

BEFORE THE PUBLIC UTILITIES COMMISSION

**IN RE: PETITION FOR APPROVAL)
OF EXTENSION OF THE ULSD)
TANK LEASE AGREEMENT)
WITH TRISTAR TERMINALS)
GUAM, INC. BY GUAM)
POWER AUTHORITY.)**

GPA DOCKET 23-05

ORDER



INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC”) pursuant to the December 7, 2022 Petition (hereinafter referred to as the “Petition”) for review and approval of the Tristar Terminals Guam, Inc. (“Tristar”) contract related to GPA’s extension of its leases for Tank 1906 and Tank 1907, which store Ultra Low Sulfur Diesel (“ULSD”) fuel. GPA seeks PUC approval to extend the Tristar leases through June 30, 2024.¹

On December 16, 2022, the Administrative Law Judge of the PUC (the “ALJ”) assigned to this matter filed an ALJ Report that included his findings and recommendations based on the administrative record before the PUC. The ALJ found the following.

DETERMINATIONS

On September 28, 2017, the PUC authorized GPA to enter into an agreement with Tristar to lease a storage tank for ULSD fuel oil for a term of five years, specifically through December 31, 2022. The PUC authorized this lease at an annual cost of \$1,176,000.00.² Thereafter, on January 1, 2018, GPA entered into an agreement with

¹ Petition, p. 1.

² PUC Order, GPA Docket 21-16, p. 2 (Sept. 30, 2021) (citing PUC Order, GPA Docket 17-23, pp. 1-4 (Sept. 28, 2017)).

Tristar, which included among others, the leasing of Tristar's Tank 1906 "for the storage of Diesel product."³ Subsequently, at GPA's request, the PUC further authorized GPA to amend the Tristar agreement, adding the lease of Tristar's Tank 1907 for additional ULSD fuel oil storage. The amendment indicates a storage lease fee for Tank 1907 of about \$1,176,000.00 annually. These ULSD storage tanks are located at the Tristar Terminal in Agat.

1. GPA's Contract Review Protocol

Pursuant to 12 G.C.A. §12105, GPA may not enter into any contractual agreements or obligations which could increase rates and charges without the PUC's express approval. Additionally, pursuant to GPA'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"

Contract Review Protocol, GPA Docket 09-01, p. 1 (June 20, 2011). Further, with respect to multi-year contracts, GPA's Contract Review Protocol provides that "GPA must obtain PUC approval if the total costs over the entire procurement term exceed the review threshold." *Id.*, p. 3.

2. Extension of Contract Terms and Costs

According to GPA, its lease of Tank 1906 is set to expire on December 31, 2022; and on June 30, 2023 for Tank 1907.⁴ GPA has determined that the extension of the ULSD storage lease agreement through June 30, 2024 serves the best interest of both GPA

³ Contract No. TTGI-SA-2018-01, between Tristar Terminals Guam, Inc. and Guam Power Authority, p. 4 (Jan. 1, 2018).

⁴ Petition, p. 1; Resolution, p. 1.

and its ratepayers since it would ensure the uninterrupted supply of ULSD to its power plants. Accordingly, GPA has negotiated extensions of the leases for these tanks so that they both expire on June 30, 2024.⁵

Based on the proposed amendment to the contract extending the lease term through June 30, 2024, the storage fees for the tanks remain unchanged at \$98,000.00 per month, excluding the handling and throughput fees.⁶ These fees were negotiated back in 2018 (for Tank 1906) and 2021 (for Tank 1907).

According to GPA, an additional 17 months at \$98,000.00 per month for Tank 1906 costs \$1,666,000.00; and an additional year also at \$98,000.00 per month for Tank 1907, costs \$1,176,000.00.⁷ As a result, the total cost of the subject extension is about \$2,842,000.00.⁸ GPA submitted that the contracts will be funded through its fuel revenue budget.

4. CCU Approval

On November 29, 2022, the Consolidated Commission on Utilities (the “CCU”) issued GPA Resolution No. 2023-04 (the “Resolution”) that approved the contract extensions for both Tank 1906 and Tank 1907, allowing them to expire at the same time on June 30, 2024.⁹ Additionally, the CCU authorized the corresponding costs for the extensions, at an approximate total of \$2,842,000.00.¹⁰ In the Resolution, the CCU

⁵ Petition, p. 1; Resolution, p. 1.

⁶ Resolution, p. 1; [Proposed] Amendment No. 3 to Contract No. TTGI-SA-2018-01.

⁷ Resolution, p. 2.

⁸ Resolution, p. 2.

⁹ Resolution, p. 1.

¹⁰ Resolution, pp. 1-2.

indicated that the contract extension of the lease concerning the ULSD storage tanks “ensure adequacy of supply to the power plants” and is “reasonable and prudent.”¹¹

CONCLUSION

Based on the documentation provided, the ALJ found that the subject contract is necessary, and that the extensions of the terms referred to herein are reasonable and prudent. As indicated by GPA, the contract extension referred to in this matter is vital since they ensure the “uninterrupted” “supply [of fuel] to the power plants.”¹²

Indeed, this Commission has previously held that any disruption to the safe distribution of fuel resources to GPA, “could be a potential threat to the public health, welfare and safety of our island.”¹³

In addition, this Commission has consistently found that GPA “has little choice but to utilize the storage tanks of Tristar.”¹⁴ Significantly, too, the fees for the two tanks under the extended lease agreement will remain the same as the fees that were negotiated back in 2018, and in 2021.

Based on the documentation provided by GPA in this docket, and for the other reasons set forth herein, the ALJ recommended that the PUC approve the contract extension with Tristar, at a total cost of \$1,666,000.00 for Tank 1906; and \$1,176,000.00 for Tank 1907; for a total cost of \$2,842,000.00.

¹¹ Resolution, p. 2.

¹² Resolution, p. 2.

¹³ PUC Order, PAG Docket 21-01, p. 7 (Jan. 28, 2021).

¹⁴ PUC Supplemental Order, GPA Docket 13-11, p. 2 (Sept. 24, 2013).

Further, while the proposed amendment to the contract includes an option to extend the term on a “month to month basis for a period up to two (2) years”, GPA should be required to return to the PUC for approval of any extension beyond June 30, 2024.

The Commission hereby adopts the findings in the December 16, 2022 ALJ Report and therefore issues the following.



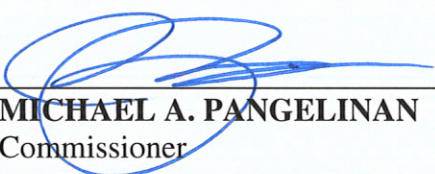
ORDERING PROVISIONS

Upon careful consideration of the record herein, 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. That the instant Petition is hereby APPROVED.
2. GPA is authorized to enter into the contract extension with Tristar Terminals Guam, Inc., at a total cost of \$1,666,000.00 for Tank 1906; and \$1,176,000.00 for Tank 1907; for a total cost of \$2,842,000.00.
3. GPA shall be required to return to the PUC for any subsequent request to extend the contract term beyond June 30, 2024.
4. GPA 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 this matter. 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.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

SO ORDERED this 19th day of December, 2022.


JEFFREY C. JOHNSON
Chairman
ROWENA E. PEREZ-CAMACHO
Commissioner
JOSEPH M. MCDONALD
Commissioner
PEDRO GUERRERO
Commissioner
MICHAEL A. PANGELINAN
Commissioner
PETER MONTINOLA
Commissioner
DORIS FLORES BROOKS
Commissioner

P223056.JRA