

**12 GCA AUTONOMOUS AGENCIES
CH. 8 GUAM POWER AUTHORITY**

**CHAPTER 8
GUAM POWER AUTHORITY**

NOTE: Pursuant to P.L. 9-239:4 (Aug. 13, 1968), all references in this Chapter to Department/Director of Finance were altered to Department/Director of Administration.

- Article 1. General Provisions.
- Article 2. Guam Power Authority Revenue Bonds.
- Article 3. Alternate Energy Plan.
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**ARTICLE 1
GENERAL PROVISIONS**

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§ 8101. Short Title.

This Article may be cited as the *Guam Power Authority Act of 1968*.

SOURCE: GC § 21500.

§ 8102. Definitions.

As used in this Chapter, unless otherwise indicated:

(a) '*Authority*' means the Guam Power Authority.

(b) '*Board*' means the Consolidated Commission on Utilities established in Chapter 79 of Title 12 of the Guam Code Annotated.

(c) '*Director*' means a Commissioner of the Consolidated Commission on Utilities.

SOURCE: GC § 21501. Repealed and reenacted by P.L. 26-076:5 (Mar. 12, 2002) to reflect the new Consolidated Utilities structure.

§ 8103. Continuation of Existence.

Guam Power Authority is continued in existence as a public corporation.

SOURCE: GC § 21502. Repealed and reenacted by P.L. 26-076:6 (Mar. 12, 2002) to reflect consolidated utilities structure.

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COURT DECISIONS: D.C.GUAM: APP.DIV. 1981 Under the laws of Guam, the Guam Power Authority is a part of the government of Guam and, therefore, an employee injured in the course of his work has an exclusive remedy against his employer, thus precluding a separate course of action against the Government. *Guerrero v. Government of Guam*, D.C. Civil #80-043A.

§ 8104. Powers.

The Authority shall have and exercise each and all of the following powers:

(a) Generate, transmit, distribute, sell and exchange electric power on Guam;

(b) Acquire, in accordance with Title 5 GCA, Chapter 5, and subject to the laws of Guam, by grant, purchase, gift, devise or lease, or by the exercise of the right of eminent domain in accordance with the provisions and subject to the limitations of 21 GCA, Chapter 15, and hold and use any real or personal property necessary or convenient or useful for the carrying on of any of the powers pursuant to the provisions of this Chapter; provided further that the Authority shall not enter any agreement for the purchase of oil or any other petroleum product which extends longer than five (5) years;

(c) Establish its internal organization and management and adopt regulations for the administration of its operations;

(d) Establish and modify from time to time, with approval of the Public Utility Commission, reasonable rates and charges for electric service at least adequate to cover the full cost of such service, including the cost of debt service, and collect money from customers using such service, all subject to any contractual obligation of the Board to the holders of any bonds; and refund charges collected in error.

(e) Enter into contracts and execute all instruments necessary or convenient in the exercise of its powers, adopt a seal and sue or be sued in its own corporate name;

(f) Construct works along or across any street or public highway or watercourse or over any of the lands which are the property of the Territory; and with respect to federal lands, the Authority shall have the same powers with respect to the

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construction of such works as possessed by the government of Guam. The Authority shall restore any such street or highway to its former state as near as may be and shall not use it in a manner to impair unnecessarily its usefulness;

(g) At any time or from time to time, incur indebtedness pursuant to Article 2 of this Chapter;

(h) Enter into contracts with the Government of the Territory or with the United States for loans or grants;

(i) Employ, retain or contract for the services of qualified managers, specialists or experts, as individuals or as organizations, to advise and assist its Board of Directors and employees;

(j) Adopt such rules and regulations as may be necessary for the exercise of the powers and performance of the duties conferred or imposed upon the Authority or the Board by this Article;

(k) Control, operate, improve, equip, maintain, repair, renew, replace, reconstruct, alter and insure the electric system subject to compliance with any applicable zoning, building and health regulations of the territory of Guam;

(l) Do any and all other things necessary to the full and convenient exercise of the above powers.

(m) Adopt rules and regulations governing selection, compensation, promotion, performance evaluation, disciplinary action and other terms and conditions of employment affecting *certified, technical and professional* personnel, subject to the provisions of the Administrative Adjudication Act. Such rules and regulations shall provide for the employment and retention of persons on the basis of merit and shall include an orderly and systematic method of recruitment and the establishment of a list of qualified applicants. *Certified, technical and professional personnel* are defined as personnel employed by GPA who are professional engineers, attorneys, and other licensed professionals, or who are highly skilled employees with certificates such as plant operators and other similar engineering and technical personnel, including, but not limited to, those types of jobs listed in Attachment A. Compensation for all other personnel shall remain consistent with compensation plans and pay scales as determined by law.

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(n) The Guam Power Authority may enter into long term contracts for a period up to and *not exceeding* thirty (30) years for renewable energy contracts, purchased power agreements, refurbish-operate-maintain contracts, and build-operate-transfer contracts that cost Thirty Million Dollars (\$30,000,000) or more. Nothing herein *shall* repeal, limit, *or* otherwise prohibit any law *or* regulation authorizing the Authority to enter into any contract for a longer period.

(o) The Guam Power Authority may enter into performance management contracts (PMC) to manage any part of the island wide power system with a base period up to five (5) years and *no more than* two (2) five (5) year renewal option periods, *not exceeding* a total of fifteen (15) years, including the base period and all option periods. Nothing herein *shall* repeal, limit, *or* otherwise prohibit any law *or* regulation authorizing the Authority to enter into any contract for a longer period.

Nothing contained in this Section or elsewhere in this Article shall be construed directly or by implication to be in any way in derogation or limitation of powers conferred upon or existing in the Authority or the Board by virtue of any provisions of the Organic Act of Guam or statutes of the Territory or any other provisions of this Code.

SOURCE: GC § 21503. Subsection (2) amended by P.L. 16-124:8 (Dec. 29, 1982) and by P.L. 18-008:16 (July 8, 1985). Subsection (4) amended by P.L. 12-042:3 (Sept. 21, 1973); P.L. 16-073 (Mar. 20, 1982), repealed and reenacted by P.L. 16-119 (Dec. 14, 1982), amended by P.L. 17-048 (Feb. 9, 1984), repealed and reenacted by P.L. 17-074 (Oct. 26, 1984). Subsection (13) added by P.L. 28-113:2 (April 14, 2006). Subsections (14) and (15) added by P.L. 30-066:2 and 3 (Nov. 27, 2009).

2014 NOTE: Pursuant to the authority granted by 1 GCA § 1606, the reference in subsection (b) to Title VII-A of the Government Code was altered to reflect its codification in Title 5, GCA; and subsection designations were altered to adhere to the Compiler's alpha-numeric scheme.

COURT DECISIONS: Subsection (d), as amended by P.L. 12-042:3 (Sept. 21, 1973), was declared invalid in *Guam Power Authority v. Bishop of Guam*. 383 F. Supp. 476 (D.Ct. Guam 1974). The District Court of Guam found that P.L. 12-042 was vague and ambiguous, and lacked a rational basis to justify requiring customers to subsidize private functions of churches and private schools, or public functions of government schools and hospitals.

§ 8105. Power, Duty to Connect.

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Notwithstanding any other provision of the Guam Code Annotated or any duly promulgated rule or regulation except those service rules and regulations of the Authority, the Authority shall not refuse to connect electrical power to any single family residence because said residence fails to meet specified public health or waste water standards.

SOURCE: GC § 21503.1, as added by P.L. 12-146 (June 19, 1974).

NOTE: Pursuant to the authority granted by 1 GCA § 1606, the reference to the Government Code of Guam was altered to reflect its codification in the Guam Code Annotated.

§ 8105.1. Streetlights: Disconnection Notice.

Notwithstanding any provision of law to the contrary the Guam Power Authority shall at all times provide power necessary for operation of at least as many public streetlights as were working on July 1, 1983. If the Authority does not receive prompt payment for such power consumption, it shall notify the Legislature and it shall not disconnect any street lights until thirty (30) days after so notifying the Legislature.

SOURCE: Added by P.L. 17-026:48 (Oct. 11, 1983).

§ 8106.

[Repealed.]

SOURCE: GC § 21503.2, added by P.L. 16-073 (Mar. 20, 1982); repealed and reenacted by P.L. 16-119:3 (Dec. 6, 1982); repealed and reenacted by P.L. 17-010:9 (June 14, 1983). Subsection (a) added by P.L. 17-010:10 (June 14, 1983) and by P.L. 17-025:23 (Oct. 7, 1983). Repealed and reenacted by P.L. 17-048. Codified as 12 GCA 8106. Repealed by P.L. 17-074:3 (Oct. 26, 1984).

2014 NOTE: The legislative history of this provision is somewhat confusing, and is best understood as two separate provisions of the Government Code: § 21503.2 and § 21503.2(a).

Section 21503.2 was added to the Government Code by P.L. 16-073. It was repealed and reenacted by P.L. 16-119:3 and by P.L. 17-010:9.

Section 21503.2(a) was added by P.L. 17-010:10. A completely different version of GC § 21503.2(a) was added by P.L. 17-025:23.

P.L. 17-048 repealed and reenacted a new § 21503.2(a) and (b). It also repealed the conflicting versions of § 21503.2(a) that had been added by P.L. 17-010:10 and P.L. 17-025:23.

The entire provision was repealed by P.L. 17-043:3.

§ 8107. Governance of Authority.

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All powers vested in the Authority, except as provided herein, shall be exercised by the Consolidated Commission on Utilities, as established in Chapter 79 of Title 12 of the Guam Code Annotated.

SOURCE: GC § 21504. Repealed and reenacted by P.L. 26-076:7 (Mar. 12, 2002).

§ 8108. General Manager.

(a) The Board shall appoint a general manager who shall be its chief executive officer and shall serve at its pleasure. The general manager shall, at a minimum, possess the following qualifications:

(1) A combined minimum of ten (10) years of documented experience successfully managing a public or private utility or business activity similar, or greater, in scope and size to the Authority, and either:

(A) graduation from an accredited institution of higher education with a bachelor's degree in business or public sector management, or closely related field or discipline, or

(B) graduation from an accredited institution of higher learning with a bachelor's degree in engineering or engineering technology.

(2) The Board shall fix the general manager's compensation, notwithstanding any other provision of law. The general manager shall have full charge and control of the construction of the works of the Authority and their maintenance and operation, and also of the administration of the business affairs of the Authority.

(3) The Board may contract with a corporation to perform any or all of the duties, and to exercise any or all of the powers of the general manager as provided in this Section; and the general manager, subject to the approval of the Board, may contract with a corporation to perform some of the duties, or to render expert and technical assistance, in the operation of the Authority. Such a management contract shall be for no longer than three (3) years duration. A corporation contracted pursuant to this Section must have a minimum of seven (7) years experience in the operation of an electrical power utility of similar, or greater, scope than the Authority.

(b) The powers of the General Manager include the following:

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(1) To see that all rules and regulations of the Authority are enforced.

(2) To attend all meetings of the Board and submit a general report of the affairs of the Authority.

(3) To keep the Board advised as to the needs of the Authority and to approve demands for the payment of obligations of the Authority within the purposes and amounts authorized by the Board.

(4) To prepare or cause to be prepared all plans and specifications for the construction of the works of the Authority.

(5) To devote his entire time to the business of the Authority; to select and appoint the employees of the Authority, except as otherwise provided by this Act, and to plan, organize, coordinate and control the services of such employees in the exercise of the powers of the Authority under the general direction of the Board.

(6) To cause to be published within one hundred twenty (120) days from the end of each fiscal year a financial report showing the result of operations for the preceding fiscal year and the financial status of the Authority on the last day thereof. The publication shall be made in the manner provided by the Board.

(7) To perform such other and additional duties as the Board may require.

(c) The Board may contract with a corporation to perform any or all of the duties and to exercise any or all of the powers of the General Manager as provided in this Section and the General Manager, subject to the approval of the Board, may contract with a corporation to perform some of the duties or to render expert and technical assistance in the operation of the Authority.

SOURCE: GC § 21505. Subsection (a) repealed and reenacted by P.L. 26-076:12 (Mar. 12, 2002).

2014 NOTE: Pursuant to the authority granted by 1 GCA § 1606, numbers and/or letters were altered, and subsection designations in subsection (a) were added to adhere to the Compiler's alpha-numeric scheme.

§ 8109. Assistant General Manager: Engineering and Technical Services.

[Repealed.]

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SOURCE: GC § 21505.1, as added by P.L. 11-057. Repealed by P.L. 26-076:16 (Mar. 12, 2002).

§ 8110. Chief Financial Officer.

The Board shall appoint a chief financial officer who shall serve at its pleasure. The chief financial officer shall be a Certified Public Accountant and should have Federal Energy Regulatory Commission ('FERC') knowledge and experience. The Board shall fix the chief financial officer's compensation. The chief financial officer shall have full charge and control of the fiscal, business and accounting operations of the Authority, subject to the supervision of the Board.

SOURCE: GC § 21505.2, as added by P.L. 11-057. Repealed and reenacted by PL. 26-076:13 (Mar. 12, 2002).

§ 8110.5. Employees.

All employees of the Authority shall be eligible for all insurance, retirement, workmen's compensation and other benefits as extended to employees of the government of Guam, and shall be employees of the government of Guam for the purposes of the application of all civil service laws and personnel rules and regulations that apply to government of Guam employees, inclusive of all scales, tables and schedules for compensation. With respect to compensation, this Section shall not apply to the compensation of the general manager or the chief financial officer.

SOURCE: Added by P.L. 26-076:14 (Mar. 12, 2002).

§ 8111. Same: Operations and Distribution.

(a) The General Manager, with the consent of the Board, shall appoint an Assistant General Manager for Operations and Distribution, who shall serve at the pleasure of the General Manager and the Board.

(b) The Assistant General Manager for Operations and Distribution shall be entitled to receive compensation to be determined by the General Manager with the approval of the Board.

(c) Such Assistant General Manager shall devote his entire time to the business of the Authority and shall have full charge and control, subject to the control of the General Manager and the Board of all operation and distribution of the Authority.

(d) Such Assistant General Manager shall have such other duties as may be designated by the General Manager.

SOURCE: GC § 21505.3, as added by P.L. 11-057.

§ 8112. Other Officers.

(a) The Board may also appoint a Secretary, a Treasurer, a Comptroller and an Attorney, who shall serve at the pleasure of the Board and whose duties and compensation shall be fixed by the Board. The Board may appoint one or more assistants to any such office. Any of such offices may be consolidated in one person.

(b) The Secretary shall have charge of all records and minutes of the Board.

(c) The Treasurer shall have custody of all moneys of the Authority and shall pay out such money only in accordance with the direction of the Board or as provided in connection with any indebtedness incurred pursuant to Article 2 of this Chapter. The Board shall however appoint the Director of Administration of Guam or any agent designated by him as its trustee for the payment of bonds issued by it and for any related purposes as the Board may provide.

(d) The Attorney, who must have been admitted to practice before the District Court of Guam, shall advise the Board and the General Manager on all legal matters to which the Authority is a party or in which the Authority is legally interested and may represent the Authority in connection with legal matters before the Legislature, boards and other agencies of the Territory. The Attorney General shall represent the Authority in litigation concerning the affairs of the Authority, provided that he may delegate this duty to the Attorney of the Authority, with respect to any such litigation.

SOURCE: GC § 21506, amended pursuant to P.L. 09-239.

§ 8113. Acquisition of Existing Systems.

(a) On the first day of the month following one hundred twenty (120) days after the effective date of this Act or on such later date as the Board shall establish, the public Utility Agency of Guam shall transfer to the Authority:

(1) all items of property which that Agency owns or controls, including construction work in progress, which are used exclusively

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for electric utility operations and all materials and supplies used and useful exclusively in connection with such properties or in the electric utility operations of that Agency;

(2) all items of property and materials and supplies used by the Agency for electric utility operations in common with other operations and which the Agency and the Authority agree to transfer; and

(3) all working capital, cash, accounts payable and receivable, deposits, advances payable and receivable, all books, records and maps and all other rights, obligations, assets, liabilities, agreements and privileges pertaining to the electric utility properties or electric utility operations of the Agency. Each employee of the Public Utility Agency of Guam primarily engaged in electric utility operations at the date of the transfer shall be offered employment by the Authority.

(b) As soon as practical and subject to agreement with the United States Navy, the Authority shall acquire by purchase or lease, all electric utility properties of such Navy which are jointly used to supply electric power and energy to civilian consumers, federal agencies and military installations on Guam and are not required for exclusive use of the Navy and other agencies of the Department of Defense and pay therefor, out of the proceeds of an indebtedness incurred by the Authority, such price as may be agreed upon. The Authority may also acquire from the Navy such items of general plant and materials and supplies, related to power operations, as may be agreed upon. Any locally hired civilian employee of the Navy who at the date of transfer is engaged primarily in the operation of the electric utility properties being acquired from the Navy shall be offered employment by the Authority.

(c) Any person accepting employment under this Section shall receive not less than the straight-time rate of compensation he was receiving immediately before the transfer date. The other employment benefits and rights, including retirement and leave, of such transferred employees shall be governed by the provisions of § 8118 of this Article. Any persons so transferred who are found to be in excess of the personnel required for the efficient administration of the Authority shall be retained by the Authority until transferred to other positions in the

government of Guam, with the consent of the agency to which transfer is made.

SOURCE: GC § 21507.

2012 NOTE: Pursuant to the authority granted by 1 GCA § 1606, numbers and/or letters were altered to adhere to the Compiler's alpha-numeric scheme.

§ 8113.1. Expedited Procurement of Generators.

In order to provide immediate relief from the critical power shortage existing in 1992, the Guam Power Authority (herein called "GPA"), with all deliberate speed, and with the consent of the Public Utilities Commission (herein called "PUC"), shall procure and install generators adding at least 76 megawatts more or less of nameplate generating capacity to the Island-Wide Power System ("IWPS"). GPA has determined what equipment it shall procure, weighing the time necessary to make the equipment an efficiently operating component of the IWPS, the per kilowatt hour cost of the equipment, factoring in the maintenance cost of the equipment over its anticipated usable life, and the compatibility of the equipment with the long-range capital improvement plans for the IWPS."

SOURCE: Added by P.L. 21-117:1 (July 15, 1992).

§ 8113.2. Interim Debt.

Procurement by GPA of the generators and ancillary equipment, land and buildings will require long-term financing in the form of revenue bonds or capital leases, or a combination of both.

Pending issuance of revenue bonds, in order to identify funds sufficient to enable GPA forthwith to enter into contracts and obligations incident to procurement and installation of the generators and ancillary equipment, and to enable GPA to obtain or provide for interim funding, the Governor may guarantee the repayment by GPA of such interim debt in an amount not to exceed \$45.6 million. In order to reduce the amount of interim debt, the Governor is authorized to transfer to GPA from any funds of the government of Guam or appropriated by statute, excluding appropriations to the Judicial or Legislative Branches, such sums as he may identify as available, without interest, to be repaid not later than September 1, 1993 from fund proceeds herein authorized. If the Governor identifies other sources which require Legislative approval he shall promptly introduce a bill requesting approval to use these funds. All

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sums advanced by the government of Guam to expedite the interim financing loan shall be repaid promptly from the bond proceeds.

GPA presently has outstanding long-term and other indebtedness which includes that to the Federal Financing Bank ("FFB") with certain restrictive covenants.

Without retirement of the FFB indebtedness, which include covenants preventing parity of new indebtedness, GPA is at an extreme disadvantage in obtaining additional long-term debt. Further, GPA has an existing short term \$26,000,000 bank loan which is intended to be replaced by issuance of revenue bonds at the earliest practicable time, and which should be replaced in order to enhance a new issuance here authorized. The \$20 Million loan to GPA in Public Law 20-112 is hereby converted to a grant with the condition that the \$800,000 interest free annual payment be used for debt service and a source of funding for the long-term debt.

SOURCE: Added by P.L. 21-117:2 (July 15, 1992).

§ 8113.3. Long-Term Indebtedness.

In order to enable GPA to obtain the best possible price to the territory, and in the best interest of GPA's rate payers, GPA is authorized to incur long-term indebtedness not to exceed \$258,000,000 maturing not later than thirty (30) years from issuance, bearing interest at a rate not to exceed 10% per annum, and payable solely from revenues of GPA. Notwithstanding § 8210, Title 12, Guam Code Annotated, without further approval by legislation, but subject to the approval of PUC, the indenture pursuant to which the indebtedness is issued may include any and all covenants and agreements described by said § 8210. The debt service coverage ratio used in the rate covenant for the debt authorized by this Act shall not exceed an amount approved in writing by the Governor, and shall be the debt service coverage ratio hereafter used by PUC, together with other appropriate factors, in setting rates. The indenture may also include a pledge by the government of Guam not to repeal, amend or modify Chapter 12 of Title 12, Guam Code Annotated, in any way that would substantially impair the powers, duties or effectiveness of the PUC thereunder in relation to GPA and its rates. The proceeds of said debt shall be used to refund GPA's existing indebtedness, including revenue bonds, FFB loans, the short-term

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indebtedness herein authorized, and the \$26 million interim debt and to finance the following listed projects:

- (a) Procurement and installation of the generation, and ancillary equipment described in § 8113.1;
- (b) Refurbishment of the Weber barge;
- (c) Land acquisition for generator siting;
- (d) Next baseload unit having between 34.5 and 40 megawatts of capacity unless some greater capacity is recommended by the GPA board of directors, and approved by the PUC.
- (e) Anigua substation construction and equipment;
- (f) Upgrading of computers for central control of IWPS;
- (g) Replacement of deteriorated steel structures at Cabras supporting 115 KV buses and switch gear; and
- (h) Procurement and installation of stand-by generators for water wells and booster stations in the islandwide water, sewer, and power systems.

To the extent GPA, with the approval of PUC, determines that as to procurement and installation of the generators and ancillary equipment, it is in the best interest of GPA's rate payers to procure by various appropriate financing means available, GPA is hereby authorized to do so.

To the extent costs are incurred or advances are received for such projects prior to issuance of the revenue obligations authorized hereby, such costs may be reimbursed from proceeds of such obligations. This authorization shall constitute an expression of the intent of the government of Guam to reimburse such costs for purposes of §1.148-18 of the Treasury Regulations.

SOURCE: Added by (July 15, 1992):3; amended by P.L. 21-133:1 (Sept. 3, 1992). Subsection (4) amended by P.L. 22-026 (Sept. 21, 1993).

2012 NOTE: Pursuant to the authority granted by 1 GCA § 1606, numbers and/or letters were altered to adhere to the Compiler's alpha-numeric scheme.

§ 8113.4 PUC Authorization; Tax-Free.

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Such funds as GPA may borrow to implement the requirements of this Act, shall be borrowed upon such terms and conditions as shall be authorized by PUC pursuant to its regulatory authority ensuring that any rates resulting to consumers are reasonable as provided by §12004 of this Title 12.

The amount and terms for both interim and long-term debt authorized by the Act shall be as set by PUC, not to exceed the limits set by this Act. All interest on the debt and all costs of financing and all associated costs for new generation shall be capitalized so there are no associated demands on GPA cash and no impact on rates until construction and installation of the respective generators are complete and the generators concerned are on line and providing power, revenue and benefits to GPA and the people of Guam. On behalf of the government of Guam, the Governor may guarantee the repayment of the interim debt. The term of the interim debt allowed by this Act shall be repaid not later than September 1, 1993, during which period long-term financing to pay off this debt shall be obtained by GPA. The interim debt terms shall allow for an early payoff with no prepayment penalty after two (2) months, and the interest rate thereon shall not exceed a reasonable rate to GPA (taking into account non-taxability to the lender of the interest), not to exceed an annual actual percentage rate of 10%. The appropriateness, terms, conditions, fees, and interest rates of the debt (interim and long-term) shall be approved by the PUC. All expenses and costs involved in the origination of the debt shall be the responsibility of GPA, to be paid from the proceeds of said debt.

Interest paid by GPA on long-term and interim financing, if any, shall be free of income and business privilege taxation from the government of Guam.

SOURCE: Added by P.L. 21-117:4 (July 15, 1992). Amended by P.L. 29-002:VI:28 (May 18, 2007) the name, Gross Receipts Tax, changed to Business Privilege Tax, effective July 17, 2007.

§ 8113.5 Transfer of Property.

To provide necessary land for installation of the generators, for use for substations, and for building uses, there is hereby transferred to GPA, in fee simple, the following described parcels of real property, all hereby determined to be necessary and related to GPA's immediate needs for additional generation capacity and its operation, maintenance, transmission and distribution:

Macheche Substation:

Two (2) parcels of government of Guam land more particularly described as Lots 5246-2 and 5246-3, each situated in the Municipality of Dededo, each containing an area of 3,716± square meters or 40,000± square feet, each as shown on the map recorded in the Department of Land Management on June 6, 1988, under Document Number 399099.

Anigua Substation:

A parcel of government of Guam land more particularly described as Lot No. 1361-1-C NEW, situated in Anigua, Municipality of Agana, containing an area of 1,522± square meters or 16,382± square feet, as shown on the map recorded in the Department of Land Management on February 11, 1981 under Document Number 319048.

T&D/Supply Warehouse Relocation:

A parcel of government of Guam land more particularly described as Lot No. 10122-13-R1, situated in the Municipality of Dededo, containing an approximate area of 32,115± square meters or 345,551± square feet, as shown on the map recorded in the Department of Land Management on May 26, 1988 under Document Number 398768.

SOURCE: Added by P.L. 21-117:5 (July 15, 1992).

§ 8113.6. Generators at the Hospital.

Subject to agreement between the Guam Memorial Hospital Authority (GMHA) and GPA whereby GMHA makes available to GPA at the Guam Memorial Hospital site sufficient land for installation of electrical generators and related ancillary equipment, including fuel storage, and in consideration of such agreement, should a shortage of electrical supply otherwise occur, from and after commissioning of that generating capacity to be installed at the Guam Memorial Hospital site, GPA will apportion to GMHA sufficient electrical supply from the generating capacity there installed to meet the needs of GMHA; provided, however, that the terms and conditions of any such agreement between GMHA and GPA shall be subject to prior review and approval of PUC.

SOURCE: Added by P.L. 21-117:6 (July 15, 1992).

§ 8113.7. Conditional Uses Approved.

To permit use by GPA of the parcels of land described in §§ 8113.5 and 8113.6 of this Title for public utility uses, GPA is hereby granted such conditional uses.

SOURCE: Added by P.L. 21-117:7 (July 15, 1992).

§ 8113.8. Waiver of Procurement Requirements.

In view of the urgency for procurement of the generators and ancillary equipment, the requirements of Part B, Article 3, Chapter 5, Title 5, Guam Code Annotated, are hereby waived and GPA is hereby authorized to utilize such method of source selection as it deems necessary, subject to the approval of PUC for the generators and ancillary equipment described in §§ 8113.10 and 8113.12 of this Title and as shown on GPA Exhibit I attached to the Act of which this section is a part.

SOURCE: Added by P.L. 21-117:8 (July 15, 1992).

§ 8113.9. Liquidated Damages.

GPA shall provide that any contract awarded to a bidder to provide GPA with a generating unit shall include in the contract a provision which will impose liquidated damages of not less than \$2,000 per day for each day beyond an agreed date that the contractor promises to activate a specific generating unit. The provisions in this section shall not apply in the case of force majeure to the extent of delays caused by such force majeure. The provisions of this section can not be waived.

SOURCE: Added by P.L. 21-117:10 (July 15, 1992).

§ 8113.10. Dates When Generators Go on Line.

GPA did, on July 10, 1992, provide the Legislature, while sitting as a Committee of the Whole, with a list of the specific dates that each of the following generating units purchased by the authorization contained in this Act will come on line and be producing electricity for the IWPS. Such dates were:

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Generation Unit	In-Service date*	Ten. Location
2-3616 Caterpillar, 9.6 MW (4.8 MW each)	May 31, 1993	Talofofo
2-3616 Caterpillar, 9.6 MW (4.8 MW each)	June 30, 1993	GMH
1-LM2500, 21.6 MW (Gas Turbine)	April 30, 1993	Macheche
4-3616 Caterpillar, 19.2 MW (4.8 MW each)	Aug. 31, 1993	New Site
Weber CT1 (8 MW)	Jan. 31, 1993	Existing
Weber CT2 (8 MW)	Feb. 28, 1993	Existing

* In-Service Date means the date the unit is up and providing power to the IWPS.

The Authority shall also provide the Speaker of the Legislature and the Governor of Guam a detailed explanation as to why a specific dateline cannot or has not been met within ten (10) days of the date missed.

SOURCE: Added by P.L. 21-117:11 (July 15, 1992).

§ 8113.11. Power to Southern Guam.

Any generating units purchased with the funds authorized by this Act and which are sited to the south of a line extending from the northernmost point in Agat to the northernmost point in Yona and are activated to supplement the IWPS shall be used to provide electric power to the villages of Yona, Talofofo, Inarajan, Merizo, Umatac, Agat and Santa Rita first, and only secondarily for the rest of the IWPS, provided, that all parts of the island share equally in any load shedding. Excess electricity from these generating units may then be used to provide electric power to the Manengon Hills project only if there is adequate power for the rest of the island.

SOURCE: Added by P.L. 21-117:12 (July 15, 1992).

§ 8113.12. Awards to Specific Bidders.

Of the generating equipment to provide the 76 megawatts more or less of electricity authorized by this Act 60 megawatts shall be purchased from the bidders listed in this section, and 16 megawatts will be achieved as a result of the refurbishment of the Navy's Weber Barge. The new units shall be purchased from the bidders Pacific Machinery and Stewart & Stevenson. These are the successful bidders to supply new generators to GPA as shown in GPA Exhibit I, attached to this Act and made a part thereof by reference. If such units as are described in this Act are not purchased pursuant to said bids, this Act shall be a nullity. The units purchased must be new units and may not be replaced or substituted with rebuilt units. PUC may waive bid defects or minor technical changes as recommended or approved by GPA.

SOURCE: Added by P.L. 21-117:13 (July 15, 1992).

§ 8113.13. Repayment of FFB Debt.

Part of the funds authorized to be borrowed by this Act shall be used to purchase the entire debt held by FFB and GPA must use the FFB Reserve fund to offset the balance to be paid.

§ 8113.14. [Untitled Section].

(a) Legislative Findings and Intent.

(1) *I Liheslaturan Guåhan* finds that § 8203 of Title 12 of the Guam Code Annotated provides that the Guam Power Authority (GPA) is authorized to incur indebtedness by the issuance of revenue bonds with the approval of I Maga'lahi (the Governor) to raise funds for the purpose of establishing the electric power system of GPA, or of acquiring lands for the system, or of acquiring, constructing, improving, equipping, maintaining, repairing, renewing, replacing, reconstructing or insuring the system, or any part thereof, or for the purpose of refunding any such bonds, or for any combination of such purposes.

(2) Section 12004 of Title 12 of the Guam Code Annotated provides that GPA shall not enter into any contractual agreements or obligations (including bonds) that could increase rates and charges prior to the written approval of the Guam Public Utilities Commission (the GPUC).

(3) Section 50103 of Title 12 of the Guam Code Annotated provides that public corporations of the government of Guam,

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including GPA, shall issue bonds and other obligations only by means of, and through the agency of the Guam Economic Development Authority (GEDA), and that GEDA shall not sell any bond without the approval by *I Liheslaturan Guåhan* of the terms and conditions of the bonds.

(4) The Consolidated Commission on Utilities (CCU) has been exploring opportunities to reduce debt service costs for nearly a decade and the primary point of focus has been the Marianas Energy Corporation (MEC) plant contract which is financed over a twenty (20) year period even though the useful life of the plant is estimated to be forty (40) years. This short-term financing has placed a high burden on existing ratepayers to repay this debt faster than usual, with the highest debt payments emerging between 2012 and 2018.

(5) While the CCU has concluded that the MEC contract cannot be refinanced on terms beneficial to GPA customers, GPA has developed an alternative finance strategy to accomplish the same purposes as the savings from an MEC refinancing wherein GPA would refinance and restructure its currently outstanding bonds in order to reduce debt service costs by approximately \$8 Million Dollars per year through 2018, at which time the Independent Power Producer contracts, including the MEC contract, will terminate.

(6) This estimated \$8 Million Dollars annual savings would provide current relief to ratepayers when they need it most, and significantly reduce the impact of current rate increases on GPA customers. The GPUC recently approved a May 1 base rate increase that would yield an estimated \$9.1 Million Dollars per year in revenues to GPA. The proposed refinancing and restructuring contemplated by this legislation would effectively roll back nearly all of the recently approved rate hike.

(7) Based on historic low interest rates and current market conditions, GPA expects to be able to refinance certain maturities of its outstanding 1993 Series A and 1999 Series A revenue bonds for debt service savings, but in any event desires to refinance certain maturities of such bonds in order to restructure debt service in a manner that results in more level total payments for capital costs, taking into account GPA's current contract with Marianas Energy

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Company, which requires much higher capital payments through January, 2019.

(8) GPA entered into forward delivery agreements with Lehman Brothers and Bank of America for the investment of certain funds relating to its outstanding 1993 Series A and 1999 Series A revenue bonds, and it is necessary and desirable to terminate and retire one (1) or more of those agreements in connection with such refinancing and restructuring of the outstanding 1993 Series A and 1999 Series A revenue bonds.

(9) As a result of the potential savings to ratepayers, on June 5, 2012, the Consolidated Commission on Utilities (the CCU) adopted a resolution relative to (1) approving the issuance of additional senior revenue bonds to refund all or a portion of the outstanding Guam Power Authority Revenue Bonds 1993 Series A and 1999 Series A, and (2) approving the issuance of subordinate revenue bonds to terminate and retire all or a portion of the outstanding GPA obligations under the forward delivery agreements.

(10) In order to benefit ratepayers, *I Liheslaturan Guåhan* has determined to approve the issuance of revenue bonds by GPA for the purposes described in subparagraph (1) of the preceding paragraph and the issuance of subordinate revenue bonds by GPA for the purpose described in subparagraph (2) of the preceding paragraph, all subject to approval by *I Maga'lahaen Guåhan*, the GPUC and the Board of Directors of GEDA in accordance with law.

(b) Approval of the Terms and Conditions of GPA Refunding Bonds. *I Liheslaturan Guåhan*, pursuant to § 50103(k) of Title 12 of the Guam Code Annotated, hereby approves the terms and conditions of the issuance of senior revenue bonds by GPA for the purpose of refunding all or a portion of GPA's outstanding 1993 Series A and 1999 Series A revenue bonds (all or such portion of such revenue bonds being referred to herein as the "prior bonds") in accordance with the following requirements, limitations, terms and conditions:

(1) The aggregate principal amount of the refunding bonds shall not exceed the sum of (i) the amount determined in accordance with § 8229 of Title 12 of the Guam Code Annotated, plus (ii) any additional amount needed to provide for a deposit to the debt service reserve in connection with the issuance of the refunding bonds.

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(2) All obligation of GPA to pay debt service on, and the redemption price of, the prior bonds shall be discharged concurrently with the issuance of the refunding bonds. Thereafter, the prior bonds shall be payable solely from and secured solely by an escrow established for such purpose in accordance with GPA's existing bond indenture.

(3) The final maturity of the refunding bonds shall not be greater than the final maturity of the 1999 Series A revenue bonds.

(4) Such bonds shall be issued and sold pursuant to GPA's existing bond indenture, shall be held by the Trustees of the existing bonds and shall be in compliance with the provisions of Chapter 8 of Title 12 of the Guam Code Annotated, including approval by the CCU and by *I Maga'lahaen Guåhan* as provided therein.

(5) The sale of the bonds shall be approved by the Board of Directors of GEDA as provided by Chapter 50 of Title 12 of the Guam Code Annotated and the terms and conditions of the issuance of the bonds shall be approved by the GPUC as provided by Chapter 12 of Title 12 of the Guam Code Annotated.

(6) GPA's outstanding 1993 Series A and 1999 Series A revenue bonds maturing in calendar years 2012 through 2018, inclusive, may be refinanced with a portion of the proceeds of the bonds approved in this Section, provided that such refinancing results in GPA's ability to petition the GPUC to reduce rates during the years of the maturities being refinanced without such rate reduction resulting in the violation of any bond indenture covenants.

(7) Any of GPA's outstanding 1993 Series A and 1999 Series A revenue bonds may be refinanced with a portion of the proceeds of the bonds approved in this Section, provided that the present value of debt service for each maturity of such refinancing bonds shall not exceed the present value of debt service for each maturity of such refinanced bonds, using the yield on the refinancing bonds as the discount rate.

(c) Approval of the Terms and Conditions of GPA Subordinate Revenue Bonds to Terminate and Retire the Obligations of GPA under Certain Forward Delivery Agreements.

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(1) *I Liheslaturan Guåhan*, pursuant to § 50103(k) of Title 12 of the Guam Code Annotated, hereby approves the terms and conditions of GPA subordinate revenue bonds in a principal amount not to exceed Twenty Million Dollars (\$20,000,000) for the purposes listed in Subsection (3) of this Section, provided, that such bonds have a final maturity not later than October 1, 2027, bear interest at such rate or rates and are sold for such price or prices as shall result in a net interest cost not exceeding the limitation provided by § 8214 of Chapter 8 of Title 12 of the Guam Code Annotated, as amended, are issued and sold in accordance with the provisions of Chapter 8 of Title 12 of the Guam Code Annotated, including approval by the CCU and by *I Maga'lahaen Guåhan* as provided therein.

(2) The sale of the subordinate bonds shall be approved by the Board of Directors of GEDA as provided by Chapter 50 of Title 12 of the Guam Code Annotated and the subordinate bonds shall be approved by the GPUC as provided by Chapter 12 of Title 12 of the Guam Code Annotated.

(3) The proceeds of the subordinate bonds may be applied to pay for the costs of issuance of the subordinate bonds, for credit enhancement therefore, to provide for reserves and to pay the costs of terminating and retiring GPA's obligations under the forward delivery agreements for the investment of certain funds relating to its outstanding 1993 Series A and 1999 Series A revenue bonds, subject in each case to approval by the GPUC of such purpose in accordance with Chapter 12 of Title 12 of the Guam Code Annotated.

(d) Prompt Ratepayer Relief. Within thirty (30) days after the issuance of the bonds approved by this Section, GPA shall petition the PUC for a resetting of GPA's revenue requirement that takes into account the savings in debt service which results from the refunding. The intention of the *I Liheslatura* (the Legislature) is to provide prompt ratepayer relief that takes into account the savings resulting from the refunding.

SOURCE: Added by P.L. 31-233:XII:27 (Sep. 7, 2012).

§ 8114. Indebtedness.

The Authority may incur indebtedness by any means permitted by Article 2 of this Chapter.

SOURCE: GC § 21508.

§ 8115. Exemption from Taxation, and In-Lieu Payments.

As an instrumentality of the Territory, the Authority and all property acquired by or for the Board and all revenues and income therefrom are exempt from taxation by the Territory or by any political subdivision or public corporation thereof and from all taxes imposed under the authority of the Legislature of the Territory, or with respect to which the Legislature is authorized to grant exemption. Sales of liquid fuels for electric power generation to the Authority are exempt from the tax on such sales to the same extent as sales to the United States are exempt and sales of all fuel to the Authority for electric power generation are exempt from the business privilege tax.

SOURCE: GC § 21509, Subsection (b) repealed by P.L. 16-025:1 (Aug. 21, 1981). Amended by P.L. 29-002:VI:28 (May 18, 2007) the name, Gross Receipts Tax, changed to Business Privilege Tax, effective July 17, 2007.

2014 NOTE: Subsection designation was removed to adhere to the Compiler's general codification scheme pursuant to the authority granted by 1 GCA § 1606.

§ 8116. Contracts and Purchases.

[Repealed by P.L. 16-124.]

COURT DECISIONS: SUPER.CT. 1981 There was sufficient evidence to show that GPA, in denying the bid to the plaintiffs, exercised reason, rather than improper or illegal motives, in selection of another bidder. Therefore, a temporary injunction is denied and the temporary restraining order vacated. *Miles Security Agency, Inc. v. Guam Power Authority*, Civil Case #843-82.

§ 8117. Accounting and Expenditures.

(a) The Board shall adopt and maintain a system of accounting which is substantially in accordance with the Uniform System of Accounts prescribed for Public Utilities and Licensees (Class A and B) issued by the Federal Power Commission of the United States, as amended from time to time.

(b) The Board may authorize, by annual budget resolution and amendments thereto, the payment of demands against the Authority resulting from its exercise of the powers prescribed in this Act, for a period of one (1) year if:

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(1) the purposes and amounts of such demands are projected in a budget expressed in terms of major account groups of the Uniform System of Accounts, which has been adopted by the Board after receiving recommendations of the General Manager; and

(2) if the specific demands which are made are approved by the Board or the General Manager prior to payment.

(c) The Board shall employ a firm of independent certified public accountants who shall examine and report to the Board, at least annually, upon the status of the financial records and accounts maintained by the Authority. Copies of any such report shall be furnished to the Governor and to the Legislature.

(d) The Board shall report to the Governor concerning its administration of the affairs of the Authority. It shall present an annual report within one hundred twenty (120) days after the end of each fiscal year and, if requested by the Governor, shall present special reports within thirty (30) days after the end of each intervening quarter. The financial information presented in such reports shall be in accordance with the Uniform System of Accounts adopted by the Board. Copies of any such reports, including the annual and special reports, shall be furnished to the Legislature.

SOURCE: GC § 21511.

2012 NOTE: Pursuant to the authority granted by 1 GCA § 1606, numbers and/or letters were altered to adhere to the Compiler's alpha-numeric scheme.

§ 8118. Employment.

(a) Pursuant to the provisions of 4 GCA §§ 4105 and 4106, the Board shall establish rules and regulations regarding selection, promotion, performance evaluation, demotion, suspension and other disciplinary action for the employees of the Authority; provided, however, that all con-tracts for the hiring of off-island employees shall conform to the provisions of 4 GCA § 6216.

(b) Employees of the Authority, excluding the directors, shall be members of the Government of Guam Retirement Fund, subject to the provisions 4 GCA § 8105, except that for the purposes of Subsection (a) of said section, the employees of the Authority shall not be considered employees of a "public corporation" whereby their membership in the Fund is optional and membership therein must be specifically requested.

The Authority shall contribute to the Government of Guam Retirement Fund on the basis of annual billings as determined by the Board of Trustees, Government of Guam Retirement Fund, for the government share of the cost of the retirement benefits applicable to the Authority's employees and their beneficiaries. The Authority shall also contribute to the Workmen's Compensation Fund, on the basis of annual billings as determined by the Workmen's Compensation Commissioner, for the benefit payments made from such Fund on account of the Authority's employees.

(c) Notwithstanding any other provisions of law, neither the Manager, Secretary, Treasurer, Comptroller nor Attorney of the Authority shall be within the classified service of the government of Guam but shall be hire, compensated and employed under terms and conditions fixed by, and at the pleasure of the Board.

SOURCE: GC § 21512; Subsection (a) amended by P.L. 13-081 and P.L. 16-023.

§ 8119. No Generators Near Schools.

No power generation facility, with a capacity in excess of one (1) megawatt and utilizing fossil fuels, may be constructed within one thousand five hundred feet (1,500') of a school.

SOURCE: Added by P.L. 22-023:5 (6/22/93).

§ 8120. Authority Liable for Damage.

The Authority shall be liable for damage caused to electrical appliances and devices when such damage is proximately caused by power surges, voltages fluctuations or frequency fluctuations in the power supplied by the Authority to a consumer and when such damage is not a result of any negligence on the part of the consumer and is not a result of an otherwise defective appliance or electrical device. Except for computer equipment or equipment for which the manufacturer recommends that a voltage protection device, surge protector, or power conditioning device be installed by the consumer, the Authority may not require the use of voltage protection devices, surge protectors or power conditioners and may not raise the failure to use such devices as a defense to claims for damages arising out of voltage or frequency fluctuations or power surges. In establishing liability for damages pursuant to this section, the consumer need only prove that the appliance or electrical device was damaged by a variation of voltage or a variation

of frequency or a surge in power supplied by the Authority. The Authority may raise as an affirmative defense proof that the appliance or electrical device in question was defective or that the fluctuation of voltage or frequency or power surge was not caused by the Authority but was in fact caused by the consumer's electrical wiring system or devices or equipment belonging to the consumer. It shall be an affirmative defense for the Authority to establish that the quality of power delivered to the consumer's meter was satisfactory.

Any consumer claiming damages from the Authority who relies upon the provisions of this section must file such a claim with the Authority within ninety (90) days of the date of the alleged damage. Otherwise, except for the shortened period in which to make a claim, the procedures contained in the Government of Guam Claims Act shall apply to claims brought pursuant to this section to the extent not otherwise inconsistent herewith. This section shall be effective only as to damages occurring after the date that this section becomes law.

SOURCE: Added by P.L. 22-021 (June 22, 1993)

§ 8121. No Substation for Utilizing or Transforming Electrical Power.

No substation for utilizing or transforming electrical power at 13 kV or higher which is not actually fully completed and in use on or prior to April 1, 1996, may be built or operated within One Hundred (100) feet of any building which is regularly or customarily occupied for residential purposes, including any buildings or structures within the curtilage which are regularly used in conjunction with or as a part of the residence.

SOURCE: Added by P.L. 23-093:2.

§ 8122. Authorization for Tax Exempt Commercial Paper Program.

(a) Authorization for Tax Exempt Commercial Paper Program. The Public Utilities Commission *PUC* and the Guam Economic Development Authority *GEDA* have authorized the Guam Power Authority *GPA* to enter into a borrowing or financing program referred to as tax exempt commercial paper *TECP*. *GPA* is authorized to establish a tax exempt commercial paper program in accordance with the approvals of the *PUC* and *GEDA*.

(b) Purposes: Terms of Borrowing. *GPA* is authorized to incur debt under the Tax Exempt Commercial Paper Program up to a limit of Fifty

Million Dollars (\$50,000,000). This amount may be used to replace the existing lines of credit. At no time will the total outstanding balance borrowed from TECP and lines of credit arising from operation and maintenance purposes exceed this amount without approval from the Public Utilities Commission.

SOURCE: Added by P.L. 24-065:1. Subsection (b) amended by P.L. 24-143:17. Repealed/reenacted by P.L. 25-004:5. Subsection (b) amended by P.L. 28-116:2 (April 26, 2006).

§ 8123. Acceptance of Payments, Installation Applications and Service/Repair Requests via the Internet.

(a) Notwithstanding any other provision of law, the Guam Power Authority shall, within one (1) year of the enactment of this Section, provide that the following services be made available via the internet:

- (1) Acceptance payments via bank cards;
- (2) Application for installation of new and additional services;
and
- (3) Requests for service and repair.

(b) The Guam Power Authority shall provide an email address(es) for inquires regarding items (a) (1), (2) and (3).

(c) Nothing herein shall be construed as limiting the Authority's ability to receive payments through online payment and/or banking services.

(d) The Guam Power Authority shall set, by Administrative Rule, the timeframes to which email inquires must be addressed and dispensed with.

(e) The Guam Power Authority shall adopt appropriate security measures necessary to protect its customers from fraud and identity theft.

SOURCE: Added by P.L. 28-051:1 (June 30, 2005).

§ 8124. Disclosure of Fuel Purchase on Agency's Website.

Within five (5) days of the date of the transaction, Saturdays, Sundays and government of Guam holidays excepted, the Guam Power Authority *shall* disclose the following information on its website for each fuel purchase:

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- (a) the type of fuel purchased;
- (b) the quantity of fuel purchased;
- (c) the total price of the fuel purchased;
- (d) the cost to ship the fuel purchased to Guam; and
- (e) the expected date of delivery of the fuel purchased.

The Guam Power Authority, for fuel purchase contracts for multiple shipments for different future delivery dates *or* for different types of fuels shipped for the same delivery date, *shall* disclose the information required in items (a), (b), (c), (d) and (e), *supra*, for each shipment of fuel *or* each type of fuel.

Nothing herein *shall* be construed as to limit the Guam Power Authority from disclosing any additional information regarding its fuels purchases.

SOURCE: Added by P.L. 30-029:2 (June 16, 2009).

**ARTICLE 2
GUAM POWER AUTHORITY REVENUE BONDS**

- § 8201. Short Title.
- § 8202. Definitions.
- § 8203. Powers of Board; Incurring Indebtedness.
- § 8204. Amounts of Rates and Charges; Refunds. [Declared invalid.]
- § 8205. Validity of Authorization and Issuance of Bond.
- § 8206. Board to Determine Issuance of Bonds and Incurring of Other Indebtedness; Territory Not Liable for Indebtedness; Board Only Liable as Provided by Indenture or Contract.
- § 8207. Board to Declare Purpose and Maximum Amount of Bonds to be Issued.
- § 8208. Indenture Providing Terms and Conditions of Bonds.
- § 8209. Issues of Bonds.
- § 8210. Covenants and Agreements That May Be Contained in Indenture.
- § 8211. Director of Administration as Trustee for Board and Holders of Bonds.
- § 8212. Duties and Powers of Trustee.
- § 8213. Issuance and Interchange of Coupon and Registered Bonds.

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- § 8214. Interest on Bonds.
- § 8215. Redemption of Bonds Prior to Maturity.
- § 8216. Places of Payment.
- § 8217. Execution and Authentication of Bonds.
- § 8218. Dates and Maturities of Bonds.
- § 8219. Preparation of Bonds and Documents by Treasurer.
- § 8220. Sale of Bonds; Maximum Discount.
- § 8221. Payment of Bonds From Sources Other Than Revenues.
- § 8222. Payments Which May be Made Out of Proceeds of Sale of Bonds.
- § 8223. Bonds May be Secured by Revenues of System.
- § 8224. Temporary Bonds.
- § 8225. Replacement of Bonds or Coupons.
- § 8226. Tax Exemptions.
- § 8227. Bonds as Legal Investments and as Security For Performance of Any Act.
- § 8228. Refunding Bonds.
- § 8229. Principal Amount in Which Refunding Bonds May be Issued.
- § 8230. Bonds Negotiable Except When Registered.
- § 8231. Title in Authority Subject to Trust in Favor of Bondholders.
- § 8232. Use of Other Funds for System.
- § 8233. Insurance.
- § 8234. Limitations as to Competitive Project.
- § 8235. Right of Bondholders to Bring Action.
- § 8236. Guam Power Authority Construction Fund.
- § 8237. Guam Power Authority Revenue Fund.
- § 8238. Investment of Money in Funds.
- § 8239. Use of Balances of Funds and of Surplus Money in Funds.
- § 8240. Appropriation of Money in Funds.
- § 8241. Short Term Borrowing.
- § 8242. Construction of Article.
- § 8243. Approval of the Terms and Conditions of Guam Power Authority Revenue Bonds.
- § 8244. Self-Insurance Fund Surcharge Reduction.
- § 8245. Approval of Financial Agreements or Arrangements.

§ 8201. Short Title.

This Article may be cited as the *Guam Power Authority Revenue Bond Act of 1968*.

SOURCE: GC § 21550.

§ 8202. Definitions.

The following terms wherever used or referred to in this Article or in any indenture entered into pursuant hereto, shall have the following meanings, respectively, unless a different meaning appears from the context:

(a) *Authority* means the Guam Power Authority provided for in the Guam Power Authority Act of 1968.

(b) *Board* means the Board of Directors of the Authority provided for in the Guam Power Authority Act of 1968. "Board" also means the Governor, the Director of Administration or any other officer or agency of the Territory whenever any action which this Article or any indenture requires or permits the Board to take can, under the Organic Act or any provision of this Code or any other statute of the Territory, be taken for, or on behalf of, or in lieu of the Board only by the Governor, the Director of Administration or such other officer or agency.

(c) *Bonds or revenue bonds* means the written evidence or any obligation issued by the Board with the approval of the Governor pursuant to § 8203, payment of which is secured by a pledge of revenues or any part of revenues, as provided in this Chapter, in order to raise funds for any of the purposes authorized § 8203, irrespective of the form of such obligations.

(d) *Bondholder or holder of bonds* or any similar term means any person who shall be:

(1) the bearer of any outstanding bond or bond registered to bearer or not registered; or

(2) the registered owner of any such outstanding bond or bond which shall at the time be registered other than to bearer.

(e) *Director of Administration* means the Director of Administration, head of the Department of Administration, within the Executive Branch of the government of Guam or any agent designated by him as trustee pursuant to any provision of this Article or of any indenture.

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(f) *General Manager* means the General Manager of the Authority provided for in the Guam Power Authority Act of 1968.

(g) *Governor* means the Governor of Guam.

(h) *Guam Power Authority Act of 1968* means Article 1 of this Chapter.

(i) *Indenture* means an agreement entered into and approved or adopted by a majority of all the members of the Board, with the approval of the Governor, pursuant to which bonds are issued, regardless of whether such agreement is expressed in the form of a resolution of the Board or by other instrument.

(j) *Organic Act* means the Organic Act of Guam as amended and in effect on the effective date of this Article. (64 Stat. 384, Title 48, §1421 et seq. U.S. Code.)

(k) *Person* includes any individual, firm, corporation, association, copartnership, trust, business trust or receiver or trustee or conservator for any thereof, and also includes the United States, the Territory or any public corporation, political subdivision, city, county or district or any agency or instrumentality of the United States or of the Territory.

(l) *Revenue* means and includes:

(1) any and all rates and charges received or receivable in connection with, and any and all other income and receipts of whatever kind and character derived by the Authority from the operation of or arising from the system;

(2) any such revenues or any proceeds of sale of bonds or any other moneys of the Authority that may have been or may be impounded or deposited in any fund or account created or authorized by this Article and held by the Board or the Treasurer or the Director of Administration for the security of any bonds issued hereunder or for the purpose of providing for the payment thereof or the interest thereon;

(3) any moneys received or receivable by the Authority pursuant to any contract between the Authority and any person, which moneys are designated as revenues (as herein defined) in such contract; and

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(4) all earnings on any investment of any revenues.

(m) *System* means the electric power system of the Authority.

(n) *System operation and maintenance costs* means:

(1) the reasonable costs of operating and maintaining the system, including refunds authorized by § 8204, and all reasonable repairs, renewals, replacements, system insurance costs and costs of insurance or other provision for retirement of officers and employees of the Authority, but (notwithstanding any system of accounts maintained by the Board) without any allowance for depreciation; and

(2) all revenues required by any indenture to be deposited in any one or more reserve funds or accounts in lieu of insurance or in any working capital fund or account or contingency fund or account relating to the system.

(o) *Territory* means the territory of Guam.

(p) *Treasurer* means the Treasurer of the Authority provided for in Article 1.

(q) *United States* means the United States of America.

SOURCE: GC § 21551.

2012 NOTE: Pursuant to the authority granted by 1 GCA § 1606, numbers and/or letters were altered to adhere to the Compiler's alpha-numeric scheme.

§ 8203. Powers of Board; Incurring Indebtedness.

The Board has power and is hereby authorized, in addition to and in amplification of all other powers conferred upon the Board by the Guam Power Authority Act of 1968 or any other provision of this Code or by any statute of the Territory or of the United States, to exercise any or all of the powers granted to the Board by this Article. The Board may at any time or from time to time incur indebtedness:

(a) pursuant to § 8241;

(b) for a period not exceeding ten (10) years, payable only from the Guam Power Authority Construction Fund created by § 8236 and incurred only for a purpose for which moneys in said Fund may be expended;

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(c) for a period not exceeding ten (10) years, payable only from the Guam Power Authority Revenue Fund created by § 8237 and incurred only to pay system operation and maintenance costs, subject and subordinate to any contractual obligation of the Board to the holders of any bonds;

(d) by the issuance of revenue bonds, with the approval of the Governor, to raise funds for the purpose of establishing the system, or of acquiring lands for the system, or of acquiring, constructing, improving, equipping, maintaining, repairing, renewing, replacing, reconstructing or insuring the system, or any part thereof, or for the purpose of refunding any such bonds, or for any combination of such purposes which bonds shall be issued and secured as provided in this Article; or

(e) for any other lawful purpose for a period not exceeding fifty (50) years pursuant to a contract of indebtedness, repayment of which is subject and subordinate to any contractual obligation of the Board to the holders of any bonds.

The maximum rate and times of payment of interest on any indebtedness incurred pursuant to this Section are subject to the limitations of § 8214 (relating to interest on bonds). It is hereby declared that the system is and shall be a public improvement or undertaking as that term is used in Section 11 of the Organic Act. (§1423a, Title 48, U.S. Code.) All indebtedness incurred by the Board pursuant to this § 8203 shall be repayable only from funds of the Authority available therefor or solely from revenues of the system and, therefore, will not be and shall not be deemed to be public indebtedness of the Territory as that term is used in Section 11 of the Organic Act.

SOURCE: GC § 21552.

§ 8204. Amounts of Rates and Charges; Refunds.

[Declared invalid by *Guam Power Authority v. Bishop of Guam*. 383 F. Supp. 476 (D.Ct. Guam 1974).]

SOURCE: GC § 21553. Amended by P.L. 12-042 (Sept. 21, 1973). Declared invalid by the District Court of Guam in *Guam Power Authority v. Bishop of Guam*. 383 F. Supp. 476 (D.Ct. Guam 1974).

2014 NOTE: P.L. 12-042:4 amended this provision as indicated in italics:

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Section 21553. Amounts of rates and charges; refunds. Except to the extent otherwise permitted or required by an indenture or any contract relating to indebtedness incurred by the Board, all rates and charges shall at all times be fixed to yield annual revenues equal to the annual principal payments and interest charges and reserve fund requirements on all bonds at any time issued and outstanding hereunder, the annual system operation and maintenance costs and the annual principal payments and interest charges on all other outstanding indebtedness incurred by the Board, *provided, however, that the rate for services supplied to any nonprofit educational facility, church or publicly-owned hospital shall not exceed one half (1/2) of the minimum rate charged to any other customer.* An indenture or contract of indebtedness may provide for payment from revenues of refunds of rates and charges that are collected in error and that are refundable by the Board in accordance with regulations prescribed by it.

COURT DECISIONS: *Guam Power Authority v. Bishop of Guam.* 383 F. Supp. 476 (D.Ct. Guam 1974) invalidated sections 3 and 4 of P.L. 12-042 (Sept. 21, 1973). Section 4 amended the original codification of this provision, GC § 21553. The District Court of Guam held that these sections 3 and 4 of P.L. 12-042 were vague and ambiguous, and further, that there was rational basis justify requiring customers to subsidize private functions of churches and private schools, or public functions of government schools and hospitals.

§ 8205. Validity of Authorization and Issuance of Bonds.

The validity of the authorization and issuance of any bonds by the Board, with the approval of the Governor, is not dependent on nor affected in any way by:

- (a) Proceedings taken by the Board for the acquisition, construction or completion of the system or any part thereof;
- (b) Any contracts made by the Board in connection with the acquisition, construction or completion of the system or any part thereof; or
- (c) The failure to complete the system or any part thereof for which bonds are authorized to be issued.

SOURCE: GC § 21554.

§ 8206. Board to Determine Issuance of Bonds and Incurring of Other Indebtedness; Territory Not Liable for Indebtedness; Board Only Liable as Provided by Indenture or Contract.

(a) The Board, with the approval of the Governor, shall determine the time, form and manner of issuance of bonds and shall issue bonds in the name of the Authority and as its obligations and shall also, subject to

the limitations of this Article, determine the time, form and manner of incurring other indebtedness.

(b) No bond issued or sold pursuant to this Article shall be or become a lien, charge or liability against the Territory or the Governor or against the Authority or the Board or against any property or funds of the Authority or the Board or the Territory or the Governor, except to the extent of the pledge or revenues or part of revenues, as may be provided by the indenture pursuant to which such bonds are issued and every such bond shall contain a recital on its face stating that neither the payment of the principal or any part thereof, nor of any interest thereon, is a debt, liability or obligation of the Territory.

(c) No other indebtedness incurred pursuant to this Article shall be or become a lien, charge or liability against the Territory or the Governor and each such indebtedness shall be payable only from the fund or source from which it is authorized to be paid as provided in this Article.

SOURCE: GC § 21555.

§ 8207. Board to Declare Purpose and Maximum Amount of Bonds to be Issued.

(a) Before issuing any bond or bonds, the Board shall by indenture, approved by the Governor, declare the purpose for which the proceeds of the bonds proposed to be issued shall be expended and shall specify the maximum amount of bonds to be issued or sold for such purpose. Bonds shall not be issued or sold for such purpose in an amount exceeding such specified maximum except either:

(1) pursuant to a provision in an indenture pursuant to § 8210(l); or

(2) with the consent of bondholders, pursuant to amendment or modification of an indenture, as provided in § 8210(p).

(b) Nothing contained in this Section shall be construed to prevent the Board, with the approval of the Governor, from amending any such indenture prior to the issuance of bonds authorized thereby to increase or decrease the maximum amount of bonds to be issued or sold. The issuance of bonds for one or more purposes may be included in a single indenture.

SOURCE: GC § 21556.

2012 NOTE: Pursuant to the authority granted by 1 GCA § 1606, numbers and/or letters were altered to adhere to the Compiler's alpha-numeric scheme.

§ 8208. Indenture Providing Terms and Conditions of Bonds.

The Board, with the approval of the Governor, may enter into indentures providing for the aggregate principal amount, date or dates, maturities, interest rates, denominations, form, registration, transfer and interchange of any bonds and coupons issued pursuant to this Article and the terms and conditions on which the same shall be executed, issued, secured, sold, paid, redeemed, funded and refunded. Reference on the face of the bonds to such indenture by its date of adoption, or the apparent date on the face thereof, is sufficient to incorporate all the provisions thereof and of this Article into the body of the bonds and their appurtenant coupons. Each taker and subsequent holder of the bonds or coupons, whether the coupons are attached to or detached from the bonds, has recourse to all the provisions of the indenture and of this Article and is bound thereby.

SOURCE: GC § 21557.

§ 8209. Issues of Bonds.

An indenture may provide for one or several issues of bonds and that bonds may be issued in series or that any issue may be divided into one or more divisions with different maturities or dates of issue, different rates of interest, or different terms and conditions for the bonds of the several series or divisions. It is not necessary that all bonds of the same authorized issue be of the same kind or character, have the same security, or be of the same interest rate, but the terms thereof shall in each case be provided for by the Board, with approval of the Governor, at or prior to the issue thereof.

SOURCE: GC § 21558.

§ 8210. Covenants and Agreements That May Be Contained in Indenture.

An indenture pursuant to which bonds are issued and which is approved by legislation may include any and all such covenants and agreements on the part of the Authority, the Board, the Territory, the Governor, the Director of Administration, the Treasurer, the General Manager or any other officer or agency of the Territory, the Authority or the Board as are authorized by this Article or as the Board deems

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necessary or advisable for the better security of the bonds issued thereunder, including without limiting the generality of the foregoing, any one or more of the following:

(a) A provision that payments of principal and interest of bonds shall be secured by all or by part of revenues and provisions creating one or more funds or accounts to be held by the Director of Administration into which all or any part of revenues shall be deposited:

(1) for payment of the principal of and interest on bonds at or prior to maturity; or

(2) for reserve or sinking funds for the further security of bonds. All moneys in any such fund or account shall be paid out by the Director of Administration or his agent to pay the principal of and interest on the bonds when due or when redeemed or purchased prior to maturity, as provided in any indenture.

(b) A provision requiring the Director of Administration or his agent, as trustee as hereinafter provided, to pay or cause to be paid punctually the principal of all such bonds and the interest thereon on the date or dates, or at the place or places and in the manner mentioned in such bonds and in the coupons appertaining thereto in accordance with such indenture.

(c) A provision requiring the Board to operate the system continuously, to the extent practicable under conditions as they may from time to time exist, in any efficient and economical manner.

(d) A provision requiring the Board to maintain the system and to make all necessary repairs, renewals and replacements to the system and to keep the system at all times in good working order and condition.

(e) A provision requiring the Board to preserve and protect the security of the bonds and the rights of the holders thereof and to warrant and defend such rights.

(f) A provision requiring the Board to pay and discharge or cause to be paid and discharged all lawful claims for labor, materials and supplies or other charges which, if unpaid, might become a lien

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or charge upon revenues or any part thereof, or which might impair the security of the bonds.

(g) A provision which limits, restricts or prohibits any right, power or privilege of the Board to mortgage or otherwise encumber, sell, lease or dispose of the system or any part thereof, or to enter into any lease or agreement which impairs or impedes the operation of the system or any part thereof necessary to secure adequate revenues or which otherwise impairs or impedes the right of the holders of bonds with respect to such revenues.

(h) A provision requiring the Board to fix, prescribe and collect annually rates or other charges in connection with the electric service furnished from the system which, together with other available revenues, will be:

(1) sufficient to pay the principal of and interest on the bonds as they become due and payable, together with such additional sums as may be required for any bond reserve fund or account or other fund or account created by the indenture for the security of such bonds;

(2) sufficient to pay the annual system operation and maintenance costs; and

(3) in such additional amount as shall be provided in the indenture for the further security or protection of such bonds.

(i) A provision that no electric service shall be furnished free of charge to any person, except to the extent permitted by the indenture.

(j) A provision requiring the Board and the Treasurer and the Director of Administration to hold or cause to be held in trust the revenues or any part of revenues pledged to the payment of such bonds and the interest thereon, or to any fund or account created by any indenture relating to such bonds for the further security or protection of such bonds and to apply such revenues or any part of revenues or cause them to be applied only as provided in the indenture and to invest all or any part of such revenues pending such application in such securities and subject to such limitations as are specified in the indenture.

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(k) A provision defining the power of the Board and the Treasurer in applying the proceeds of the sale of any issue of bonds for the acquiring, constructing or completing of the system or any part thereof.

(l) A provision permitting the board to issue additional bonds or one or more additional series of bonds, equally secured with bonds theretofore issued under the indenture, for the purpose of acquiring, constructing or completing, improving or extending the system or any part thereof; and a provision limiting the power of the Board to issue any additional bonds so secured or any other additional bonds for such purpose.

(m) A provision requiring, specifying or limiting the kind, amount and character of insurance (or any reserve fund or funds in lieu of insurance) to be maintained by the Board on the system or any part thereof and the use and disposition of the proceeds of any such insurance thereafter collected or of the moneys in any such reserve fund.

(n) A provision specifying the events of default and the terms and conditions upon which any or all of the bonds of the Board then or thereafter issued may become or be declared due and payable prior to maturity, and the terms and conditions upon which such declaration and its consequences may be waived.

(o) A provision designating the rights, limitations, powers and duties arising upon breach by the Board of any of the covenants, conditions or obligations contained in the indenture.

(p) A provision prescribing a procedure by which the terms and conditions of the indenture may be subsequently amended or modified with the consent of the Board, subject to the approval of the Governor, and the vote or written consent of the holders of a specified principal amount or specified proportion of the bonds issued and outstanding, including provisions for meetings of bondholders and for the manner in which the consent of the bondholders may be given and specifically stating the effect of such amendment or modification upon the rights of the holders of all of the bonds and interest coupons appertaining thereto, whether attached thereto or detached therefrom.

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With respect to any provision relating to the modification or amendment of an indenture, the Board, with the approval of the Governor, may agree that bonds held by the Authority, the Territory, the United States or any instrumentality of either thereof (including every public corporation, political subdivision, city, county, district, board, agency or instrumentality of any kind of class) shall not be counted as outstanding bonds, or be entitled to vote or assent, but shall, nevertheless, be subject to any such modification or amendment.

(q) A provision for the refunding of all or any bonds authorized by such indenture, subject to the provisions and limitations of Sections 8228 and 8229.

(r) A provision permitting the Authority, the Board or the Director of Administration to purchase outstanding bonds of the Authority from any moneys or funds or accounts referred to in the indenture or otherwise legally available for such purpose.

(s) A provision that the Governor, the Treasurer and the Director of Administration and all other officers and agencies of the Territory shall:

(1) be bound by all of the covenants and agreements on the part of the Board set forth in such indenture; and

(2) perform all such covenants and agreements which, under the Organic Act or any provision of this Code or any other statute of the Territory, can be taken for, or on behalf of, or in lieu of the Board only by the Governor, the Treasurer and the Director of Administration or such other officer or agency.

(t) A provision for any working capital fund or account or contingency fund or account relating to the system.

(u) A provision for the replacement of lost, destroyed or mutilated bonds or coupons.

(v) A provision or provisions relating to such other acts and matters as may be necessary or convenient or desirable in order better to secure the bonds or to make the bonds more marketable.

(w) As to existing bond issues and indentures and covenants thereto, no changes as indicated above nor any changes relating to

repayment schedules or sinking fund requirements may be approved or agreed to except upon action of the Board of Directors of the Guam Power Authority after approval by legislation. Neither the Guam Power Authority nor the Governor shall have the authority to amend any Guam Power Authority bond covenants, indentures or agreements as to bond issues if such bond issues can be paid from, obligate, or are secured by Section 30 money, money or revenues owed to the Government of Guam, or money or other funds belonging to or payable to the Government of Guam. Any offer to make any such changes or amendments as indicated above shall be deemed withdrawn upon the effective date of this Act, and shall thereafter be subject to approval by legislation as herein indicated.

SOURCE: GC § 21559, as repealed and reenacted by P.L. 17-029.

2012 NOTE: Pursuant to the authority granted by 1 GCA § 1606, numbers and/or letters in subsection (a), (h), and (s) were altered to adhere to the Compiler's alphanumeric scheme.

§ 8211. Director of Administration as Trustee for Board and Holders of Bonds.

(a) The Director of Administration or any agent designated by him shall act as trustee for the Board and the holders of bonds issued hereunder and the Board may authorize the trustee to act on behalf of the holders of the bonds or any stated percentage thereof and to exercise and prosecute on behalf of the holders of the bonds such rights and remedies as may be available to the holders.

(b) The Board may provide in an indenture:

(1) for the deposit of all revenues with the Treasurer and for the holding thereof by the Treasurer in one or more separate funds or accounts in the Guam Power Authority Revenue Fund created by § 8237; and

(2) for the transfer to such trustee of such portions of revenues as are provided as security for the bonds and for the holding thereof by such trustee in one or more separate funds or accounts in said Revenue Fund. All money in each such fund or account shall be disbursed only as provided herein and in the indenture.

SOURCE: GC § 21560.

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2012 NOTE: Pursuant to the authority granted by 1 GCA § 1606, numbers and/or letters in subsection (b) were altered to adhere to the Compiler's alpha-numeric scheme.

§ 8212. Duties and Powers of Trustee.

The Board shall prescribe in any indenture the duties and powers of the trustee with respect to the issuance, authentication, sale and delivery of the bonds provided for in such indenture and with respect to the payment of principal of and interest on such bonds, the redemption thereof, the registration and discharge from registration thereof and the management of any and all funds provided as security therefor.

SOURCE: GC § 21561.

§ 8213. Issuance and Interchange of Coupon and Registered Bonds.

An indenture may provide that bonds may be issued as coupon bonds or as registered bonds and for the interchange of coupon bonds for registered bonds and registered bonds for coupon bonds, and may provide that bonds shall be registered as to principal only or as to both principal and interest or otherwise as the Board may determine.

SOURCE: GC § 21562.

§ 8214. Interest on Bonds.

(a) Bonds *shall* bear interest at a net rate of *not to exceed* nine percent (9%) per annum, after subtracting from bond interest the amount of any direct subsidy payment to be received from the United States in connection with such Bonds. Interest *shall* be payable annually or semi-annually *or* in part annually and in part semi-annually except that the first coupon on any bond may be payable any number of months *less than* twelve (12) after the date of such bond.

(b) The interest rate on the refinancing of the Thirty-Six Million Dollars (\$36,000,000) loan from the Federal Financing Bank (as provided in P.L. No. 96-205) shall be at the rate established in accordance with P.L. No. 96-205. Interest may be payable annually or semi-annually or in part annually and in part semi-annually except that the first coupon on any bond may be payable any number of months less than twelve (12) after the date of such bond.

SOURCE: GC § 21563, as amended by P.L. 13-013 (Apr. 25, 1975) and 15-143 (Nov. 28, 1980). Subsection (a) amended by P.L. 30-147:5 (May 17, 2010).

§ 8215. Redemption of Bonds Prior to Maturity.

An indenture may provide that bonds may be redeemed prior to maturity upon such terms, conditions and upon such notice as are stated in the indenture and upon the payment of such premium as may be fixed by the indenture. No bond is subject to call or redemption prior to its fixed maturity date unless the right to exercise such call is expressly stated on the face of the bond.

SOURCE: GC § 21564.

§ 8216. Places of Payment.

An indenture may provide for the payment of the principal and interest of bonds at any one or more places in the Territory or in the United States and in any specified coin or currency of the United States.

SOURCE: GC § 21565.

§ 8217. Execution and Authentication of Bonds.

An indenture may provide for the execution and authentication of bonds by the manual, lithographed or printed facsimile signature of any one or more officers of the Board and by additional authentication by endorsement by the manual signature or a signature stamp of the Director of Administration or of any agent designated by him as trustee. If any officer or agent whose signature, countersignature or endorsement appears upon the bonds or coupons ceases to be an officer or agent before the delivery of the bonds or coupons, his signature, countersignature or endorsement is nevertheless valid and of the same force and effect as if he had remained such officer or agent until the delivery of the bonds and coupons.

SOURCE: GC § 21566.

§ 8218. Dates and Maturities of Bonds.

Bonds shall bear dates prescribed by the Board in the indenture providing for their issuance. Bonds may be serial bonds, term bonds or sinking fund bonds with such maturities as the indenture shall specify. No bond by its terms shall mature in more than fifty (50) years from its own date and, in the event any authorized issue is divided into two (2) or more series or divisions, the maximum maturity date herein authorized shall be calculated from the date on the face of each bond separately,

irrespective of the fact that different dates may be prescribed for the bonds of each separate series or division of any authorized issue.

SOURCE: GC § 21567.

§ 8219. Preparation of Bonds and Documents by Treasurer.

Whenever an indenture, adopted by the Board and approved by the Governor, directs the preparation of any bonds authorized under this Article, the Treasurer shall prepare or procure the requisite number of suitable bonds and appurtenant coupons of the denominations and in accordance with the specifications contained in such indenture. When authorized by resolution of the Board, the Treasurer shall prepare or procure the printing, engrossing or publication of any indentures, notices, contracts, agreements or other documents required or convenient for or pertaining to the issuance or sale of bonds.

SOURCE: GC § 21568.

§ 8220. Sale of Bonds; Maximum Discount.

Bonds authorized to be issued under this Article shall be sold by the Board for cash, in accordance with the provisions of a resolution providing for such sale adopted by the Board and approved by the Governor. Such resolution may provide that the bonds shall be sold at either public or private sale upon such notice as shall be specified in such resolution, may fix terms and conditions for the sale or other disposition of the bonds and may provide that the bonds shall be sold at less than their par or face value, except that the discount on any bonds so sold shall not exceed five percent (5%) of the par value thereof. Before any bonds are delivered to the purchaser thereof, all coupons, if any, which have matured on or before the date of such delivery shall be detached therefrom and cancelled.

SOURCE: GC § 21569.

§ 8221. Payment of Bonds from Sources Other Than Revenues.

The Board may use and expend all or any part of any funds other than revenues or proceeds of any property owned by it other than the system, whether received by gift, appropriation or otherwise (if not restricted as to the use of such funds or proceeds of property by the terms of gift or trust or provision of law) for the payment of bonds issued pursuant to the provisions of this Article and of interest due thereon.

SOURCE: GC § 21570.

§ 8222. Payments Which May be Made out of Proceeds of Sale of Bonds.

The proceeds of sale of any bonds may be expended for any one or more of the following purposes, all as provided in the indenture relating to such bonds:

(a) For payment of any costs or expenses of the acquisition, construction or completion of the system or any part thereof or any costs or expenses incidental thereto, including payment to the United States or any other public body for the portion to be borne by the Board of the cost of any work done by the United States or such public body for or jointly or in conjunction with the Board;

(b) For payment of any engineering, inspection, legal, consultant's or paying agent's fees relating or incidental to:

(1) the acquisition, construction or completion of the system or any part thereof; or

(2) the authorization, issue or sale of bonds;

(c) For payment of any costs or expenses relating to the authorization, issuance or sale of bonds;

(d) For deposit in any one or more reserve funds or accounts in lieu of insurance or in any working capital fund or account or contingency fund or account relating to the system pursuant to any provision of any indenture referred to in § 8210(m) or (t);

(e) For payment of interest on bonds during the period of actual acquisition, construction or completion of the system or any part thereof for the acquisition, construction or completion of which such bonds have been issued and for a period of not to exceed ten (10) years thereafter;

(f) For deposit in any reserve or sinking fund pursuant to any provision of any indenture referred to in § 8210(a); or

(g) For payment of the principal of and interest on any indebtedness incurred pursuant to § 8241 that is by its terms repayable from the proceeds of sale of bonds.

SOURCE: GC § 21571.

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2012 NOTE: Pursuant to the authority granted by 1 GCA § 1606, numbers and/or letters in subsection (b) were altered to adhere to the Compiler's alpha-numeric scheme.

§ 8223. Bonds May Be Secured by Revenues of System.

An indenture may provide that the bonds and the interest thereon shall be secured by all or by part of revenues and that the bonds shall constitute such lien upon revenues as may be provided for in such indenture.

SOURCE: GC § 21572.

§ 8224. Temporary Bonds.

An indenture may provide that pending the actual issuance or delivery of definitive bonds, the Board may issue temporary or interim bonds, certificates or receipts or any denomination whatsoever and with or without coupons, to be exchanged for definitive bonds when ready for delivery.

SOURCE: GC § 21573.

§ 8225. Replacement of Bonds or Coupons.

The Board, with the approval of the Governor, may provide for the replacement of lost, destroyed or mutilated bonds or coupons.

SOURCE: GC § 21574.

§ 8226. Tax Exemptions.

Bonds issued pursuant to the provisions of this Article and the interest or income therefrom are exempt from taxation in accordance with the provisions of the last sentence of Section 11 of the Organic Act. (§1423a, Title 48, U.S. Code.)

SOURCE: GC § 21575.

§ 8227. Bonds as Legal Investments and as Security For Performance of Any Act.

Notwithstanding any other provision of law, all bonds sold and delivered pursuant to the provisions of this Article are legal investments for all trust funds and for the funds of all banks, both commercial and savings and may be deposited as security for the performance of any act whenever any evidence of indebtedness of the Territory may be so

deposited and may also be used as security for the deposit of public moneys in banks in the Territory.

SOURCE: GC § 21576.

§ 8228. Refunding Bonds.

The Board, with the approval of the Governor, may provide for the issuance, sale or exchange of refunding bonds for the purpose of redeeming or retiring any bonds issued under the provisions of this Article. All provisions of this Article applicable to the issuance of bonds are applicable to the funding or refunding bonds and to the issuance, sale or exchange thereof.

SOURCE: GC § 21577.

§ 8229. Principal Amount in Which Refunding Bonds May be Issued.

Refunding bonds may be issued in a principal amount sufficient to provide funds for the payment of all bonds to be refunded thereby and in addition for the payment of all expenses incident to the calling, retiring or paying of such outstanding bonds and the issuance of such refunding bonds. These expenses include:

(a) the difference in amount between the par value of the refunding bonds and any amount less than par for which the refunding bonds are sold;

(b) any amount necessary to be made available for the payment of interest upon such refunding bonds from the date of sale thereof to the date of payment of the bonds to be refunded or to the date upon which the bonds to be refunded will be paid pursuant to the call thereof or agreement with the holders thereof; and

(c) the premium, if any, necessary to be paid in order to call or retire the outstanding bonds and the interest accruing thereon to the date of the call or retirement.

SOURCE: GC § 21578.

2012 NOTE: Pursuant to the authority granted by 1 GCA § 1606, numbers and/or letters were altered to adhere to the Compiler's alpha-numeric scheme.

§ 8230. Bonds Negotiable Except When Registered.

All bonds issued under the provisions of this Article are negotiable instruments, except when registered in the name of a registered owner.

SOURCE: GC § 21579.

§ 8231. Title in Authority Subject to Trust in Favor of Bondholders.

Title to the system and to all property acquired by or for the Authority and the revenues and income therefrom is in the Authority. The title to any moneys, revenues, bond reserve funds and other funds and accounts created by this Article or any indenture and the income thereof pledged to the payment of the principal or interest of any bonds is subject to any trust declared in favor of the bondholders.

SOURCE: GC § 21580.

§ 8232. Use of Other Funds for System.

In addition to the proceeds of any bonds issued and sold pursuant to this Article, the Board may use for the payment of the costs of acquisition, construction or completion of the system or any part thereof any available money or funds of the Authority and any money or funds made available to the Authority by any person or provided from any source which may be expended for the accomplishing of the purposes set forth in this Article or in the Guam Power Authority Act of 1968.

SOURCE: GC § 21581.

§ 8233. Insurance.

The Board may insure against loss of revenues from any cause whatsoever and the proceeds of any such insurance shall be used solely for the payment of bonds and the interest thereon. The Board may insure against public liability or property damage from any cause. An indenture may provide for the carrying of such insurance or any other insurance in such amount and of such character as shall be specified in such indenture, for the payment of the premiums thereon and for the disposition of all proceeds received from any such insurance. At the option of the Board, or as provided in any indenture, any insurance may be provided by funded reserves or any other means.

SOURCE: GC § 21582.

§ 8234. Limitations as to Competitive Projects.

An indenture may include such limitations as to acquisition, ownership or operation by the Authority or the Board of projects which may compete with the system as may be deemed necessary or desirable for the security of bonds issued pursuant to this Article.

SOURCE: GC § 21583.

§ 8235. Right of Bondholders to Bring Action.

The holder of any bond issued pursuant to this Article may by mandamus or other appropriate proceeding require and compel the performance of any of the duties imposed upon or assumed by the Authority, the Board, the Treasurer, the General Manager, the Governor, the Director of Administration or any other officer or agency of the Authority or the Board or the Territory or any employee thereof, in connection with the acquisition, construction, improvement, operation, equipment, maintenance, repair, renewal, replacement, reconstruction or insurance of the system or any part thereof, or the collection, deposit, investment, application and disbursement of all revenues or in connection with the deposit, investment and disbursement of the proceeds received from the sale of bonds issued pursuant to this Article. The enumeration of such rights and remedies does not, however, exclude the exercise or prosecution of any other rights or remedies available to the holders of bonds issued pursuant to this Article.

SOURCE: GC § 21584.

§ 8236. Guam Power Authority Construction Fund.

The proceeds from the sale of all bonds authorized by this Article shall be deposited forthwith by the Treasurer to the credit of a fund to be designated as the Guam Power Authority Construction Fund, which fund is hereby created. The money in said Construction Fund shall be expended in the manner provided by law for any of the purposes authorized by this Article, including any or all of the purposes specified by § 8222, and for such other purposes, subject to the restrictions provided by law or by such indenture, as may be authorized by such indenture.

SOURCE: GC § 21585.

§ 8237. Guam Power Authority Revenue Fund.

All revenues received from the operation of the system shall be deposited by the Treasurer to the credit of the Guam Power Authority Revenue Fund, which fund is hereby created. Moneys in the Guam Power Authority Revenue Fund shall be used for the following purposes in the following order of priority:

(a) to be transferred to the Director of Administration pursuant to any provision of any indenture referred to in § 8210(a);

(b) to pay the annual system operation and maintenance costs; and

(c) for any other purposes of the Authority; all as provided in any indenture or indentures and subject to any restrictions provided by law or any indenture.

SOURCE: GC § 21586.

§ 8238. Investment of Money in Funds.

Moneys in the Guam Power Authority Construction Fund may be invested by the Treasurer and any revenues in any other fund or account held by the Treasurer or by the Director of Administration or his agent may be invested by the Treasurer or Director of Administration or his agent, as the case may be, subject to such limitations as may be provided in any indenture providing for the issuance of bonds. All securities in which any such moneys are invested and all other investments made under the provisions of this Article shall be held by the Treasurer or the Director of Administration or his agent, as the case may be, as custodian thereof. All interest or other earnings received pursuant to such investments shall be collected by the Treasurer or the Director of Administration or his agent, as the case may be, and shall be deposited to the credit of the fund or account from which such interest or other earnings are derived, unless otherwise provided in an indenture.

SOURCE: GC § 21587.

§ 8239. Use of Balances of Funds and of Surplus Money in Funds.

Any balance remaining in any of the funds or accounts created by this Article or any indenture after payment of all costs, expenses and charges required or authorized to be expended therefrom, may be allocated and used for such other purposes relating to the acquisition, construction, operation and maintenance of the system or to the Authority, as the Board may determine, subject to the limitations and restrictions in any indenture. After all bonds shall have been fully paid and discharged or provision for their payment and discharge irrevocably made, any surplus moneys in any fund or account created by this Article or any indenture shall, subject to the limitations and restrictions in any indenture, be transferred to the Treasurer and shall be and remain

available for the acquisition, construction, improvement, maintenance or operation of the system or for any other purposes of the Authority herein or hereafter authorized by law.

SOURCE: GC § 21588.

§ 8240. Appropriation of Money in Funds.

All money in the funds and accounts created by this Article or any indenture is hereby appropriated for expenditure in carrying out the purposes herein and therein provided.

SOURCE: GC § 21589.

§ 8241. Short Term Borrowing.

The Board may at any time or from time to time, by resolution adopted by a majority of all the members of the Board and approved by the Governor, incur indebtedness for any lawful purpose for any period not exceeding five (5) years evidenced by contract with any person or by one or more promissory notes executed as provided in § 8217 (relating to bonds) and delivered to any person. Any such indebtedness shall be incurred subject and subordinate to any contractual obligation of the Board to the holders of any bonds and the principal thereof and interest thereon may be repaid:

- (a) from revenues; or
- (b) if incurred for a purpose for which bonds may be issued, from revenues or from the proceeds of sale of bonds.

SOURCE: GC § 21590.

§ 8242. Construction of Article.

This Article shall be liberally construed to carry out the objects and purposes and the declared policy of the Territory as in this Article set forth. Nothing contained in this Article shall be construed directly or by implication to be in any way in derogation or limitation of powers conferred upon or existing in the Authority or the Board by virtue of any provisions of the Organic Act or statutes of the Territory or any other provisions of this Code.

SOURCE: GC § 21591.

§ 8243. Approval of the Terms and Conditions of Guam Power Authority Revenue Bonds.

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I Liheslaturan Guåhan, pursuant to § 50103(k) of Title 12 of the Guam Code Annotated, hereby approves the terms and conditions of the issuance and sale of revenue bonds (the bonds), from time to time, by the Guam Power Authority (GPA), in one or more series or issues of tax-exempt and/or taxable bonds, as senior revenue bonds in accordance with its existing senior revenue bond indenture (or in the case of projects financed with taxable bonds and/or projects that *do not* constitute capital improvements to GPA's system, as subordinate revenue bonds in accordance with its existing subordinate revenue bond indenture), for the purpose of continuing GPA's investment in the island-wide power system involving generation, transmission, and distribution assets to improve reliability, efficiency and power service, and to comply with environmental regulations; provided, that the bonds *shall* have a principal amount *not to exceed* Ninety-four Million Dollars (\$94,000,000), *shall* have a final maturity date *not later than* thirty-one (31) years from the date of the issuance of the bonds, *shall* accrue interest at rates that *shall not exceed* (1) seven percent (7%) with respect to tax-exempt bonds, and (2) with respect to taxable bonds, the limitation set forth in § 8214(a) of Title 12 of the Guam Code Annotated, and *shall* be sold for such price or prices as *shall* result in a net yield to the bondholders *not exceeding* the rate specified by said § 8214(a).

The issuance of any and all such Bonds *shall* be further subject to the following requirements, limitations, terms and conditions:

(a) Such bonds *shall* be issued and sold pursuant to GPA's existing senior bond indenture (including any amendments in accordance with its terms to provide for the issuance of the bonds described herein), and in compliance with the provisions of Article 2 of Chapter 8 of Title 12 of the Guam Code Annotated, including approval by the CCU and by *I Maga'lahaen Guåhan* as provided therein; provided, *however*, that such bonds may be issued and sold pursuant to GPA's subordinate bond indenture (including any amendments in accordance with its terms to provide for the issuance of the bonds described herein) for purposes of financing projects with taxable bond proceeds and/or projects that *do not* constitute capital improvements to GPA's system;

(b) The sale of the bonds *shall* be approved by the Board of Directors of Guam Economic Development Authority (GEDA) as provided by § 50103(k) of Chapter 50 of Title 12 of the Guam Code

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Annotated, and the terms and conditions of the issuance of the bonds *shall* be approved by the Guam Public Utility Commission (GPUC) as provided by Chapter 12 of Title 12 of the Guam Code Annotated; and

(c) The proceeds of the bonds *shall* be applied to pay the costs of issuance of the bonds, to pay the cost of any credit enhancement of the bonds, to provide for required reserves, and, subject to approval by the GPUC in accordance with § 12004 Article 2 Chapter 12 of Title 12 of the Guam Code Annotated, to pay the costs of the projects and items listed in Subsection (d) of this Section.

(d) The remaining proceeds of the Bonds *shall* be used *solely* for the following purposes:

(1) Up to Fifty Six Million Four Hundred Seventy Seven Thousand Dollars (\$56,477,000) for the following Generation Improvements projects:

(A) Reimbursement of GPA for costs associated with the Environmental Compliance Program (Diesel RICE MACT);

(B) Cabras 1 Major Boiler Overhaul;

(C) Cabras 2 Turbine & Boiler Overhaul;

(D) Cabras 3 & 4 Major Overhaul and Maintenance;

(E) Cabras Compound Employee and Visitor Parking Lot;

(F) Generator Protection Upgrade with Fault Recorders;

(G) *Dededo* CT Return to Service Phases I and II;

(H) Diesel Plan Major Overhaul and Maintenance and Diesel Fuel Oil Tank Repairs;

(I) Energy Storage Equipment (Renewable Energy Impact Mitigation);

(J) Liquefied Natural Gas Initial Startup.

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(2) Up to Five Million Five Hundred Eighty Six Thousand Dollars (\$5,586,000) for the following Transmission System Improvement projects:

- (A) *Piti* 115 kV GIS Major Maintenance;
 - (B) System Protection Improvement & Cap Bank Controllers – Phases I and II;
 - (C) Substation Major Refurbishment (*San Vitores* T-122, *Harmon* T500 and T501, *Macheche* T90);
 - (D) 13.8 kV Breaker Upgrades Phases I and II;
 - (E) 34.5 kV Breaker Upgrades Phase I;
 - (F) *Agat* Shoreline Pole Restoration Project;
 - (G) *Dededo* Substation Capacitor Bank;
 - (H) Substation Battery Banks/Chargers Upgrade;
- and
- (I) *Harmon* X82 to *Yigo* X160 Overhead Line Upgrade Phase I;

(3) Up to One Million Five Hundred Eighty Seven Thousand Dollars (\$1,587,000) for the following Distribution Improvements projects:

- (A) Distribution Improvements;
 - (B) Smart Grid Sub-Projects (not covered by grant);
- and
- (C) Mobile Workforce Management.

(4) Up to Two Million Nine Hundred Thousand Dollars (\$2,900,000) for the following Supervisory Control and Data Acquisition System Upgrades projects:

- (A) Power System Control Center Reliability Improvements; and
- (B) Network Communication – Fiber to *Fadian* Complex.

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(5) Up to Two Million Four Hundred Fifty Thousand Dollars (\$2,450,000) for the following Cyber Security and Information Technology Upgrades projects:

- (A) Upgrade of Facilities Physical Security; and
- (B) Information Technology Upgrades.

(6) Five Million Dollars (\$5,000,000) to be held in reserve by GPA in a fund separate and apart from any other fund for the sole purpose of establishing a revolving loan fund to support demand-side management and/or renewable energy programs approved by the Guam Public Utility Commission (GPUC) for residential and/or commercial purposes; provided, *however*, that the issuance of debt for purposes of this Subsection (d)(6) *shall* be subject to prior approval by the GPUC, and

(7) Such amounts as may be needed to capitalize and pay from bond proceeds interest on the bonds due, accruing or required to be set-aside for a period ending *not later than* twenty four (24) months after issuance.

Notwithstanding anything herein to the contrary, to the extent that there are excess proceeds of bonds authorized herein that exist for one of the categories of purposes listed in Subsections (d)(1) through (d)(7) above, such excess may be transferred to another such category.

SOURCE: Added by P.L. 32-140:1 (April 28, 2014), amended by P.L. 32-181:XII:28 (Sept. 5, 2014).

§ 8244. Self-Insurance Fund Surcharge Reduction.

The GPA *shall* file a petition with the Guam Public Utilities Commission to reduce the GPA's Self-Insurance Fund surcharge charged to ratepayers by *not less than* seventy percent (70%) of the Self-Insurance Fund surcharge in effect as of the enactment of this Act. GPA *shall* request the GPUC for such reduction *not later than* sixty (60) calendar days after the enactment of this Act, and such filing may be considered by the GPUC through an expedited schedule of review and approval by the GPUC.

SOURCE: Added by P.L. 32-140:2 (April 28, 2014).

§ 8245. Approval of Financial Agreements or Arrangements.

Any financial agreement or arrangement between GPA and any bank, private banking firm, brokerage firm, bond brokerage firm, or similar financial institutions, which uses, pledges, or arbitrages any GPA revenue, trust funds, debt service payment deposits with trustees, bond proceeds, or interests on any of these, *not* specifically authorized by existing statute authorizing the issuance or refinancing of bonds, *shall* require legislative approval, and any income generated from such financial agreement and arrangement may be directed toward decreasing residential ratepayer rates; *provided, however*, that the pledge of GPA revenue to secure the payment of GPA's revenue bonds and the direct investment by the bond trustees of GPA moneys in obligations permitted by the GPA's bond indenture are hereby specifically approved and are *not* subject to further legislative approval.

SOURCE: Added by P.L. 32-140:3 (April 28, 2014).

**ARTICLE 3
ALTERNATE ENERGY PLAN**

- § 8301. Title.
- § 8302. Findings.
- § 8303. Adoption of U.S. Department of Energy's Territorial Energy Assessment Final Report.
- § 8304. Governor's Powers.
- § 8305. Coordination, Guam Energy Office.
- § 8306. Legislature's Policy.
- § 8307. Provision of Land/Easement.
- § 8308. Leased Government Land
- § 8309. Purchase of Alternate Energy.
- § 8310. Expenditure of Exxon Funds.
- § 8311. Renewable Portfolio Standards
- § 8312. Same.

§ 8301. Title.

This Article shall be known as the *Alternate Energy Plan for Guam Act*.

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SOURCE: Added by P.L. 17-077 (Dec. 11, 1984).

§ 8302. Findings.

The findings of the Seventeenth Guam Legislature are that:

(a) P.L. 16-119 requires the Guam Power Authority to prepare a Ten Year Alternate Energy Plan for Guam, and that the Governor shall forward said plan to the Legislature to be considered for codification into law; and

(b) The Governor appointed an Alternate Energy Task Force to research and prepare a Ten Year Alternate Energy Plan; and the Alternate Energy Task Force has identified essentially the same indigenous renewable energy resources as outlined in the Comprehensive Development Plan for Guam and the Territorial Energy Assessment/Final Report and has suggested a schedule for implementation; and

(c) The Comprehensive Development Plan for Guam was presented to the Legislature by Governor Bordallo in 1978. That Comprehensive Development Plan has been the working document for energy development since then, notwithstanding its not having been officially adopted by resolution of the Legislature as of the date of this Act. The Comprehensive Development Plan for Guam incorporated a section describing the energy situation on Guam in 1978, and outlines alternate energy options planned for the territory at that time; and

(d) The United States Department of Energy has adopted the Territorial Energy Assessment/Final Report as its official guideline for development of alternate energy resources for the Insular Territories; and

(e) The Congress of the United States is currently considering means of funding the studies outlined in the Territorial Energy Assessment/Final Report; and

(f) Studies have been conducted by several professional engineering companies which indicate that alternate energy forms may be found among Guam's indigenous resources and elsewhere; and

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(g) All studies indicate that no source of alternate energy is competitive cost-wise with the present cost of generating power using current conventional sources of power presently available on Guam; and

(h) Guam has sufficient capacity for power generation for the foreseeable future, using conventional power sources; and

(i) The development of the Ten Year Alternate Energy Plan has been accomplished without the expenditure of any significant local funds through existing governmental agencies; and

(j) The government of Guam and Guam Power Authority are relatively small and have no excess funds to experiment with new forms of energy with local or Guam Power Authority Funds.

SOURCE: Added by P.L. 17-077 (Dec. 11, 1984).

§ 8303. Adoption of U.S. Department of Energy's Territorial Energy Assessment Final Report.

The U.S. Department of Energy's Territorial Energy Assessment-Final Report is hereby adopted as an integral part of the Comprehensive Development Plan for Guam, the latter is hereby adopted as the official guideline for alternate energy development for the Territory by the Seventeenth Guam Legislature, subject however to the conditions contained in this Act.

SOURCE: Added by P.L. 17-077 (Dec. 11, 1984).

§ 8304. Governor's Powers.

The Governor is hereby authorized to proceed with development of a long term energy plan for Guam and to develop alternate energy sources without legislative approval by itself or in conjunction with Guam Power Authority or private companies, to the extent that those alternative resources can be developed using private funds or funds provided by the U. S. Congress through the U.S. Department of Energy, with local coordination through the Guam Energy Office, in cooperation with Guam Power Authority and other affected agencies. The Energy Office is also authorized to develop alternate energy sources using local funds appropriated for that purpose.

SOURCE: Added by P.L. 17-077 (Dec. 11, 1984).

§ 8305. Coordination, Guam Energy Office.

The Guam Energy Office, in coordination with other appropriate government agencies, shall coordinate the development of conventional energy resources and alternate energy resources outlined in the Ten Year Alternate Energy Plan for Guam, which plan is hereby included as an element of the Comprehensive Development Plan for Guam.

SOURCE: Added by P.L. 17-077 (Dec. 11, 1984).

§ 8306. Legislature's Policy.

The Legislature supports, in principle, the development of alternate energy, but is concerned that the alternate energy program not be a burden upon the taxpayers, power consumers, and residents of Guam. Therefore, the Governor, the government of Guam and the Guam Power Authority may enter into alternate energy agreements to develop alternate energy or to purchase alternate energy only if all of the following conditions are met:

(a) Local funds of the government of Guam or the Guam Power Authority Funds may be used to develop alternate energy sources (including power generated from windmills, solar ponds and Ocean Thermal Energy Conversion) as may be later, appropriated by the Legislature or approved by law for that specific purpose.

(b) Any power produced or sold from alternate energy sources (including power generated from windmills, solar ponds and Ocean Thermal Energy Conversion (OTEC) cannot be purchased by Guam Power Authority or the government of Guam at a cost greater than the average cost of producing power found in the islandwide power system (not inclusive of backup diesel generators), specifically the two Cabras Units, the two Tanguisson Units, and the Piti Power Plant.

(c) No contract may be signed by the government of Guam or the Guam Power Authority to develop or purchase power from alternate energy sources (including power generated from windmills, solar ponds and Ocean Thermal Energy Conversion), if such contract will result in increased expenses and costs for the Guam Power Authority. No such alternate energy contract may be signed until the board of directors of the Guam Power Authority has so certified that the agreement is consistent with all bond covenants and that the price paid for electricity pursuant to the agreement does not exceed actual current avoided cost.

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(d) For so long as the Navy Power Pool Agreement is in effect, neither the Guam Power Authority nor the government of Guam may contract to purchase any power generated from alternate energy source (including power generated from windmills and solar ponds and Ocean Thermal Energy Conversion) without giving the United States Navy prior written notification.

(e) Any contract to purchase alternate energy (including power generated from windmills and solar ponds and Ocean Thermal Energy Conversion) must provide that any loss or damage to the islandwide power system, Guam Power Authority and the U.S. Navy or to consumers as a result of or proximately caused by the negligence of alternate energy supplier or by the quality of alternate energy supplied will be borne solely by the alternate energy supplier who will hold Guam Power Authority and the government of Guam harmless.

(f) All interface facilities to provide usable alternate energy (including power generated from windmills, solar ponds and Ocean Thermal Energy Conversion) shall be installed and maintained at the expense of the supplier of alternate energy. Any such interconnections shall be at existing lines owned and operated by the Islandwide Power System, and such interfaces shall be subject to the engineering standards and approval set by the Guam Power Authority.

(g) Any contract to purchase alternate energy (including power generated from windmills, solar ponds and Ocean Thermal Energy Technology) must provide that neither the government of Guam nor the Guam Power Authority shall be obligated to purchase electrical power not needed by the Guam Power Authority.

SOURCE: Added by P.L. 17-077 (Dec. 11, 1984).

2012 NOTE: In maintaining the general codification scheme of the GCA the Compiler changed the hierarchy of subsections beginning with “Numbers” to “Lowercase Letters” in this section.

§ 8307. Provision of Land/Easement.

The Power of Eminent Domain (condemnation) shall not be used by the government of Guam or the Guam Power Authority to provide land for alternate energy sources or to provide land to lease to alternate energy suppliers. It shall be the exclusive responsibility of the alternate energy

supplier to cope with land/easement problems, and neither the government of Guam nor the Guam Power Authority shall be under any obligation to provide land to alternate energy suppliers.

SOURCE: Added by P.L. 17-077 (Dec. 11, 1984).

§ 8308. Leased Government Land.

If the government of Guam or the Guam Power Authority leases any land belonging to the government of Guam or the Guam Power Authority for alternate energy to private alternate energy suppliers for alternate energy related purposes, such lease shall be for the full fair market rental value of the land (based upon the value at the highest and best use) and contain provisions canceling the lease and reverting the land to the government of Guam or the Guam Power Authority if not developed for alternate energy purposes within three (3) years, and canceling the lease and reverting the land to the government of Guam or the Guam Power Authority whenever the land is no longer being primarily utilized for alternate energy purposes.

SOURCE: Added by P.L. 17-077 (Dec. 11, 1984).

§ 8309. Purchase of Alternate Energy.

In the event that the Guam Power Authority or the Governor of Guam determines that purchase of alternate energy from private developers or development of any alternate energy source which does not comply with the guidelines of the Act is feasible and in the best interests of the territory of Guam and the Guam Power Authority, then the Governor shall present to the Legislature a full detailed development plan and a complete cost analysis, cash flow and capital improvement plan for development of that alternate energy source. The submission shall fully justify departure from the above plans and demonstrate why such plan is in the best interests of the people of Guam. The Governor shall accompany such plan with proposed legislation to amend this Act. In such event, the Legislature may consider such plan in deciding whether or not to pass legislation amending this Alternate Energy Plan for Guam Act.

SOURCE: Added by P.L. 17-077 (Dec. 11, 1984).

§ 8310. Expenditure of Exxon Funds.

The Guam Energy Office and the Governor of Guam shall submit a program plan to the Legislature for approval prior to spending any funds

received from or pursuant to U.S. Public Law 97-377 Section 155, the Court Case of U.S. vs. Exxon (TECA) Nos. 91-100 (Consolidated) and the case of "In re Department of Energy Stripper Well Exemption Litigation (MDL No. 378)." No money shall be spent by the Guam Energy Office, the Governor, or the territory of Guam from any of the above without prior concurrence by law.

SOURCE: Added by P.L. 18-30:21.

§ 8311. Renewable Portfolio Standards.

The Guam Power Authority shall establish a preliminary renewables portfolio standard goal of:

(a) five per cent (5%) of its net electricity sales by December 31, 2015;

(b) eight per cent (8%) of its net electricity sales by December 31, 2020;

(c) ten per cent (10%) of its net electricity sales by December 31, 2025;

(d) fifteen per cent (15%) of its net electricity sales by December 31, 2030; and

(e) twenty-five percent (25%) of its net electricity sales by December 31, 2035.

The amount of renewable capacity may be subject to engineering and economic analysis by the Guam Power Authority.

SOURCE: Added by P.L. 29-062:2 (Apr. 4, 2008).

§ 8312. Same.

The Guam Power Authority *shall* undertake all interconnection requirements *or* outsourcing agreements, including, automatic generation control, subject to the Guam Power Authority's interconnection policy, so as to provide for the maximum feasible ability to add renewable resources to the Island-wide Power System. Each customer-generator based installation *shall* be credited to GPA pursuant to § 8311, Chapter 8, 12 GCA.

SOURCE: Added by P.L. 29-062:3 (Apr. 4, 2008). Amended by P.L. 30-141:3 (May 17, 2010).

ARTICLE 4
UNAUTHORIZED ELECTRICAL CONNECTIONS

- § 8401. Legislative Findings and Intent.
- § 8402. Definition of Unauthorized Electrical Connections or Illegal Power Hook-Ups.
- § 8403. Education and Amnesty Period.
- § 8404. Establishment of Reward for Persons Reporting Unauthorized Electrical Connections or Illegal Hook-Ups.
- § 8405. Fine or Penalty Schedule.
- § 8406. Determination of Amount of Power Illegally Used.
- § 8407. Effective Date.

§ 8401. Legislative Findings and Intent.

The Guam Legislature finds that Guam Power Authority (“GPA”) is faced with attempting to recover millions of dollars in lost revenue resulting from unauthorized electrical connections, or “illegal hook-ups.” The problem has manifested itself in various forms, perpetrated by not only residential users, but by contractors and businesses as well. Between November 1995 through September 1996, seventy-six (76) meter tampering cases were reported to GPA and sixty-three (63) cases were reported as thefts to the Guam Police Department (“GPD”). In most cases, the individuals involved were not penalized because the thefts are classified as misdemeanors. The Guam Legislature also finds that with the increase in delinquent accounts, disconnections follow, which many times lead to an increase in unauthorized electrical connections and inactive accounts. The cycle oftentimes recurs, resulting in wasted GPA manpower and materials that, in turn, will eventually lead to higher costs. The Guam Legislature also realizes that illegally tapping into and tampering with the power system is a safety hazard that endangers lives and property. In anticipation of continued unauthorized use of electricity, the Guam Legislature finds that it is imperative that stringent measures be taken to put an end to such illegal activities. The Guam Legislature further finds that legislation must be enacted that will effectuate the necessary steps in which the millions in lost revenues be properly recovered.

SOURCE: Added as uncodified law by P.L. 24-031:1 (May 16, 1997). Codified to this section by the Compiler.

§ 8402. Definition of Unauthorized Electrical Connections or Illegal Power Hook-Ups.

An illegal power hook-up is any connection to power lines which belong to the government of Guam, that is made without the prior written permission of the Guam Power Authority, or any power hook-up from a direct power line which bypasses or hinders meter registration. The conditions include, but are not limited to:

- (a) External jumpers;
- (b) Bypass on meter;
- (c) Tap ahead of electric meter;
- (d) Inverted (electric) or reversed substitution meter;
- (e) Manipulation of meter dials;
- (f) Foreign materials inside electric meter;
- (g) Open potential line;
- (h) Unmetered theft of service;
- (i) Metered theft of service; or
- (j) Any other unauthorized or illegal hook-up.

SOURCE: Added as uncodified law by P.L. 24-031:2 (May 16, 1997). Codified to this section by the Compiler.

§ 8403. Amnesty Period.

This Section shall become effective forty-five (45) days after enactment of this Act to allow for an educational period in which the Guam Power Authority ('GPA') shall conduct a public awareness campaign on the provisions of this Act. In addition to the public awareness campaign, GPA shall issue a notice containing the pertinent sections of this Act. This notice shall be issued along with the regular power bill for the current billing period along with the regular power bill for the current billing within the forty-five (45) day educational period. There shall be an amnesty period of ninety (90) days beginning after the expiration of the forty-five (45) day educational period for users wishing for assistance in disconnection and/or correction of conditions which are

in violation of Section 2 of this Act. Once a customer has reported to GPA that they are in violation of this Act and requests assistance in correcting the conditions, it is the responsibility of GPA to correct the conditions without any penalty to the customer.

SOURCE: Added as uncodified law by P.L. 24-031:5 (May 16, 1997). Codified to this section by the Compiler. Repealed and reenacted by P.L. 24-126:3 (Feb. 16, 1998).

2014 NOTE: In past print publications, this section was entitled "Education and Amnesty Period." The title has been corrected to reflect the name established by P.L. 24-031:5.

§ 8404. Establishment of Reward for Persons Reporting Unauthorized Electrical Connections or Illegal Hook-Ups.

The Guam Power Authority shall formulate a reward program inclusive of, but not limited to the terms, conditions and the amount to be awarded to a person who reports to GPA an illegal power hook-up resulting in the collection of fines and penalties, or a conviction. The identity of the individual reporting the illegal hook-up shall be kept confidential.

SOURCE: Added as uncodified law by P.L. 24-031:6 (May 16, 1997). Codified to this section by the Compiler.

2014 NOTE: In past print publications, this section was entitled "Establishment of Reward for Persons Reporting Unauthorized." The title has been corrected to reflect the name established by P.L. 24-031:6.

§ 8405. Fine or Penalty Schedule.

The General Manager of the Guam Power Authority shall formulate a penalty schedule based upon a minimum of Two Thousand Five Hundred Dollars (\$2,500.00) up to a maximum of Twenty-five Thousand Dollars (\$25,000.00) in fines for illegal hook-ups, including meter tampering. GPA shall submit the penalty schedule to the Guam Legislature forty-five (45) days after the enactment of this Act for approval. The General Manager may formulate a payment schedule for a period of up to twenty-four (24) months, in which imposed fines shall be paid along with regular power bills, at twelve percent (12%) annual interest on the unpaid balance. Any person who makes an unauthorized connection shall have GPA service discontinued and shall be refused service until such time that the aggregate amount in penalties are paid to GPA.

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SOURCE: Added as uncodified law by P.L. 24-031:7 (May 16, 1997). Codified to this section by the Compiler.

§ 8406. Determination of Amount of Power Illegally Used.

The Guam Power Authority shall determine the estimated value of the power utilized by the illegal power connection, or tampered meter, based upon the estimated time of placement using average consumption figures for the type of consumption of the illegal hook-up system-wide for all consumers of that set class, taking into account usage of the premises, number of occupants or users, and the size of the building or area served by such illegal hook-up. It shall be the burden of the recipient of the illegal hook-up to establish that the estimated usage set forth by the Guam Power Authority is incorrect. A possible method of determination of time period shall be the verification of Guam Power Authority records bill and KWH history so as to determine when the location last paid for power at a normal level of consumption notwithstanding other legislative provisions on backbilling. The amount so determined shall be due and payable to the Guam Power Authority.

SOURCE: Added as uncodified law by P.L. 24-031:8 (May 16, 1997). Codified to this section by the Compiler.

§ 8407. Effective Date.

This Act shall become effective immediately upon enactment.

SOURCE: Added as uncodified law by P.L. 24-031:9 (May 16, 1997). Codified to this section by the Compiler.

**ARTICLE 5
NET METERING**

SOURCE: Entire Article added by P.L. 27-132:1 (Dec. 30, 2004).

- § 8501. Legislative Findings and Intent.
- § 8502. Definitions.
- § 8503. Net Metering for Customer Generators.
- § 8504. Net Metering Safety and Quality Standards.
- § 8505. Net Metering Billing Period.
- § 8506. Interim Meeting.

§ 8501. Legislative Findings and Intent.

I Liheslaturan Guåhan recognizes the island's historical crisis of power outages almost a decade ago. Rolling blackouts and endless load-shedding became part of one's daily life. Although the island has made great progress, power outages continue to plague the island. Each day, there remains the threat of disruption of electrical/power supply service.

Therefore, it is the intent of *I Liheslaturan Guåhan* to combine new power-generation technologies with traditional power-generation systems in order to expand and safeguard the island's electric supply, without the need for additional capital investment by the utility company.

One way to accomplish the combination of both the new and traditional electric system is through the use of photovoltaic, solar technology and other alternative energy-generation systems. Such has the advantage to generate power in a 'distributed' method, as electricity is generated and used at the same location. The use of this method enhances the island power generation system, and reduces the disruption of services if a central power plant were shut down or damaged.

Moreover, it is the intent of *I Liheslaturan Guåhan* to

- (a) encourage private investment in renewable energy resources;
- (b) stimulate economic growth; and
- (c) enhance the continued diversification of the renewable energy resources used on Guam.

§ 8502. Definitions.

- (a) 'Customer-generator' means a user of a net metering system.
- (b) 'Net Metering' means measuring the difference between the electricity supplied by a utility and the electricity generated by a customer-generator which is fed back to the utility over the applicable billing period.
- (c) 'Net Metering System' means a facility for the production of electrical energy that:
 - (1) uses fuel cells, microturbines, wind, biomass, hydroelectric, solar energy or a hybrid system consisting of these facilities, as its primary source of fuel;

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(2) has a generating capacity limited to the following, provided, however, that the rated capacity of the renewable energy generation *does not* exceed the customer-generator power service entrance capacity:

(A) *not* exceed twenty-five (25) kilowatts for Guam Power Authority residential class customers; and

(B) *not* exceed one hundred (100) kilowatts for Guam Power Authority non-residential class customers;

(C) This Subsection is *only* applicable to solar energy systems located on, or co-located for the benefit of GDOE owned schools, GDOE leased schools, GDOE administrative, and GDOE ancillary buildings. Guam Power Authority public school customers under third party owned solar energy power systems may exceed net metering capacity limitation as long as there is *no* demonstrated adverse impact on Guam Power Authority's transmission and distribution system, and *does not exceed* eighty percent (80%) of GPA's current billing charges. Any contract issued under this item shall be under net metering as defined as a one to one exchange of energy as currently adopted by the GPUC.

(3) is located on the customer-generator's single contiguous premises and *does not* serve loads outside the customer-generator's single contiguous premises;

(4) operates in parallel with the utility's transmission and distribution facilities; and

(5) is intended primarily to offset part or all of the customer-generator's requirements for electricity.

(d) 'Utility' means a public utility that supplies electricity on Guam.

SOURCE: Added by P.L. 27-132:1 (Dec. 30, 2004). Subsections (c)(2) and (3) amended by P.L. 30-141:2 (May 17, 2010). Subsection (c)(2)(C) added by P.L. 32-095:3 (Nov. 27, 2013).

2012 NOTE: Pursuant to the authority granted by 1 GCA § 1606, numbers and/or letters were altered to adhere to the Compiler's alpha-numeric scheme.

§ 8503. Net Metering for Customer Generators.

(a) A utility shall offer net metering, as set forth in § 8505 of this Article, to customer-generators operating within its service area.

(b) A utility:

(1) shall offer to make available to each of its customer-generators who has accepted its offer for net metering an energy meter that is capable of registering the flow of electricity in two (2) directions;

(2) may, at its own expense and with the written consent of the customer-generator, install one (1) or more additional meters to monitor the flow of electricity in each direction; and

(3) shall not charge a customer-generator any fee or charge that would increase the customer-generator's minimum monthly charge to an amount greater than that of other customers of the utility in the same rate class as the customer-generator.

§ 8504. Net Metering Safety and Quality Standards.

(a) A net metering system used by a customer-generator must meet all applicable safety and power quality standards established by:

(1) the National Electrical Code;

(2) Underwriters Laboratories, Inc.; and

(3) the Institute of Electrical and Electronic Engineers.

(b) A customer-generator whose net metering system meets such safety and quality standards must not be required by the utility to:

(1) comply with additional standards or requirements;

(2) perform additional tests;

(3) install additional controls; or

(4) purchase additional liability insurance, arising solely from his status as a customer-generator.

§ 8505. Net Metering Billing Period.

(a) The billing period for net metering may be either a monthly period, or with the written consent of the customer-generator, quarterly, semi-annual or annual period.

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(b) The net energy measurement must be calculated in the following manner:

(1) The utility shall measure the net electricity produced or consumed during the billing period, in accordance with normal metering practices.

(2) If the electricity supplied by the utility exceeds the electricity generated by the customer-generator which is fed back to the utility during the billing period, the customer-generator must be billed for the net electricity supplied by the utility.

(3) If the electricity generated by the customer-generator which is fed back to the utility exceeds the electricity supplied by the utility during the billing period, the customer-generator is entitled to compensation for electricity provided to the utility during the billing period at a rate to be determined by the Public Utility Commission.

§ 8506. Interim Meeting.

GPA is authorized to immediately implement an interim, emergency net metering rate structure wherein Customer generators shall be entitled to receive immediate credit for one hundred percent (100%) of the power generation capacity based on the specifications of the generation equipment installed times the rate the Guam Power Authority currently charges the customer until such time that GPA submits a rate structure to the PUC for the net metering program and it is approved by the PUC. This interim rate shall be subject to PUC revocation at any time.

SOURCE: Added by P.L. 29-062:6 (Apr. 4, 2008).
