

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



**WILMAR EDIBLE OILS
PHILIPPINES, INC. (WEOPI),**
Complainant,

- versus -

ERC CASE NO. 2016-046 CC

**MISAMIS ORIENTAL II
ELECTRIC SERVICE
COOPERATIVE, INC.
(MORESCO II),**

Respondent.

X- - - - - X

D O C K E T E D
Date: DEC 05 2017
By: [Signature]

DECISION

Before this Commission for resolution is the "*Joint Motion to Approve Compromise Agreement*" filed on May 10, 2017 by complainant Wilmar Edible Oils Philippines, Inc. (WEOPI) and respondent Misamis Oriental II Rural Electric Service Cooperative, Inc. (MORESCO II) praying that the compromise agreement executed by the parties be approved by the Commission.

On September 29, 2016, WEOPI filed a verified complaint against the MORESCO II contesting the generation rate charged by the latter for the billing period January 2015 to July 2016 and praying, among others, that MORESCO II be directed to refund the amount of PhP20,358,823.90 representing the aggregate overbilled amount.

The Commission then conducted several conferences on November 22, 2016, December 6, 2016, January 12, 2017, January 30, 2017, February 24, 2017, March 20, 2017, and April 20, 2017 to afford the parties the opportunity to explore avenues to settle the case amicably.

On May 10, 2017, WEOPI and MORESCO II submitted the instant "*Joint Motion to Approve Compromise Agreement*".

On June 7, 2017, the Commission issued an Order directing the WEOPI and MORESCO II to submit, within ten (10) days from receipt of a copy thereof, their respective Board Resolutions authorizing their representatives to sign and execute the said compromise agreement.

In compliance with the Order dated June 7, 2017, respondent MORESCO II submitted its "*Compliance with Directive*" with Annex

“A”¹ on June 27, 2017 while, complainant submitted its “Compliance” with Annex “A”² on August 9, 2017.

“JOINT MOTION
TO
APPROVE COMPROMISE AGREEMENT”

COME NOW the parties, and unto this Honorable Commission, most respectfully state: That –

1. To avoid the costs and inconvenience resulting from a protracted litigation and to save the precious time not only of the parties but more importantly of this Honorable Commission, the parties have agreed to enter into an amicable settlement, as follows:

Compromise Agreement

WHEREAS, through a letter dated January 10, 2017, the Misamis Oriental II Electric Cooperative, Inc. (MORESCO II) presented an offer to WILMAR in order to settle the complaint for overbilling docketed with the Energy Regulatory Commission (ERC) as Case No. ERC Case No. 2016-046 CC;

WHEREAS, under the said offer, MORESCO II effectively commits to charge or bill WILMAR based on what the former has been doing starting with the Billing Period May 26, 2016 to June 25, 2016 and up to the present, provided that WILMAR waives its right to collect the alleged overbilling it is seeking in ERC Case No. 2016-046 CC;

WHEREAS, WILMAR has agreed to accept MORESCO II's offer under the terms and conditions stated hereunder; and

WHEREAS, the parties desire that their compromise agreement be formalized and submitted for approval by the ERC, and for rendition of judgment based thereon.

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties have agreed, and hereby agree, as follows:

- a. Beginning with the Billing Period May 26, 2016 to June 26, 2016, the generation and transmission charges imposed by MORESCO II's power supplier/s and the National Grid Corporation of the Philippines (NGCP), as the case may be, shall be merely passed on by MORESCO II to WILMAR, provided that, no financial penalties or other charges imposed by MORESCO II's power supplier/s to MORESCO II arising from MORESCO II's failure to comply with its minimum contracted capacity (KW) or energy (KWS) or is in breach of applicable terms and conditions under its power supply agreement (PSA) with such suppliers, may be passed on to WILMAR.

¹ MORESCO II Board Resolution No. 39, Series of 2017 entitled "A Resolution Authorizing The OIC-General Manager, Engr. Ronel B. Cahada, To Represent In All Hearings And Negotiations For And In Behalf Of MORESCO II Re: Complainant, Wilmar Edible Oils Mills, Inc. Filed At The Energy Regulatory Commission (ERC)"

² DIRECTOR'S CERTIFICATE subscribed and sworn to before notary public Atty. Hobert N. Lluza, the contents of the said certificate states in part: "Xxx GEORGE E. GEMZON is hereby constituted and appointed as the agent and attorney-in-fact of the Corporation, with authority to execute and enter into a Compromise Agreement with Misamis Oriental II Electric Cooperative, Inc., in ERC Case No. 2016-046 CC. xxx"

- b. MORESCO II shall compute the generation charges payable by WILMAR based on a blended rate formula, as follows:

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|---|
| $\text{TotalEquivalentRate} = \frac{\text{TotalENAmount}}{\text{TotalEnergy}_{\text{Moresco}}}$ |
| $\text{TotalEquivalentRate} = \frac{\text{ENAmount}_{\text{FDC}} + \text{ENAmount}_{\text{KEGI}} + \text{ENAmount}_{\text{PSALM}} + \dots + \text{ENAmount}_{\text{etc}}}{\text{TotalEnergy}_{\text{Moresco}}}$ |

- c. Apart from the generation and transmission charges to be passed on by MORESCO II as adverted to in par. (a), MORESCO II may impose upon WILMAR a charge in lieu of all charges (including DSM charges) that MORESCO II is allowed to collect from high voltage customers under the Order dated January 10, 2010 (issued in ERC Case No. 2009-072 RC), or as may be amended or revised, from time to time, by the Energy Regulatory Commission (ERC), as follows:
- i.) Effective the first billing period after signing hereof – P45.9584/KW;
 - ii.) Effective The first billing period after December 2017 – P85.00KW
- d. MORESCO II hereby recognizes that WILMAR is a “contestable customer” under the pertinent polices, rules and regulations of the Department of Energy (DOE) and the ERC, and that MORESCO II will not object to WILMAR’s becoming a participant to the wholesale electricity spot market (WESM) if and when this scheme becomes operational in Mindanao, and accordingly, WILMAR may draw its power from the WESM as a contestable customer, likewise in accordance with pertinent polices, rules and regulations imposed by the DOE and ERC;
- e. MORESCO II shall not obtain or contract additional capacity (KW) or energy (KWH) from existing or new power suppliers except through the competitive selection process (CSP) as mandated by the ERC (that in turn implements the mandate of the DOE);
- f. For and in consideration of the foregoing terms and conditions agreed to by MORESCO II, WILMAR hereby waives its right to the refund of the overbillings in generation charges previously collected by MORESCO II amounting to P20,358,823.90, as prayed for in the former’s Complaint filed with the ERC and docketed as ERC Case No. 2016-046 CC;
- g. In case of breach by a party of any of the terms and conditions of this Compromise Agreement, the offended party shall be immediately entitled, as a matter of right, to a writ of execution, upon motion filed with the ERC, to enforce or implement such term or condition;
- h. This compromise agreement shall be embodied a joint motion to approve compromise agreement that shall be submitted by the

parties in ERC Case No. 2016-046 CC, which joint motion shall pray that the ERC Approves the same, and renders judgment based thereon; and

i. This Compromise is effective immediately but is subject to approval by the ERC.

2. The undersigned signatories of the parties represents to this Honorable Commission that their principals have authorized the execution and signing of the foregoing Compromise Agreement, and that they have been respectively been authorized to sign for and in behalf of their respective principals.

3. The foregoing Compromise Agreement is not contrary to law, public policy or morals. Accordingly, approval by the Honorable Commission of this Compromise Agreement is in order.

PRAYER

WHEREFORE, the parties respectfully pray that – (i.) the instant Joint Motion to Approve Compromise Agreement be granted, (ii.) the Compromise Agreement embodied in said joint motion be approved *in toto*, and (iii.) judgment be rendered in accordance therewith.

Other reliefs and remedies that may be just and proper under the premises are likewise prayed for.”

“Article 1306 of the Civil Code of the Philippines provides that contracting parties may establish such stipulations, clauses, terms, and conditions, as they may deem convenient, provided that they are not contrary to law, morals, good customs, public order, or public policy. A compromise agreement is a contract whereby the parties make reciprocal concessions, avoid litigation, or put an end to one already commenced.³ It is an accepted, even desirable and encouraged, practice in courts of law and administrative tribunals.⁴

A compromise agreement intended to resolve a matter already under litigation is a judicial compromise. Having judicial mandate and entered as its determination of the controversy, such judicial compromise has the force and effect of a judgment. It transcends its identity as a mere contract between the parties, as it becomes a judgment that is subject to execution in accordance with the Rules of Court. Thus, a compromise agreement that has been made and duly approved by the court attains the effect and authority of *res judicata*, although no execution may be issued unless the agreement receives the approval of the court where the litigation is pending and compliance with the terms of the agreement is decreed.⁵”

³ **María Susan L. Raola versus Spouses Fernando and Ma. Concepcion M. Raola*, G.R. No. 185095, Resolution dated July 31, 2009’ citing Article 2028, Civil Code of the Philippines; *Harold v. Aliba*, G.R. No. 130864, October 2, 2007, 534 SCRA 478, 486

⁴ **María Susan L. Raola versus Spouses Fernando and Ma. Concepcion M. Raola*, G.R. No. 185095, Resolution dated July 31, 2009’ citing *DMG Industries, Inc. v. Philippine American Investments Corporations*, G.R. No. 174114, July 6, 2007, 526 SCRA 682, 687.

⁵ **María Susan L. Raola versus Spouses Fernando and Ma. Concepcion M. Raola*, G.R. No. 185095, Resolution dated July 31, 2009’ citing *Viesca v. Gilinsky*, G.R. No. 171698, July 4, 2007, 526 SCRA 533, 557-558.

Finding the "Compromise Agreement" entered into by and between WEOPI and MORESCO II dated May 10, 2017 to be reasonable and consistent with public policy and in accordance with law and existing rules and regulation, the same is hereby **APPROVED**. Accordingly, this case is declared closed and terminated.

SO ORDERED.

Pasig City, October 26, 2017.

FOR AND BY AUTHORITY
OF THE COMMISSION:


GLORIA VICTORIA C. YAP-TARUC
Commissioner

We Concur:


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner


ALFREDO J. NON
Commissioner


GERONIMO D. STA. ANA
Commissioner

Copy Furnished:

1. **MR. GEORGE E. GEMZON**
Senior Manager, Wilmar Edible Oils Philippines, Inc.
(WEOPI)
28th Floor, LKG Towers, 6801 Ayala Avenue
Makati City 1200, Metro Manila
2. **ATTY. RUFINO M. MARGATE, JR.**
Counsel for the Complainant WEOPI
Units 701 & 702 Atlanta Centre Condominium, 31 Annapolis
Street
Greenhills, City of San Juan, Metro Manila
3. **MISAMIS ORIENTAL II ELECTRIC SERVICE
COOPERATIVE, INC. (MORESCO II)**
Tion Street, North Poblacion Medina
Misamis Oriental 9013
4. **ATTYS. JEREMIAH D. FRANCISCO AND NELSON V.
EVANGELISTA**
DECHAVEZ AND EVANGELISTA LAW OFFICES
Counsel for the Respondent MORESCO II
Units 1609-1610, Tycoon Centre
Pearl Drive, Ortigas Center, Pasig City 1605