

GUAM PUBLIC UTILITIES COMMISSION
SPECIAL MEETING
MARCH 31, 2014
SUITE 202, GCIC BUILDING, HAGATNA



MINUTES

The Guam Public Utilities Commission [PUC] conducted a special meeting commencing at 6:30 p.m. on March 31, 2014, pursuant to due and lawful notice. Commissioners Johnson, Perez, McDonald, Montinola, Cantoria, and Niven were in attendance. The following matters were considered at the meeting under the agenda made *Attachment "A"* hereto.

1. Approval of Minutes

The Chairman announced that the first item of business on the agenda was approval of the minutes of February 25, 2014. For the record, Commissioner Perez indicated that she was present at the meeting for informational purposes pending her reconfirmation. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the minutes subject to correction.

2. Choice Phone LLC

The Chairman announced that the next item of business was CP Docket 14-01, Joint Petition of Teleguam Holdings LLC and Choice Phone LLC for approval of Wireless Interconnection Agreement, PUC Counsel Report, and Proposed Order. Counsel indicated that, under federal law, the Guam PUC is the body that is required to approve interconnection agreements. In this case, GTA and Choice Phone negotiated an Interconnection Agreement to facilitate communications between the two companies, the transmission of traffic, and billing matters. The parties have used the format previously approved by the PUC with the GTA-Guam Cellular and Paging Interconnection Agreement in 2008. Certain modifications were made to bring the agreement into compliance with federal law.

When the companies exchange "intra-MTA Traffic," which is traffic within the area of Guam, the companies do not bill each other so long as the calls terminate in Guam. See "Bill and Keep" arrangement explained in the Counsel Report. Neither party charges the other for the transport and termination of intra-MTA traffic that originates on one of the parties' networks and terminates on the other party's network. Other transmissions are governed by tariffs. The Interconnection Agreement covers the relationship between the parties, how billings are done, and procedural provisions for renewal of the agreement. The agreement will automatically renew unless one of the parties, not less than 120 days prior to the end of the term, informs the other party that it does not wish to renew. The agreement is in accord with the Wireless Interconnection

Agreement previously approved by the PUC. The instant agreement will be effective upon approval by the PUC.

Counsel believes that, under Section 252 of the Telecom Act, the agreement does not discriminate against telecommunications carriers not a party to the interconnection agreement. The agreement is consistent with the public interest, convenience, and necessity. The Guam Telecom Act does seek to provide the people of Guam with modern, innovative, accessible and affordable telecommunication services and products. This type of interconnection agreement enables the parties to handle more communications and provide better service to the people. Counsel recommends that the Commission approve the Interconnection Agreement. The Proposed Order would do so. Any further amendments to the Interconnection Agreement would require the approval of the Commission, and the Commission would retain jurisdiction over any disputes between the parties.

Upon motion duly made, seconded and unanimously carried, the Commissioners approved the Interconnection Agreement of Choice Phone LLC and GTA, and adopted the Order made *Attachment "B"* hereto.

3. Port Authority of Guam

The Chairman announced that the next item on the agenda was PAG Docket 14-03, Request for Review and Approval of Agreement with TriStar Terminals Guam, Inc., ALJ Report, and Proposed Order. Counsel indicated that the Port was requesting review and approval of the Tristar Terminals Guam Contract related to the management and operation of the F-1 Fuel Pier Facility. Tristar has numerous duties regarding management of the F-1 Fuel Pier: securing the fuel pier, managing the pier, responding to emergencies, performing related bunkering pier duties, etc. In this case, there was a competitive bid. Ultimately, Tristar was selected as the most qualified contractor. The PUC is required to review this contract under the contract review protocol because it will exceed \$1M over the five year period.

In addition of the duties previously mentioned, there are others included such as preventive maintenance, dredging, providing safety equipment, assurance of the availability of the dock, quality assurance and scheduling of operations of the facility. The cost is roughly \$555,000 per year; over the five year term it will be \$2.775M. The cost is based upon Tristar's estimate for handling 4.8M barrels of imported petroleum products per year. The compensation for Tristar would be 12.5 cents per barrel on the first three million barrels, and 10.01 cents per barrel for barrels in excess of the first three million.

The tariff rate for these petroleum products that are offloaded is 50 cents per barrel. Basically, Tristar collects all the fees that are due, then subtracts its management fee from that amount and remits the balance due to the Port. Tristar has extensive experience in management of the F-1 pier. Aside from Guam, it has worldwide experience working with the federal government and countries around the world in

maintaining similar facilities. It has also, through its predecessor Shell, managed the Guam F-1 pier since 1988. Based upon the foregoing facts, the ALJ found that the Contract is reasonable and necessary, and that the F-1 Fuel Pier Facility is essential to the operations of the Port. Through negotiations, the Port did secure a reduction from Tristar in the initial fee proposal, which was \$2.08 cents per barrel. The proposed Order would approval an annual cost of \$555,180 for the five year term; it would further incorporate the findings that the ALJ has recommended. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the Tristar Terminals Guam Contract, and adopted the Order made *Attachment "C"* hereto.

4. Guam Waterworks Authority

The Chairman announced that the next item of business was GWA Docket 14-01, Petition for Approval of 2013 Bond Projects and Exemption for PMO under Contract Review Protocol, ALJ Report, and Proposed Order. Counsel indicated that GWA was requesting certain changes to the current contract review protocol. Presently, PUC must approve any reallocation of bond funds. However, GWA is requesting flexibility up to 20% of the total value of a project; if GWA didn't use bond funds on one project, it could transfer those funds up to 20% of the cost of another project. The project to which GWA transferred funds would have 120% of its original budget. GWA could reallocate some funds without the necessity of coming to the PUC.

The ALJ believed that such request was reasonable and would give GWA needed flexibility. A second request was that all bond funded projects be exempted from the review and approval process of GWA's contract review protocol. The ALJ found that all of the projects under the 2010 Bonds had already been reviewed by the Commission on at least two occasions, including cost estimates. There is no need for GWA to come back to the Commission to request approval of procurements in each case, since the underlined projects were already approved. However, as to the final contracts, the ALJ will not give a blanket exemption for all bond funded projects but believes that GWA should be required to seek final approval of the contracts from the Commission.

Under 12 GCA §12005, PUC must review and approve all uses of bond proceeds and the disposition thereof. The ALJ found, based on prior recommendations from PUC regulatory consultants, that PUC has a statutory duty to review these contracts under the contract review protocol. The Order approving issuance of bond proceeds also specifically required that each individual contract must be reviewed by the PUC. There is also a prudence standard. When a GWA contract exceeds \$1M, PUC has an obligation to examine the prudence of the contract. Commission must be satisfied that the contract is reasonable, and that the goals it seeks to accomplish are a proper purpose for the utilities. The PUC ensures that the contract satisfies something like the "reasonable man" test. The contract must be reasonable and have a value to the ratepayers.

The ALJ agreed that 2010 bond projects do not need further PUC approval in terms of procurement/solicitation.

GWA also requested an exemption from the contract review protocol for projects involving the Program Management Office for both the 2010 series bond-funded projects and the 2013 series bond-funded projects. The ALJ did not concur with that request for exemption. The PMO projects are under the scrutiny and jurisdiction of the Commission. The Commission had already issued a number of orders requiring GWA to submit information on the PMO and projects under it. This was another request by GWA that it could unilaterally reduce expenditures on any bond projects in such amounts as GWA found reasonable. The ALJ did not object to this request. Counsel brought up the concern that all of these issues concerning requests for exemption from contract review could only be considered in the context of the written contract review protocol. The contract review protocol is the vehicle which determines what procedures there are for contract review. If the Commissioners were inclined to permit exemptions from the contract review process, such exemptions should be incorporated in the contract review protocol.

Martin Roush, the General Manager of GWA, then spoke on these issues concerning the contract review protocol. He stated that the PUC Order on the 2005 Bonds gave a 20% flexibility on bond issuance which was not in the contract review protocol. There is also a separate order that stipulated order projects are exempt from the contract review protocol. He has no objection to Counsel's suggestion that any exemptions should be placed within the contract review protocol. Meeting the federal court stipulated order requirements is very important for GWA. It could cause harm to ratepayers, and receivership is the worst case scenario. For some reason court ordered projects are not exempt when the PMO does the project. The GM of GWA indicated there were "220-day review times" plus 150 days on the second review, totaling 350 days for two orders. That's an incredible amount of time for court order by PUC of GWA projects that have 180 day time frames in the early part or a year or two to deliver the projects. He does not understand why the PMO is held to a different standard of contract review protocol. He claims that this is hurting GWA's ability to deal with the court order. He indicated that GWA has 12 full time engineers - GWA's capacity to deliver projects is exhausted without help. Questions need to be answered so that GWA can meet court ordered projects.

GWA Counsel Sam Taylor disagreed with PUC Counsel: Taylor believes that when GWA obtains approval of the bond purchase agreement that is the contract which affects rates and for which approval is required under 12 GCA §12004. Taylor believes that PUC approves bond projects under 12 GCA §12005. That section only refers to "projects" and not "contracts". Taylor feels it is incorrect that bond projects are under the contract review protocol. Only the bond purchase agreement falls under the contract review protocol. GWA needs flexibility to move funds up to 20% from one project to another. Bond funded projects should not be tied into the contract review protocol.

GWA agrees with the ALJ Report for the most part. However, it does not want to include bond projects under the contract review protocol. The Chairman indicated that

in the past, PUC has given GWA the ability to go up to a 20% ceiling to help expedite matters. The PUC has already done preliminary approvals of the 2010 bond projects. GWA indicated that it did not have issues if the Commission were to approve the 20% portion of the ALJ's decision this evening. Commissioner Niven asked PUC Counsel what flexibility the contract review protocol allows. PUC Counsel objected to GWA's interpretation indicating that under the contract review protocol, Section 1(d) bond issuances *and any use of said funds* has to be approved by the Commission under the contract review protocol. Under 12 GCA §12005 the PUC is tasked with reviewing and approving all uses of bond proceeds and the disposition thereof. Although the GM of GWA argued that there's no provision in the contract review protocol for a 20% excess, that is incorrect. Under Section 9, GWA is allowed to incur 20% excess over the amount authorized by the Commission without prior PUC approval.

In response to Commissioner Niven's question, Counsel indicated that there is no requirement in the protocol for PUC approval for reductions in amounts spent for projects. For reallocation of bond funds, GWA must come back to the PUC for approval. Commissioner Niven then indicated that the proposed Order would impose a new restriction that if the reduction is more than 20%, GWA would have to come back to the Commission. Counsel indicated that that was not required; the ALJ's Report would give unlimited ability to GWA to reduce funding. Commissioner Niven then indicated he did not see what additional flexibility was afforded by this Order in terms of the 20%.

PUC Counsel indicated that the proposed Order did give GWA broader reallocation authority, bond proceeds from one project could be reallocated to another project up to 20%. It gives GWA flexibility on reallocation. Counsel does not believe that delay by PUC is a problem in the review process. If there is delay, the Commission has to do its due diligence particularly with large expenditures like the PMO contract. These costs are a substantial burden on the ratepayers. If the Commission abdicated its duty with reviewing large PMO contract expenditures, it would not be doing its duty to the ratepayers. GM Roush indicated his belief that the PUC did delay on the PMO project. If Brown & Caldwell is doing a court ordered project, the GM believes that the PMO expense of about 6% of the project amount for program management is not unreasonable. He agrees that GWA owes the PUC review of the Brown & Caldwell contract looking at percentage of local firms hired, GWA staffing levels, etc. GWA absolutely needs the PMO.

GWA Counsel indicated that GWA did agree with the recommendation of the ALJ report that pre-procurement review be eliminated for bond funded projects under the contract review protocol. The Chairman asked whether US EPA had a priority list for projects that need to move forward in the next one, two, or three years. GM Roush indicated there was such a list. GWA does have a CIP list which defines its projects, the due dates for court ordered projects. PUC needs to streamline regulatory review with regard to the court ordered specific projects. GWA would like to see a way of initiating changes in the contract review protocol, whether initiated through a GWA petition or

whether GWA could initiate it on its own. PUC Counsel indicated that the Commission could initiate a docket on this matter on its own. Counsel indicated that this matter could be expedited. The Chairman asked the GWA GM about the difference between court ordered projects and bond funded projects, are they directly related? Mr. Roush indicated that his concern was focused on court ordered projects. Upon motion duly made, seconded and unanimously carried, the Commissioners tabled the Proposed Order regarding proposed exemptions for PMO under the Contract Review Protocol. In addition, upon further motion duly made, seconded and unanimously carried, the Commissioners approved the creation of a new GWA Docket which would address the issue of what revisions should be made to the Contract Review Protocol, as raised in GWA's petition dated March 6, 2014.

5. Guam Power Authority

The Chairman announced that the next item on the agenda was GPA Docket 14-02, Petition for Contract Review Ratification of Additional Charges under the R.W. Armstrong PMO Contract, PUC Counsel Report, and Proposed Order. Counsel indicated that he was not ready to proceed this evening. After receiving the petition, he requested additional documents from GPA including the R.W. Armstrong billings from the beginning of the PMO project. He is still reviewing those billings. He requests that this matter be continued to the next session.

The Chairman announced that the next item of business was GPA Docket 14-07, Petition for Approval of the Contract with East West Power Guam for Cabras 3&4 Smoke Stack Refurbishment, PUC Counsel Report, and Proposed Order. Counsel indicated that GPA had discovered, through studies and investigation, that the steel structure on the smoke stacks for Cabras 3&4 [including bracing, steel plates, steel log bolts, steel nuts] had deteriorated due to severe corrosion. GPA supplied pictures indicating the serious deterioration of the steel structure. A report by Macario & Associates included an estimated breakdown for repairs on the project. The report indicated the various elements of the steel structure that needed to be replaced.

There was a bidding process. The PMC for Cabras 3&4, East West Power, bid out the project and selected Triple L Construction as being the lowest bidder, in the amount of \$2.89M for the project. The Consolidated Commission on Utilities has approved the selection of Triple L and the amount for the project. GPA has demonstrated that if these structures fail, Cabras 3&4 could go down. There would be a loss of revenues, as was experienced with Cabras 3 before. GPA's cost-benefit analysis indicated that revenues could be lost in the amount of \$5.3M. Based on the foregoing information provided, these stacks do need refurbishment. There is also a concern to the health and safety of the employees from these deteriorated structures. Counsel recommends that GPA should be authorized to expend \$2.898M in bond funds for this project. There should be no additional rate impact since these are bond funds. The Chairman asked whether there was downtime to do the refurbishment. GPA GM Flores indicated that it depended upon what the contractor finds. It would be a difficult challenge to replace the structure, the actual cage that supports the chimney, the smoke stack. The

Chairman asked whether Cabras 3&4 has a shared stack. GM Flores indicated that they did, a common stack. The Chairman indicated that it's anticipated to take upwards of 12 months to finish the job. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the smoke stake refurbishment and the expenditure of up to \$2.898M; Order made *Attachment "D"* hereto was duly adopted.

The Chairman announced that the next item on the agenda was GPA Docket 11-13, Petition for Contract Review of Change Order to Substation Automation Contract under the Smart Grid Project, PUC Counsel Report, and Proposed Order. Counsel indicated that the PUC approved the original substation automation contract with Black Construction under the Smart Grid Project, which has been before the Commission on numerous occasions. The substation automation project was originally anticipated for seven substations. It establishes an IP based infrastructure which can be used to generate information from the substation operation, and also includes substation metering that should be able to account for system losses and also provide for revenue meters. The amount of this change order is \$475,877. The Commission had originally authorized \$3.1M for this contract; with another prior change order, the total which GPA now seeks to expend would be up to \$3.876M for the contract. This change order will allow GPA to extend the benefits of substation automation to the other substations in addition to the first seven substations. Counsel recommends approval. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the Change Order to the Substation Automation Contract under the Smart Grid Project, and adopted the Order made *Attachment "E"* hereto.

Discussion ensued concerning the industry forum that GPA had planned for April 14, 2014. GM Flores then requested that the Commission approve certain charges that had been incurred for the GPA PMO.

6. Administrative Matters

The Chairman announced that the next matter of business was the information filing of the 2013 Citizen Centric Report. Counsel confirmed that the filing is just informational. The Chairman also announced that the next matter was Extension Amendment of PUC Contract for Administrative and Bookkeeping Services. There have been discussions between Counsel and Mr. Kim, which resulted in a few more minor changes to the proposed contract. Counsel believes that the cost of the contract is justified by its benefits. Mr. Kim is a certified CPA and can provide a higher degree of skill to assist the Administrator in working with the accounts. The contract is terminable on one month's notice. Mr. Kim was also previously a PUC Commissioner in the 1980s. The Chairman indicated that he agreed that this contract would give the Administrator some extra support and was a good first step and that Mr. Kim can assist the Commission. Administrator Ms. Palomo indicated that she can work with Mr. Kim and has previously worked with him. Commissioner Montinola indicated that the Commission should also put out an ad and explore other options in this regard. Upon motion duly made, seconded and unanimously carried, the Commissioners approved

the Contract for Administrative and Bookkeeping Services between the PUC and Mr. George Kim.

After further discussion and questions, the Commissioners moved to adjourn the meeting.

A handwritten signature in black ink, appearing to read "J. Johnson", written over a horizontal line.

Jeffrey C. Johnson
Chairman

**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION
SPECIAL MEETING
SUITE 202, GCIC BUILDING
414 W. SOLEDAD AVE. HAGATNA, GUAM
6:30 p.m., March 31, 2014**

Agenda

- 1. Approval of Minutes of February 25, 2014**
- 2. Choice Phone LLC**
 - **CP Docket 14-01, Joint Petition of Teleguam Holdings LLC and Choice Phone LLC for approval of Wireless Interconnection Agreement, PUC Counsel Report, and Proposed Order**
- 3. Guam Power Authority**
 - **GPA Docket 14-02, Petition for Contract Review Ratification of Additional Charges under the R.W. Armstrong PMO Contract, PUC Counsel Report, and Proposed Order**
 - **GPA Docket 14-07, Petition for approval of the Contract with East West Power Guam for Cabras 3&4 Smoke Stack Refurbishment, PUC Counsel Report, and Proposed Order**
 - **GPA Docket 11-13, Petition for Contract Review of Change Order to Substation Automation Contract under the Smart Grid Project, PUC Counsel Report, and Proposed Order**
- 4. Guam Waterworks Authority**
 - **GWA Docket 14-01, Petition for Approval of 2013 Bond Projects and Exemption for PMO under Contract Review Protocol, ALJ Report, and Proposed Order**
- 5. Port Authority of Guam**
 - **PAG Docket 14-03, Request for Review and Approval of Agreement with TriStar Terminals Guam, Inc., ALJ Report and Proposed PUC Order**
- 6. Administrative Matters**
 - **Informational Filings**
 - **2013 Citizen Centric Report**
 - **Extension and Amendment of PUC Contract for Administrative and Bookkeeping Services**
- 7. Other Business**

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN RE:)
) CP Docket 14-01
)
 JOINT PETITION OF TELEGUAM)
 HOLDINGS LLC AND CHOICE PHONE) **ORDER**
 LLC FOR APPROVAL OF)
 INTERCONNECTION AGREEMENT)
 _____)

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Joint Petition of Teleguam Holdings LLC ["GTA"] and Choice Phone LLC ["Choice"] (jointly "the Parties") for approval of their Interconnection Agreement.¹
2. The Parties submit their Wireless Interconnection Agreement for approval by the PUC in accordance with the terms of Section 252(e) of the Telecommunications Act of 1996. They request that the PUC approve the Agreement in accordance with the requirements of Section 252(e).²

BACKGROUND

3. The Parties herein have modeled their Interconnection Agreement after the GTA-Guam Cellular and Paging, Inc. Interconnection Agreement, which was previously approved by the PUC on October 3, 2008.³
4. Minor modifications have been made by the Parties to update the GTA-Guam Cellular Agreement in accordance with the Telecommunications Act of 1996 and the requirements of the Federal Communications Commission.⁴

¹ Joint Petition of GTA and Choice, CP Docket 14-01, filed February 28, 2014.

² Id.

³ PUC Order Approving Interconnection Agreement, Docket 07-05, dated October 3, 2008.

⁴ Statement by Robert Kelly, Choice Representative/Consultant, to Frederick J. Horecky, PUC Counsel, in Telephone Conference on March 7, 2014.

5. The Agreement provides specific Interconnection and Reciprocal Compensation arrangements between the Parties solely for the exchange of IntraMTA Traffic between their networks.⁵
6. "IntraMTA Traffic" is telecommunications traffic that, at the beginning of the call, originates and terminates within the Guam MTA.⁶ The "MTA" is the "Major Trading Area" designated by the FCC as the service area for Guam.⁷
7. GTA and Choice have agreed to interconnection points, transport methods, technical requirements, and standards.⁸ Each Party agrees to comply with all applicable FCC and PUC standards and quality of service requirements when providing service to the other Party.⁹
8. For traffic exchanged on and after July 1, 2012, the Parties agree that "Bill-and-Keep" shall be the compensation methodology for Non-Access Telecommunications Traffic exchanged between GTA and Choice.¹⁰ "Bill-and-Keep" is an arrangement under which neither of the parties charges the other for the transport and termination of IntraMTA traffic that originates on one of the Party's network and terminates on the other Party's network.¹¹
9. The Agreement is effective as of the "Effective Date", which is upon execution by the Parties, subject to subsequent approval of the Commission.¹² The Parties recognize that the Agreement requires "regulatory approval" by the PUC, subject to change, modification, or cancellation as required by a final order of a regulatory authority.¹³

⁵ Wireless Interconnection Agreement between Teleguam Holdings, LLC, and Choice Phone, LLC, attached to the Petition herein, at §3 Scope.

⁶ Id. at §1.18.

⁷ Id. at §1.24.

⁸ See §4 of the Wireless Interconnection Agreement.

⁹ Id. at §4.6.2.

¹⁰ Id. at §6.1 of the Wireless Interconnection Agreement.

¹¹ Id. at §1.5.

¹² Id. at §19.5.

¹³ Id. at §16.1.

DETERMINATIONS

10. The PUC adopts the findings and recommendations in the PUC Counsel Report dated March 12, 2014.
11. The Agreement, which GTA and Choice intend to use as their Interconnection Agreement, conforms with the format previously approved in Docket 07-05 and is not inconsistent with the Commission's Interconnection Implementation Rules.
12. The Wireless Interconnection Agreement proposed by GTA and Choice does not violate the standards set forth in 47 USC §252[e][2][A]. The provisions of the Agreement have been negotiated by the parties and appear to have resulted in a final product which adequately protects the interests of both.
13. The Wireless Interconnection Agreement does not discriminate against a telecommunications carrier not a party to the Interconnection Agreement. The Agreement is consistent with the public interest, convenience and necessity. It is in the public interest to provide the people of Guam with modern, innovative, accessible and affordable telecommunications services and products.¹⁴

ORDERING PROVISIONS

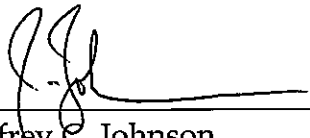
Based upon the foregoing, the Guam Public Utilities Commission orders that:

1. The Interconnection Agreement between Teleguam Holdings LLC and Choice Phone LLC, as filed herein on February 28, 2014, is approved.
2. The Parties shall comply with all duties and obligations thereunder in accordance with their Interconnection Agreement.
3. In the event that the parties revise, modify or further amend their Interconnection Agreement, as approved herein, the revised, modified or amended Interconnection Agreement shall be submitted to PUC for approval pursuant to 47 USC §252[e][1] prior to taking effect.

¹⁴ See Guam Telecommunications Act of 2004, 12 GCA §12101(2).

4. The Wireless Interconnection Agreement as approved herein is effective upon the date of approval by the PUC and shall terminate in accordance with its stated terms.
5. PUC reserves the jurisdiction and authority to enforce the Interconnection Agreement, to issue appropriate orders with regard thereto, and to hear and resolve complaints with respect to the Interconnection Agreement pursuant to PUC's existing authority.
6. GTA and Choice are ordered and directed to each pay one half of the PUC's regulatory expenses and fees in this docket.

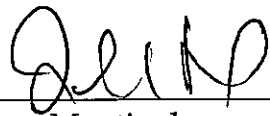
Dated this 31st day of March, 2014.



Jeffrey C. Johnson
Chairman

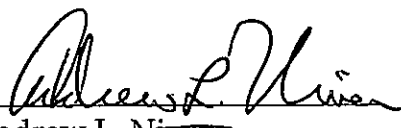
Joseph M. McDonald
Commissioner

Rowena E. Perez
Commissioner




Peter Montinola
Commissioner

Michael A. Pangelinan
Commissioner



Andrew L. Niven
Commissioner



Filomena M. Cantoria
Commissioner

BEFORE THE PUBLIC UTILITIES COMMISSION



IN RE: REQUEST FOR REVIEW)
AND APPROVAL OF)
AGREEMENT WITH)
TRISTAR TERMINALS)
GUAM, INC. BY PORT)
AUTHORITY OF GUAM)

PAG DOCKET 14-03
ORDER

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the "PUC" or the "Commission") pursuant to the February 24, 2014 Petition for review and approval of the Tristar Terminals Guam Inc. ("Tristar") contract related to the management and operation of the F-1 Fuel Pier Facility (hereinafter referred to as the "Petition"), filed by the Jose D. Leon Guerrero Commercial Port, Port Authority of Guam ("PAG" or the "Port"). PAG seeks PUC review and approval of the professional services contract with Tristar.

DETERMINATIONS

On March 27, 2013, PAG issued a Request for Proposal for services related to the management and operations of PAG's F-1 Fuel Pier Facility (the "RFP"). Four firms submitted proposals, which were evaluated and ranked by PAG's Evaluation Committee.¹ Thereafter, the Evaluation Committee identified IP&E Holdings, LLC dba IP& E Guam ("IP&E") as the highest ranked proposal and, therefore, recommended that IP&E be given an opportunity to negotiate a contract with PAG.² The Evaluation Committee identified Tristar as the second ranked proposal.

¹ Petition, p. 1.

² Memorandum from the Contracts Management Administrator to the General Manager, Evaluation Analysis and Recommendation for RFP-PAG-013-003 Management and Operations Services for F-1 Fuel Pier Facility, p. 2 (June 3, 2013).

On June 17, 2013, Tristar filed a protest with PAG.³ According to PAG, the protest alleged the following: that the RFP was “vague and confusing”; that the evaluation factors did not “properly reflect the services to be provided”; that PAG’s responses to questions “were incomplete and inaccurate”; and that the “May 14, 2013 deadline [] for submission of proposals was insufficient.”⁴ On August 21, 2013, PAG issued a denial of Tristar’s protest on the basis that such protest was untimely.⁵

According to PAG, after several sessions with IP&E, it terminated negotiations with IP&E on the basis that such negotiations were unsuccessful.⁶ According to PAG, its “Negotiations Committee concluded that further discussion with IP&E may result in limiting the scope of work and further delay in the project.”⁷ Consequently, PAG commenced negotiations with Tristar, the next ranked offeror.

On January 23, 2014, PAG and Tristar arrived at mutually agreeable terms and cost with respect to the contract for services. On February 17, 2014, PAG’s Board of Directors approved the contract award to Tristar.⁸ On March 27, 2014, the ALJ submitted an ALJ Report detailing his findings with respect to the review of the subject contract.

Pursuant to 12 G.C.A. §12004, PAG may not enter into any contractual agreements or obligations which could increase rates and charges without the PUC’s express

³ Petition, p. 1.

⁴ PAG’s Response Re: Protest of Procurement Process/Potential Award of Request for Proposal No. RFP-PAG-013-003, p. 1 (Aug. 21, 2013).

⁵ *Id.*

⁶ Petition, p. 1.

⁷ Petition, p. 1.

⁸ Petition, p. 1.

approval. Additionally, pursuant to PAG's current Contract Review Protocol, "[a]ll professional services contracts in excess of \$1,000,000" and "[a]ll internally financed contracts utilizing O&M funds in excess of \$1,000,000, whether or not the contract extends over a period of one year or several years" "shall require prior PUC approval under 12 G.C.A. §12004." Contract Review Protocol, PAG Docket 09-01, p. 1 (June 20, 2011). Further, with regard to multi-year contracts with fixed terms and fixed annual costs, PAG's Contract Review Protocol provides that "PAG must obtain PUC approval if the total costs over the entire procurement term exceed the review threshold."

In the March 27, 2014 ALJ Report, the ALJ found the following. The RFP requires that the offeror must furnish services related to operations of the F-1 Fuel Pier, maintaining the F-1 Fuel Pier, securing the F-1 Fuel Pier, managing the F-1 Fuel Pier, responding to emergencies, as well as perform related bunkering pier duties.⁹ In particular, the offeror is required to receive imports of fuel oil, jet fuel, diesel, motor gasoline and liquid petroleum products; deliver fuel for export of jet fuel and diesel; bunker fuel oil and marine gas oil; maintain and ensure product quality by conducting field quality checks and maintaining fuel samples for dock customers; and coordinate with ship masters and harbor pilots to ensure safe dockage.

In addition, the offeror is tasked with providing preventive maintenance to the jetty, breasting dolphins, dredging and other safety equipment needed to operate the F-1 Dock; conducting maintenance repairs to ensure operational availability of this fuel dock; and providing Quality Assurance inspections and controls schedule. The offeror must also secure the F-1 pier

⁹ See RFP, p. 20.

by ensuring compliance with the American Petroleum Standards, ISGOTT, and all applicable federal and local laws.¹⁰

Furthermore, the offeror is tasked with managing the F-1 Management Agreement by providing operational access by scheduling operations of the facility for the co-use of same for the purpose other than petroleum; reporting and collecting Port user fees; and citing Best Management practices and methods for fee recovery.¹¹ The offeror is also tasked with the responsibility of responding to emergencies, such as responding to Tier 1 spills and participate with Tier 2 and off-island Tier 3 responders; and preparing and securing the facility in the event of an anticipated storm or weather disturbance and maintain operational capabilities for post storm recovery.¹² The offeror is further required to perform any duties related to bunkering as may be required from time to time.¹³

With respect to Tristar, based on its Proposal, “Tristar and its affiliated companies have extensive worldwide experience operating and maintaining petroleum facilities of all types, including the F-1 fuel pier, bulk fuel terminals and connecting pipelines on Guam.”¹⁴ Further, Tristar’s workload includes the following: the storage, transfer, and management of jet fuel for the Defense Logistics Agency-Energy (DLA-E); the provision of facility and personnel support for GPA bunkering services; the storage, transfer, and management of jet and diesel fuel for

¹⁰ RFP, p. 20.

¹¹ RFP, p. 20.

¹² RFP, p. 20.

¹³ RFP, p. 20.

¹⁴ Proposal, p. 3.

IP&E; the storage, transfer, and management of liquefied petroleum gas (LPG) for IP&E.¹⁵ Tristar currently manages and operates the F-1 facility.¹⁶ Tristar also presently owns and operates the Guam Agat Bulk Fuel Terminal.¹⁷ “The Agat terminal provides bulk fuel storage and ships aviation fuel, residual fuel oil, diesel, and LPG for the U.S. Government and provides bulk fuel services to customers on Guam . . .” that includes the federal government, PAG, and IP&E.¹⁸

In addition, Tristar’s personnel are “intimately familiar” with the F-1 operations having managed the pier since 1988.¹⁹ According to Tristar, its experience includes the following: the scheduling and handling 158 ships; the safe transfer of more than 14.7 million barrels of petroleum products, and the timely collection of \$5.85 million dollars in user fees.”²⁰ According to Tristar, it is intimately familiar with the bunkering requirements for the F-1 pier, and all bunkering operations involve Tristar personnel and equipment.²¹

With respect to the proposed contract, the contract provides for a five-year term. With respect to cost, PAG has estimated that the annual rate for the management fee is \$555,180.00, for an estimated total of \$2,775,900.00 for the full five-year term. This annual estimate is based on Tristar handling 4.8 million barrels of imported petroleum products per year.

¹⁵ Proposal, p. 3.

¹⁶ Proposal, p. 3.

¹⁷ Proposal, p. 2.

¹⁸ Proposal, p. 2.

¹⁹ Proposal, p. 49.

²⁰ Proposal, p. 49.

²¹ Proposal, p. 77.

As negotiated between the parties, Tristar shall be authorized as compensation \$0.125 per barrel on the first three million barrels, and then \$0.1001 per barrel exceeding the first three million barrels. The tariff rate per barrel for all petroleum products which are off-loaded at the facility is \$0.50 per barrel. The contract will be funded through its O&M budget.

Based on his review, the ALJ found that the subject contract is reasonable and necessary. The ALJ expressed that the operation and management of PAG's F-1 Fuel Pier Facility is crucial to its operations; and based on its workload and history, as well as the fact that Tristar currently manages and operates the F-1 facility, it is clear that Tristar is qualified to provide the services set forth in the RFP.

The ALJ further found that PAG has demonstrated due diligence in negotiating with both IP&E and Tristar, and in arriving at the terms of the subject contract. In fact, Tristar's initial fee proposal was \$0.228 per barrel. PAG was, therefore, able to lower the fee to the rate structure discussed in Part 4 above. Accordingly, the ALJ recommended that the PUC approve the proposed Tristar contract related to the operations and management of the F-1 Fuel Pier Facility for an estimated annual cost of \$555,180.00.

The Commission hereby adopts the findings made in the March 27, 2014 ALJ Report and, therefore, issues the following:

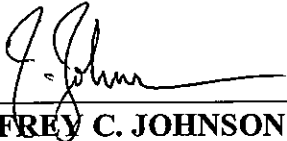
ORDERING PROVISIONS

Upon consideration of the record herein, the March 27, 2014 ALJ Report, and for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby ORDERS the following:

1. PAG is authorized to enter into the F-1 Fuel Pier Facility Management and Operations Agreement.

2. PAG is ordered to pay the PUC's regulatory fees and expenses, including and without limitation, consulting and counsel fees, and the fees and expenses associated with the instant contract review process. Assessment of the PUC's regulatory fees and expenses is authorized pursuant to 12 G.C.A. §§ 12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the PUC.

SO ORDERED this 31st day of March, 2014.



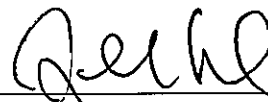
JEFFREY C. JOHNSON
Chairman

ROWENA E. PEREZ
Commissioner



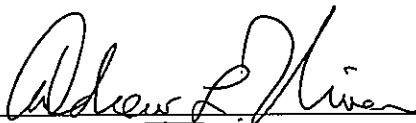
FILOMENA M CANTORIA
Commissioner

JOSEPH M. MCDONALD
Commissioner



PETER MONTINOLA
Commissioner

MICHAEL A. PANGELINAN
Commissioner



ANDREW L. NIVEN
Commissioner



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:)
) GPA Docket 14-07
)
THE APPLICATION OF THE GUAM)
POWER AUTHORITY FOR APPROVING) **ORDER**
THE CONTRACT WITH EAST WEST)
POWER GUAM FOR CABRAS 3&4 SMOKE)
STACK REFURBISHMENT)
_____)

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Guam Power Authority's ["GPA"] Petition for approval of the Contract with East West Power Guam for Cabras 3&4 Smoke Stack Refurbishment.¹

BACKGROUND

2. GPA has contracted with its Performance Management Contractor for Cabras 3&4 for refurbishment of the smoke stacks at Cabras 3&4.²
3. GPA submits that the steel structure of the smoke stacks for these units, including bracings, steel plates (gusset, angle and stiffener), steel log bolts, and steel nuts, has deteriorated due to severe corrosion.³
4. GPA further submits that the repair of the existing steel structure is necessary to ensure the safety of personnel working on the structure and to prevent the existing structure from further deterioration. Failure of the structure would result in a shutdown of both Cabras 3 and Cabras 4 units and the loss of almost 80MW of generation.⁴

¹ GPA Petition for Contract Review, GPA Docket 14-07, filed March 14, 2014.

² Id. at p. 1.

³ Guam Consolidated Commission on Utilities Resolution No. 2014-12, adopted March 11, 2014, at p. 1.

⁴ Id. at p. 1.

5. GPA's PMC East West Power Guam solicited bids for the refurbishment of the Cabras 3&4 Smoke Stacks. Two bids were received, the low bidder being Triple "L" Construction, Inc., in the amount of \$2,898,250.00.⁵
6. The CCU, in Resolution No. 2014-12, has approved GPA's request to contract for the refurbishment of the smoke stacks for Cabras 3&4.⁶
7. GPA proposes that refurbishment of the smoke stack structure of Cabras 3&4 would be paid for utilizing 2010 Bond funds.⁷

DETERMINATIONS

8. The Commission adopts the recommendations of the PUC Counsel Report, filed herein on March 22, 2014.⁸
9. The Cabras 3&4 units are critical baseload units for the Island Wide Power System due to their quick start-up capabilities and high efficiency. Failure of the steel structure would result in a shutdown of both units and a loss of almost 80MW of generation.⁹
10. The main purpose of the Stack Structure Refurbishment is to eliminate safety hazards, to ensure the safety of personnel, and to prevent the existing structure from further deterioration.¹⁰
11. Shutdown could result in lost revenues of \$5.3M.¹¹
12. The CONSTRUCTION COST ESTIMATE BREAKDOWN for the project indicates that there will need to be substantial replacements of elements of the Steel Structure.¹²

⁵ GPA Petition for Contract Review, GPA Docket 14-07, filed March 14, 2014, at p. 1 PRICE OFFER of Triple "L" Construction, Inc.

⁶ CCU Resolution No. 2014-12, adopted March 11, 2014, at p. 2.

⁷ Id.

⁸ PUC Counsel Report, GPA Docket 14-07, filed March 22, 2014.

⁹ Id. at p. 1.

¹⁰ Id.

¹¹ Id. at p. 2.

¹² CONSTRUCTION COST ESTIMATED BREAKDOWN, GPA Docket 14-07, filed by GPA Counsel Graham Botha on March 19, 2014.

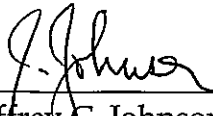
13. Due to the need to prevent further deterioration of the smoke stacks, as well as the initial safety hazards presented to personnel, GPA should be authorized to undertake the repairs.
14. Since the smoke stack repair and refurbishment will be paid for from bond funds, there should be no additional rate impact to GPA's ratepayers.

ORDERING PROVISIONS

Upon consideration of the record herein, the Petition of GPA, the PUC Counsel Report, and for good cause shown, on motion duly made, seconded, and carried by the affirmative vote of the undersigned Commissioners, the Guam Public Utilities Commission **HEREBY ORDERS** that:

1. GPA's request for approval of the Contract between East West Power Guam and Triple "L" Construction, Inc. for the Cabras 3&4 Smoke Stack Refurbishment is granted.
2. GPA is authorized to expend \$2,898,250.00, using 2010 Bond Funds, for the smoke stack refurbishment for Cabras 3&4.
3. 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 §§12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

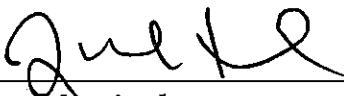
Dated this 31st day of March, 2014.



Jeffrey C. Johnson
Chairman

Joseph M. McDonald
Commissioner

Rowena E. Perez
Commissioner



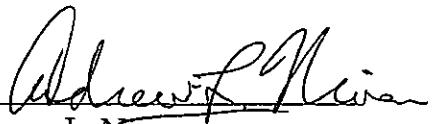
Peter Montinola
Commissioner

Order
Contract for Cabras 3&4
Smoke Stack Refurbishment
GPA Docket 14-07
March 22, 2014

Michael A. Pangelinan
Commissioner



Filomena M. Cantoria
Commissioner



Andrew L. Niven
Commissioner

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN THE MATTER OF:)	GPA DOCKET 11-13
)	
GUAM POWER AUTHORITY'S)	
PETITION FOR CONTRACT REVIEW)	ORDER
OF CHANGE ORDER TO)	
SUBSTATION AUTOMATION)	
CONTRACT UNDER THE SMART)	
GRID PROJECT)	

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Guam Power Authority's ["GPA"] Petition for approval of Change Order to GPA's Substation Automation Contract with Black Construction Corporation.¹
2. According to the Petition, the implementation of the Substation Automation Contract and Change Order are critical to the success of GPA's Smart Grid Project.²

BACKGROUND

3. PUC authorized GPA to issue revenue bonds, which included approximately \$17M for the Smart Grid Project. PUC further approved the expenditure of funds for Smart Grid under the Contract Review Protocol and the implementation of the Smart Grid Project.³
4. On December 19, 2011, the PUC approved GPA's intent to proceed with six major contracts for different aspects of the Smart Grid Project, including Substation Automation, and authorized GPA to obligate funds up to the full amount of \$17M.⁴

¹ GPA Petition for Contract Review of Change Order to Substation Automation Contract under the Smart Grid Project, GPA Docket 11-13, filed March 14, 2014.

² Id. at p. 1.

³ PUC Order, GPA Docket 10-01, issued July 27, 2010, at p. 2.

⁴ PUC Order GPA Docket 11-13, issued December 19, 2011, at p. 2.

5. On July 30, 2012, the PUC granted GPA's Petition for approval of the Substation Automation Contract with Black Construction Corporation.⁵ GPA was authorized to expend up to the amount of \$3,195,421.00 for said Contract.⁶
6. The Substation Automation Project implements a secure substation LAN infrastructure and convergence of data, network, and voice applications on an IP-based infrastructure. The project also includes substation metering to better account for system losses, and remotely read revenue meters with power quality functions for large industrial customers like the Department of Defense.⁷
7. In its Order dated July 30, 2012, the PUC determined that the implementation of the Substation Automation Contract was critical to the success of GPA's Smart Grid Project.⁸
8. In the instant Petition, GPA is seeking approval for a Change Order to the Substation Automation Contract in the amount of \$475,877.00.⁹
9. There were prior change orders to the Substation Automation Contract in the amount of \$205,002.37.¹⁰ These change orders were for additional meter parts, switchgear accessories, materials for meter upgrades, building permit approval, wireless equipment, and cost variance.¹¹

DETERMINATIONS

10. The purpose of the new proposed change order is to enable GPA to purchase additional equipment, substation meters, and services to complete the

⁵ PUC Order, GPA Docket 11-13, issued July 30, 2012, at p. 2.

⁶ Id. at p. 3.

⁷ Guam Consolidated Commission on Utilities Resolution No. 2012-38 [Authorizing Management of the Guam Power Authority to Contract Services for Substation Automation in support of Smart Grid Initiatives] GPA Docket 11-13, adopted July 10, 2012, at p. 2.

⁸ PUC Order, GPA Docket 11-13, issued July 30, 2012, at p. 2.

⁹ GPA Petition for Contract Review of Change Order to Substation Automation Contract under the Smart Grid Project, GPA Docket 11-13, filed March 14, 2014, at p. 1.

¹⁰ GPA Petition for Contract Review, GPA Docket 11-13, filed March 14, 2014, AIA Document G701-2001.

¹¹ Email from GPA Counsel Graham Botha to PUC Counsel Frederick J. Horecky, GPA Docket 11-13, dated March 24, 2014 [Chart provided by Engineer Roel A. Cahinhinan].

communications and metering to the remaining GPA Substations under the Black Construction Substation Automation Contract.¹²

11. The original Substation Automation Contract was designed to upgrade seven (7) GPA Substations; this Change Order will provide for the upgrading of the remaining GPA Substations under the Substation Automation Contract.¹³
12. In Resolution No. 2014-06, the CCU authorized the GPA General Manager to obligate \$475,877.00 for the purpose of effectuating the Change Order with Black Construction subject to PUC approval.¹⁴
13. Funding provided by the Change Order will allow GPA to purchase net routers, switches, and other necessary equipment for the development of Substation Automation.¹⁵

ORDERING PROVISIONS

After a review of the record herein, GPA's Petition for review and approval of Change Order to the Substation Automation Contract with Black Construction Corporation, and the PUC Counsel Report, for good cause shown, the Guam Public Utilities Commission HEREBY ORDERS that:

1. GPA's Petition for review and approval of the Change Order to the Substation Automation Contract with Black Construction Corporation is hereby granted.
2. The recommendations and reasoning contained in the Counsel Report are adopted.
3. GPA is authorized to expend up to the amount of \$3,876,300.37 for said Contract and the Change Orders thereunder.
4. GPA shall continue to comply with its monthly reporting requirements to the PUC as set forth in the PUC Order dated July 27, 2011. GPA shall submit ongoing

¹² Guam Consolidated Commission on Utilities Resolution No. 2014-06 [Authorizing Management of the Guam Power Authority to Approve the Change Order for Substation Automation in Support of Smart Grid Initiatives], adopted January 14, 2014 at p. 2.

¹³ Id. at p. 2.

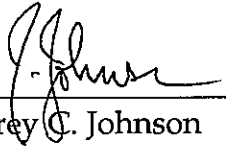
¹⁴ Id. at p. 3.

¹⁵ Letter from Black Construction MEP Division Manager Jack Travers to Mr. John J. Cruz, Jr. of the Guam Power Authority, dated December 18, 2013, "Pricing Breakdown."

progress reports to the PUC concerning this contract and other ongoing Smart Grid Projects.

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 §§12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

Dated this 31st day of March, 2014.



Jeffrey C. Johnson
Chairman

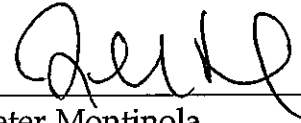
Rowena E. Perez
Commissioner

Michael A. Pangelinan
Commissioner

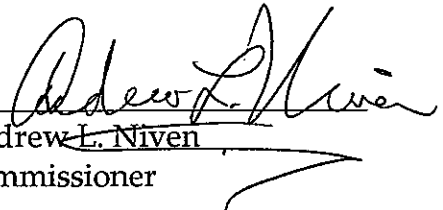


Filomena M. Cantoria
Commissioner

Joseph M. McDonald
Commissioner



Peter Montinola
Commissioner



Andrew L. Niven
Commissioner