



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

In Re: Petition to Approve Extension for)
Dock Facility & Storage Agreements) GPA Docket 10-10
_____)

PUC COUNSEL REPORT

Background

This matter comes before the Guam Public Utilities Commission [GPUC] upon GPA's Petition for the PUC to review and approve the Contract Extensions with Tristar Terminals Guam, Inc. for the Dock Facility User Agreement (F-1Dock) and Storage Agreement.¹ Therein, GPA seeks review and approval of contract extensions for two contracts: the Facility User Agreement and the Storage Agreement.

The present Facility User Agreement (F-1Dock) was entered into between the Guam Power Authority [GPA] and Tristar Terminals Guam, Inc. [TRISTAR] on December 1, 2009. Pursuant to this Agreement, GPA is allowed to discharge or load fuel from and to vessels commissioned by GPA. TRISTAR provides the necessary equipment and labor. TRISTAR's facilities are used for the handling and receiving of fuel import deliveries into GPA storage facilities.² F-1 Dock is located at the Port Authority of Guam. The dock is owned by the Port Authority of Guam and was previously managed and operated by Shell Guam Inc. In 2009, the Facility User Agreement between GPA and Shell was assigned to TRISTAR with the sale of the Shell Guam Inc. facilities to TRISTAR.³

A form of this agreement has been in effect since at least March of 1994.⁴

¹ GPA Petition for Contract Review, GPA Docket 10-01, Filed November 22, 2010.

² Id. at p. 1.

³ Id.

⁴ Letter from General Manager of GPA to the Guam Public Utilities Commission dated November 5, 2010, Request for PUC approval of the extension of the Agreement with Tristar Terminals Guam, Inc., Schedule B2.

The present Facility User Agreement with TRISTAR will expire on February 28, 2010. The Agreement provides an option to extend the term until February 28, 2013. Thus, GPA now asks the PUC to approve a two year extension of the Facility User Agreement.⁵ The Annual cost of this Agreement to GPA is \$1,413,164.00, and the 2-year Contract Extension Cost is \$2,826,328.00.⁶ The cost includes Fuel related fees (Residual Fuel Oil Throughput Fees, Dock Operator Overtime, and Excess Dock Overtime) and Bunkering fees (Port Royalty fee and Maritime Security Fee).⁷ Certain of these fees, including Throughput fees and Bunkering fees, are Port Authority of Guam fees charged to the Dock Manager and passed through to GPA.⁸ The PAG Throughput fees increased from \$.16/bbl to \$.40/bbl on February 1, 2010 as a result of the PUC Order.⁹

The Consolidated Commission on Utilities authorized GPA to extend the Facility User Agreement with TRISTAR for a 2-year term on October 26, 2010.¹⁰ Therein the CCU noted that of the estimated annual GPA expense to TRISTAR of about \$1.4M for the use of the Dock Facility, approximately \$1.2M is paid by TRISTAR to the Port Authority of Guam as import throughput fees.¹¹ The CCU authorized the requested 2-year contract extension on the basis that "GPA has determined that the extension of the Dock Facility User Agreement will serve the best interest of the Authority and its ratepayers by insuring uninterrupted supply of fuel to GPA through the use of TRISTAR's fuel handling facilities..."¹² Based upon this rationale, the CCU authorized GPA to proceed and enter into a two year extension for the Dock Facility User Agreement with Tristar Terminals Guam, Inc. commencing on March 1, 2011 and expiring on February 28, 2013.¹³

On March 1, 2008, a Storage Agreement was entered into between Shell Guam Inc. and GPA. Pursuant thereto, Shell provides storage tanks to GPA with a total nominal capacity of 500,000 barrels for the storage of fuel oil.¹⁴ Storage tanks are located at the Agat Terminal Facility. The Agreement indicates that the parties had entered into

⁵ Id.

⁶ Id. at Schedule B.

⁷ Id.

⁸ Id. at Schedule B2.

⁹ PUC Order Approving Interim Tariffs and Rates for the Port Authority of Guam, Port Docket 09-02, issued January 29, 2010.

¹⁰ Consolidated Commission on Utilities Resolution No. 2010-59, issued October 26, 2010.

¹¹ Id.

¹² Id.

¹³ Id. at p. 2.

¹⁴ Storage Agreement between Shell Guam Inc. and the Guam Power Authority dated March 1, 2008, Par. 1 at p. 1.

Storage Agreement since February of 1998.¹⁵ On May 20, 2009, GPA and Shell Guam Inc. agreed that effective immediately, the Storage Agreement was assigned and transferred to TRISTAR.¹⁶

GPA's fuel is stored in the tanks. This Agreement also will expire February 28, 2011. Extension of the Agreement would continue the agreement in effect until February 28, 2013.¹⁷ The annual cost of the Storage Agreement to GPA is \$1,386,720, and the cost for the 2-year extension is \$2,773,440.¹⁸ The Storage fee, based upon 500,000 bbls total storage capacity, is \$115,560.00 per month.

On October 26, 2010, the Consolidated Commission on Utilities authorized GPA to proceed and enter into a two year extension for the Storage Agreement with Tristar Terminals Guam Inc. to commence on March 1, 2011 and to expire on February 28, 2013.¹⁹ As with the User Agreement, the CCU found that the extension of the Storage Agreement with TRISTAR would serve the best interest of the Authority and its ratepayers by insuring uninterrupted supply of fuel to GPA through the use of TRISTAR's fuel handling facilities.²⁰

Discussion

Pursuant to the Contract Review Protocol for Guam Power Authority, multi-year contracts of GPA which exceed the contract review threshold of \$1.5M require prior PUC approval.²¹ In the cases of both the User Agreement and the Storage Agreement, the 2 year costs of the contract extensions exceed the contract review threshold. Thus, both agreements must be reviewed by the PUC before they are effective. In fact, the Storage Agreement contains an express provision indicating that such agreement is subject to the review and approval of the Public Utilities Commission.²²

¹⁵ Id. at p. 1.

¹⁶ Letter Agreement for Consent for Assignment of and 1st Amendment to Storage Agreement, by and between Shell Guam Inc. and GPA, dated May 15, 2009.

¹⁷ Letter from General Manager of GPA to the Guam Public Utilities Commission dated November 5, 2010, *Supra*.

¹⁸ Id. at Schedule A: Storage Agreement.

¹⁹ Consolidated Commission on Utilities Resolution No. 2010-57, issued October 26, 2010 at p.1.

²⁰ Id.

²¹ Contract Review Protocol for Guam Power Authority, Administrative Docket, filed February 15, 2008, at par. 4.

²² Storage Agreement at par. 22.

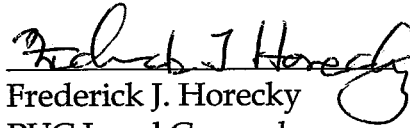
PUC Counsel Report
In Re: Petition to Approve Extension for
Dock Facility & Storage Agreements
GPA Docket 10-10
December 6, 2010

It is evident that if GPA were unable to enter into the Facility User Agreement, it would not have necessary dock facility at which vessels commissioned by GPA could load and unload fuel oil. Without the use of the F-1 Dock Facility, GPA would be unable to obtain the fuel necessary to supply its power plants. Without fuel, GPA could not provide electricity to the ratepayers. These fuel storage facilities provided by TRISTAR in accordance with the Storage Agreement are also necessary to supply fuel to the ratepayers of Guam. In both cases, the extensions of the Agreements do serve the best interests of the Authority and its rate payers by insuring the uninterrupted supply of fuel to GPA through the use of Tristar's fuel handling facilities. The contract extensions for the two agreements are reasonable, prudent and necessary.²³

Recommendation

Counsel recommends that the PUC approve the Contract Extensions for the Dock Facility User Agreement (F-1Dock) and Storage Agreement. GPA should be authorized to enter into two year extensions of such Agreements with Tristar Terminals Guam, Inc. A proposed Order is submitted herewith for the consideration of the Commissioners.

Dated this 6th day of December, 2010.


Frederick J. Horecky
PUC Legal Counsel

²³ GPA's Petition for Contract Review, GPA Docket 10-10, p. 2.