 2006. On September 27, 2006, GPA and GWA requested that *I*
6 *Liheslaturan Guåhan* exercise its power to amend the aforementioned Proposed
7 Rules and approve them. The Proposed Rules are administrative rules that GPA
8 and GWA filed with the Legislative Secretary pursuant to the Administrative
9 Adjudication Law as codified in Title 5 G.C.A. §9300 *et. seq.* and *I Liheslaturan*
10 *Guåhan* has the power to amend said Rules and approve them within ninety (90)
11 days of July 26, 2006, which is the date they were filed with the Legislative
12 Secretary, pursuant to Title 5 G.C.A. §9303(c). In P.L. 28-150, *I Liheslaturan*
13 *Guåhan* extended the period for approval or amendment of said Rules to December
14 31, 2006.

15 Said Rules are hereby approved in their entirety, as they appear, beginning
16 with the Section thereof immediately following this Section. Said Rules shall
17 retain their status as administrative rules and may be *modified, amended* or
18 *repealed* by the Consolidated Commission on Utilities pursuant to the
19 Administrative Adjudication Law.

20 **Section 2. Amendments to Existing Personnel Rules and Regulations.**
21 The Guam Power Authority (GPA) and the Guam Waterworks Authority (GWA)
22 have existing Personnel Rules and Regulations. GPA's Personnel Rules and
23 Regulations were adopted by its Board of Directors on May 5, 1982, approved by
24 the Civil Service Commission (CSC) on July 29, 1982, and approved and
25 promulgated via Executive Order No. 82-18 on October 4, 1982. Pursuant to
26 Executive Order 96-24, GWA's Board of Directors adopted the Department of
27 Administration's (DOA) Personnel Rules and Regulations as GWA's Personnel

1 Rules and Regulations on March 12, 1997, and this action was approved by the
2 CSC on January 23, 2001. The existing GPA and GWA Personnel Rules and
3 Regulations shall continue in full force and effect *except* for those sections or
4 chapters of said Rules that are amended as set forth herein.

5 (a) Sections and Chapters not affected by Amendments:

6 (1) The following Sections of GPA's Personnel Rules and Regulations
7 are *not* affected by these amendments: Sections 1, 2, 3, 5, 6, 8, 9, 10, 12,
8 13, 14, 16, 17, 19, 20, 21, 22, 23 and 24.

9 (2) The following Chapters of GWA's Personnel Rules and Regulations
10 are *not* affected by these amendments: Chapters 1, 2, 3, 7, 8, 9, 10, 11,
11 12, 13, Merit Career Plan, and Appendices A, B, C, D, E, F, G, H and I.

12 (b) Amended Sections and Chapters:

13 (1) The following Sections of GPA's Personnel Rules and Regulations
14 are *amended* as set forth herein: Sections 4, 7, 11, 15 and 18.

15 (2) The following Chapters of GWA's Personnel Rules and Regulations
16 are *amended* as set forth herein: Glossary and Chapters 4, 5, 6, 10 and
17 11.

18 **Section 3. Definition of Terms.** A new Subsection 7.03 is hereby *added* to
19 GPA's Personnel Rules and Regulations and Paragraph 29A is hereby *added* to the
20 Glossary of GWA's Personnel Rules to read:

21 **§7.0.3. Certified, Technical, and Professional Employee:**

22 (a) Definition. 'Certified, Technical, or Professional Employee' shall
23 mean personnel employed by the Authority who are professional engineers,
24 attorneys, and other licensed professionals, or who are highly skilled employees
25 with certificates such as plant operator and other similar engineering and technical
26 personnel.

1 (b) Identification of Certified, Technical, and Professional Positions.

2 No later than thirty (30) days after the effective date of this Rule, the General
3 Manager shall identify and list, by title, position description, and pay range, all the
4 Certified, Technical, and Professional Positions that currently exist in the
5 Authority. Said list shall include, but is not limited to, the positions identified in
6 the Attachment A and B of P.L. 28-113. The General Manager shall submit said
7 list to the Consolidated Commission on Utilities (CCU) and the CCU shall
8 approve, disapprove, or amend said list at any regularly scheduled CCU meeting.
9 The General Manager shall publish the CCU approved list on the Authority's
10 website and a copy of the list shall be maintained at the Authority's Personnel
11 Office and be available for public inspection.

12 (c) Amendment of Certified, Technical, and Professional Positions. The
13 General Manager may petition the CCU to amend, to include, but not limited to,
14 deleting, adding, or modifying such positions, the approved list of the Authority's
15 Certified, Technical, and Professional Positions.

16 (1) The Petition shall include:

17 (A) The justification for the amendment.

18 (B) The essential details of the amendment.

19 (C) An analysis of the similarities or differences between
20 the existing position and the Amendment.

21 (D) The job title, pay range, and position description
22 affected by the amendment.

23 (2) The General Manager shall post the petition on the Authority's
24 website for ten (10) days (Saturdays, Sundays, and government of Guam holidays
25 excepted). After the posting, the General Manager shall forward the petition, along
26 with evidence that prompt notice of the posting was provided each newspaper of
27 general circulation and broadcasting station which airs a regular local news

1 program within Guam, to the CCU. The CCU shall approve, disapprove, or amend
2 the petition at any regularly scheduled CCU meeting.”

3 **Section 4. Selection and Appointment of Certified, Technical, or**
4 **Professional Employees.**

5 (a) Section 4.A to GPA’s Personnel Rules and Regulations and Chapter
6 4.A to GWA’s Personnel Rules and Regulations is hereby *added* to read:

7 **“4.A. Employment of Certified, Technical, and Professional Employees:**

8 **4.A.1.0. RECRUITMENT**

9 **4.A.1.1. Announcement of Recruitment and Examination:**

10 4.A.1.1.1. When there is a need to establish a list of eligibles, the General
11 Manager shall publish and disseminate announcements of recruitment and
12 examination on either an ‘Open’ or ‘In-House’ competitive basis. The General
13 Manager shall use ‘Open Announcements’ whenever new personnel are required to
14 augment the Authority’s existing staff. The General Manager shall use In-House
15 Competitive Announcements whenever the Authority can provide promotional
16 opportunities for its existing employees without the need to acquire additional
17 employees.

18 (a) ‘In-House’ competitive announcements shall be published to allow all
19 interested permanent classified employees of the Authority to compete for
20 vacancies. Applicants who are not permanent classified employees of the
21 Authority will not be allowed to submit applications under this type of
22 announcement.

23 (b) ‘Open’ competitive announcements shall be published to allow all interested
24 and qualified persons or employees to compete for Authority vacancies.

25 4.A.1.1.2. Each recruitment and announcement for an initial appointment or a
26 promotion shall contain the title of the class, the applicable range of pay, the
27 character of the duties and responsibilities and examples thereof, the closing date

1 and place for filing applications, the minimum qualifications for entry into the
2 position, the required supporting documentation such as, but not limited to, a high
3 school diploma, official college transcripts, police and court clearances, and other
4 information deemed necessary. Appointments from other than the eligibility list,
5 as for example by transfer, demotion, or reemployment, shall be bound by
6 minimum qualifications requirements set forth in such announcement.

7 4.A.1.1.3. The announcement of a position must be opened for at least ten (10)
8 working days to allow ample time for candidates to submit employment
9 applications.

10 **4.A.1.1.4. Compliance with Americans with Disabilities Act.** In recruiting,
11 interviewing, selecting, hiring, affixing compensation and related aspects of
12 employment, GPA and GWA shall not discriminate against individuals with
13 disabilities. As used herein, the term 'discriminate' includes:

- 14 (1) limiting, segregating, or classifying a job applicant in a way that
15 adversely affects the opportunities or status of such applicant because of
16 the disability of such applicant;
- 17 (2) participating in a contractual or other arrangement or relationship that
18 has the effect of subjecting a qualified applicant with a disability to
19 discrimination (such relationship includes a relationship with an
20 employment or referral agency, labor union, an organization providing
21 fringe benefits to an employee of GPA or GWA, or an organization
22 providing training and apprenticeship programs);
- 23 (3) utilizing standards, criteria, or methods of administration
 - 24 (A) that have the effect of discrimination on the basis of disability; or
 - 25 (B) that perpetuate the discrimination of others who are subject to
26 common administrative control;

1 (4) excluding or otherwise denying equal jobs or benefits to a qualified
2 individual because of the known disability of an individual with whom the
3 qualified individual is known to have a relationship or association;

4 (5) (A) not making reasonable accommodations to the known physical or
5 mental limitations of an otherwise qualified individual with a disability who
6 is an applicant unless GPA or GWA can demonstrate that the
7 accommodation would impose an undue hardship on its operations; or

8 (B) denying employment opportunities to a job applicant who is an
9 otherwise qualified individual with a disability, if such denial is based on
10 GPA's or GWA's need to make reasonable accommodation to the physical
11 or mental impairments of the applicant;

12 (6) using qualification standards, employment tests or other selection criteria
13 that screen out or tend to screen out an individual with a disability or a class
14 of individuals with disabilities unless the standard, test or other selection
15 criteria is shown to be job-related for the position in question and is
16 consistent with GPA's or GWA's needs; and

17 (7) failing to select and administer tests concerning employment in the most
18 effective manner to ensure that, when such test is administered to a job
19 applicant or has a disability that impairs sensory, manual, or speaking skills,
20 such test results accurately reflect the skills, aptitude, or whatever other
21 factor of such applicant that such test purports to measure, rather than
22 reflecting the impaired sensory, manual, or speaking skills of such employee
23 or applicant (except where such skills are the factors that the test purports to
24 measure).

25 **4.A.1.1.5. Permissive Measures to Ensure Compliance with the Americans**
26 **with Disabilities Act.**

1 (1) Employment entrance examination. GPA and GWA may require a
2 medical examination after an offer of employment has been made to a job
3 applicant and prior to the commencement of the employment duties of such
4 applicant, and may condition an offer of employment on the results of such
5 examination, if:

6 (A) all entering employees are subjected to such an examination
7 regardless of disability;

8 (B) information obtained regarding the medical condition or history of
9 the applicant is collected and maintained on separate forms and in separate
10 medical files and is treated as a confidential medical record, except that--

11 (i) supervisors and managers may be informed regarding
12 necessary restrictions on the work or duties of the employee and necessary
13 accommodations;

14 (ii) first aid and safety personnel may be informed, when
15 appropriate, if the disability might require emergency treatment; and

16 (iii) government officials investigating compliance with this
17 chapter shall be provided relevant information on request; and

18 (C) the results of such examination are used only in accordance with
19 this rule;

20 (2) As indicated in Rule 4.A.1.1.4, GPA and GWA may create 'reasonable
21 accommodations' for individuals with disabilities that may include:

22 (A) making existing facilities used by employees readily accessible
23 to and usable by individuals with disabilities; and

24 (B) job restructuring, part-time or modified work schedules,
25 reassignment to a vacant position, acquisition or modification of
26 equipment or devices, appropriate adjustments or modifications of
27 examinations, training materials or policies, the provision of qualified

1 readers or interpreters, and other similar accommodations for
2 individuals with disabilities.

3 **4.A.1.2. Application Form.**

4 The General Manager shall prescribe a form to be used by applicants for positions
5 which shall require information about experience, training, and other pertinent data
6 indicated as being necessary in the announcements. Applications shall be signed
7 and the truth of all statements therein certified to by such signature. Applications
8 for competitive announcements shall be accepted only during the period specified.

9 The applicant shall inform the Human Resources Division of his current mailing
10 address and contact phone numbers. The Human Resources Division will not be
11 held liable for missed or non-receipt of notice of examination due to incorrect or
12 non-renewal of contact information.

13 **4.A.1.3. Submittal of Supporting Documents.**

14 All supporting documents to an employment application must be received on or
15 before the closing date of an announcement, or at the time of submittal of an
16 application for announcements on a continuous basis to receive full consideration
17 for eligibility to compete in the recruitment processes, including, but not limited to,
18 high school diplomas, official college transcripts, police and court clearances and
19 DD Form 214. Applicants may still submit pending documents within ten (10)
20 working days of the stamped date of the notice of rating. Changes in rating
21 generally will not affect a certification already issued, or invalidate an appointment
22 already made from the eligibility list. No documents will be accepted for further
23 consideration past the ten (10) day period listed above.

24 **4.A.1.4. Rejection of Applicants.**

25 The General Manager shall not be required to accept applications or, after
26 acceptance and evaluation, establish an applicant as eligible on an eligibility list, or

1 allow an applicant admission to the recruitment process when any of the following
2 conditions exists:

3 (a) Conviction of a crime if the crime is directly related to the work to be
4 performed.

5 (b) Refusal or failure to furnish documents required to verify any statements
6 made in the application.

7 (c) Intentional false statements, deception, or fraud in the application process.

8 (d) Failure to attest to the accuracy of information presented on the application
9 form.

10 (e) Failure to submit an application within the announcement period except in
11 those instances where the applicant can certify in writing extenuating
12 circumstances to the satisfaction of the General Manager.

13 (f) Evidence that the applicant has been removed from a position, either within
14 the Authority or government of Guam or otherwise for reasons which would
15 render him unsatisfactory for the position for which he is applying.

16 **4.A.1.5. Notification of Rejection of Applicants.**

17 4.A.1.5.1. A rejected applicant shall be notified promptly of such action and the
18 reasons for rejection in writing.

19 4.A.1.5.2. Any person who has been disqualified based on non-submittal of
20 supporting documents may appeal such action within ten (10) calendar days of the
21 date of the written notice to the General Manager.

22 4.A.1.5.3. The General Manager may schedule a selection interview prior to the
23 expiration of the ten (10) day appeal period for rejected applications that are
24 pending supporting documents due to organizational needs. The ten (10) day
25 appeal period will not delay the employment process. Certification lists for
26 interview may be established prior to the expiration of the appeal period.

1 4.A.1.5.4. Should the Authority determine, through the appeal, that an applicant's
2 disqualification for the position applied for was due to non-submittal of supporting
3 documents, the applicant may then be considered in the next certification period.

4 **4.A.1.6. Rating Process.**

5 4.A.1.6.1. Competitive announcements shall be held for original appointments and
6 promotions and shall be job-related in nature and designed to reveal the capacity
7 and fitness of the applicant to satisfactorily perform the characteristic duties of the
8 class or position for which the announcement is published.

9 4.A.1.6.2. Any accepted personnel examining technique may be used, including a
10 verification and evaluation of education, training and experience; tests of
11 knowledge, skill, ability, intelligence or aptitude; medical examinations, appraisals
12 of personal suitability; and any other matter that the General Manager deems
13 appropriate.

14 **4.A.1.7. Notification to Report for Interview or Examination.**

15 Upon evaluation and acceptance of the application, the General Manager shall
16 notify each applicant by mail, telephone or other acceptable means of
17 communication of the date, time and place of interview or examination. No person
18 shall be admitted to the interview or to the examination without such authorization
19 or other satisfactory evidence of conditional acceptance of his application.

20 **4.A.1.8. Rating of Employment Applications.**

21 All applications for employment are evaluated based on the information provided
22 by the applicant. Work experience is measured against the minimum experience
23 and training as well as the knowledge, abilities and skills listed on the job
24 announcement and the job specification.

25 **4.A.1.9. Notification of Rating Results.**

26 All competing applicants shall be notified in person or by mail of their final earned
27 ratings. The records or ratings, as well as examination papers (if a written

1 examination is required), shall be held as official records for the life of the
2 resulting eligibility list.

3 **4.A.1.10. Inspection of Written Examination Papers.**

4 The General Manager shall, upon request of a candidate, authorize such candidate
5 to inspect his own written examination papers (when applicable) within twenty
6 (20) days of the date of examination in the presence of a Personnel Specialist. The
7 privilege of inspection shall not be deemed to include authorization to copy
8 examination instructions, questions, results or notations.

9 **4.A.1.11. Duration of Final Earned Ratings.**

10 Final Earned Ratings are valid only for the life of the eligibility list. Ratings
11 received through performance tests shall not be carried over to a new list after a
12 period of one (1) year.

13 **4.A.2.0. PREFERENCE**

14 **4.A.2.1. Preference Credit for Individuals with Disabilities.**

15 Applicants who have physical or mental disabilities, but are physically or mentally
16 able to perform efficiently and safely the duties of the position applied for, as
17 certified by the Director of Public Health and Social Services, shall receive a
18 preferential credit of five (5) points which shall be added to their passing
19 examination score for initial appointment to a position (does not apply to
20 subsequent applications for employment with the Authority after separation).

21 **4.A.2.2. Preference Credit for Veterans of the United States Armed
22 Forces or Former Members of the Guam Police Combat Patrol.**

23 Veterans of the Armed Forces of the United States, or former members of the
24 Guam Police Combat Patrol, as certified by the Chief of Police, shall receive a
25 preferential credit of five (5) points which shall be added to their passing
26 examination score upon initial employment only. Such veterans, or former
27 members who are disabled as a result of their service in the Armed Forces or

1 Combat Patrol, shall receive a preferential credit of ten (10) points which shall be
2 added to their passing examination score upon initial employment only (does not
3 apply to subsequent applications for employment in the Authority after separation).

4 **4.A.2.3. Proof of Eligibility for Veteran's Preference Credit.**

5 Persons claiming veteran's status must submit their DD Form 214, Armed Forces
6 of the United States Report of Transfer of Discharge. A person must have
7 completed at least one hundred eighty (180) consecutive days of service in the
8 Armed Forces of the United States and must have received other than a
9 dishonorable discharge from such service to be eligible for veteran's preference.

10 **4.A.3.0. EMPLOYMENT LISTS**

11 **4.A.3.1. Certification of Eligibles.**

12 *Rule of Eight:* Eligibles shall consist of eight (8) or such fewer eligibles as may be
13 available for the class. Eligibles shall be certified by the General Manager in the
14 order that they appear on the eligibility list as follows:

- 15 (a) First Ranked Eligible
- 16 (b) Second Ranked Eligible
- 17 (c) Third Ranked Eligible
- 18 (d) Fourth Ranked Eligible
- 19 (e) Fifth Ranked Eligible
- 20 (f) Sixth Ranked Eligible
- 21 (g) Seventh Ranked Eligible
- 22 (h) Eighth Ranked Eligible

23 In case of a tie for the eighth ranked eligible, the eligibles will be certified until the
24 earned ratings are changed in numerical places. For example, the eighth, ninth
25 ranked eligible has earned a score of 71.00 and the tenth eligible rating is a 70.00,
26 the eighth and ninth eligibles will be certified along with the first seven (7)
27 eligibles.

1 **4.A.3.2. Certification of Eligibles For More Than One (1) Vacancy.**

2 4.A.3.2.1. For more than one (1) vacancy, the General Manager may certify an
3 additional eligible for each additional vacancy.

4 4.A.3.2.2. When the last eligible to be referred is one (1) of two (2) or more
5 eligibles who have identical examination scores, such two (2) or more eligibles
6 shall also be certified.

7 4.A.3.2.3. If the department head does not wish to select any of the candidates
8 certified, he must justify to the General Manager his reasons for non-selection
9 before a new certification is authorized.

10 **4.A.3.3. Establishment of Eligibility Lists.** Names of candidates shall be
11 placed on eligibility lists in rank order of qualifying scores after appropriate
12 examination. This list shall be designated as an "Eligibility List" for that class and
13 area of consideration. After the General Manager has approved the eligibility list,
14 it shall then be considered 'established'.

15 **4.A.3.4. Duration of Eligibility Lists.**

16 The life of an eligibility list, other than a reemployment list, shall be for a period of
17 not more than one (1) year unless extended by the General Manager, but such
18 extension shall not exceed three (3) months. When an eligibility list is reduced to
19 an insufficient number of eligibles (less than eight (8)), a new eligible list may be
20 established through appropriate examination. The names of eligibles on the former
21 list shall be combined with those on the new list according to the final score.

22 **4.A.3.5. Types of Lists.**

23 4.A.3.5.1. *In-House List:* The In-House List shall consist of names of employees of
24 the Authority who have passed their initial probationary period and meet the
25 minimum requirements of the position applied and were certified as eligibles. The
26 In-House List shall be used whenever an In-House Competitive announcement is
27 used to announce the position as set forth in Section 1.1.1(b) above.

1 4.A.3.5.2. *Open List:* The open list shall consist of names from the general
2 public who are not employed by the Authority, as well as current employees of the
3 Authority. The names of such persons shall be placed on the list in order of their
4 final earned ratings starting from the highest. Open Lists shall be used whenever
5 an Open Competitive announcement is used as set forth in Section 1.1.1(a) above.

6 **4.A.3.6. Removal of Names from Eligibility List.** The name of any person
7 on an eligibility list may be removed if:

- 8 (a) The person is appointed to a permanent position for the class;
- 9 (b) The eligible fails to respond within fifteen (15) days to a written inquiry
10 relative to availability for employment;
- 11 (c) The eligible rejects an offer of permanent employment;
- 12 (d) The eligible fails to report for selection interview after two (2) notifications
13 of selection interview without written notice; or fails to report to duty within the
14 time prescribed; failure to report for the selection interview will not delay the
15 selection process.
- 16 (e) Withdrawal by the eligible;
- 17 (f) Findings of deception or fraud in the employment process;
- 18 (g) Conviction of a crime which is related to the position applied for.

19 **4.A.3.7. Selection of Employees.** Appointments to classified positions of the
20 Authority shall be selected from among a certified list of eligibles. A certification
21 list may not be required in the appointment of unclassified positions.

22 **4.A.3.8. Supplemental Certification.**

23 The General Manager may certify supplemental eligibles to provide a full
24 certification under the following conditions.

25 4.A.3.8.1. The supplemental certification may be used only upon the failure to
26 appear for a selection interview, refusal of appointment by eligibles or the rejection
27 of eligibles by the General Manager for cause.

1 4.A.3.8.2. The additional eligibles to be certified shall be of such number that will
2 provide the Authority with a full certification of up to eight (8) eligibles.

3 **4.A.3.9. Selection Interview Consideration.**

4 When an applicant is interviewed for a position within the Authority and is not
5 selected for an appointment, the applicant shall be considered for selection at a
6 later time to the same position within the same division without another interview.
7 This selection interview consideration shall remain in effect for the life of the
8 eligibility list.

9 **4.A.3.10. Selective Certification.**

10 Upon request of the department head and approval of the General Manager,
11 selective certification may be made when specific identifiable qualifications and
12 skills are essential to successfully perform the duties and responsibilities of the
13 position. These factors shall pertain to knowledge, skills and abilities pertinent to
14 certain program operations when these qualifications and skills cannot be readily
15 acquired after appointment. Selective certification requirements must be
16 established in the job announcement and the position description.

17 **4.A.3.11. Selection Interviews.**

18 The General Manager, at his discretion, may schedule a selection interview
19 immediately after the establishment of an eligibility list for the position.
20 Applicants who are pending submission of supporting documents at the time the
21 selection interview is scheduled will not be considered for certification purposes.

22 **4.A.3.12. Types of Appointments.**

23 4.A.3.12.1. Probational Appointment: An appointment to a permanent classified
24 position in which the employee will commence serving a probational period on an
25 initial recruitment for duration of six (6) months.

1 4.A.3.12.2. Permanent Appointment: An appointment granted to a classified
2 employee in a permanent position, subject to satisfactory completion of a
3 probationary period on an initial recruitment.

4 4.A.3.12.3. Reemployment Appointment: A former classified employee of the
5 Authority who separated in good standing may be appointed to the same class and
6 salary level held at the time of separation.

7 4.A.3.12.4. Unclassified Appointment: Where no specific term of appointment or
8 employment is specified in law regarding a position, appointment shall be at the
9 pleasure of the General Manager or the Consolidated Commission on Utilities
10 (CCU) without competition.

11 **4.A.3.13. Reemployment.** A permanent classified employee who separated
12 from the Authority through resignation or retirement while in good standing may
13 be eligible for reemployment, without competition to:

14 4.A.3.13.1. The same or comparable position in the Authority within four (4) years
15 from the date of separation. A reemployed employee may be hired at not less than
16 the salary earned at his former position. Reemployment appointments are not
17 subject to the certification procedures as described in these Rules.

18 4.A.3.13.2. If the same or comparable position is not available, the former
19 employee may be reemployed to a lower level position in the class series with a
20 rate of pay closest to the salary earned in the position the former employee was in
21 at the date of his separation from the Authority. If the former employee accepts the
22 aforementioned lower level position, the former employee shall be deemed to have
23 exhausted his or her re-employment rights. Reemployment to the aforementioned
24 lower level position are not subject to the certification procedures as described in
25 these Rules.”

(b) **Recruitment Above-Step for Employees in Certified, Technical, and Professional Positions.** A new Subsection 15.11A and 6.001C are hereby *added* to GPA's and GWA's Personnel Rules and Regulations to read:

“RECRUITMENT ABOVE-STEP FOR EMPLOYEES IN CERTIFIED, TECHNICAL, AND PROFESSIONAL POSITIONS

1.0. PURPOSE.

This guide is intended to be used for salary placement above Step 1 of a respective pay grade for certified, technical and professional positions within the Guam Power Authority and the Guam Waterworks Authority. This is a management tool and may be used at the discretion of the General Manager.

2.0. ABOVE STEP QUALIFICATIONS.

2.1. The General Manager may petition the Consolidated Commission on Utilities (CCU) for recruitment at a higher step, not to exceed Step 10, because of documented recruitment difficulty or exceptional qualifications. The petition shall be posted on the agency's website for ten (10) days (Saturdays, Sundays and government of Guam holidays excepted). This petition shall be made before an applicant is hired. Every petition shall be scrutinized and amply justified before being approved. Increment schedule consisting of Steps 11 through 20 shall not be used for recruitment above step.

2.2. The appropriate step placement of a respective pay grade for above step qualifications shall be determined by education, work experience, and other credentials or evidence accepted by the General Manager.

2.3. Exceptional qualifications can be established by the quality of major accomplishments, expertise, professional growth and leadership, and by an individual's personal enhancement initiatives. These qualifications can be demonstrated through the following:

(a) Performance evaluations

- (b) Professional accomplishments.
- (c) Professional awards/recognition.
- (d) Training Certificates/Certifications.
- (e) Academic achievements.
- (f) Other testimonials.

2.4. Recruitment difficulty exists when recruitment efforts fail to produce the minimum applicants needed to establish a list of eligibles as defined by personnel rules and regulations.

2.5. Recruitment announcements shall be made for at least one (1) month and at least twice in a local news media of general circulation and other viable means of electronic communication to include, but not limited to, internet postings. Such media announcements shall be two (2) weeks apart. All recruitment announcements shall be made for no more than one (1) month preceding the submission of the request to the General Manager.

2.6. Internet postings for job announcements on a continuous basis may be considered on a cumulative basis totaling a period of one (1) month. Internet postings constitute off-island recruitment.

3.0 GUIDELINES. These guidelines are used to determine step placement in addition to the qualifying factors for above step recruitment listed above.

(1) Minimum education and experience requirements established in the job standard must first be met and are not included in the computation for an above step.

(2) Pending certifications, licensure, diplomas, potential performance, economic conditions, etc. are not qualifying items for additional step placement.

(3) Job-related College level degrees beyond a Bachelors degree will receive four (4) points.

1 (4) Job-related Bachelor's degree beyond a High School educational
2 requirement will receive three (3) points.

3 (5) Job-related Associate's degree beyond a High School educational
4 requirement will receive two (2) points.

5 (6) Should the applicant possess multiple degrees, he will receive the points
6 designated for the highest degree level held.

7 (7) Should there be multiple degrees at the same level, only one (1) degree
8 related to the job will be credited.

9 (8) Job-related Certificate of Completion of an Apprenticeship Program
10 recognized by the U.S. Department of Labor will receive two (2) points.

11 (9) Qualifying directly related work experience:

Total years beyond the minimum requirement	Points for direct work experience beyond the minimum requirement
2 – 5 years	1
6 – 9 years	2
10-12 years	3
13-15 years	4
More than 15 years	5

12 ***When total years of experience include months: round down at five (5)**
13 **months; round up at six (6) months.**

14 (10) Nationally recognized licensures, certifications and other job related
15 certificates as determined by organizational needs and accepted by the General
16 Manager may receive up to three (3) additional points.

17 (11) The Selection Interview plays a vital part in determining a candidate's
18 suitability for the job. The General Manager may, pursuant to the procedures set
19 forth in Subsections 4.0 and 5.0 of this Section/Chapter, authorize additional step

- 1 placement based on the interview panel's recommendation up to four (4) points for
2 candidates who performed exceptionally well during the selection interview.

Total Points Above the Line of Demarcation for Selection Interview	Points for selection interview results
10-20 Points above the Line of Demarcation	1
21-30 Points above the Line of Demarcation	2
31-40 Points above the Line of Demarcation	3
41 or more Points above the Line of Demarcation	4

- 3 Each point factor has a direct correlation to the step placement of each position's
4 assigned pay grade in accordance with the pay schedule in effect.

5 **4.0. DISCRETIONARY APPROVAL.**

- 6 The General Manager at his discretion may grant additional step placement beyond
7 the formulated criteria based upon organizational needs and demands, insufficient
8 labor pool, documented superior past performance or other factors accepted by the
9 General Manager. Additional step placement under this Section must be justified
10 in writing. The General Manager may designate the respective hiring division
11 manager to justify additional step placement.

12 **5.0. REQUEST TO RECRUIT ABOVE THE MINIMUM STEP SHALL**
13 **INCLUDE THE FOLLOWING INFORMATION.**

- 14 5.1. The request for recruitment above step shall come through the General
15 Manager for submission to the CCU for approval.

- 16 5.2. Identifying information about the candidate and the position to be filled.

1 5.3. Demonstration of qualifications above the required minimum set by the job
2 standard/announcement.

3 5.4. Justification for salary being requested. Justifications must include
4 information of the applicant's current salary. The applicant must inform the
5 Authority, in writing, a salary minimally acceptable for the job.

6 5.5. The candidate is advised before being hired that Step 1 will be the normal pay
7 rate of employment pending the General Manager's approval of additional step
8 placement.

9 **6.0. MISCELLANEOUS PROVISIONS.**

10 6.1. The effective date of the additional step placement rate is the General
11 Manager's date of approval of such rate.

12 6.2. No additional step placement will be considered after ten (10) working days
13 of the incumbent's date of hire, except for just cause as determined by the General
14 Manager.

15 6.3. All documentation for consideration of step placement must be submitted to
16 the Human Resources Division within ten (10) working days of the incumbent's
17 date of hire.

18 6.4. In accordance with Chapters 8 and 14 of Title 12 of the Guam Code
19 Annotated, the Consolidated Commission on Utilities (CCU) determines the
20 compensation of the General Manager, Chief Financial Officer, Assistant General
21 Manager, Comptroller, Attorney, Treasurer and Secretary positions."

22 **Section 5. Compensation.** A new Section 15.17, is hereby *added* to GPA's
23 Personnel Rules and Regulations and a new Chapter 5.200 is hereby *added* to
24 GWA's Personnel Rules and Regulations to read:

25 **"COMPENSATION OF CERTIFIED, TECHNICAL, AND**
26 **PROFESSIONAL EMPLOYEES**

1 **1.0. AUTHORITY.** Pursuant to 12 G.C.A. §8104(13) [12 G.C.A. §14104(m)
2 **for GWA]**, the Authority is authorized to adopt rules and regulations governing
3 the compensation of the Authority's Certified, Technical, and Professional
4 Employees. This Compensation Policy and the following rules and procedures
5 shall only apply to the Certified, Technical, and Professional Employees of the
6 Authority. Compensation for all other personnel shall remain consistent with
7 compensation plans and pay scales as determined by law.

8 **2.0. COMPENSATION POLICY.**

9 (a) Certified, Technical, and Professional Employee compensation shall be
10 based on internal equity and external competitiveness.

11 (b) To the extent practical, compensation will be targeted at the U.S.
12 National Average levels compared to the appropriate labor markets and account
13 shall be taken of the relevant economic factors.

14 (c) Internal equity should be reviewed annually and external
15 competitiveness at least every three (3) years.

16 (d) Compensation structures and administrative policies should also
17 recognize and reward individual employees commensurate with performance.

18 (e) All aspects of compensation (base salaries, benefits, pay differentials,
19 and other factors) shall be considered as a total reward and incentive package for
20 employees and shall be consistent and uniformly administered through the
21 Authority.

22 (f) A program of ongoing communications and training shall be a critical
23 component of compensation administration.

24 **3.0. ADMINISTRATION.** The Consolidated Commission on Utilities (CCU)
25 shall approve a unified pay scale for the Authority's Certified, Technical, and
26 Professional Employees that has been developed by the General Manager using the
27 following process:

1 (a) Position Classification, Compensation, and Benefits Study. The
2 General Manager shall complete a Position Classification, Compensation, and
3 Benefits Study for every Certified, Technical, and Professional position in the
4 Authority. The study shall include the following:

5 (1) A Job Analysis and Job Evaluation. This analysis and evaluation
6 must use a systematic process of assessing the relative size and importance of
7 Certified, Technical, and Professional positions in the Authority. The job
8 evaluation must provide a structured approach to assessing the relative worth of
9 each Certified, Technical, and Professional Position. It must use measurement
10 factors universally applicable across all sectors of industry, commerce, and
11 government.

12 (2) Compensation Structuring. This shall incorporate the
13 compensation policy set forth in paragraph 1 above. The compensation structure
14 shall be in the form of a unified pay scale for Certified, Technical & Professional
15 positions.

16 (3) Pay Incentive Development.

17 (4) Implementation Plan.

18 (b) Approval of Unified Pay Scale and Implementation Plan. The General
19 Manager shall petition the CCU for approval of the unified pay scale developed
20 from the Position, Classification, and Benefits Study as follows:

21 (1) The Petition shall include:

22 (a) The unified pay scale.

23 (b) The Position, Classification, and Benefits Study justifying
24 the unified pay scale.

25 (c) The Implementation Plan

26 (2) The petition shall be posted on the Authority's website for ten
27 (10) days (Saturdays, Sundays, and government of Guam holidays excepted) and a

1 notice of posting shall be sent to each newspaper of general circulation and
2 broadcasting station which airs a regular local news program on Guam. After the
3 posting, the General Manager shall forward the petition, along with evidence of his
4 or her compliance with notice of posting requirements, to the CCU.

5 (3) The CCU may approve, disapprove, or amend the unified pay
6 scale at any regularly scheduled meeting.”

7 **Section 6. Performance Appraisal For Employees in Certified,**
8 **Technical, and Professional Positions.** A new Subsection 11.00A and Chapter
9 10.000C are hereby *added* to GPA’s and GWA’s Personnel Rules and Regulations,
10 respectively, to read:

11 **“PERFORMANCE APPRAISAL FOR CERTIFIED, TECHNICAL, AND**
12 **PROFESSIONAL EMPLOYEES**

13 **1.0. PURPOSE.**

14 It shall be the policy of the Guam Power Authority and the Guam Waterworks
15 Authority to ensure that formal and informal performance appraisal processes are
16 developed and implemented for *certified, technical and professional* positions.

17 **2.0. OBJECTIVES.**

18 The objectives of this policy are to:

19 (a) establish a process whereby the work performance of each employee
20 can be informally evaluated on an ongoing basis;

21 (b) establish standards for quality and quantity of work;

22 (c) provide a formal review of each employee’s work performance on a
23 six (6) month, twelve (12) month, eighteen (18) month, or twenty-four (24)
24 month basis;

25 (d) improve individual performance;

26 (e) identify specific requirements for training and development of
27 employees;

- (f) strengthen supervisor/employee relationships;
- (g) grant or deny salary increments;
- (h) recognize employee accomplishments;
- (i) determine order of layoffs;
- (j) grant or deny permanent appointment to a probationary employee;
- (k) determine eligibility for promotions or transfers;
- (l) determine whether disciplinary action is warranted.

3.0. SUPERVISOR RESPONSIBILITIES.

The individual doing the performance review shall be the supervisor immediately responsible for the employee's work. The evaluator shall be the person who directly oversees, reviews and checks the daily work performance of the employee being rated or is the supervisor who is closely acquainted with the employee's work. Supervisors may submit a performance appraisal for an employee during any single rating period provided the employee has worked for ninety (90) calendar days during that period.

4.0. PERIOD COVERED.

4.1. Supervisors shall evaluate and submit the employee's work performance for the following periods:

- (a) six (6) months for probationary employees;
- (b) every twelve (12) months of service for employees in Pay Steps 1 through 7;
- (c) every eighteen (18) months of service for employees in Pay Steps 7 through 10; and
- (d) every twenty-four (24) months of service for employees in Pay Steps 10 through 20.

4.2. Submittal of performance appraisal reports must be prepared and submitted for processing no sooner than thirty (30) days prior to the above periods.

1 **5.0. SALARY INCREMENT.**

2 A salary increment shall be subject to satisfactory performance, which shall be a
3 minimum of a one-step increase.

4 **6.0. PROBATIONARY PERFORMANCE APPRAISAL.**

5 6.1. Certified, Technical, or Professional Employees in the classified service shall
6 serve a probationary period of six (6) months. An extension of up to six (6)
7 additional months may be granted. The division manager must justify, in writing,
8 to the General Manager stating specific reasons for the request for extension based
9 on the duties and responsibilities associated with the employee's current position
10 description and job standard. No extension beyond six (6) months may be granted.

11 6.2. Employees in the unclassified service where no specific term of appointment
12 or employment is specified shall serve at the pleasure of the General Manager or
13 the Consolidated Commission on Utilities (CCU).

14 6.3. A probationary employee who is dismissed has no recourse to file a grievance
15 or appeal his/her termination unless the termination is a result of discrimination.

16 **7.0. APPROVAL OF PERFORMANCE APPRAISAL.**

17 A division manager shall make, on a six (6) month, twelve (12) month, eighteen
18 (18) month, or twenty-four (24) month basis, as appropriate, a written
19 recommendation to the General Manager regarding the performance appraisal of
20 every employee. The General Manager shall make a final performance appraisal
21 accepting or rejecting said recommendation and make the corresponding salary
22 adjustments.

23 **8.0. APPEALS.**

24 8.1. Purpose: This procedure outlines the responsibilities and procedures to be
25 followed by management and employees in handling performance rating
26 appeals.

1 8.2. Coverage: Certified, Technical, and Professional Employees covered in this
2 procedure are those employees who have satisfactorily completed their original
3 and new probationary period and have attained permanent status in the Authority.
4 Such Certified, Technical, and Professional Employees who believe they are
5 unjustly rated may request for re-determination of their performance ratings.
6 Original probationary period performance ratings are not appealable under this
7 procedure.

8 8.3. Representation: An employee has the right to present an appeal with or
9 without representation. He or she also has the right to be accompanied,
10 represented, and advised by a representative of his choice at any step of the appeal
11 proceeding.

12 8.4. Freedom from Reprisal or Interference: An employee and his representative
13 shall be free to appeal a performance rating without restraint, interference,
14 coercion, discrimination, or reprisal.

15 8.5. Management's Responsibility for Timely Action: Management shall expedite
16 the processing of an appeal and shall abide by the allotted time. Failure to render a
17 decision within the allotted time at any step constitutes denial, and the employee
18 may then proceed to the next step of the appeal procedure.

19 8.6. Informal Appeal Procedure – General Manager

20 8.6.1. The Certified, Technical, or Professional Employee who believes that he or
21 she was unjustly rated shall bring the matter to the attention of his immediate
22 supervisor not later than five (5) work days after he was notified of his or her
23 performance evaluation rating by his or her supervisor. The employee may
24 present his or her informal appeal either orally or in writing to the General
25 Manager or his representative.

26 8.6.2. A review of the rating shall be afforded the employee by a higher-level
27 supervisor. Settlement of aggrieved matters is encouraged at the lowest

possible administrative level and in the shortest possible time. The employee shall be notified of the decision not later than five (5) work days after presentation of his informal appeal to his or her General Manager, or the General Manager's designated representative.

8.6.3. If the employee's concerns are not resolved, or if a decision is not issued within five (5) work days, the employee may file a formal appeal to a Performance Rating Board of Review appointed by the Consolidated Commission on Utilities (CCU).

8.7. Formal Appeal Procedure – Performance Rating Board of Review:

8.7.1. When the decision of the General Manager fails to satisfy the employee, the employee may file a formal appeal to the CCU. The appeal shall be in writing to the Chairman of the CCU and filed within five (5) work days after the appellant receives the General Manager's decision.

8.7.2. A Performance Rating Board of Review shall be appointed by the CCU and shall consist of three (3) persons who are Certified, Technical, or Professional Employees in the classified service, of which one (1) shall be the same position level as the appellant, one (1) shall be at the managerial level, and a designated Staff Attorney who shall serve as the Hearing Officer. Board members shall not be from the same section, department, or division where the appellant is employed.

The Board shall conduct its first hearing within five (5) work days of its appointment. The Board shall complete the investigation and conduct the final hearing not later than ten (10) work days from the date the Board convened. The Board shall give notice of hearings and shall provide all pertinent documents related to the appeal to the appellant, his representative, the rater, and all other parties concerned. The conduct of the hearing shall be consistent with the opportunity to present all information necessary to decide the merits of the appeal.

Both oral and written information which the Board considers pertinent may be given, as well as any other information the Board requests concerning the appeal.

8.7.3. The Hearing Officer shall preside and shall rule on all questions and conduct of the hearing during the proceedings. Board members shall consider the case and vote objectively. They shall give consideration to the merits of the case and secure all necessary information. They shall encourage a harmonious relationship between employees and supervisors during the proceedings of the Board. All members of the Board shall be present at all times during hearings and shall participate in decisions. Hearings shall be recorded and summarized in writing.

8.7.4. When all pertinent information in an appeal has been presented to the Board, the Board shall render a decision by majority vote. The Board may either amend the performance rating, or sustain the rating without change. When an amendment is made by the Board to the performance rating, that amended rating shall not be lower than the original rating. The Board shall make its decision within five (5) work days of the final hearing. The Board's decision shall be in writing with the Hearing Officer's signature. The decision shall contain a brief summary of the facts on which the Board based its decision. The written decision shall be sent immediately to the appellant and signed copies forwarded to the General Manager.

8.7.5. When the General Manager receives a Board decision amending the employee's rating, the General Manager shall immediately substitute the amended rating. The General Manager must reconsider administrative actions based on the original rating using the amended rating and adjust those administrative actions to conform to the amended rating."

Section 7. Disciplinary Action For Employees in Certified, Technical, and Professional Positions. A new Subsection 18.00A and Chapter 11.200C are

1 hereby *added* to GPA's and GWA's Personnel Rules and Regulations,
2 respectively, to read:

3 **"DISCIPLINARY ACTION FOR CERTIFIED, TECHNICAL, AND**
4 **PROFESSIONAL EMPLOYEES.**

5 **1.0. STATEMENT OF POLICY.** This Section/Chapter sets forth the
6 guidelines and procedures by which the General Manager may suspend, demote, or
7 dismiss a permanent Certified, Technical, or Professional employee. A Certified,
8 Technical, or Professional Employee shall have a right to appeal an Adverse
9 Action taken against him to either the Consolidated Commission on Utilities or the
10 Civil Service Commission as provided in Title 4 G.C.A. § 4403(h). Further, this
11 Section/Chapter sets forth Appeal Procedures that apply only to the Authority's
12 Certified, Technical, and Professional Employees in the Classified Service.
13 Finally, the procedures and rules governing the Consolidated Commission on
14 Utilities (CCU) hearing and deciding the Adverse Action Appeals of the
15 Authority's Certified, Technical, and Professional Employees in the Classified
16 Service shall only be applicable if the CCU and the Civil Service Commission
17 (CSC) of the Government of Guam have not mutually consented to hear all the
18 Adverse Action Appeals of the Authority's Certified, Technical, and Professional
19 Employees in the Classified Service pursuant to 4 G.C.A. §4403(h).

20 **2.0. COVERAGE.** This Section/Chapter shall apply to all permanent classified
21 employees who hold certified, technical and professional positions.

22 **3.0. SCOPE.** For the purpose of this Chapter, the term "dismissal" shall not be
23 interpreted to include:

24 3.1. Actions taken by the General Manager referenced in the Section/Chapter on
25 RESIGNATION AND TERMINATION; or

26 3.2. Action taken by the General Manager in the termination of services of an
27 original probationary employee.

1 **4.0. EMPLOYEE DISCIPLINE.**

2 4.1. Responsibility for Discipline. The General Manager derives his authority and
3 responsibility for employee discipline from 4 G.C.A. §4105.

4 **5.0. JOB PROTECTION PROCEDURES IN EMPLOYEE DISCIPLINE**
5 **ACTIONS.**

6 5.1. All levels of supervision and management share the responsibility for strict
7 adherence to an employee's job protection rights and considerations including:

8 5.1.1. The right to reply to the notice of a proposed adverse action that may result
9 in a suspension, demotion, or dismissal.

10 5.1.2. The right to reply to the notice of a proposed adverse action and careful
11 consideration of any reply.

12 5.1.3. The right to appeal to the Consolidated Commission on Utilities (CCU) as
13 provided in the CCU Procedural Rules relative to Appeals of Adverse Actions.

14 **6.0. ADVERSE ACTION PROCEDURES.**

15 6.1. An employee must be given the final notice and statement of the charges,
16 pursuant to 4 G.C.A. §4406, no later than sixty (60) days after management
17 knew, or should have known, the facts or events which form the alleged
18 basis for the adverse action.

19 6.2. An employee covered by the Adverse Action Procedures may not be
20 suspended for more than thirty (30) work days as the result of a single
21 adverse action, nor may an employee be suspended for more than a total of
22 sixty (60) work days in a calendar year, as a result of multiple adverse
23 actions taken by any one (1) department or agency. Employees on a twenty-
24 four (24) hour on and twenty-four (24) hour off employment basis shall not
25 be suspended for more than ten (10) work days, or an equivalent of two
26 hundred forty (240) work hours as a result of a single adverse action, nor

1 may suspension be more than a total of twenty (20) work days (480 work
2 hours) in a calendar year as a result of multiple adverse actions.

3 6.3. Copies of the adverse action rules and appeal procedures should be made
4 available upon request by the employee.

5 **7.0. DEFINITIONS.**

6 7.1. Suspension- The temporary removal of an employee from his position with
7 loss of pay as a disciplinary measure.

8 7.2. Demotion – The involuntary reduction in status of an employee for
9 disciplinary reasons from a position which he occupies in a specific class, to a
10 position in another class, where the maximum rate of pay is less than the maximum
11 rate of pay for the class which he had held, or a reduction to a lower salary step in
12 the same class.

13 7.3. Dismissal – The termination of an employee for any authorized cause of
14 adverse action.

15 7.4. Days – Refers to calendar days unless otherwise specified.

16 **8.0. AUTHORIZED CAUSES FOR ADVERSE ACTION.**

17 The General Manager, or his designee, may remove an employee for misconduct
18 which affects the efficiency of the service. The authorized causes for adverse
19 actions include, but are not limited to, the following:

20 8.8. Fraud in securing appointment.

21 8.9. Refusal or failure to perform prescribed duties and responsibilities.

22 8.10. Insubordination.

23 8.11. Intoxication while on duty or the unauthorized possession, use or sale of
24 alcohol on duty or while on or in Authority property.

25 8.12. The unlawful use, possession, or sale of illicit drugs.

26 8.13. Unauthorized absence.

27 8.14. Conviction of a crime.

- 1 8.15. Discourteous treatment to the public or other employees.
- 2 8.16. Political activity prohibited by law.
- 3 8.17. Misuse or theft of government property.
- 4 8.18. Refusal to take and subscribe to any oath or affirmation which is required
- 5 by law in connection with employment.
- 6 8.19. Acts prohibited by 4 G.C.A. §9102 relating to strikes against the
- 7 government.
- 8 8.20. Acts of prohibited discrimination to include sexual harassment.
- 9 8.21. Failure to comply with the Drug-Free Workplace Program or Policy.
- 10 8.22. Any violation of the Authority's Code of Conduct as set forth in the
- 11 Authority's Personnel Rules and Regulations.
- 12 8.23. Failure to report being charged with or being convicted of a crime.
- 13 8.24. Other misconduct not specifically listed.

14 **9.0. EMPLOYEES COVERED.**

15 All Certified, Technical, or Professional Employees in the classified service are

16 covered by these rules, except the following:

- 17 9.1. Contract employees whose contracts are not renewed upon expiration.
- 18 9.2. Probationary employees serving an original appointment.
- 19 9.3. Employees on limited-term, temporary, seasonal, intermittent, part-time,
- 20 provisional or appointments only for a specific project.
- 21 9.4. Unclassified or Exempt Employees.

22 **10.0. ADVERSE ACTIONS COVERED.**

- 23 10.1. These rules apply to the following adverse actions:
- 24 10.1.1. Suspension
- 25 10.1.2. Demotion
- 26 10.1.3. Dismissal

1 10.2. The use of any combination of the adverse actions listed for the same
2 offense is prohibited.

3 **11.0. NOTICE OF PROPOSED ADVERSE ACTION.**

4 An employee against whom adverse action is sought is entitled to immediate
5 written notice stating any and all reasons, specifically and in detail, for the
6 proposed action. The written notice must make it clear that it concerns only
7 proposed action and not a matter already decided. The notice may also order the
8 employee to report to the General Manager at a specific date, time, and place to
9 receive the General Manager's final decision concerning the proposed action.

10 **12.0. EMPLOYEE'S ANSWER.**

11 An employee is entitled to seek reconsideration of the proposed adverse action by
12 answering any charges within ten (10) days after receipt of the notice; the answer
13 may be made orally, in writing, or both. The General Manager shall be available
14 to meet with the employee at the designated date and time. The General Manager
15 may designate a committee to hear the employee's answer. The employee may be
16 represented by a person of his or her choice. The General Manager must consider
17 the employee's answers to the charges in the proposed adverse action notice. If the
18 employee fails to answer during the notice period, the employee's inaction shall be
19 construed as answer, and the General Manager may proceed with the adverse
20 action upon expiration of the notice period.

21 **13.0. SUSPENSION DURING NOTICE PERIOD.**

22 13.1. An employee against whom adverse action is proposed, must be retained in
23 active duty status during the notice period; however, in an emergency
24 situation, an employee may be immediately suspended during the notice
25 period, under the following conditions:

26 13.1.1. The continued presence of the employee may interfere with the efficient
27 operation of the Authority, or the health or safety of the employee or others.

1 13.1.2. Suspension is necessary to eliminate the possibility of deliberate damage
2 to equipment, property, or important documents.

3 13.1.3. The employee's absence without authorized leave prevents the issuance
4 of notice of proposed adverse action and the Authority's attempt to contact the
5 employee was unsuccessful.

6 13.2. Suspension under this Section is a separate adverse action and is appealable
7 to the CCU within twenty (20) days of the effective date of the immediate
8 suspension.

9 13.3. If the CCU sustains the Authority's action in suspending the employee
10 during the notice period, the number of days of suspension under this Section shall
11 be considered part of the final disciplinary penalty and in no case, shall the final
12 days of the suspension be more than thirty (30) work days.

13 **14.0. LEAVE PENDING INVESTIGATION.**

14 In cases requiring investigation of allegations against an employee involving
15 misappropriation of Authority funds or property, mistreatment of persons on or in
16 Authority property, or acts which constitute a crime, the General Manager may
17 authorize the employee an administrative leave of absence with pay for up to
18 twenty (20) work days. The administrative leave may be terminated by the
19 General Manager by giving the employee twenty-four (24) hours written notice.

20 **15.0. EMPLOYMENT STATUS DURING IMPRISONMENT.**

21 15.1. An employee who is incarcerated pending disposition of a case by the court,
22 and who does not have accrued annual leave, may be granted leave without
23 pay at the discretion of the General Manager, if the employee requests to be
24 placed on leave without pay status. If the employee does not request to be
25 placed on annual leave or leave without pay, such employee shall be absent
26 without leave.

1 15.2. When the employee is released from incarceration or imprisonment, the
2 General Manager shall determine whether the employee will return for duty,
3 or whether to take adverse action against an employee so imprisoned.
4 Nothing in this Section shall preclude the General Manager from taking
5 adverse action against an employee during imprisonment.

6 **16.0. FINAL NOTICE OF ADVERSE ACTION.**

7 16.1. An employee is entitled to written notice of the Authority's decision within
8 ten (10) days after receipt of the employee's answer to the charges. The decision
9 shall be made by the General Manager and shall be delivered to the employee at or
10 before the time the action will be made effective. The notice shall be in writing; be
11 dated; state the specific facts found upon which such action is based; inform the
12 employee of his right to appeal to the CCU, or the CSC if mutual consent is given,
13 pursuant to 4 G.C.A. §4403(h) (As amended by P.L. 28-113:4), by the CCU and
14 the CSC for the CSC to hear an employee's adverse action appeal; and, inform the
15 employee of the time limit of twenty (20) days within which an appeal may be
16 submitted as provided by the CCU Hearing Procedures for Adverse Action
17 Appeals or the CSC Hearing Procedures for Adverse Actions Appeals if the appeal
18 shall be heard by the CSC.

19 16.2. In the event the General Manager cannot locate the employee, the Notice of
20 Proposed Adverse Action or the Notice of Final Adverse Action shall be sent, by
21 certified mail, to the employee's last known address.

22 **17.0. SERVICE OF THE PROPOSED AND FINAL NOTICES OF**
23 **ADVERSE ACTION.**

24 The Proposed and Final Notices of Adverse Action shall be personally served upon
25 the employee. In the event the General Manager cannot locate the employee, after
26 reasonable efforts have been made to locate the employee, service of the Proposed
27 or Final Notices may be made by leaving the Notice at the employee's dwelling or

1 usual place of abode with some person of suitable age and discretion residing
2 therein, or by mailing the Notice to the employee at the last known address.
3 Service by mail is complete upon mailing.

4 **18.0. OFFENSES AND RANGE OF PENALTIES FOR OFFENSES.**

5 The offenses and the range of penalties for offenses, and their guidelines, for
6 Certified, Technical, and Professional Employees in the Classified Service shall be
7 the same as the offenses and the range of penalties for offenses and their guidelines
8 for all employees in classified service as set forth in the Authority's Personnel
9 Rules and Regulations.

10 **19.0. REPRIMANDS.**

11 19.1. In as much as a reprimand is not an adverse action under these rules, a
12 management official need not apply the Adverse Action Procedures.

13 Reprimands shall not remain in an employee's personnel file for more than one (1)
14 year.

15 **20.0. REPORTING OF CRIMINAL CHARGE OR CONVICTION.**

16 Employees shall advise the General Manager, in accordance with P.L. 28-122, of
17 any criminal charge made against the employee or any crimes the employee is
18 convicted of in a prompt manner.

19 **21.0. RECORDS OF ADVERSE ACTIONS.**

20 The Final Notice of Adverse Action issued shall be made a part of the affected
21 employee's official personnel records.

22 **22.0. CCU RULES OF PROCEDURES FOR ADVERSE ACTION**

23 **APPEALS.** These procedures and rules governing the CCU hearing and deciding
24 the Adverse Action Appeals of the Authority's Certified, Technical, and
25 Professional Employees in the Classified Service shall only be applicable if the
26 CCU and the CSC have not mutually consented to hear all the Adverse Action

1 Appeals of the Authority's Certified, Technical, and Professional Employees in the
2 Classified Service pursuant to 4 G.C.A. §4403(h).

3 **RULE 1. JURISDICTION.**

4 The CCU is empowered to create these Rules pursuant to 12 G.C.A. §8104(13) for
5 the Guam Power Authority (GPA) and pursuant to 12 G.C.A. §14104(m) for the
6 Guam Waterworks Authority (GWA).

7 **RULE 2. PURPOSE.**

8 The purpose of these Rules is to create a fair process with which to adjudicate
9 Adverse Action Appeals (hereafter referred to as an "action").

10 **RULE 2.1. UNREPRESENTED PARTY.**

11 The CCU shall adjust the application of these Rules for any party who is not
12 represented by a lawyer or a lay representative when it is clear there is a genuine
13 misunderstanding of a rule(s) which, if applied, would operate unfairly.

14 **RULE 3. CITATION.**

15 These Rules may be cited as CCU Rules of Procedure for Adverse Actions
16 Appeals, and then the term "Rule" and number.

17 **RULE 4. CITATION TO LAWS AS RULES.**

18 Many of these Rules paraphrase existing laws. For example, Rule 5.2 states that an
19 appeal from an adverse action must be taken within twenty (20) days from
20 the effective date of the action. 4 G.C.A. §4406 establishes the twenty (20) day
21 period by law.

22 **RULE 4.1.** The reason certain laws are paraphrased as Rules is that Employees
23 against whom adverse actions are taken are generally given a copy of these Rules
24 by Management or have these Rules available. The CCU believes it important to
25 inform Employees of laws critical to their appeal by including some of these laws
26 in these Rules. When a Rule is related to a law, a citation to the law shall be
27 included.

1 **RULE 5. RIGHT TO APPEAL.**

2 A person may appeal an adverse action to the CCU, if the person meets all of the
3 following criteria:

4 (A) is a permanent, Certified, Technical, and Professional Employee in the
5 classified service;

6 (B) has successfully completed his or her probationary period; and

7 (C) is subjected to an Adverse Action.

8 See: 4 G.C.A. §4403(b).

9 **RULE 5.1. ADVERSE ACTION.**

10 An adverse action is a termination from employment, or a suspension from
11 employment or a demotion in employment.

12 See: 4 G.C.A. §4403(b).

13 **RULE 5.2. TIME FOR FILING APPEAL.**

14 An appeal from an adverse action must be filed in writing with the CCU or its
15 designee, during normal working hours, within twenty (20) days of the employee's
16 receipt of the Final Notice of Adverse Action from Management. If the Employee
17 willfully evades service of the Final Notice of Adverse Action, the twenty (20) day
18 period referred to above begins to run on the day the Employee first willfully
19 evades service. The term "service" is defined in Rule 6. "Filed" means given to the
20 CCU or its designee and received by the CCU or its designee. A document may be
21 filed by facsimile transmission, registered mail or personal delivery. See: 4
22 G.C.A. §4406.

23 **5.2.1. FILING PAST THE TWENTY (20) DAY PERIOD.**

24 The CCU may excuse the filing of a Notice of Appeal beyond the twenty (20) day
25 period if the Employee proves a compelling reason for his failure to timely file.

26 **5.2.2. COMPUTATION OF TIME.**

27 Whenever these Rules or orders of the CCU provide for a time period of ten (10)

1 or less days, weekends and government of Guam holidays are not to be included in
2 the computation. Whenever these Rules provide for a time period over ten (10)
3 days, weekends and government of Guam holidays are to be included in the
4 computation. The first day of a time period commences with the day after a party
5 receives a document or order which contains a time period.

6 **RULE 5.3. CONTENTS OF APPEAL.**

7 The Notice of Appeal shall be in the following format:

8 **GUAM CONSOLIDATED COMMISSION ON UTILITIES**

9 **(Name of Employee)** **ADVERSE** **ACTION**
10 **#** _____

11 **EMPLOYEE**

12 **vs.**

13 **(Name of Department/Agency)** **NOTICE OF APPEAL**
14 **MANAGEMENT**

15 **[INSERT TEXT OF APPEAL]**

16 **RULE 5.3.1. CONTENTS.**

17 The Notice of Appeal shall be a brief, plain statement, either typed or hand written,
18 stating why the Employee believes the adverse action should not have been taken
19 against him. The parties to an adverse action appeal are to be identified as the
20 **EMPLOYEE** and as **MANAGEMENT**. The Employee and Management to an
21 action are collectively referred to as the "parties".

22 **RULE 5.3.2. AMENDMENT OF NOTICE OF APPEAL.**

23 A Notice of Appeal may be amended by the Employee without permission of the
24 CCU, if it is amended within fifteen (15) days after the date it was originally filed.
25 An Amendment after fifteen (15) days shall be made by motion.

26 **RULE 5.4. RIGHTS OF EMPLOYEE WHO FILES AN APPEAL.**

1 The Employee shall:

2 (a) have a reasonable time to prepare his case if on duty;

3 (b) have the right to be represented by an attorney, another person
4 who is not an attorney, or represent himself; and

5 (c) not suffer from Management any restraint, coercion,
6 discrimination or reprisal for filing an appeal of an adverse action,
7 either during the appeal process or after it has been adjudicated.

8 **RULE 6. SERVICE OF DOCUMENTS.**

9 All documents filed with the CCU, except for the Final Notice of Adverse Action
10 and the Notice of Appeal, shall be served by the parties on each other or to the
11 other's representative or lawyer. Service means giving a copy of a document to a
12 party, a party's representative or lawyer.

13 **RULE 6.1. HOW SERVICE IS PERFORMED.**

14 Service may be made by the parties and CCU or its designee as follows:

15 (a) Personal delivery, with a copy of the document acknowledged in writing to
16 have been received; or

17 (b) By facsimile transmission to a representative's or attorney's place of business
18 with a confirmed receipt; or

19 (c) Regular mail with supporting affidavit as to the date of mailing; or certified
20 mail with a signed return receipt; or

21 (d) By any method of service established by the Superior Court of Guam's Rules
22 of Civil Procedure.

23 **RULE 7. CONFERENCES.**

24 **RULE 7.1. STATUS CALL CONFERENCE.**

25 Upon receipt of a Notice of Appeal, the CCU or its designee shall immediately set
26 the matter for a Status Call Conference. The Status Call Conference shall be
27 conducted by Administrative Counsel designated by the CCU. The Administrative

Counsel shall not be the Staff Attorney representing Management. At the Status Call Conference, the parties or their representatives shall be prepared to discuss:

- (a) The legal issues of the action;
- (b) Pre-hearing motions;
- (c) Witnesses and documentary evidence;
- (d) The possibility of settlement; and
- (e) The date of the hearing on the merits.

RULE 7.2. PRE-HEARING CONFERENCE.

Two (2) weeks before the hearing on the merits, the parties shall meet with the Administrative Counsel at a pre-hearing conference to finalize witness lists and exhibits, and to discuss stipulations or other matters that may expedite the hearing on the merits.

RULE 8. DISCOVERY.

The Administrative Counsel shall control the nature and scope of discovery between the parties, including, but not limited to, the following:

- (a) Issuing orders compelling discovery;
- (b) Issuing orders limiting the scope and nature of discovery;
- (c) Issuing orders establishing dates for completion of discovery; and
- (d) Issuing protective orders regarding discovery.

RULE 8.1.

Any order regarding discovery that is issued by the Administrative Counsel is subject to review by the CCU. A party may request such a review by filing an appropriate motion with the CCU within forty-eight (48) hours (holidays and weekends excluded) of receipt of the order. See 4 G.C.A. §4406.

RULE 9. PRE-HEARING MOTIONS.

The moving party bears the burden of proof on motions by a preponderance of the evidence. The parties shall file any motion regarding procedural issues or questions

1 of law prior to the hearing on the merits. All pre-hearing motions must be in
2 writing and must be filed and then served on all other parties.

3 **RULE 9.1. ARGUMENTS ON MOTIONS.**

4 The CCU may or may not hear oral argument on written motions. The CCU may
5 rule on a motion without hearing argument.

6 **RULE 9.1.1. ISSUES RAISED BY THE COMMISSION.**

7 Any Commissioner may, at any time, raise issues not raised by motion of the
8 parties. Upon a majority vote of the CCU, such issues must be addressed by the
9 parties and decided by the CCU.

10 **RULE 9.2. MOTION FILING SCHEDULE.**

11 Unless otherwise predetermined by an order, the moving party must file and serve
12 a motion thirty (30) days before the hearing on the merits. A motion may be
13 supported by affidavits, but no live testimony shall be taken at a motion hearing
14 unless a written request from a party is approved by the Administrative Counsel
15 within five (5) days after the opposition brief is filed.

16 Unless otherwise predetermined by a discovery order, the opposition brief shall be
17 filed ten (10) days before the hearing on the motion.

18 No reply briefs shall be filed unless with the written approval of the Administrative
19 Counsel.

20 **RULE 9.3. FAILURE TO TIMELY FILE.**

21 Motion documents that are not filed on time may be disregarded by the CCU or
22 subject the transgressing party or his representative to sanctions.

23 **RULE 9.4. MOTION TO POSTPONE HEARINGS.**

24 A motion to continue a date of hearing shall set forth the factual basis for the
25 motion. Continuances based on illness, emergencies, or stipulation of the parties,
26 may be granted without hearing by the Administrative Counsel, if said decision
27 may be made seven (7) days before the hearing sought to be postponed.

1 **RULE 9.4.1. CONTINUANCES OTHER THAN IN RULE 9.4.**

2 The Administrative Counsel is empowered to grant continuances of the date of the
3 hearing, so long as the continuance is applied for more than seven (7) days before
4 the date sought to be continued.

5 **RULE 9.4.2. STAYS.**

6 The Administrative Counsel is empowered to grant "stays" of actions when a
7 motion to stay proceeding is brought by an employee on the basis that the
8 Employee has been or may be charged with a criminal offense which arises from
9 the same factual transaction which is the basis of the adverse action.

10 **RULE 9.5. MOTIONS TO DISMISS.**

11 Motions to dismiss an adverse action appeal may be made on the bases of lack of
12 jurisdiction, untimely filing of the appeal, procedural defects in the proceeding or
13 other significant reasons. The legal and factual bases of such motions must be
14 sufficiently set forth in the motion and supporting affidavits. A motion to dismiss
15 may also be made upon stipulation of the parties. A stipulated motion to dismiss,
16 however, must be approved by the CCU. An Employee may dismiss his appeal
17 with prejudice by filing a written motion to dismiss which must be signed by the
18 Employee and his representative or attorney. The Parties may settle an action, but
19 any settlement must be approved by the CCU before the action is dismissed with
20 prejudice.

21 **RULE 9.6. MOTION TO ALLOW HEARING IN THE ABSENCE OF**
22 **THE EMPLOYEE.**

23 The CCU may dismiss an appeal if the Employee is not present for the hearing on
24 the merits, unless the Employee has a reasonable excuse. A motion to permit an
25 Employee to be absent from the hearing on the merits shall set forth the factual
26 basis for the motion. The CCU may require affidavits in support of the motion.

27 **RULE 10. SUBMISSION OF DOCUMENTS FOR INTRODUCTION**

1 **INTO EVIDENCE.**

2 **RULE 10.1. TIME FOR SUBMISSION OF DOCUMENTS.**

3 No later than seven (7) days before a hearing on the merits or a motion hearing,
4 each party shall submit to the CCU all documents it wishes the CCU to consider.

5 **RULE 10.1.1.**

6 Management shall submit to the CCU the Notice of Proposed Adverse Action and
7 the Notice of Final Adverse Action.

8 **RULE 10.1.2.**

9 Employee shall submit to the CCU the Notice of Appeal of Adverse Action.

10 ~~**RULE 10.2. DOCUMENTS TO BE BOUND.**~~

11 The documents shall be bound into a binder. Each document shall be indexed and
12 tabbed. Press-guard or other inexpensive binders are sufficient.

13 **RULE 10.2.1.**

14 Management shall identify its documents using consecutive letters of the alphabet.

15 **RULE 10.2.2.**

16 Employee shall identify his documents using consecutive numbers.

17 **RULE 10.2.3.**

18 Each party shall submit seven (7) copies of their binders to the CCU.

19 **RULE 11. HEARING ON THE MERITS --- BURDEN OF PROOF.**

20 The burden of proof on the merits is on Management to prove its allegations by a
21 preponderance of the evidence. If, however, Management's allegations would
22 constitute criminal charges, then Management bears the burden of proof to prove
23 the allegations by substantial evidence. See: 4 G.C.A. §§4407(a) and 4407(c).

24 **RULE 11.1. PLACE AND TIME OF HEARING.**

25 The CCU shall set the place, date and time of hearing as expeditiously as possible.

26 **RULE 11.2. CONDUCT OF HEARING.**

27 The hearing shall be open to the public.

1 **RULE 11.2.1.**

2 The hearing will be conducted so as to bring out pertinent facts, including the
3 production of certain records.

4 **RULE 11.2.2. ADMISSIBILITY OF EVIDENCE.**

5 Decisions on the admissibility of testimony or other evidence are made by the
6 CCU after consulting with the Administrative Counsel.

7 **RULE 11.2.3. OATH.**

8 Testimony is under oath or affirmation.

9 **RULE 11.2.4. RIGHT TO CALL WITNESSES.**

10 Each party shall have the right to call, examine, or cross-examine witnesses, and
11 introduce exhibits. The CCU may subpoena to testify any person upon a majority
12 vote. Any Commissioner may direct relevant questions to a witness after
13 examination of the witness has been completed by both parties; except that
14 questions may be asked during examination by a Party to clarify a response by a
15 witness.

16 **RULE 11.2.5. RULES OF EVIDENCE.**

17 The Rules of Evidence, Title 6 G.C.A., shall not apply. The only grounds for
18 excluding any proffered evidence are that the evidence is irrelevant or unduly
19 repetitious.

20 **RULE 11.2.6. ORDER OF PRESENTATION.**

21 The order of presentation at the hearing shall be as follows:

- 22 (a) Opening statement of Management;
23 (b) Opening statement of Employee;
24 (c) Presentation by Management of evidence in support of the charges;
25 (d) Presentation by the Employee of such evidence in defense or
26 rebuttal;
27 (e) Closing statement of Management;

1 (f) Closing statement of Employee.

2 **RULE 11.3. WITNESSES.**

3 Both parties are entitled to produce witnesses. Except as otherwise provided in
4 Rule 9.6, the Employee shall be in attendance without subpoena.

5 **RULE 11.3.1. EVIDENTIARY AUTHORITY OF CCU.**

6 The CCU may call additional witnesses, as it may deem necessary, and require the
7 production of documents.

8 **RULE 11.3.2. SUBPOENAS.**

9 The Chairperson of the CCU, upon his or her own initiative, or upon the request of
10 any member of the CCU, or upon the request of any party before the CCU, may
11 summon in writing any person to attend a meeting of the CCU as a witness and, in
12 a proper case, to bring with him or her any book, record, computer print-out, paper
13 or thing which may be deemed material evidence in the case. Subpoenas shall be
14 served by the party who requested the issuance of the subpoena as per Rule 6 and
15 Rule 6.1.

16 **RULE 11.3.2. SUBPOENA FEES.**

17 The fees for such attendance shall be the same as the fees of the witnesses before
18 the Superior Court, except that if the witness is a public corporation or government
19 employee no witness fee shall be given. Upon motion, the fee may be waived by
20 the CCU. The subpoena shall issue in the name of the CCU, and shall be directed
21 to the person and served in the same manner as subpoenas to appear and testify
22 before the Superior Court of Guam.

23 **RULE 11.3.3. DUTY STATUS.**

24 An Employee is considered to be on duty status during the time he or she is made
25 available as a witness. Such employee is entitled to compensatory time-off if he
26 serves during a time he or she is not normally scheduled to work. The CCU shall
27 furnish the General Manager of the public corporation in which the witness is

1 employed, a certification showing the time devoted to the hearing. "Employee" in
2 this Section does not include the parties to the appeal or their representatives.

3 **RULE 11.3.4. COURTESY AT TRIAL.**

4 The CCU shall ensure that all witnesses are treated with courtesy and respect while
5 giving testimony at the hearing. Management shall assure witnesses freedom from
6 restraint, interference, coercion, discrimination, or reprisal in presenting testimony.

7 See: 9 G.C.A. §5545.

8 **RULE 11.4. RECORD OF HEARING.**

9 All hearings shall be audio tape recorded by the CCU. The CCU's recordings and
10 the exhibits admitted during the hearing, together with all pleading and documents
11 filed by the parties, shall constitute the official record of a hearing.

12 **RULE 11.4.1. RECORDING BY OTHER PERSONS.**

13 Filming, video taping or audio recording of a hearing or other proceeding before
14 the CCU by any person is permitted by the CCU only upon written motion or
15 request.

16 **RULE 11.4.2. TAPES AVAILABLE.**

17 Copies of the audio tape recording of hearings will be made available to any
18 person at cost.

19 **RULE 11.5. LIMITATION IN THE SCOPE OF HEARINGS ON THE**
20 **MERITS.**

21 The scope of the hearing on the merits shall be limited to:

22 (a) The issue in dispute; and

23 (b) A review of compliance with procedural requirements for effecting an
24 adverse action;

25 **RULE 11.6. DELIBERATIONS.**

26 The deliberation of the CCU regarding the merits of actions and motions shall be
27 made publicly.

1 **RULE 11.6.1.**

2 In addition to the Commissioners, the Administrative Counsel and CCU Secretary,
3 may be present during deliberations, as the CCU deem fit.

4 **RULE 11.6.2.**

5 The Commissioners shall have available to them during their deliberation all items
6 received into evidence in the action.

7 **RULE 11.6.3.**

8 An audio tape recording of the deliberations shall be made and maintained by the
9 CCU. No minutes of the deliberation shall be made.

10 **RULE 11.6.4.**

11 For good cause shown, a court of competent jurisdiction may require the CCU to
12 produce the audio tape recording of its deliberations, otherwise the audio tape
13 recording shall remain unavailable to the public.

14 **RULE 11.6.5.**

15 After the CCU completes its deliberation, it shall convene in public whereupon
16 each Commissioner shall state his conclusions regarding the merits and shall cast
17 his vote.

18 **RULE 11.7. DECISION.**

19 The CCU shall decide the appeal on the basis of the evidence presented. See 4
20 G.C.A. §4403(d) and 4406.

21 **RULE 11.7.1.**

22 Except as provided in Rule 11.7.3 below, if Management proves the charges
23 against the Employee, the CCU shall sustain the adverse action.

24 **RULE 11.7.2.**

25 If Management fails to prove the charges, the CCU shall revoke the adverse action.

26 **RULE 11.7.3. MODIFICATION OF ADVERSE ACTION.**

27 If Management proves the charges, but the CCU finds, that because of the

1 Employee's past record or the gravity of the offense, or the facts and circumstances
2 of the case, that the adverse action should be modified, it may modify the adverse
3 action accordingly. The reasons for such modification shall be stated in the
4 decision of the CCU. Any compensation or benefits due as a result of the
5 modification shall be restored to the Employee. The CCU may not modify an
6 adverse action to the Employee's detriment. In the event the CCU modifies the
7 adverse action taken by Management, the CCU shall make a separate
8 determination as to whether the Employee has prevailed for purposes of awarding
9 attorney fees to the Employee. See 4 G.C.A. §4406.

10 **RULE 11.7.4. PROCEDURAL DEFECT.**

11 If the CCU finds that the adverse action was procedurally defective because it
12 violated personnel rules or law, it may void or revoke the adverse action as it
13 considers fair and equitable under the facts and circumstances of the action.

14 See: 4 G.C.A. §§4403(d) and 4406.

15 **RULE 11.7.5. JUDGMENT.**

16 A judgment is the final administrative adjudication of the CCU on an action. A
17 judgment shall be in writing and the caption shall state it is a "judgment". The
18 vote taken by the CCU to decide an adverse action does not constitute a judgment.
19 An Order of the Commission is not a judgment. A judgment is entered, that is, it
20 becomes final and effective, on the date a majority of the Commissioners sign the
21 judgment at a CCU meeting attended by a sufficient number of Commissioners to
22 constitute a quorum. Notice that a proposed judgment is before the CCU for
23 signing shall be served on the parties to the action and shall be publicly advertised
24 as required by the Open Government Law of Guam. A quorum of the CCU shall
25 be three (3) members. The judgment shall recite the numerical vote of the CCU in
26 deciding an adverse action. The signing of the judgment by the Commissioners
27 does not reflect how they actually voted in deciding the adverse action. The

1 signing of the judgment simply affirms that the judgment accurately reflects the
2 decision that was made. See: 4 G.C.A. §4402.

3 **RULE 11.7.6. COMPLIANCE WITH JUDGMENT.**

4 Within thirty (30) days of the entry of any judgment that requires a public
5 corporation to take affirmative action, the General Manager of the public
6 corporation shall report to the CCU what steps he or she has taken to implement
7 the terms of the judgment.

8 **RULE 11.7.7. RECONSIDERATION OR AMENDMENT (Time to seek**
9 **Judicial Review).**

10 A party may move the CCU to reconsider or amend its judgment by filing a motion
11 with the CCU within ten (10) days of entry of the judgment. The filing of a motion
12 to reconsider or amend does not effect the time limit imposed by law to file a
13 Petition for Judicial Review with the Superior Court of Guam. If a motion to
14 amend or reconsider is not decided within thirty (30) days of the entry of a
15 judgment, the motion is denied.

16 **RULE 11.7.8. JUDICIAL REVIEW.**

17 Judicial review of the judgment of the CCU may be had by filing appropriate
18 pleadings with the Superior Court of Guam within thirty (30) days after the last
19 day on which reconsideration can be granted.

20 **RULE 12. TERMINATION OF APPEAL.**

21 In addition to adjudication on the merits, the CCU may terminate an Employee's
22 appeal:

23 (a) at the Employee's request; or

24 (b) when the Employee fails to furnish information necessary to adjudicate the
25 appeal.

26 **RULE 12.1. DEATH OF EMPLOYEE.**

27 If an Employee dies after he has filed an appeal of an adverse action taken against

1 him, the appeal shall automatically be stayed for a period of up to six (6) months in
2 order for the Estate of the Employee to apply to the CCU to continue with the
3 appeal. If the Estate of the Employee does not so apply within six (6) months, then
4 the appeal shall be dismissed. If the Estate of the Employee does so apply, then
5 the appeal shall be adjudicated. In the event the Employee prevails, the Estate of
6 the Employee shall receive the compensation, but not the benefits, the Employee
7 would have recovered up to the date of his death.

8 **RULE 13. RULES RELATIVE TO LAY REPRESENTATIVES.**

9 A non-lawyer who represents an Employee before the CCU or who represents a
10 government agency before the CCU, shall be called a "Lay Representative".

11 A Lay Representative shall enter his or her appearance in an action by filing with
12 the CCU an entry of appearance which shall include the written approval of his
13 client and shall also contain the address and telephone number of the Lay
14 Representative. Said lay representatives shall comply with all Guam laws relevant
15 to the unauthorized practice of law and the Lay Representative shall be disqualified
16 if said laws are violated by the Lay Representative's representation of the
17 Employee in the Adverse Action Appeal.

18 **RULE 13.2. ENTRY OF APPEARANCE.**

19 By entering his appearance before the CCU, the Lay Representative becomes
20 subject to the orders of the CCU and to reasonable discipline and to contempt
21 proceedings by the CCU. Reasonable discipline may include, but is not limited to,
22 the following:

- 23 (a) Disqualification from representing the Employee in the Adverse Action
24 Appeal at issue.
- 25 (b) Suspension from appearing before the CCU as a Lay Representative.
- 26 (c) Disqualification from appearing before the CCU as a Lay Representative for
27 an Employee in any Adverse Action Appeal.

1 By agreeing to be a Lay Representative, the Lay Representative assumes an ethical
2 and agency relationship with the Employee that he or she represents. Lay
3 Representatives shall not be compensated for their services.

4 **RULE 13.3. WITHDRAWAL AS LAY REPRESENTATIVE.**

5 No Lay Representative may withdraw from representing an Employee except upon
6 motion, cause shown, and an Order of the CCU.

7 **RULE 13.4. LAY REPRESENTATIVE REQUIRED READING.**

8 Every Lay Representative shall agree in writing that he has read, and is familiar
9 with, 4 G.C.A., Chapter 4, these Rules, and the Personnel Rules applicable to the
10 public corporation that took adverse action against the Employee.

11 **RULE 14. HEARING COUNSEL.**

12 The CCU, by a majority vote, may designate its Administrative Counsel to act as
13 Hearing Counsel. When so designated, the CCU shall assign the Hearing Counsel
14 to conduct evidentiary hearings on specific issues. The issues shall be within the
15 jurisdiction of the CCU.

16 **RULE 14.1. HEARING PROCEDURE.**

17 Hearing Counsel shall use these Rules in conducting hearings. Hearing Counsel
18 shall administer oaths to witnesses.

19 **RULE 14.2. WRITTEN FINDINGS.**

20 Hearing Counsel shall make written proposed findings of fact and conclusions of
21 law which shall be served on the Parties. The findings shall then be submitted to
22 the CCU who may accept, reject or modify the findings or may conduct its own
23 hearing on the issues.

24 **RULE 14.3. PARTIES' INPUT.**

25 The Parties shall be informed of the date on which the CCU shall deliberate the
26 adoption of the findings and may file written objections or other written comments
27 regarding the findings for the CCU's consideration."

1 **Section 8. Subpoena Powers for the Consolidated Commission on**
2 **Utilities.** A new §79107 is hereby *added* to Chapter 79, Title 12 of the Guam
3 Code Annotated to read:

4 **“§79107. Subpoena Powers.** The Chairperson of the Consolidated
5 Commission on Utilities, upon his or her own initiative, upon the request of any
6 member of the Commission, or upon the request of any party before the
7 Commission, may summon in writing any person to attend before a meeting of the
8 Commission as a witness and in a proper case, to bring with him or her any book,
9 record, or paper which may be deemed material as evidence in the case. The fees
10 for such attendance shall be same as the fees of witnesses before the Superior
11 Court, except that if the witness is a government employee no witness fees shall be
12 given. The subpoena shall issue in the name of the Consolidated Commission on
13 Utilities, and shall be directed to the person and shall be served in the same manner
14 as subpoenas to appear and testify before the Superior Court. If any person or
15 persons summoned to testify refuses or neglects to obey said subpoena, upon
16 petition, the Superior Court may compel the attendance of such person or persons
17 before the Commission, or punish said person or persons for contempt in the same
18 manner provided by law for securing the attendance of witnesses or their
19 punishment for neglect or refusal to attend in the Superior Court.”

20 **Section 9. Severability.** *If* any provisions of this Act or its application to
21 any person or circumstance is found to be invalid or contrary to law, such
22 invalidity shall *not* affect other provisions or applications of this Act which can be
23 given effect without the invalid provisions or applications, and to this end the
24 provisions of this Act are severable.