

**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF: ) GPA Docket 18-10  
)  
The Application of the Guam Power )  
Authority to Approve the Contract ) **ORDER**  
Extension with Tristar Terminals Guam, )  
Inc. for the Dock Facility User Agreement, )  
Pipeline Agreement, and Fuel Storage )  
Agreement for GPA. )

**INTRODUCTION**

1. This matter comes before the Guam Public Utilities Commission [“PUC”] upon the Supplemental Filing of the Guam Power Authority [“GPA”] for contract review and approval of the Contract Extension with Tristar Terminals Guam, Inc. for the Pipeline Agreement, and the Fuel Storage Agreement for GPA.<sup>1</sup>

**BACKGROUND**

2. In its Order in this Docket dated March 29, 2018, the PUC granted GPA’s request for approval of the Dock Facility User Agreement between GPA and Tristar.<sup>2</sup>
3. However, the Commission expressed concerns about the contract provisions in both the Pipeline and Storage Agreements for annual, automatic four (4) percent cost of living increases in the pricing.
4. The Commission determined that the “rapidly increasing contract costs, which are compounded annually as a result of the 4% automatic annual increases, impose burdens upon the ratepayers.”<sup>3</sup>
5. The Commission further determined that these costs were included as “fuel handling charges” in the Levelized Energy Adjustment Clause, which increased the amounts that ratepayers pay for fuel.<sup>4</sup>
6. According to the Commission, said automatic charges were not “just and reasonable” rates, as there was no evidence demonstrating that the 4% automatic annual increase under the contracts were related to actual CPI increases, or to any

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<sup>1</sup> GPA Supplemental Filing for Contract Extension with Tristar Terminals Guam, Inc. for Pipeline Agreement, and Fuel Storage Agreement, GPA Docket 18-10, filed August 10, 2018.

<sup>2</sup> PUC Order, GPA Docket 18-10, dated March 29, 2018, at p. 4.

<sup>3</sup> Id. at p. 3.

<sup>4</sup> Id.

demonstrable costs incurred by Tristar.”<sup>5</sup>

7. PUC ordered that GPA, with regard to the Pipeline and Storage Agreements, “renegotiate the automatic 4% annual CPI increases with Tristar.”<sup>6</sup>
8. Subsequent to the PUC Order, GPA did meet with Tristar on several occasions regarding the automatic CPI increases.<sup>7</sup>
9. On May 4, 2018, Tristar filed its response concerning the automatic 4% annual CPI escalation in a letter to GPA General Manager John Benavente.<sup>8</sup>
10. Tristar claims that its basis for the 4% annual escalation factor are the terms agreed to by GPA in the initial contract period (2013 to 2018). Tristar further claims that the increase is based upon “operational cost accorded by various regulating agencies” that GPA was aware of.<sup>9</sup>
11. Tristar states that the CPI did increase in one year, 2016, by 6%. It also refers to Government of Guam tax increases, such as the increase in GRT from 4% to 5%, and the new 2% general sales tax, as justifications for the automatic annual CPI increases.<sup>10</sup>
12. GPA indicates that the Pipeline Agreement and the Fuel Storage Agreement terminate on August 31, 2018. It claims that Tristar is unwilling to negotiate further on the 4% annual CPI increase, and requests that PUC approve the Pipeline Agreement and Fuel Storage Agreement with such 4% annual CPI Increases.<sup>11</sup>

### DETERMINATIONS

13. Tristar’s arguments supporting the annual 4% CPI increases are not convincing.

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<sup>5</sup> Id.

<sup>6</sup> Id. at p. 5.

<sup>7</sup> GPA Supplemental Filing for Contract Extension with Tristar Terminals Guam, Inc. for Pipeline Agreement, and Fuel Storage Agreement, GPA Docket 18-10, filed August 10, 2018, at p. 1.

<sup>8</sup> Letter from Tristar General Manager Kazhakuttam K. Vikraman to GPA General Manager John Benavente, dated May 4, 2018 (a copy is attached to GPA’s Supplemental Filing).

<sup>9</sup> Id. at p. 1.

<sup>10</sup> Id. at pgs. 1-2.

<sup>11</sup> Telephone conversation between GPA Counsel Graham Botha and Frederick J. Horecky, PUC Counsel on August 13, 2018.

14. That the percent change in the annual CPI for FY2016 was 6% is correct, but that fact has no relevance. In examining calendar years 2013-2017, for the five-year period, there was an average 1.5% annual CPI increase, far less than the “automatic” 4% charged.
15. Tristar also indicates a number of other costs that it bears, such as GRT and sales tax. The sales tax has now been deleted by the Legislature. However, any costs such as GRT should be factored in as actual costs when GPA and Tristar negotiate the contract prices. These costs should stand on their own and may be included if negotiated by the parties. Other alleged costs are no justification for an automatic 4% annual CPI increase.
16. Tristar has not offered any convincing justification for an automatic annual 4% increase.
17. Since 2013, the PUC staff and consultants have questioned the assumptions of the annual automatic 4% annual contract price increases. Lummus Consultants found that there is no evidence that supports an assumption of the 4% annual inflation increase; such increase results in substantial costs to the ratepayers.<sup>12</sup>
18. Yet, unfortunately, there seems to be little that the PUC can do at the present time regarding these contract provisions. Tristar has steadfastly refused to negotiate the automatic annual CPI increases. As has repeatedly been pointed out, Tristar has a monopoly on these services and access to the Pipeline.
19. The 2013 conclusion of Lummus Consultants, that GPA has little choice but to contract with Tristar for the Pipeline and Fuel Storage Agreements, is still valid, as there is no other alternative.<sup>13</sup>
20. The termination dates for the Pipeline Agreements and Fuel Storage Agreement are rapidly approaching (August 31, 2018). There is little time to fashion other solutions.
21. From a regulatory view point, it is frustrating that GPA and Tristar have been unable or unwilling to address this issue and correct an automatic charge that has no rational basis and is completely unrelated to any actual CIP increase.

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<sup>12</sup> Lummus Consultants Review of Fuel Storage Contract, GPA Docket 13-11, filed September 19, 2013, at p. 1.

<sup>13</sup> Id.

22. It is true that this is a contract extension, and the parties initially agreed to and incorporated the automatic 4% annual CPI increases in the contracts.
23. The PUC should now indicate that it will not approve any future contract between GPA and Tristar with such provisions. GPA's Counsel has agreed that GPA will seek to ensure that any future contracts with Tristar will not include the automatic 4% increase.<sup>14</sup>
24. The parties should be free to include actual Tristar costs in the pricing, or to negotiate increases based upon actual CPI increases in the prior year.
25. At present, however, GPA does need the services provided by Tristar for "ensuring uninterrupted supply of fuel to GPA through the use of Tristar's fuel handling facilities..."<sup>15</sup>

### **ORDERING PROVISIONS**

After careful review and consideration of the above determinations, the Petition of GPA, the Pipeline, and Storage Agreements between GPA and Tristar, the Report of PUC Counsel, and the record herein, for good cause shown, on motion duly made, seconded, and carried by the undersigned Commissioners, the Guam Public Utilities Commission hereby **ORDERS** that:

1. GPA's request to proceed with the Contract extension with Tristar Terminals Guam Inc. for the Pipeline Agreement and Fuel Storage Agreement for a four-year period, from September 1, 2018, to August 31, 2022, is approved.
2. PUC will not approve any future contract provisions between GPA and Tristar that include an automatic annual CPI increase.
3. The owner of the pipeline which GPA utilizes from Tristar is the Port Authority of Guam. Tristar leases the pipeline from PAG. GPA is ordered to meet and discuss with PAG any possible ways in which PAG can mitigate the increasing costs which Tristar charges GPA for use of the pipeline facilities.
4. GPA should continue to consider and evaluate alternative plans by which it can reduce its reliance upon Tristar's facilities.

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<sup>14</sup> Telephone conversation between GPA Counsel Graham Botha and Frederick J. Horecky, PUC Counsel on August 13, 2018.

<sup>15</sup> CCU Resolution No. 2017-43, adopted November 22, 2017, at p. 1.

5. GPA is ordered to pay the Commission's regulatory fees and expenses, including, without limitation, consulting and counsel fees and the fees and expenses of conducting the hearing proceedings. Assessment of PUC's regulatory fees and expenses is authorized pursuant to 12 GCA §§12103(b) and 12125(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

Dated this 30th day of August, 2018.

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Jeffrey C. Johnson  
Chairman

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Rowena E. Perez  
Commissioner

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Joseph M. McDonald  
Commissioner

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Michael A. Pangelinan  
Commissioner

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Peter Montinola  
Commissioner

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Filomena M. Cantoria  
Commissioner