

Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City



**IN THE MATTER OF THE
APPLICATION FOR
APPROVAL OF THE
ELECTRICITY SUPPLY
AGREEMENT (ESA)
BETWEEN SULTAN
KUDARAT ELECTRIC
COOPERATIVE, INC.
(SUKELCO) AND DMCI
POWER CORPORATION
(DPC), WITH PRAYER FOR
PROVISIONAL AUTHORITY,**

ERC CASE NO. 2015-179 RC

**SULTAN KUDARAT
ELECTRIC COOPERATIVE,
INC. (SUKELCO) AND DMCI
POWER CORPORATION
(DPC),**

Applicants.

X-----X

D O C K E T E D
Date: **NOV 07 2017**
By: _____

ORDER

On 20 October 2015, Sultan Kudarat Electric Cooperative, Inc. (SUKELCO) and DMCI Power Corporation (DPC) filed an *Application* for approval of their Electricity Supply Agreement (ESA), with prayer for the issuance of provisional authority.

On 16 February 2016, pursuant to the Commission's power to provisionally approve the ESA between SUKELCO and DPC, as provided under Section 4 (e), Rule 3 of the Implementing Rules and Regulations of Republic Act No. 9136, or the Electric Power Industry Reform Act of 2001 (EPIRA-IRR), the Commission issued an Order granting Applicants provisional authority to implement their ESA, the dispositive portion of which reads:

“WHEREFORE, the foregoing premises considered, the Commission hereby PROVISIONALLY APPROVES the Electricity Supply Agreement (ESA) between SULTAN KUDARAT ELECTRIC COOPERATIVE, INC. (SUKELCO) and DMCI Power Corporation (DPC), subject to the following conditions:

a) Applicable Rates:

Cost Components	Rate
Capital Recovery Fee (CRF)	PhP642.25/kW/month
Fixed O&M Fee (FOMF)	PhP263.35/kW/month
Variable O&M Fee (VOMF)	PhP0.5927/kW/month
Fuel Fee	Pass-through subject to fuel consumption rate of 0.28li/kWh or actual, whichever is lower

Note: Fixed and Variable O&M Fee shall be subject to adjustment formula indicated under the ESA

- b) The final generation cost that can be recovered shall be determined by the Commission in its Decision in the instant Application; and
- c) In the event that the final rate is higher than that provisionally granted, the resulting additional charges shall be collected by DPC from SUKELCO. On the other hand, if the final rate be lower than that provisionally granted, the amount corresponding to the reduction shall be refunded by DPC to SUKELCO.

SO ORDERED.”

In interpreting the power of the Commission to grant provisional authority, the Supreme Court in the case of *Freedom from Debt Coalition vs. Energy Regulatory Commission*¹ explained that a provisional authority is effective for only twelve (12) months.

Inasmuch as the Commission has initiated the evaluation of the *Application* taking into consideration all submissions made by the parties, prudence dictates that a meticulous review of Applicants’ ESA be made pursuant to the Commission’s mandate under Section 23 of the EPIRA to ensure that distribution utilities supply electricity in the least cost manner to its captive market.

¹ G.R. No. 161113, 15 June 2014.

On 09 February 2017, the Commission deliberated and granted the extension of provisional authority to Applicants SUKELCO and DPC. However, due to supervening events², the Order could no longer be promulgated without undergoing reconfirmation by the Commission *En Banc*. Thus, the Commission resolved to reconfirm

WHEREFORE, premises considered, the provisional authority granted to Applicants SUKELCO and DPC in the Order dated 16 February 2016 is **EXTENDED** until revoked or made permanent by the Commission.

SO ORDERED.

Pasig City, 13 September 2017.

JOSE VICENTE B. SALAZAR*

Chairman and CEO



ALFREDO J. NON

Commissioner



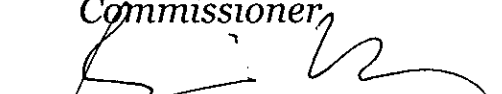
GLORIA VICTORIA C. YAP-TARUC

Commissioner



JOSEFINA PATRICIA A. MAGPALE-ASIRIT

Commissioner



GERONIMO D. STA. ANA

Commissioner

LS: CRC/LSH/APV/ord.2015-179 RC-SUKELCO-DPC/ESA extension of PA

FWC
TWG/FPG/LOC/FGID

² The Chairman was placed on preventive suspension as per Order of the Office of the President (OP-DC Case No. 17-D-094) dated 2 May 2017 and received on 04 May 2017.

*Ibid.

Copy Furnished:

1. DICCION LAW FIRM
Unit 1708 Jollibee Plaza Building
F. Ortigas Jr. Road., Ortigas Center
Pasig City
2. Sultan Kudarat Electric Cooperative, Inc.
(SUKELCO)
National Highway, Tacurong City
Sultan Kudarat
3. DMC Power Corporation (DPC)
3/F DMCI Plaza Building
2281 Don Chino Roces Ave.
Makati City
4. Office of the Solicitor General (OSG)
134 Amorsolo Street, Legaspi Village, Makati City
5. Commission on Audit (COA)
Commonwealth Avenue, Quezon City
6. Senate Committee on Energy
GSIS Bldg., Roxas Boulevard, Pasay City
7. House Committee on Energy
Batasan Hills, Quezon City
8. Office of the City Mayor
Tacurong City, Sultan Kudarat
9. Office of the Municipal Mayor
Isulan, Sultan Kudarat
10. Office of the Municipal Mayor
Esperanza, Sultan Kudarat
11. Office of the Municipal Mayor
Bagumbayan, Sultan Kudarat
12. Office of the Municipal Mayor
Pres. Quirino, Sultan Kudarat
13. Office of the Municipal Mayor
Lambayong, Sultan Kudarat
14. Office of the Municipal Mayor
Cumbio, Sultan Kudarat
15. Office of the Municipal Mayor
Palimbang, Sultan Kudarat
16. Office of the Municipal Mayor
Senator Ninoy Aquino, Sultan Kudarat

17. Office of the Municipal Mayor
Lebak, Sultan Kudarat
18. Office of the Municipal Mayor
Kalamansig, Sultan Kudarat
19. Office of the Provincial Governor
Province of Sultan Kudarat
20. Office of the Municipal Mayor
Buluan, Maguindanao
21. Office of the Municipal Mayor
Datu Paglas, Maguindanao
22. Office of the Municipal Mayor
General S. K. Pendatun, Maguindanao
23. Office of the Municipal Mayor
Paglat, Maguindanao
24. Office of the Provincial Governor
Province of Maguindano
25. Philippine Chamber of Commerce and Industry (PCCI)
3rd Floor, Chamber and Industry Plaza (CIP),
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McKinley Town Center, Fort Bonifacio, Taguig City