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M&C Fwd: OPA Report No. 19-09, Guam Power Authority and Guam Waterworks Authority Unclassified Employees' Pay Raises and Bonuses

1 message

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Thu, Dec 26, 2019 at 3:27 PM

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Sinseru yan Minagâhet,

Office of the Speaker • Tina Rose Muña Barnes
Committee on Public Accountability, Human Resources & the Guam Buildup

35th Guam Legislature
I Mina'trentai Singko na Liheslaturan Guåhan

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From: Andriana Quitugua <aquitugua@guamopa.com>
Date: Thu, Dec 26, 2019 at 1:55 PM
Subject: OPA Report No. 19-09, Guam Power Authority and Guam Waterworks Authority Unclassified Employees' Pay Raises and Bonuses
To:
Cc: Edlyn Dalisay <edalisay@guamopa.com>

Hafa Adai!

Pursuant to P.L. 21-122, Section 1, Chapter 19 § 1909 (j), herein attached is OPA Report No. 19-09, Guam Power Authority and Guam Waterworks Authority Unclassified Employees' Pay Raises and Bonuses. Please refer to the attachments for your copy:

1. Executive Summary
2. OPA Report No. 19-09

Please contact Audit Supervisor Edlyn Dalisay at 475-0390 ext. 219 or Auditor-in-Charge Andriana Quitugua at ext. 203 for any questions or concerns that you may have.

Thank you,

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EXECUTIVE SUMMARY
Guam Power Authority and Guam Waterworks Authority
Unclassified Employees' Pay Raises and Bonuses
Report No. 19-09, December 2019

Our audit of the Guam Power Authority (GPA) and Guam Waterworks Authority (GWA) unclassified employees' pay raises and bonuses found that the Consolidated Commission on Utilities (CCU) did not comply with the Open Government Law when it discussed and decided during their executive meetings the employees' salaries and bonuses. Additionally:

- CCU violated Public Law (P.L.) 33-123 when it gave bonuses to certain unclassified employees after February 2016;
- After the Attorney General (AG)'s April 23, 2019 opinion, most unclassified employees returned the voided salaries and bonuses provided by the CCU at its November 27, 2018 executive meeting, at the net amounts instead of the gross amounts; and
- CCU did not conduct performance evaluations for the GPA and GWA General Managers.

Salaries and Bonuses Discussed and Decided During CCU Executive Meetings

Title 5 of the Guam Code Annotated Chapter 8 § 8111 (a) states, "... *Under no circumstances shall a public agency hold an executive or closed meeting to discuss salaries, salary levels, or salary adjustments of any employee or officer. All such discussions or decisions must be held in public meeting and minutes shall be kept and open to the public.*"

The CCU violated this law when it discussed the following during their executive sessions:

Meeting Date	Agency	Position	Description	Annual Amount
02/11/2014	GPA	General Manager (GM)	Salary Adjustment	\$ 15,000
12/11/2014	GPA	GM	Bonus (one-time)	\$ 4,000
12/11/2014	CCU	Board Secretary	Bonus (one-time)	\$ 1,000
02/24/2015	GWA	Assistant GM – Collection & Distribution	Salary Adjustment	\$ 28,000
07/23/2015	GPA	GM	Salary Adjustment	\$ 50,000
09/22/2015	GWA	Controller	Salary Adjustment	\$ 15,000
09/22/2015	GPA	Chief Financial Officer (CFO)	Initial Salary	\$ 135,000
09/22/2015	GPA	CFO	Bonus (one-time)	\$ 15,000
12/10/2015	GWA	CFO	Salary Adjustment	\$ 11,000
12/10/2015	GWA	Assistant CFO	Salary Adjustment	\$ 5,000
04/26/2016	GPA	CFO	Bonus (one-time)	\$ 5,000
04/26/2016	GPA	Assistant GM – Operations	Salary Adjustment	\$ 21,000
04/26/2016	GPA	Staff Attorney	Salary Adjustment	\$ 22,000
04/26/2016	GWA	Staff Attorney	Severance Pay (one-time)	\$ 10,000
05/24/2016	GWA	CFO	Salary Adjustment	\$ 5,000
05/24/2016	CCU	Board Secretary	Salary Adjustment	\$ 2,000
02/21/2017	GPA	Assistant GM – Administration	Initial Salary	\$ 128,000

Meeting Date	Agency	Position	Description	Annual Amount
02/21/2017	GPA	Assistant GM – Engineering and Technical Services	Salary Adjustment	\$ 7,000
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04/20/2018	GWA	CFO	Status Change	\$ 148,000
08/28/2018	GWA	Assistant GM – Compliance and Safety	Salary Adjustment	\$ 434
08/28/2018	GWA	Assistant CFO	Salary Adjustment	\$ 203
08/28/2018	GWA	Controller	Salary Adjustment	\$ 11,000
11/27/2018	GPA	GM	Bonus (one-time)	\$ 25,000
11/27/2018	GWA	GM	Bonus (one-time)	\$ 10,000
11/27/2018	GWA	GM	Salary Adjustment	\$ 15,000
11/27/2018	GPA	Assistant GM – Engineering	Salary Adjustment	\$ 10,000
11/27/2018	GPA	Assistant GM – Operations	Salary Adjustment	\$ 10,000
11/27/2018	GPA	Assistant GM – Administration	Salary Adjustment	\$ 17,000
11/27/2018	GPA	CFO	Salary Adjustment	\$ 17,000
11/27/2018	GPA	Staff Attorney	Salary Adjustment	\$ 10,000
11/27/2018	GWA	Staff Attorney	Salary Adjustment	\$ 25,000

After discussing the salaries and bonuses during executive sessions, the CCU would pronounce their decision when they go back in the regular sessions. However, the CCU did not do this for all salary adjustments and bonuses.

Additionally, the CCU gave bonuses to certain unclassified employees despite being prohibited by P.L. 33-123. Therefore, we questioned the validity of \$1.3 million (M) in salaries and benefits expenses of GPA and GWA.

Cancellation and Return of Salary Increments and Bonuses

The AG required GPA and GWA to pay back the increments and bonuses received by its unclassified employees arising from the November 27, 2018 CCU executive meeting. We noted inconsistencies in the manner the monies were returned. Most employees returned the net amounts (net of payroll deductions), while the Board Secretary returned the gross amount. We also noted various installment payment periods, the longest of which would take eight years to repay.

CCU Did Not Conduct Performance Evaluation for the General Managers

Both GPA and GWA GMs received pay increases and bonuses from fiscal year 2015 to 2019; however, the CCU did not conduct formal performance evaluations for these officials. Therefore, we question the CCU’s basis of pay adjustments given to the GMs.

Former GWA CFO Hired as a Contractor

The CCU hired the former GWA CFO under a contract arrangement for 11 years, however without a contract. The Legal Counsel opined that the relationship between the former CFO and GWA was that of employee and employer. Misclassifying an employee as a contractor may be suggestive of issues with retirement benefits and withholding taxes, among others. Because of OPA’s limited access to employee personal information, we referred this matter to AG for further investigation.

Salaries of Certain Unclassified Employees Inconsistent with Authorized Pay Range

We observed that the salaries of certain GWA and GPA unclassified employees were inconsistent with the CCU’s authorized pay range.

GWA Pay Range vs. Unclassified Employees Salary Level

Unclassified Employees	Salary as of 12/31/2017	Authorized Pay Range (at 10 th Market Percentile)	Higher than Maximum/ (Lower than Minimum) By
Above Pay Range:			
1. GM	\$ 175,000	\$148,098 ~ \$154,111	\$ 20,889
2. Asst. GM - Compliance & Safety	\$ 123,679	\$96,779 ~ \$100,709	\$ 22,970
3. Asst. GM - Collection & Distribution	\$ 112,152	\$102,647 ~ \$106,815	\$ 5,337
4. Staff Attorney	\$ 115,000	\$108,962 ~ \$113,387	\$ 1,613
5. CFO	\$ 147,954	\$129,762 ~ \$135,031	\$ 12,923
6. Assistant CFO	\$ 111,042	\$99,712 ~ \$103,760	\$ 7,282
Within and Below Pay Range:			
7. Assistant GM - Administration & Support	\$ 131,060	\$131,060 ~ \$136,382	Within range
8. Controller	\$ 81,432	\$89,374 ~ \$93,003	(\$ 7,942)

GPA Pay Range vs. Unclassified Employees Salary Level

Unclassified Employees	Salary as of 12/31/2017	Authorized Pay Range (at 15 th Market Percentile)	Higher than Maximum/ (Lower than Minimum) By
Above Pay Range:			
1. GM	\$ 224,993	\$168,549 ~ \$175,393	\$ 49,600
2. Board Secretary	\$ 72,009	\$43,606 ~ \$45,377	\$ 26,632
3. Staff Attorney	\$ 134,992	\$112,264 ~ \$116,822	\$ 18,170
Within and Below Range:			
4. Asst. GM - Administration	\$ 128,282	\$133,694 ~ \$139,123	Within range
5. Asst. GM - Engineering & Technical Services	\$ 145,000	\$141,919 ~ \$147,682	Within range
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7. Chief Information Technology Officer	\$ 110,000	\$105,758 ~ \$110,052	Within range
8. Controller	\$ 88,180	\$92,082 ~ \$95,821	(\$ 3,902)
9. CFO	\$ 135,000	\$137,745 ~ \$143,339	(\$ 2,745)

The CCU sets the salaries of the unclassified employees who work at their pleasure. These tables show that the CCU provides salaries to certain unclassified employees higher than the other personnel.

The Open Government Law states that the people of Guam do not yield their individual rights to the public agencies which serve them. The people insist on remaining informed. Discussions by the public agencies about the salary level of employees should not be conducted in private and should not be tolerated. In this audit, we made four recommendations.

Benjamin J.F. Cruz
Public Auditor

**Guam Power Authority and Guam
Waterworks Authority Unclassified
Employees' Pay Raises and Bonuses**

**Performance Audit
October 1, 2014 through September 30, 2019**

**OPA Report No. 19-09
December 2019**



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Benjamin J.F. Cruz
Public Auditor



Introduction

This report presents the results of our performance audit of the autonomous agencies unclassified employees' pay raises and bonuses. We initiated this audit after the Attorney General's (AG) Office requested a review of potential violations of the Open Government Law in relation to employee compensation.

We analyzed the staffing patterns of 16 autonomous agencies from October 1, 2014 to September 30, 2019. The Guam Power Authority (GPA), Guam Waterworks Authority (GWA), and Port Authority of Guam (PAG) were the top agencies with the most number of employee salary adjustments. Therefore, we focused our audit on these agencies. This report covered GPA and GWA. Report(s) for the other agencies will be issued in a separate audit report.

Our audit objectives were to determine whether:

1. Pay raises and bonuses granted to unclassified employees complied with the applicable laws (Open Government Law and/or Prohibition on Bonus Pay for Unclassified Employees); and
2. Performance reviews were conducted for the agency heads.

Refer to Appendices 1 and 2 for the objective, scope, methodology, and prior audit coverage.

Background

Consolidated Commission on Utilities

The Consolidated Commission on Utilities (CCU) governs powers vested to GPA and GWA. The CCU is comprised of five Commissioners elected at-large by the voters of Guam in a general election. CCU officials include the Chairman, Vice-Chairman, Secretary, Treasurer, and Commissioner.

GPA and GWA Unclassified Employees/Positions

From October 1, 2014 to September 30, 2019, there were at least nine unclassified employees at GPA and 13 at GWA. These numbers included employees who separated and were replaced by another unclassified employee. The executive positions held by these employees were:

- General Manager (GM)
- Assistant GMs (Engineering, Technical Services, Administration, Operations, Collection and Distribution)
- Chief Financial Officer (CFO)
- Assistant CFO
- Chief Information Technology Officer (CITO)
- Controller
- Board Secretary
- Staff Attorney

Types of Salary Adjustments

During our scope, we identified three circumstances when GPA and GWA initiated a salary adjustment to an unclassified employee:

1. After an annual performance evaluation;
2. As a structural adjustment after a compensation study by an independent firm using market data in the same industry; or
3. Based on CCU's preference, which may include appointment to an acting capacity.

Open Government Law

Under Title 5 of the Guam Code Annotated (GCA) Chapter 8 § 8102, the Legislature declares it a policy that the formation of public policy and decisions is public and shall not be conducted in secret. The people of Guam do not yield their individual rights to the public agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

5 GCA § 8111(a) states that under no circumstances shall a public agency¹ hold an executive or closed meeting² to discuss salaries, salary levels, or salary adjustments of any employee or officer. **All such discussions or decisions must be held in public meeting³ and minutes shall be kept and open to the public.**

On § 8115(b), each member of a public agency who attends a meeting of a public agency where action is taken in violation of the Open Government Law, with knowledge of the fact that the meeting is in violation thereof, is guilty of *misdemeanor*.

Attorney General's Opinion

On April 23, 2019, the AG opined that salary adjustments approved during the CCU's November 27, 2018 executive session were void *ab initio*. He said further that salary adjustments or bonuses authorized and paid as a result of this meeting must be paid back by the employees.

Note that the AG's opinion was specific to the November 27, 2018 executive session. Our audit scope covered executive sessions held from October 1, 2014 through September 30, 2019.

¹ Public agency includes any board, commission or comparable unit of government, any of whose members are elected, appointed by the Governor, or appointed by the Legislature.

² Closed meeting, sometimes referred as executive session/meeting.

³ Public meeting, sometimes referred as regular session/meeting.

Results of Audit

Our audit of the GPA and GWA unclassified employees' pay raises and bonuses from October 2014 to September 2019 found that CCU did not comply with the Open Government Law. Specifically, we found that the:

- CCU discussed and decided during their executive meetings salaries and bonuses of GPA and GWA unclassified employees;
- CCU violated Public Law (P.L.) 33-123 when it gave bonuses to certain unclassified employees after February 2016;
- After the AG's April 23, 2019 opinion, most unclassified employees returned the voided salaries and bonuses provided by the CCU at its November 27, 2018 executive meeting, at the net amounts instead of the gross amounts; and
- CCU did not conduct performance evaluations for GPA and GWA GMs.

We also found that the:

- CCU hired the former GWA CFO under a contract arrangement, but the CCU and GWA could not provide the contract or procurement documents related to the employment; and
- Salary levels of GPA and GWA unclassified employees were inconsistent with CCU authorized pay range.

Salaries and Bonuses Discussed/Decided During CCU Executive Meetings

Title 5 GCA § 8111 (a) states, "... *Under no circumstances shall a public agency hold an executive or closed meeting to discuss salaries, salary levels, or salary adjustments of any employee or officer. All such discussions or decisions must be held in public meeting and minutes shall be kept and open to the public.*" We found the CCU violated this law. In our review of the executive meeting audio recordings, it is common for the CCU to discuss in detail salary levels, adjustments, and bonuses in closed-door meetings.

Once the CCU agrees on a matter in executive session, they will then pronounce their decision when they reconvene in regular session. As an example, the CCU motioned and approved at a regular session their February 24, 2015 executive discussion and decision about an employee's pay increase as follows:

"Board Secretary motioned to move the meeting back to regular session. Vice-Chairman seconded. Treasurer motioned that the Assistant GM for Collection & Distribution be appointed Interim GM for GWA with salary of \$140K per annum. Board Secretary seconded. There was no objection or discussion and the motion carried."

Refer to Appendix 3 for the excerpts of regular session minutes about employee salary and bonuses.

The following tables show the executive session discussions pertaining to unclassified employees' salaries and bonuses. We included a column showing whether these discussions and decisions were motioned and approved in regular session. While we acknowledge that the CCU motioned and approved some of the pay salary levels, adjustments, and bonuses in regular session, the law is clear that no discussions about salary should be held in an executive session.

There may be other executive sessions where employee salaries and bonuses were discussed, however, we focused our review on those sessions where there were actual payouts made. The employees' Personnel Action Form formalized these salary increases and bonuses.

Table 1: Executive Sessions - Salary⁴/Bonus Discussions

(1.a) February 11, 2014 Executive Session*	Motioned and Approved in Regular Session?
Adjust salary of GPA GM – <ul style="list-style-type: none"> Salary increase from \$160 thousand (K) to \$175K (\$15K increase) 	YES

* Although this is beyond our audit scope, we included this information because we became aware of it.

(1.b) December 11, 2014 Executive Session	Motioned and Approved in Regular Session?
Bonus of \$4K to GPA GM	YES
Bonus of \$2K to GPA CFO	YES
Bonus of \$2K to GWA CFO	YES
Bonus of \$2K to GWA Staff Attorney	YES
Bonus of \$2K to GPA Staff Attorney	YES
Bonus of \$1K to CCU Board Secretary	YES

(1.c) February 24, 2015 Executive Session	Motioned and Approved in Regular Session?
Appoint GWA Assistant GM Collection & Distribution as GWA Interim General Manager – <ul style="list-style-type: none"> Salary increase from \$112K to \$140K (\$28K increase) 	YES

(1.d) July 23, 2015 Executive Session	Motioned and Approved in Regular Session?
Adjust salary of GPA GM – <ul style="list-style-type: none"> Salary increase from \$175K to \$225K (\$50K increase) 	YES

⁴ Salary amounts shown represent annual salary, unless otherwise stated.

(1.e) September 22, 2015 Executive Session	Motioned and Approved in Regular Session?
Promote GWA Accountant III to Controller – <ul style="list-style-type: none"> • salary increase from \$60K to \$75K (\$15K increase) 	YES
Hire GPA CFO with three-year contract – <ul style="list-style-type: none"> • Salary of \$135K • Bonus of up to \$15K, subject to performance of three projects 	YES

(1.f) December 10, 2015 Executive Session	Motioned and Approved in Regular Session?
Appoint GWA CFO as Acting GM – <ul style="list-style-type: none"> • Salary increase from \$144K to \$155K (\$11K increase) retroactive from November 2015 until a new GM reports for duty on or about January 4, 2016. 	YES
Appoint Assistant CFO as Acting CFO <ul style="list-style-type: none"> • Salary increase from \$107K to \$112K (\$5K increase) retroactive from November 2015 until a new GM reports for duty on or about January 4, 2016. 	YES

(1.g) April 26, 2016 Executive Session	Motioned and Approved in Regular Session?
Bonus of \$5K to GPA CFO for completing one of three projects	YES
Adjust salary of GPA Assistant GM Operations – <ul style="list-style-type: none"> • Salary increase from \$118K to \$139K (\$21K increase) 	YES
Adjust salary of GPA Staff Attorney – <ul style="list-style-type: none"> • Salary increase from \$113K to \$135K (\$22K increase) 	YES
Severance pay of \$10K for GWA Staff Attorney	YES

(1.h) May 24, 2016 Executive Session:	Motioned and Approved in Regular Session?
Adjust salary of GWA CFO – <ul style="list-style-type: none"> • Salary increase from \$132K to \$137K (\$5K increase) 	NO
Adjust salary of CCU Board Secretary – <ul style="list-style-type: none"> • Salary increase from \$70K to \$72K (\$2K increase) 	NO

(1.i) February 21, 2017 Executive Session	Motioned and Approved in Regular Session?
Hire GPA Assistant GM Administration – <ul style="list-style-type: none"> • Salary of \$128K 	YES
Promote from GPA Manager of Strategic Planning and Operations Research Division to Assistant GM Engineering and Technical Services – <ul style="list-style-type: none"> • Salary increase from \$138K to \$145K (\$7K increase) 	YES
Adjust salary of GPA Assistant GM of Operations – <ul style="list-style-type: none"> • Salary increase from \$139K to \$145K (\$6K increase) 	YES

(1.j) April 20, 2018 Executive Session	Motioned and Approved in Regular Session?
Change GWA CFO's contractor status to an at-will unclassified employee – <ul style="list-style-type: none"> • Salary of \$148K 	NO

(1.k) August 28, 2018 Executive Session	Motioned and Approved in Regular Session?
Structural salary adjustment for GWA Assistant GM Compliance and Safety – <ul style="list-style-type: none"> • Salary increase from \$124K to \$124K or (\$0K increase) 	NO
Structural salary adjustment for GWA Assistant CFO – <ul style="list-style-type: none"> • Salary increase from \$111K to \$111K or (\$0K increase) 	NO
Structural salary adjustment for GWA Controller – <ul style="list-style-type: none"> • Salary increase from \$81K to \$92K (\$11K increase) 	NO

(1.l) November 27, 2018 Executive Session	Motioned and Approved in Regular Session?
Bonus of \$25K to GPA GM*	NO
Bonus of \$10K to GWA GM*	NO
Adjust salary of GWA GM – <ul style="list-style-type: none"> • Salary increase from \$175K to \$190K (\$15K increase)* 	NO
Adjust salary of GPA Assistant GM Engineering – <ul style="list-style-type: none"> • Salary increase from \$145K to \$155K (\$10K increase)* 	NO
Adjust salary of GPA Assistant GM Operations – <ul style="list-style-type: none"> • Salary increase from \$145K to \$155K (\$10K increase)* 	NO
Adjust salary of GPA Assistant GM Administration – <ul style="list-style-type: none"> • Salary increase from \$128K to \$145K (\$17K increase)* 	NO
Adjust salary of GPA CFO – <ul style="list-style-type: none"> • Salary increase from \$135K to \$152K (\$17K increase)* 	NO
Adjust salary of GPA Staff Attorney – <ul style="list-style-type: none"> • Salary increase from \$135K to \$145K (\$10K increase)* 	NO
Adjust salary of GWA Staff Attorney – <ul style="list-style-type: none"> • Salary increase from \$115K to \$140K (\$25K increase)* 	NO

* Returned by employees after AG's opinion.

Bonuses

From Table 1, we extracted the bonuses provided by the CCU to the unclassified employees. We noted GPA and GWA did not reflect these bonuses in their respective Staffing Patterns.

Table 2: Summary of Bonuses

Agency	Position	Description	Amount	Date Provided
Prior to P.L. 33-123:				
GPA	GM	Bonus	\$ 4,250	December 2014
GPA	CFO	Bonus	\$ 2,000	December 2014
GWA	CFO	Bonus	\$ 2,000	December 2014
GWA	Staff Attorney	Bonus	\$ 2,000	December 2014
GPA	Staff Attorney	Bonus	\$ 2,000	December 2014
GPA	Board Secretary	Bonus	\$ 1,400	December 2014
Agency	Position	Description	Amount	Date Provided
After P.L. 33-123 (Prohibition on Bonus Pay):				
GPA	CFO	For completing 1 of 3 projects	\$ 5,000	April 2016
GWA	Staff Attorney	Severance pay	\$ 10,000	April 2016
GPA	GM	CCU opted for bonus instead of salary increase	\$ 25,000*	January 2019
GWA	GM	This was in addition to salary increase	\$ 10,000*	January 2019
GPA	Board Secretary	CCU opted for bonus instead of salary increase	\$ 5,000*	January 2019

* Returned by employees after AG's opinion.

Bonuses are sums authorized and/or paid to an unclassified employee that is separate and apart from and/or added to the base pay. Effective February 2016, P.L. 33-123 prohibited the payment of bonuses to Government of Guam unclassified employees. Therefore, the CCU violated P.L. 33-123 when they provided bonuses from April 2016 and forward.

As a result of CCU's violation of the Open Government Law and P.L. 33-123, we questioned the validity of \$1.3 million (M) in salaries and benefits expenses of GPA and GWA.

We recommend the AG provide an opinion in each of the salary levels, adjustments, and bonuses on Tables 1 and 2 (except for the November 27, 2018 meeting). Should any of salary levels, adjustments, and bonuses be void, the CCU should seek professional advice as to the appropriate corrective action especially because some increases and bonuses were provided a few years back.

Cancellation and Return of Salary Increments and Bonuses

After the AG's opinion dated April 23, 2019, the CCU cancelled the salary increments and bonuses given to certain unclassified employees during their November 27, 2018 executive session. The employees were also required to pay back any increments or bonuses.

Our inspection of the records showed that the employees, except for the Board Secretary, initiated the return of monies at the net amounts. The Board Secretary returned the \$5K bonus at gross

amount as of September 2019. Net means excluding payroll deductions such as withholding taxes, Social Security, and Medicare taxes. We also learned that the unclassified employees agreed to repay in installments, the longest of which will take 201 pay periods or approximately eight years. As of September 2019, one GWA employee and four GPA employees have settled the net amounts they agreed to return.

We could not find a Guam law that could provide guidance as to what amounts and time limit these void salaries and bonuses should be returned. From an accounting perspective, the void salary increments and bonuses should be returned at the gross amounts and within the same calendar year when they were provided. Payroll processing should be able to reverse all deductions, which will then eliminate any discrepancies in amounts. If an employee only returns the net amount, that employee would still benefit from the payroll deductions. For instance, the tax withheld but not returned by the employee may result in a refund to the employee upon its annual income tax calculation.

The CCU should obtain input from its Payroll Specialists as to how employees should return the salary increments and bonuses. We also recommend the AG provide a legal opinion on this matter.

CCU Did Not Conduct Formal Performance Evaluation for the General Managers

*Title 5 GCA Chapter 43 §43202 requires “governing boards for all agencies to issue performance reviews of the Chief Executive selected for that agency six months after appointment and every twelve months thereafter. **The performance review shall be made public and published by the respective governing board.**”*

The CCU hired the GWA GM in January 2016. Therefore, there should have been four performance reviews as of December 31, 2018. However, the CCU did not have one. Since his employment, the only pay increase provided to the GWA GM was the one discussed by CCU in an executive session on November 27, 2018, which was later cancelled.

On the other hand, the GPA GM was already the GM from the start of our audit scope of October 1, 2014. Like the GWA GM, the CCU did not conduct a formal performance evaluation for the GPA GM. Including the salary adjustment on Table 1.a, the CCU provided the GPA GM with three pay increases, one of which pertained to the November 27, 2018 executive session, which was later cancelled.

Other than the GMs, the CFOs and Legal Counsels also work at the pleasure of CCU. Likewise, they do not have documented performance evaluations conducted by CCU. However, the GWA GM issued a memorandum to the CCU Chairman in September 2018 that evaluated the Legal Counsel’s performance.

We question the CCU’s basis and measures of its approval on pay raises and bonuses. Audio recording for the November 27, 2018 CCU executive meeting revealed that while the CCU was cognizant of the requirement of performance evaluations, this was never followed. As a corrective action, the CCU issued and adopted the Executive Officer Evaluation Policy for both GPA and

GWA to include the GMs, CFOs, and General Counsels effective April 1, 2018. This evaluation should occur at a minimum of once per year.

Other Matters

Former GWA CFO Hired as a Contractor

12 GCA §14108 requires a CFO be appointed by the Board of Directors. The GWA Staffing Pattern did not include the CFO up until April 2018. From 2008 to 2018, GWA paid the former CFO's salary to a private corporation through a contract arrangement. However, CCU or GWA could not provide a contract or procurement documents related to his employment. We verified from the Department of Revenue and Taxation (DRT) that the former CFO owns a private corporation, where GWA paid his salary.

The Legal Counsel opined that the relationship between the former CFO and GWA was undoubtedly that of employer and employee. On April 20, 2018 Executive Session, the CCU discussed the former CFO's employment status. As a corrective action, the CCU reclassified the former CFO's status from contractual to an at-will unclassified employee. On February 1, 2019, the former CFO resigned.

Misclassifying an employee as an independent contractor may be suggestive of the following potential issues:

- receipt of retirement benefits from the Government of Guam Retirement Fund (GGRF) while currently being employed,
- nonpayment of retirement contributions to GGRF because employee was in a contract arrangement,
- nonpayment of Social Security retirement and Medicare contributions (commonly called together as Federal Insurance Contributions Act "FICA"),
- nonpayment of or inaccurate withholding taxes (individual tax versus corporate tax), and/or
- noncompliance with the Government of Guam Budget Act requiring reporting of the name of employees, title, salary, etc.

Therefore, we question approximately \$1.3M paid to the former CFO from 2008 to 2018 as there were no proper documents to support his employment at GWA. Because of OPA's limited access to employee personal information as held by GWA, GGRF, and DRT, we referred this matter to AG for further investigation.

Salaries of Certain Employees Inconsistent with Authorized Pay Scale

P.L. 28-113 and P.L. 28-159 authorized GWA and GPA to implement a market-based compensation model that would aid in the attraction and retention of Certified, Technical, and Professional (CTP) personnel. The law was a result of concerns that these agencies were losing highly skilled personnel because salaries were not sufficient to attract and retain such personnel. In 2005, GWA engaged a consulting firm to undertake a compensation study. According to the study, CTP positions were below the 5th market percentile. The CCU adopted the migration of salaries using 5th and higher market percentiles beginning in 2008 and subsequent years.

The consulting firm provided an updated market study in September 2017. The report indicated that while some adjustments were made to correct the situation, the market has unfortunately

continued to move along. The consulting firm recommended to migrate GWA to higher market percentiles (e.g., 10th, 15th, 20th, or 25th with eventual target being at 50th), cost permitting.

In October 2017, the CCU approved and authorized the GWA GM to implement structural pay adjustments to 10th market percentile effective January 1, 2018. At 10th market percentile, six of eight unclassified GWA employees were above the maximum pay as of the effective date (see Table 3).

Table 3: GWA Pay Range vs. Unclassified Employees Salary Level

Position	Salary as of 12/31/2017 ^[1]	Pay Range at 10 th Market Percentile	Higher than Maximum/ (Lower than Minimum) By
Above Pay Range:			
1. GM	\$ 175,000	\$148,098 ~ \$154,111	\$ 20,889
2. Assistant GM - Compliance & Safety	\$ 123,679	\$96,779 ~ \$100,709	\$ 22,970
3. Assistant GM - Collection & Distribution	\$ 112,152	\$102,647 ~ \$106,815	\$ 5,337
4. Staff Attorney	\$ 115,000	\$108,962 ~ \$113,387	\$ 1,613
5. CFO	\$ 147,954	\$129,762 ~ \$135,031	\$ 12,923
6. Assistant CFO	\$ 111,042	\$99,712 ~ \$103,760	\$ 7,282
Within and Below Pay Range:			
7. Assistant GM - Administration & Support ^[2]	\$ 131,060	\$131,060 ~ \$136,382	Within range
8. Controller ^[3]	\$ 81,432	\$89,374 ~ \$93,003	(\$ 7,942)

^[1] Salaries of the unclassified employees before the implementation of the 10th market percentile pay range.

^[2] Hired in October 2018.

^[3] CCU approved the GWA GM's recommendation to adjust salaries of the Controller to \$92,082 effective January 1, 2018.

Despite being above the highest range, the CCU approved the GWA GM's recommendation to adjust salaries of the Assistant GM Compliance & Safety's salary to \$124,113 and the Assistant CFO's salary to \$111,245. The recommendation and approval happened in August to September 2018, but salary increments were retroactively applied from January 1, 2018 when the 10th market percentile was implemented. This implies that CCU's selective approvals of salary increases trumps the agency-wide adopted pay scale.

For GPA, the CCU also approved and authorized GPA to implement the structural pay adjustments to the 15th market percentile effective January 1, 2018. At 15th market percentile, three of nine unclassified GPA employees were above the maximum pay as of the effective date (see Table 4).

Table 4: GPA Pay Range vs. Unclassified Employees Salary Level

Position	Salary as of 12/31/2017 ^[1]	Pay Range at 15 th Market Percentile	Higher than Maximum/ (Lower than Minimum) By
Above Pay Range:			
1. GM	\$ 224,993	\$168,549 ~ \$175,393	\$ 49,600
2. Board Secretary	\$ 72,009	\$43,606 ~ \$45,377	\$ 26,632
3. Staff Attorney	\$ 134,992	\$112,264 ~ \$116,822	\$ 18,170
Within and Below Range:			
4. Asst. GM - Administration	\$ 128,282	\$133,694 ~ \$139,123	Within range
5. Asst. GM - Engineering & Technical Services	\$ 145,000	\$141,919 ~ \$147,682	Within range
6. Asst. GM - Operations	\$ 145,000	\$141,919 ~ \$147,682	Within range
7. CITO	\$ 110,000	\$105,758 ~ \$110,052	Within range
8. Controller	\$ 88,180	\$92,082 ~ \$95,821	(\$ 3,902)
9. CFO	\$ 135,000	\$137,745 ~ \$143,339	(\$ 2,745)

^[1] Salaries of the unclassified employees before the implementation of the 15th market percentile pay range.

The CCU sets the salaries of the unclassified employees who work at their pleasure. Tables 3 and 4 show that CCU provides salaries to certain unclassified employees higher than the other CTP personnel.

We recommend CCU consistently apply the agency-wide adopted pay scale. For those who are already higher than the 10th market percentile for GWA and 15th market percentile for GPA, future potential increases may slow down until the rest of CTP personnel catch up.

Conclusion and Recommendations

Our audit of the GPA and GWA unclassified employees' pay raises and bonuses found that CCU did not comply with the Open Government Law when it discussed and decided salaries and bonuses of the unclassified employees during their executive meetings. While we acknowledge that the CCU motioned and approved some of the pay salary levels, adjustments, and bonuses in regular session, the law is clear that no discussions about salaries should be held in an executive session.

In addition, the CCU violated P.L. 33-123 when it gave bonuses from April 2016 forward. Therefore, we question the validity of approximately \$1.3M in salaries and benefits expenses of GPA and GWA.

Both GPA and GWA GMs received pay increases and bonuses from fiscal year 2015 to 2019; however, the CCU did not conduct formal performance evaluations for these officials. Therefore, we questioned the CCU's basis of pay adjustments given to the GMs.

Lastly, the CCU hired the former GWA CFO under a contract arrangement. However, there was no contract in place to validate his payments. Therefore, we questioned approximately \$1.3M in contractual fees paid to the former GWA CFO.

We recommend:

1. AG to provide an opinion in each of the salary levels, adjustments, and bonuses made to unclassified employees that were effective between October 2013 and January 2019,
2. CCU to consult with GPA and GWA's Payroll Specialists as to how employees should return the salary increments and bonuses,
3. AG to provide an opinion on how the employees should return the void salary increments and bonuses, and
4. CCU to consistently apply the agency-wide adopted pay scale.

Classification of Monetary Amounts

Finding Description	Questioned Costs	Potential Savings	Unrealized Revenues	Other Financial Impact
1. Salaries and Bonuses Discussed/Decided during CCU Executive Meetings	\$ 1,276,026 ⁵	\$ -	\$ -	\$ -
Bonuses	\$ 28,650 ⁶	\$ -	\$ -	\$ -
Subtotal	\$ 1,304,676	\$ -	\$ -	\$ -
2. Cancellation and Return of Salary Increments and Bonuses	\$ -	\$ -	\$ -	\$ -
3. CCU Did Not Conduct Performance Evaluation for the General Managers	\$ -	\$ -	\$ -	\$ -
4. Other Matters	\$ -	\$ -	\$ -	\$ -
Former GWA CFO Hired as Contractor	\$ 1,260,077 ⁷	\$ -	\$ -	\$ -
Salaries of Certain Unclassified Employees Above Pay Scale Range	\$ -	\$ -	\$ -	\$ -
Subtotal	\$ 1,260,077	\$ -	\$ -	\$ -
TOTAL	\$ 2,564,753	\$ -	\$ -	\$ -

⁵ This amount pertains to all salary levels and adjustments discussed and approved by the CCU during their executive sessions as noted on Table 1. We calculated each pay level and adjustment(s) from the effectivity date up to: (a) the subsequent pay adjustment(s); (b) employee's termination date; and/or (c) September 30, 2019, the end of our audit scope. This excludes: (1) salaries of the former CFO, and (2) returned pay adjustments arising from the November 27, 2018 executive session.

⁶ This amount pertains to bonuses discussed and approved by CCU during their executive session as noted on Table 2. This excludes the returned bonuses arising from the November 27, 2018 executive session.

⁷ This amount pertains to the former CFO's salary paid to his private corporation from 2008 to 2018.

In December 2019, we transmitted a draft report to the CCU and AG. In the same month, we met with CCU members, GPA, and GWA’s management, as well as the Oversight Chairperson’s of the 35th Guam Legislature to discuss the findings and recommendations.

In CCU’s management response, the CCU Chairperson generally agreed with our recommendations. However, the CCU Chairperson made a comment that “the unclassified GPA and GWA employees are not part of the CTP list, and serve at the pleasure of CCU.”

The focus of the finding is to remind CCU that the salaries of GPA and GWA unclassified employees are inconsistent with the authorized pay scale. In fact, the unclassified positions at GPA and GWA are listed as CTP positions in the compensation study conducted. See excerpts below of the compensation study.

Excerpt 1: Compensation Study for GPA Unclassified Employees

No.	Authority	Benchmark Position	JE	15th Market Percentile (2017 Market Data - 5 sub steps)									
				Structural Adjustment - MIN					Structural Adjustment - MAX				
				Base Salary	Hourly	Grade	Step	Sub Step	Base Salary	Hourly	Grade	Step	Sub Step
5	GPA	AGM Administration	1468	133,694	64.28	R	3	A	139,123	66.89	R	4	A
6	GPA	AGM Engineering & Technical Services	1555	141,919	68.23	R	4	C	147,682	71.00	R	5	C
7	GPA	AGM Operations	1566	141,919	68.23	R	4	C	147,682	71.00	R	5	C
22	GPA	Board Secretary	582	43,606	20.96	I	5	B	45,377	21.82	I	6	B
35	GPA	Chief Financial Officer (GPA)	1482	137,745	66.22	R	3	D	143,339	68.91	R	4	D
36	GPA	Chief Information Technology Officer	1173	105,758	50.85	P	3	B	110,052	52.91	P	4	B
58	GPA	Controller	1079	92,082	44.27	O	3	C	95,821	46.07	O	4	C
100	GPA	General Manager (GPA)	1831	168,549	81.03	S	5	D	175,393	84.32	S	6	D
206	GPA	Staff Attorney	1199	112,264	53.97	P	4	D	116,822	56.16	P	5	D

Excerpt 2: Compensation Study for GWA Unclassified Employees

Authority	Benchmark Position	Year	Implementation Ranges @ 10th Market Percentile (2017 Market data) - 5 Spread									
			JE Points	Structural Adjustment - MIN				Structural Adjustment - MAX				
				0	Base Salary	Grade	Step	Sub Step	Base Salary	Grade	Step	Sub Step
GWA	AGM Administration & Support	2017	1450	131,060	R	2	C	136,382	R	3	C	
GWA	Assistant Chief Financial Officer	2017	1122	99,712	O	5	C	103,760	O	6	C	
GWA	Assistant General Manager Collection & Distribution	2017	1173	102,647	P	2	C	106,815	P	3	C	
GWA	Assistant General Manager Compliance & Safety	2017	1152	96,779	O	4	D	100,709	O	5	D	
GWA	Chief Financial Officer (GWA)	2017	1464	129,762	R	2	B	135,031	R	3	B	
GWA	Controller	2017	1079	89,374	O	2	D	93,003	O	3	D	
GWA	General Manager (GWA)	2017	1734	148,098	S	2	C	154,111	S	3	C	
GWA	Staff Attorney	2017	1199	108,962	P	4	A	113,387	P	5	A	

Meanwhile, the CCU did not object to our recommendations set for the AG. Refer to Appendix 4 for the CCU’s official management response and Appendix 5 for the AG’s official response.

The legislation creating the Office of Public Accountability requires agencies to prepare a corrective action plan to implement audit recommendations, document the progress in implementing the recommendations, and the endeavor to have implementation completed no later than the beginning of the next fiscal year. Accordingly, we will be contacting CCU to provide us with a target date and title of the official(s) responsible for implementing the recommendations.

We appreciate the cooperation and assistance from CCU, as well as staff and management of GPA and GWA.

OFFICE OF PUBLIC ACCOUNTABILITY

Benjamin J.F. Cruz
Public Auditor

Appendix 1: Objective, Scope & Methodology

Our audit objectives were to determine whether:

- 1) Pay raises and bonuses granted to unclassified employees complied with the applicable laws (Open Government Law and/or Prohibition on Bonus Pay for the Unclassified Employees); and
- 2) Performance reviews were conducted for the agency heads.

We looked into the staffing patterns of 16 autonomous agencies' from October 1, 2014 to September 30, 2019. We focused on agencies with the most number of employee salary adjustments. This report covered GPA and GWA. Report(s) for other agencies will be forthcoming.

We made our observations and inquiries between June 2019 and November 2019.

Methodology

To accomplish our objectives, we performed the following pertaining to GPA and GWA's unclassified employees' pay raises and bonuses:

- Identified and reviewed applicable laws and rules and regulations.
- Identified and reviewed prior audit(s).
- Met with GPA and GWA officials to gain an understanding of the pay raises and bonuses.
- Requested and reviewed the listing of unclassified employees in the executive level.
- Reviewed GPA and GWA staffing patterns to check for an influx in the unclassified employees' salaries.
- Reviewed and verified unclassified employees' pay increases in their Personnel Action Forms, and the basis for the pay increases.
- Listened to audio recordings of CCU executive meetings.
- Inspected payment arrangements on the returned salaries and bonuses.

We conducted this performance audit in accordance with the Generally Accepted Auditing Standards issued by the Comptroller General of the United States. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix 2: Prior Audit Coverage

OPA Report No. 14-05, Government of Guam Merit Bonus Program

From fiscal year 2009 to 2013, the Government of Guam spent \$12.6 million in retroactive merit bonus payments for over 4,200 employees. Specifically, we found:

- Advice from agencies' respective legal counsels reflected differences of opinion relating to the statute of limitations for merit bonuses. As a result, periods of performance review entitled to retroactive merit bonus amongst agencies ranged from 3 to 23 years.
- Some agencies calculated a merit bonus off of the employee's current salary, not the increment salary, while some agencies did vice versa.
- Overall ratings terms used in the agency performance evaluation forms varied and resulted in employees receiving merit bonuses if the rating given was interpreted to be equivalent to "superior". In instances where performance evaluations did not have a "superior" rating, the highest possible rating was considered equivalent to "superior" for merit bonus purposes.

OPA recommended that Department of Administration (DOA) follow through and submit their assessment and policy no later than September 30, 2015, but not without first seeking clarification on the merit bonus law from AG. In October 2017, the former Public Auditor decided that this recommendation be closed as not implemented as no follow up will be done by DOA.

Appendix 3: Excerpts of CCU Meeting Minutes

Page 1 of 5

February 11, 2014

10. EXECUTIVE SESSION

10.1 Personnel Matter

This matter was discussed.

At the end of Executive Session, the meeting was moved back to Regular Session. It was 9:25 p.m.

Comm. [REDACTED] motioned to adopt for the record the decision made in Ex. Session to adjust the salary for [REDACTED] to \$175k retroactive to Oct. 1, 2013. Comm. [REDACTED] seconded. There was no further discussion or objection and the motion passed.

December 11, 2014

10. EXECUTIVE SESSION

10.1 Personnel Matter

This matter was discussed in Executive Session

10.2 Investigative Report

This matter was discussed in Executive Session

The meeting returned to Regular Session @ 9:09

The Chairman said for the record the Commission has been reviewing CCU's senior management. They are

1. Board Executive Assistant
2. GMCUS
3. GM of GWA
4. CFO of GPA
5. CFO of GWA
6. Counsel of GPA
7. Counsel of GWA

Under the advice of Counsel, it was determined that these seven people report directly to the CCU and their pay are no longer covered under the Certified Technical & Professional Pay. Effective immediately, their salaries will be set directly by the CCU.

In addition, each individual has been evaluated and based on their evaluations, the following bonus pay has been discussed for each individual respectively:

- [REDACTED] - \$1400
- [REDACTED] - No Change; the CCU just approved [REDACTED] Interim GM pay
- [REDACTED] - \$4,250
- [REDACTED] - \$2000
- [REDACTED] - \$2000
- [REDACTED] - \$2000
- [REDACTED] - \$2000

Comm. [REDACTED] moved to approve the awarding of these bonuses to the CCU Senior Executive staff; Comm. [REDACTED] seconded. On the motion there was no further objection or discussion and the motion passed unanimously.

Legal Counsel [REDACTED] was instructed by the Commission to draft a Legal Memorandum documenting this action and that said bonuses are to be paid before Christmas.

Comm. [REDACTED] motioned and Comm. [REDACTED] seconded to adopt the decision as discussed on Executive Session on the personnel matter.

Appendix 3: Excerpts of CCU Meeting Minutes

Page 2 of 5

February 24, 2015

10. EXECUTIVE SESSION

10.1 Personnel Matter

This matter was discussed in Executive Session

Comm. ██████ motioned to move the meeting back to Regular session; Comm. ██████ seconded. It was 8:50 p.m.

Chairman ██████ said he needs a motion to approve what was discussed in Executive Session.

Comm. ██████ motioned that ██████ be appointed Interim GM for GWA with salary of \$140k per annum; Comm. ██████ seconded. There was no objection or discussion and the motion carried.

11. ADJOURNMENT

With no further business to discuss, Comm. ██████ moved to adjourn the meeting: Comm. ██████ seconded. There was no objection and the meeting adjourned at 8:51 p.m.

July 23, 2015

10. EXECUTIVE SESSION

1. Personnel Matter

This matter was discussed.

Chairman ██████ called the meeting back to regular session from executive session; it was 9:40 p.m. He said all (5) Commissioners were still present. Also in the room were ██████ and Board Secretary, ██████. He said the chair will entertain a motion to approve what was adopted in Executive Session

Comm. ██████ said I move that we hire ██████ to be the General Manager for Guam Power Authority at an annual salary of \$225,000 and all other existing benefits that he has incurred. The motion was seconded by Comm. ██████. There was no further discussion or objection and the vote carried unanimously.

September 22, 2015

EXECUTIVE SESSION

9.1. Personnel Matter

This matter was discussed.

The meeting was moved back to regular session and the following ratifications followed:

Comm. ██████ said I move that we abolish the position of GMCUS that was created earlier by the CCU; Comm. ██████ seconded. There was no further discussion or objection and the motion passed.

Comm. ██████ moved to approve Resolution 2015-49 / GWA 51-FY2015 relative to the reallocation and transfer of the incumbent back to GWA Communications Manager and everything that's found in this resolution; Comm. ██████ seconded. There was no further discussion and the motion passed.

Comm. ██████ said I move that GWA hire ██████ to be the new comptroller at the salary of \$75k; Comm. ██████ seconded. It was recommended by the CFO to the Commission as discussed in ex. Session. There was no further discussion or objection and the motion passed.

Comm. ██████ said I move that GPA hire a new CFO; his name is ██████ and his salary shall be \$135k with options for additional bonuses for \$5k each for implementing a credit card transaction convenience fee program at a lower cost than we currently face, to be done in 6 months; \$5k bonus for kiosk payment program to be done in 12 months; and subject to verification by management he is eligible to receive additional \$5k bonus for establishing a prepaid program. He gets 30-days of personal leave, the Chairman is authorized to finalize 3-year contract and to also limit severance pay to no more than 60-days if terminated without cause during the 3 years of his contract. He can be terminated for cause at any time and he gets the standard health insurance and retirement benefits that are currently available to GovGuam employees. The motion was second by Comm. ██████. There was no further discussion or objection and the motion carried.

Appendix 3: Excerpts of CCU Meeting Minutes

Page 3 of 5

December 10, 2015

EXECUTIVE SESSION

9.1. Personnel Matter

This matter was discussed.

The meeting was moved back to Regular Session. The time was approximately 7:40 p.m..

Chairman [REDACTED] announced that the meeting has now moved back to Regular Session from Executive Session. He said all (5) Commissioners were still present and the Chairman will entertain a motion to approve what was adopted in Executive Session

Comm. [REDACTED] motioned that [REDACTED] be paid as the Acting GM retroactive to the date of his appointment, the annual equivalent of \$155k, but only up until the new GWA GM reports for duty on or about January 4, 2016. Further, Comm. [REDACTED] motioned that [REDACTED] pay be increased by \$5k for the period that she is acting CFO, since [REDACTED] is Acting GM, until on or about January 4, 2016, the anticipated time that [REDACTED] resumes his duties as CFO. Both motions were seconded by Comm. [REDACTED]. On the motion there was no further discussion or objection and the motion passed.

Comm. [REDACTED] moved to adjourn; Comm. [REDACTED] seconded.

April 26, 2016

EXECUTIVE SESSION

9.1 Personnel Matters

This matter was discussed.

9.2 Litigation Matter

This matter was discussed.

At approximately 8:40 p.m., Chairman [REDACTED] announced that the meeting has now back in Regular Session from Executive Session. He said all (5) Commissioners were still present and said the Chairman will entertain a motion to approve what was adopted in Executive Session.

Comm. [REDACTED] motioned to approve a claim for \$29,328.00 to be [REDACTED] as summarized in this release and settlement agreement provided by counsel to us during executive session; Comm. [REDACTED] seconded. There was no further discussion or objection and the motion passed unanimously.

Comm. [REDACTED] motioned to agree to pay a bonus to [REDACTED] our CFO, contingent on three (3) projects being completed for which he will be paid \$5,000 for each of these projects if he is successful in completing them. Project 1) to complete the transfer from our previous merchant card vendor to a new merchant card vendor to establish a brand new merchant banking relationship with GPA and to seek a reduction in the debit and credit card fees that we currently pay from a new vendor. It is my understanding that he has secured the reduction in the debit/credit card fee we are still in the process of implementing the entire agreement but the motion is upon successful completion of the transition to a new merchant agreement with the lower debit/credit card fees that he be paid \$5,000 if this occurs within 6 months of his original effort. Comm. [REDACTED] seconded. There was no further discussion or objection and the motion passed unanimously. It was noted that this is Project 1 of 3 projects pending bonus agreements with [REDACTED]

Comm. [REDACTED] moved that we adjust the salary for [REDACTED] as recommended by management to the amount of \$138,870.78 per year effective May 1, 2016; Comm. [REDACTED] seconded. There was no further discussion or objection and the motion passed unanimously.

Comm. [REDACTED] moved that we adjust [REDACTED] salary for his successful and good work that he has done for the Commission to \$135,000 per year effective May 1, 2016; Comm. [REDACTED] seconded. There was no further discussion or objection and the motion passed unanimously.

Comm. [REDACTED] move that we end the paid services for [REDACTED] GWA Legal Counsel on April 30 with the completion of this payroll period and that we offer him an additional \$10,000 severance contingent on him giving GWA full release of all and any other obligations and future claims; Comm. [REDACTED] seconded. The chairman is authorized to complete the transaction. There was no further discussion or objection and the motion passed unanimously.

Appendix 3: Excerpts of CCU Meeting Minutes

Page 4 of 5

May 24, 2016

EXECUTIVE SESSION

9.1 Personnel Matters

This matter was discussed

9.2 Litigation Matter

This matter was discussed

The meeting was moved back to Regular Session at 7:58 p.m.

Chairman [REDACTED] announced that the meeting has now moved back to Regular Session from Executive Session. He said (3) Commissioners were still present and said the chair is open to a motion to approve what was adopted in Executive Session.

Comm. [REDACTED] motioned to approve the decisions that were made in Executive Session the details of which will be summarized by Legal Counsel. [REDACTED] Comm. [REDACTED] seconded. There was no further discussion or objection and the motion passed.

February 21, 2017

7. EXECUTIVE SESSION

7.1 Personnel Matter

This matter was discussed.

At around 7:10 p.m., Chairman [REDACTED] announced that the meeting has now moved back to Regular Session from Executive Session. Four (4) Commissioners were still present – Comm. [REDACTED] and [REDACTED] along with General Manager [REDACTED] and Legal Counsel [REDACTED]. The Chairman said he will entertain a motion to approve what was adopted in Executive Session.

Comm. [REDACTED] motioned that the Commission concur with the recommendation of the General Manager, [REDACTED] to hire Mrs. [REDACTED] for position of Asst. General Manager of Administration at the salary of \$128,282; Second by Comm. [REDACTED]. All were in favor and the motion passed.

Comm. [REDACTED] motioned to concur with the recommendation of the General Manager, [REDACTED] to promote Mr. [REDACTED] Manager of SPORD to Asst. General Manager of Engineering and Technical at the proposed salary of \$145,000; second by Comm. [REDACTED]. All were in favor and the motion passed.

Comm. [REDACTED] motion to increase the salary of current Asst. General Manager of Operations, Mrs. [REDACTED] from \$138,871 to proposed salary of \$145,000; Seconded by Comm. [REDACTED]. All were in favor and the motion carried.

Appendix 3: Excerpts of CCU Meeting Minutes

Page 5 of 5

April 20, 2018

EXECUTIVE SESSION

7.1 Personnel Matter – this was discussed

7.2 Litigation Matter – this was discussed

At approximately 6:20 p.m., Chairman [REDACTED] announced that the meeting has now moved back to Regular Session from Executive Session; four (4) Commissioners were present – Commissioners [REDACTED]. Comm. [REDACTED] did not attend the meeting and was excused. The Chairman said he will entertain a motion.

Comm. [REDACTED] motioned that the Commission adopt the decision discussed in Executive Session relative to personnel matter. The motion was second by Comm [REDACTED]. On the motion there was no further discussion or objection and the motion passed. For the record the vote was 4 – yes and 1 – absent.

August 28, 2018

The minutes of meeting did not indicate structural pay adjustments for certain unclassified employees.

November 27, 2018

EXECUTIVE SESSION

7.1 Personnel Matter

7.2 Litigation Matter

The meeting was moved back to Regular Session at 7:48 p.m. and the Chairman said he would entertain a motion.

Comm. [REDACTED] motioned to approve the discussion relative to the salary adjustments for executive management as discussed in executive session. Comm. [REDACTED] seconded. There was no further discussion or objection and the motion passed unanimously.



CONSOLIDATED COMMISSION ON UTILITIES
Guam Power Authority | Guam Waterworks Authority
P.O. Box 2977 Hagatna, Guam 96932 | (671)649-3002 | guamccu.org

December 20, 2019

Mr. Benjamin J.F. Cruz
Public Auditor
Office of Public Accountability
238 Archbishop Flores Street, Ste 401
Hagatna, Guam 96910

RE: CCU Response to OPA Draft Report (12/10/19 and 12/12/19) GPA and GWA Unclassified Employees Pay Raises

Dear Mr. Cruz:

Thank you for the opportunity to respond to the OPA draft reports of December 10, 2019 and December 12, 2019 regarding unclassified employee pay adjustments. The first part of this response will address the Executive Summary of the report and certain background information. The second part will address the OPA recommendations.

Executive Summary

"Salaries and Bonuses Discussed and Decided during CCU Executive meetings". The Board does not take issue with the OPA's position that the Open Government Law was not followed when salary amounts were discussed in executive session. However, after the executive session was adjourned and the open session was resumed, the employee and his or her proposed salary was then brought to a motion, with opportunity for discussion and properly voted on except for the November 27, 2018, April 20, 2018, and May 24, 2016 meetings. All other personnel actions were taken in an open regularly noticed meeting. Therefore, in all but 3 case(s), the salary adjustments were "discussed and decided during" open public meetings. The CCU held a special meeting on May 10, 2019 in which it rescinded the salary adjustments for all GPA and GWA employees which were made at the CCU meeting on November 27, 2018. The AG opinion only referred to actions taken by the CCU at the November 27, 2018 meeting, and did not discuss severance payments.

"Cancellation and Return of Salary Increments and Bonuses". The CCU agrees that bonuses given after February of 2016 are not legal pursuant to PL 33-123. The forfeiture and repayment of the salary increases were based on gross amounts paid to the employees. The amount repaid whether in lump

sum or through a payment authorization are also in the gross amount. The payroll and accounting departments at both GPA and GWA were consulted regarding having the repayment amounts deducted from the salaries of the employees with regard to the November 27, 2018 salary adjustments. The CCU will revisit and review the terms of the repayment plans for GPA and GWA employees who have not finished repayment. The law is silent as to the repayment terms, and the General Managers could determine the repayment schedule of their management employees.

With respect to salaries above the pay range, the salaries of the executive utility employees hired by the Board are paid at a level or range determined by the Board as allowed in the GPA and GWA enabling statutes. Recruitment for the executive positions at GPA and GWA cannot be properly maintained at pay levels within the classified employee range. The unclassified GPA and GWA employees are not part of the Certified Technical and Professional list, and serve at the pleasure of the CCU. While the evaluation policy regarding the General Managers was not strictly followed, the General Managers of both GPA and GWA are reviewed by the CCU members every month at the work sessions and the CCU meetings. Furthermore, any evaluations for possible pay adjustments for executive utility employees were properly advertised "Personnel Matters" as part of a regular CCU agenda. During those publicly announced meetings, executive utility employees were hired, retained, dismissed, had pay increased, decreased or not changed at all based on the CCU's collective regular review of their performance.

Page 6: We note what looks to be a typo for the promotion increase for GWA Accountant III as a \$25k increase when it should be \$15k increase.

The severance pay inquiry is vague. Under the following definition recognized in most employment situations:

An amount of money an employer owes to an employee in lieu of notice, in exchange for the employee's agreement to sever an employment contract forthwith.

The \$10,000 severance payment was approximately 3 weeks' pay in lieu of notice of termination, and represented a settlement between GWA and the employee, the former GWA legal counsel.

The CCU originally hired former CFO [REDACTED] as an employee in August 2007. A GG-1 was issued for his employment. During the original hiring process and his subsequent employment, there were no discussions in any CCU regular or executive meeting regarding issuing an RFP or Contract for CFO services. No personal services contract for his services was ever approved nor executed by the CCU during his tenure. Nor did the CCU or GWA contract with the company later created by [REDACTED] for purposes of receiving his salaried payments. At no time during his tenure did the CCU authorize the retention nor payments to [REDACTED] as a contractor. At no time during his employment was the CCU aware that he was being paid as a contractor. When the CCU became aware that payments were being made to [REDACTED] company instead of as an individual, the CCU re-confirmed on April 20, 2018 that [REDACTED] was to always have been employed as an employee and not a contractor. [REDACTED] subsequently resigned on February 1, 2019.

Recommendations of the OPA:

1. The CCU does not object to the AG providing an opinion regarding salary adjustments and bonuses made to unclassified employees between October 2013 through January 2019. The AG has already provided an opinion regarding salary adjustments and bonuses made at the November 27, 2018 CCU meeting. The CCU, at a special meeting on May 10, 2019, has acted to rescind the salary adjustments and bonuses resulting from the November 27, 2018 CCU meeting, and has required the unclassified GPA and GWA employees to make repayment.
2. The CCU agrees to revisit and review the repayment of salary increments and bonuses and to discuss this with the CFO and payroll departments of GPA and GWA.
3. The CCU does not object to the AG providing an opinion on how employees should return the salary increments and bonuses rescinded at the CCU special meeting on May 10, 2019, resulting from the November 27, 2018 CCU meeting.
4. The CCU agrees to consistently apply the agency-wide adopted pay scale for classified employees who are considered certified, technical and professional employees. The CCU will set the salaries for unclassified executive employees as allowed in the GPA and GWA enabling statutes.

Respectfully,



Joseph T. Duenas
CCU Chairman

cc:
CCU Board
John Benavente, GPA GM
Miguel Bordallo, GWA GM
Graham Botha, GPA Legal
Kelly Clark, GWA Legal
Andriana Quitugua, OPA
Edlyn Dalisay, OPA

Appendix 5: AG Official Response



Office of the Attorney General of Guam

590 S. Marine Corps Drive, Suite 901 ♦ Tamuning, GU 96913
671.475.3324 extension 5015 ♦ Fax 671.477.4703 ♦ Email law@guamag.org

Hon. Leevin Taitano Camacho
Attorney General of Guam

December 26, 2019

Honorable Benjamin J.F. Cruz
Public Auditor
Office of Public Accountability
238 Archbishop Flores St., Ste. 401
Hagatna, Guam 96910

Dear Public Auditor Cruz:

Thank you for meeting with me and providing the draft audit report on Guam Power Authority (GPA) and Guam Waterworks Authority (GWA) unclassified employees' pay raises and bonuses. We are considering your request for legal opinions on the validity of the actions you have identified in the audit and will provide a formal response to your office. However, based on our discussions and preliminary review, we agree that there appears to be irregularities with the employee pay raises and bonuses.

As you point out in the audit, Guam law is clear that all discussions and decisions regarding salaries or salary adjustments must be held in a public setting and under no circumstances be conducted during an executive or closed meeting. Guam law also prohibits bonus pay for unclassified employees except as specifically provided for by statute. We would note that we have consistently taken the position that any pay raises or bonuses that are void because of a failure to follow Guam law must be repaid.

Our office will continue review of your findings and, if actions were taken in violation of Guam law, identify and pursue appropriate remedies.

I want to thank you and your team for your diligence in performing this audit. We appreciate the ongoing partnership with the OPA and are confident that our continued work will ensure accountability and integrity in public service.

Sincerely,


LEEVIN TAITANO CAMACHO
Attorney General

Appendix 6:
Status of Audit Recommendations

No.	Addressee	Audit Recommendation	Status	Action Required
1.	Attorney General of Guam	Provide an opinion in each of the salary levels, adjustments, and bonuses described on Table 1 and Table 2.	OPEN	Please provide target date and title of the official(s) responsible for implementing the recommendation.
2	Consolidated Commission on Utilities	Obtain inputs from Payroll Specialists as to how employees should return the salary increments and bonuses.	OPEN	Please provide target date and title of the official(s) responsible for implementing the recommendation.
3.	Attorney General of Guam	Provide an opinion of how the employees should return the salary increments and bonuses.	OPEN	Please provide target date and title of the official(s) responsible for implementing the recommendation.
4.	Consolidated Commission on Utilities	Consistently apply the agency-wide adopted pay scale.	OPEN	Please provide target date and title of the official(s) responsible for implementing the recommendation.



**Guam Power Authority and Guam Waterworks Authority
Unclassified Employees' Pay Raises and Bonuses
Report No. 19-09, December 2019**

ACKNOWLEDGEMENTS

Key contributions to this report were made by:
Amacris Legaspi, CGFM, Auditor-in-Charge
Andriana Quitugua, CFE, Auditor-in-Charge
Edlyn Dalisay, CPA, CGFM, Audit Supervisor
Benjamin Cruz, Public Auditor

MISSION STATEMENT

**To ensure public trust and assure good governance in the Government of Guam,
we conduct audits and administer procurement appeals,
with objectivity, professionalism, and accountability.**

VISION

**The Government of Guam is the model for good governance with OPA leading
by example as a model robust audit office.**

CORE VALUES

**Objectivity: To have an independent and impartial mind.
Professionalism: To adhere to ethical and professional standards.
Accountability: To be responsible and transparent in our actions.**

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- Visit our website at www.opaguam.org
- Call our office at 475-0390
- Fax our office at 472-7951
- Or visit us at Suite 401, DNA Building in Hagåtña

All information will be held in strict confidence.