



# CONSOLIDATED COMMISSION ON UTILITIES

Guam Power Authority | Guam Waterworks Authority

P.O. Box 2977 Hagatña, Guam 96932 | (671) 648-3002 | guamccu.org

CCU Regular Board Meeting

*CCU Conference Room, Gloria B. Nelson Public Service Building*

5:00 p.m., Tuesday, March 30, 2023

## MINUTES

### I. CALL TO ORDER

The Chairman called the regular board meeting to order at 5:34 p.m. He indicated that Commissioner Michael Limtiaco is attending online, however, recommended that meeting be recessed until 3/30/2023 @ 5:00pm Thursday evening. Motion made by Commissioner Pedro Roy Martinez to recess, second by Commissioner Limtiaco, none opposed. Meeting recessed to, Thursday, March 30, 2023.

Chairman reconvened regular board meeting from 03/28/2023 on 03/30/2023:

Commissioners Present:

Joseph T. Duenas, Chairman  
Francis Santos, Vice Chairman  
Peter Roy Martinez, Chairman  
Simon A. Sanchez, Commissioner

ONLINE:

Michael Limtiaco, Commissioner

Executive Management:

GPA:

John Benavente, GM  
Tricee Limtiaco, AGMA  
John Cruz, AGMETS (Online)  
John Kim, CFO

GWA:

Miguel Bordallo, GM  
Theresa Rojas, Legal Counsel  
Christopher Budasi, AGMAS  
Tom Cruz, AGMO  
Mauryn McDonald, Senior Engineer (Online)  
Taling Taitano, CFO

Management and Staff:

GPA:

Joyce Sayama, Communications Manager  
Candice Ananich, MA IV  
Reginald Diaz, MA III  
Selma Blas, Executive Office AO

GWA:

Evangeline Lujan, Compliance and Safety  
Ann Borja-Gallardes, MA IV  
John Dixon, IT  
Allen McDonald, IT  
Michael Schneip, HR  
Zina Pangelinan Charfauros, HR

### 2. APPROVAL OF MINUTES

No minutes for approval at this meeting.

### 3. PUBLIC COMMENTS

There were no public comments made at this meeting.

GPA

Commissioner Sanchez requested that they go directly to agenda item 6.1, Other Discussion, to address the retention of staff attorney – none opposed.

### 6. OTHER DISCUSSION

#### 6.1 Retention of Staff Attorney

Commissioner Sanchez presented a copy of a letter from the Office of the Attorney General (OAG) that he received, dated 3/03/2023. The letter is addressed to GPA Legal Counsel, D. Graham Botha.

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Commissioner Sanchez instructed Mr. Graham Botha to acknowledge his awareness of the letter, to confirm whether he has received it and to read the letter aloud for the record. Mr. Botha acknowledged the letter to be an offer of employment addressed to him, he confirmed the date and proceeded to read its contents.

Upon completion, Commissioner Sanchez questioned whether Mr. Botha accepted the offer, Mr. Botha stated that he has not. Commissioner Sanchez further questioned whether Mr. Botha is aware that he is named as an employee on the OAG website employee listing, Mr. Botha indicated that he only became aware at approximately 3:00pm today when Chairman Duenas informed him of it prior to the start of this board meeting. Commissioner Sanchez asked Graham if he has any idea why he would have been listed as an employee of the OAG as of 3/28/2023 when he is stating today that he has not accepted the offer of employment, Botha indicated that he has no idea. Commissioner Sanchez asked Mr. Botha if he informed any of the Board members of the offer of employment, Mr. Botha indicated he did not as it was to his understanding that all 5 board members received a copy of the letter. Commissioner Sanchez asked him if he has decided to accept the offer or not, Mr. Botha indicated that he decided not to accept the offer. When asked by Commissioner Sanchez whether he has notified the attorney general of his decision in writing, Mr. Botha stated that he did it verbally and in writing and that he will provide a copy to the Board after the meeting.

Commissioner questioned whether Mr. Botha approach Mr. Benavente to request for consideration to be made by the commission to match the pay offered by the AG – Mr. Botha indicated that he did not, but that he did tell him about the offer; furthermore, the conversation wasn't specifically to request that the Commission be approached to match the offer, but at some point it was indicated that the GM would.

Commissioner Sanchez addressed concerns about Mr. Botha's loyalty to the ratepayers, the commission that hired him and the management that he works with. Questionable factors in this situation suggests that he is not completely loyal to fulfil his duties and responsibilities to the ratepayers, thus he moves for immediate termination and that Mr. Botha be escorted from the building.

Further questioning by Commissioner Sanchez continued as he asked Mr. Botha to confirm whether he was given a positive review by the Board on November, 2022, that included a 4% increase to his salary, Mr. Botha confirmed. Commissioner Limtiaco suggested that they reach out to the OAG to find out why this was done without the position being officially accepted.

He asked if Mr. Botha would consider it improper that just 4 months after the positive evaluation review, he had asked Mr. Benavente to approach some of the commissioners to match the new offer, of which only informed some of the commissioner were approached, yet he claims to have no idea why his name is listed as an employee on the OAG website. Graham indicated that he was unable to reach other commissioners as they were off island and that he has no idea how and why his name was listed as an OAG employee.

Commissioner Sanchez further pushed for immediate termination based on the following reasons:

Incident regarding a specific meeting in which the Commission met and granted pay raises to the management team, including both GPA and GWA legal counsels, in which the CCU was subsequently sued for violation of the open government act because adequate government notice was not provided. No proper advisement of a potential violation was given by either legal counsels, despite Mr. Botha being present and accepting the pay raise approved at that meeting. As a member of the Guam Bar he is held to an ethical standard to advise his clients when improper or illegal acts are being done, yet he

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failed to do so. Mr. Botha replied that no salaries should have been discussed in Executive Session and that he was unaware that proper notice was not posted or published, otherwise he would have advised the commission of the possibility of a violation of the open government act. Commissioner Sanchez stated that Mr. Botha didn't bother to review that the process by which the raises were given was properly followed and that all requirements were adhered to, nor did he check to see if proper notices were provided so that he could advise the Board, but that he simply accepted the raise that benefited him. Further that Mr. Botha should have immediately notified the Commission and management when he knew an illegal act was being done but he didn't.

As a result, violations were brought forth by former senator Klitzky, with letters signed by both GPA and GWA legal counsels, Kelly Clark advising the commission that the pay raises may not have been properly given and the pay raises should be rescinded. Because of his inaction, fellow colleagues' pay raises were also rescinded after being properly earned by them. Commissioner asked if he was aware of the litigation initiated by Levin Camacho in which he raised the issue that the pay raises were illegal - Graham confirmed that Levin indicated the improper pay raises.

While Commissioner respects the line of questioning by Commissioner Sanchez, but asked to clarify if the motion to terminate Mr. Botha is based on recent factors or previous incidents because based on the gravity of the motion, he feels there isn't enough information at this point and recommends that more information be obtained. Commissioner Sanchez listed the letter of job offer, the way the information became available to the commission, the fact that his name is already on the OAG website as an employee and the lack of proof of written notification of refusal of the offer as main factors for the motion. The disloyalty to the mission of the agency and the rate payers and the nature of which this has occurred, as well as anecdotal information that has come to light from other sources that the offer has already been accepted. Commissioner Sanchez contended that the Board has accepted and tolerated some of the activity thus far, and that he has proven to be more loyal to his own interests than to the authority, the management and the ratepayers.

Commissioner Francis Santos stated for the record that Graham contacted him regarding the offer, and that he was currently looking at the email sent by Mr. Benavente in support of Graham. He wasn't sure at the time whether Mr. Benavente was going to reach out to everyone else individually. Based on Ms. Limtiaco's previous presentation on the market update percentile increase and information from Mr. Benavente's email, while he can understand the rationale to keep Mr. Botha as he is critical to ongoing matters, however, a pay raise for a senior employee within the structure up to the 25<sup>th</sup> market percentile will open for other employees to want their pay raises as well. He too questions Graham's loyalty, he had hoped that Mr. Botha communicated with them better. At the last work session, the board asked what the impact would be and the Board was told the survey wasn't completed at that time, but this email now indicates that the information is known. He stated that he is not comfortable to make a decision without having been given all the information, especially since the board is in the midst of deciding whether to increase the employee pay to the 25<sup>th</sup> percentile.

Commissioner Pedro Roy Martinez stated for the record, that he also received the email regarding the offer of employment. It is to his understanding that Graham has not accepted the offer.

Graham confirmed that he has not accepted the offer and he would like to stay with the Authority, it is his opinion that he has served loyally and has provided appropriate advice to the management and to the commission, an offer isn't an indication of disloyalty, he is not currently employed with the OAG and his desire it to stay with the Authority.

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Commissioner Limtiaco specified that no employee is under any obligation to inform the Board of any offers of employment, that he doesn't see this as an issue of disloyalty, any person would seek better opportunities and that he doesn't agree with the opinion that non-disclosure of the offer is an indication of disloyalty. While he acknowledges that something may not seem right, but not that it is a matter of disloyalty and that more information may be needed to make any motion.

Commissioner Sanchez agreed that something is not right about the nature of which the information was provided, including the context in which Mr. Benavente was placed in by Mr. Botha, the fact that he refused to publish his performance rating, and that he failed to provide proper legal advice which cost other well-deserving managers their pay raises and violation of the open government act. His gross displeasure is based on actions and failures by Mr. Botha, which is why he supports the motion for immediate termination. With all things considered, he doesn't feel right with Mr. Botha's continued employment.

Chairman Duenas shared that he regrets that this has happened, he hoped that Graham had realized the impact this would have had earlier on and that he sympathizes with Graham. He stated for the record that he did see the letter beforehand and did allow it on the agenda at the request of the GM for discussion and that he came to the meeting still undecided. Chairman clarified for the record that Graham did agree for his cumulative scores be released from his last evaluation, but not the year previous year. He called for Graham to speak on his own behalf, to be given the opportunity to respond on the matter at hand.

Graham expressed that he feels that he has supported and represented the Authority, the CCU, and the employees in a manner in which they should be, that nobody is perfect and that he has admitted to making mistakes in the past; whether it be jointly with the other legal counsel or not, however he will not blame counsel who's not here. Further, that he has worked on important issues and he believes he has saved the Authority and rate payers money by the way he has conducted business on litigations that has been recognized by the Commission. It was never his intent to display disloyalty to the Authority or the Commission. He explained that he did not seek out the job at the OAG, nor has he accepted it and had no intention of accepting it. The issue of pay adjustments will be addressed at some point and that he would like to stay with the Authority and that getting an offer is not a display of disloyalty to the CCU and regrets that it has come to this.

Motion to terminate employment of Mr. Graham Botha, GPA Legal Counsel, effective immediately and that he be escorted from the building was made by Commissioner Simon Sanchez, with a vote by roll call: Chairman Joey Duenas – YES; Francis Santos – YES; Pedro Roy Martinez – NO; Michael Limtiaco – NO; Simon Sanchez – YES. [YES - 3, NO – 2]

Commissioner Sanchez moved to recess CCU Regular Board Meeting to Monday, April 3, 2023 at 5:30pm. None opposed. Meeting adjourned at 6:04pm.

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CBA

Attested:

  
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JOSEPH T. DUENAS, Chairman

  
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PEDRO ROY MARTINEZ, Secretary