

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



**IN THE MATTER OF THE
APPLICATION FOR
APPROVAL OF THE
ELECTRIC POWER
PURCHASE AGREEMENT
(EPPA) BETWEEN NEGROS
OCCIDENTAL ELECTRIC
COOPERATIVE, INC. AND
PANAY POWER
CORPORATION WITH
PRAYER FOR PROVISIONAL
AUTHORITY**

ERC CASE NO. 2017-072 RC

**NEGROS OCCIDENTAL
ELECTRIC COOPERATIVE,
INC. AND PANAY POWER
CORPORATION,**

Applicants.

X ----- X

DOCKETED
Date: **APR 04 2018**
By: _____

ORDER

On 04 August 2017, the applicants Negros Occidental Electric Cooperative, Inc. (NOCECO) and Panay Power Corporation (PPC) filed an *Application* dated 30 June 2017 for the approval of their Electric Power Purchase Agreement (EPPA), with prayer for provisional authority.

In the said *Application*, NOCECO and PPC alleged the following:

**NEGROS OCCIDENTAL ELECTRIC COOPERATIVE
INC. ("NOCECO") and PANAY POWER CORPORATION
("PPC"),** through the undersigned counsel, and unto this Commission, most respectfully state:

Parties to the Case

1. Applicant NOCECO is an electric cooperative duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at Brgy. Binicuil,

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[Handwritten marks]

Kabankalan City, Negros Occidental. It is a franchised electric utility with National Electrical Administration Franchise No. 061 servicing its member-consumers in the Province of Negros Occidental, specifically the Cities of Kabankalan, La Carlota, Himamaylan and Sipalay, and the Municipalities of Ponteiverda, Pulpandan, San Enrique, Valladolid, Binalbagan, Hinigaran, Isabela, La Castellana, Moises Padilla (Magallon), Candoni, Cauayan, Hinoba-an and Ilog.

2. Applicant PPC is a corporation duly organized and existing under the laws of the Republic of the Philippines with principal office address at Brgy. Ingore, La Paz, Iloilo City. PPC owns and operates a 72MW diesel fired power plant ("Plant") in the same location.

Statement of Facts and of the Case

3. Pursuant to Rule 20 (B) of the 2006 Rules of Practice and Procedure of the Energy Regulatory Commission ("ERC"), this Application is submitted to this Honorable Commission for its review and approval of the Electric Power Purchase Agreement dated 19 April 2017 between PPC as Seller and NOCECO as Buyer (the "EPPA").
4. Prior to the execution of the EPPA and in compliance with ERC Resolution No. 13, series of 2015, in October 2016, a competitive selection process was undertaken by NOCECO, through its Technical Working Group, published an Invitation to Bid in newspapers of general circulation in the Philippines for two consecutive days. Accordingly, PPC and SPC Island Power Corporation submitted their respective bids. After thorough evaluation of the bids, NOCECO awarded the supply contract for its peaking requirements at 12MW for twenty two months to PPC for having submitted the lowest calculated bid with a base price of PhP6.3572/kWh.

Salient Features of the EPPA

5. The salient features of the EPPA are indicated below:

Type of Plant	Diesel-Bunker Fired Power Plant
Installed Capacity	72MW
Cooperation Period	A period of twenty two (22) months commencing upon actual date of the Start of Supply of Electricity as provided in Article 3.2 of the EPPA, and ending on the expiration of the of 22-month period
Contracted Capacity	12MW

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Minimum Energy Off-Take	Billing Month	Minimum Contracted Energy, kWh	Minimum Contracted Energy, kWh
	January	NA	792,000
	February	NA	792,000
	March	792,000	792,000
	April	792,000	792,000
	May	792,000	792,000
	June	792,000	792,000
	July	792,000	792,000
	August	792,000	792,000
	September	792,000	792,000
	October	792,000	792,000
	November	792,000	792,000
	December	792,000	792,000

Delivery Point The delivery point shall mean the high side of PPC's connection point to the Grid.

Outages PPC shall not be entitled to any planned/scheduled or forced outage allowance. In any case of such outage, the SELLER shall procure replacement energy, and NOCECO shall settle under Schedule 4 of the EPPA.

6. As indicated above, PPC agreed to supply and deliver, and NOCECO agreed to take and pay for electricity supplied by PPC at a contracted capacity of 12MW (the "Contracted Capacity"), commencing upon actual date of the Start of Supply of Electricity as provided in Article 3.2 of the EPPA, and ending on the expiration of the of 22-month period, at an Electricity Fee (Schedule 4 of the EPPA) computed as follows:

ELECTRICITY FEES

$$\text{Electricity Fees} = \left(\text{Energy Fees} + \text{Fuel Fees} \right) \times E$$

$$\text{Energy Fees} = \text{CRF} + \text{Fixed O\&M} + \text{Variable O\&M}$$

$$\text{Fuel Fees} = \text{FOCR} \times \text{FC}$$

Where

CRF = Capital Recovery Fee = **Php0.4475** per kWh

Fixed O&M = Fixed O&M Fee = **Php1.2184** per kWh

Variable O&M = Variable O&M Fee = **Php0.3612** Per kWh

FOCR = Fuel Oil Consumption Rate at 0.2535 in liters per kWh, or actual whichever is lower

FC = Fuel Cost, weighted average price of fuels (Bunker, Diesel and Lubes) for the current month, in Php per liter

E = Actual energy delivered, Minimum Contracted Energy, or Day-ahead energy nomination, whichever is higher in kWh

7. In deriving Fuel Cost, the Fuel Oil Consumption Rate is at 0.2535 in liters per kWh, or actual whichever is lower, shall always be multiplied by the actual energy delivered.

8. As seen in the Rate Impact below, for the duration of the term of the EPPA between PPC and NOCECO, the simulated delivered price thereunder would result in an overall savings of PhPo.026/kWh, as follows:

	Rate,PhP/kWh
Without PPC EPPA	5.4241
With PPC EPPA	5.3982
GENERATION RATE INCREASE/(DECREASE)(rounded off figure)	(0.0260)

9. The foregoing agreed terms, among others, are embodied in the EPPA, a copy of which is attached to this Application as Annex "A" and made an integral part hereof.

10. Should the Honorable Commission approve the Electricity Fees under the EPPA, there will be an indicative decrease in generation cost of PhPo.026/kWh.

Allegations in Support of the Prayer for Provisional Authority

11. The current demand of NOCECO is 47MW. To meet this demand, NOCECO sources 20MW of its electric power requirements from KEPCO SPC Power Corporation and Palm Concepcion Power Corporation. Likewise, it secures power deficit from its existing suppliers with the Wholesale Electricity Spot Market (WESM).

12. It is expected that NOCECO's current demand will increase to over 50MW by 2018 and 53MW by 2019 based on NOCECO's load forecast.

13. Considering that NOCECO is in need of additional supply of power beginning 2017, it is imperative that NOCECO obtain this Honorable Commission's approval of the EPPA with PPC.
14. The supply of additional 12 MW from PPC to NOCECO (and ultimately, to its consumers) will not only secure the power requirements of NOCECO but also lessen NOCECO's exposure to higher prices during peak hours as well as the volatility of the Wholesale Electricity Spot Market (WESM) prices and reduce its dependence on the Negros-Panay submarine cable.
15. Under the terms of the EPPA, among the conditions precedent to the performance by NOCECO and PPC of their respective obligations thereunder is the approval of this Application by the Honorable Commission.
16. Thus, for PPC to be able to deliver and NOCECO to be able to receive power from PPC, it is imperative that a provisional authority be granted for the EPPA to allow PPC to deliver and NOCECO to receive power during these periods.

Compliance with Pre-Filing Requirements

17. Applicants manifest their compliance with the pre-filing requirements mandated under Rule 3, Section 4(e) of the Implementing Rules and Regulations of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2011, or the "EPIRA", and Rule 6 of the 2006 ERC Rules of Practice and Procedures, as evidenced by the following attachments:
 - 17.1. Affidavit of Service re: service of the Application with Annexes to the Sangguniang Panlungsod of Kabankalan City, a copy of which will be attached as **Annex "B"**;
 - 17.2. Affidavit of Service re: service of the Application with Annexes to the Sangguniang Panlalawigan of the Province of Negros Occidental, a copy of which will be attached as **Annex "C"**;
 - 17.3. Affidavit of Service re: service of the Application with Annexes to the Sangguniang Panlungsod of the City of Iloilo and to the Sanggunian Panlungsod of the City of Makati, a copy of which will be attached as **Annex "D" and Annex "D-1"**, respectively;
 - 17.4. Affidavit of Publication stating that the instant Application had been published in a newspaper of general circulation and local circulation, a copy of which will be attached as **Annex "E" and Annex "E-1"**, respectively;
 - 17.5. Newspaper of general circulation issue and newspaper of local circulation issue where the Application appeared, as published, a copy of which will be attached as **Annex "F" and Annex "F-1"**, respectively;

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- 17.6. A copy of the Board Resolution authorizing NOCECO to jointly file the instant application with PPC, which is herein attached as **Annex "G"**;
- 17.7. A copy of the Board Resolution authorizing PPC to jointly file the instant application with NOCECO, which is herein attached as **Annex "H"**; and
- 17.8. Proof of payment of filing fees, a copy of which will be attached as **Annex "I"**.

PRAYER

WHEREFORE, in view of the foregoing, it is respectfully prayed that the Commission:


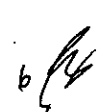
1. Upon initial review of the instant Application and pending trial on the merits, issue a provisional authority for the terms of the 19 April 2017 EPPA between PPC and NOCECO, thereby authorizing PPC to charge and collect from NOCECO the Electricity Fees, and authorizing NOCECO to pass the full amount thereof to its consumers; and
2. After trial on the merits, issue a permanent approval of the terms of the 19 April 2017 EPPA between PPC and NOCECO, thereby authorizing PPC to charge and collect from NOCECO the Electricity Fees, and authorizing NOCECO to pass the full amount thereof to its consumers.

Other reliefs just and equitable under the premises are likewise prayed for.

Finding the said *Application* to be sufficient in substance, with the required fees having been paid, the same is hereby set for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on **04 July 2018 at ten o'clock in the morning (10:00 A.M.), at NOCECO's Main Office, Brgy. Binicuil, Kabankalan City, Negros Occidental.**

Accordingly, NOCECO and PPC are hereby directed to:

- 1) Cause the publication of the attached Notice of Public Hearing in two (2) newspapers of nationwide circulation in the Philippines at their own expense, twice (2x) within two (2) successive weeks, the dates of publication not being less than seven (7) days apart, and the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial hearing;

- 2) Furnish with copies of this Order and the attached Notice of Public Hearing the Offices of the Provincial Governor, the City and Municipal Mayors, and the Local Government Unit (LGU) legislative body within the affected franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within the affected franchise area of the filing of the *Application*, its reasons therefor, and of the scheduled hearing thereon, by any other means available and appropriate;
- 4) Furnish with copies of this Order and the attached Notice of Public Hearing the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire, to send their duly authorized representatives at the scheduled hearing; and
- 5) Furnish with copies of the *Application* and its attachments all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing, Applicants must submit to the Commission their written compliance with the aforementioned jurisdictional requirements attaching therewith, methodically arranged and duly marked the following:

- 1) The evidence of publication of the attached Notice of Public Hearing consisting of affidavits of the Editors or Business Managers of the newspapers where the said Notice of Public Hearing was published, and the complete issues of the said newspapers;
- 2) The evidence of actual posting of this Order and the attached Notice of Public Hearing consisting of certifications issued to that effect, signed by the aforementioned Governor, Mayors, and LGU legislative body or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by Applicants to inform the consumers within the affected franchise area of the filing of the *Application*, its reasons therefor, and of the scheduled hearing thereon;

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- 4) The evidence of receipt of copies of this Order and the attached Notice of Public Hearing by the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress;
- 5) The evidence of receipt of copies of the *Application* and its attachments by all those making requests therefor, if any; and
- 6) Such other proof of compliance with the requirements of the Commission.

Applicants and all interested parties are also required to submit, at least five (5) days before the date of the initial hearing and Pre-Trial Conference, their respective Pre-Trial Briefs containing, among others:

- 1) A summary of admitted facts and proposed stipulation of facts;
- 2) The issues to be tried or resolved;
- 3) The documents or exhibits to be presented, stating the purposes and proposed markings therefor; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

Failure of Applicants to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from the said date of cancellation.

NOCECO and PPC must also be prepared to make an expository presentation of the instant *Application*, aided by whatever communication medium that they may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, what the *Application* is all about and the reasons and justifications being cited in support thereof.

SO ORDERED.

Pasig City, 15 March 2018.

FOR AND BY AUTHORITY
OF THE COMMISSION:


AGNES VST DEVANADERA
Chairperson and CEO

LS: JGM/ARG/GLS/APV



COPY FURNISHED:

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Applicant
Brgy. Binicuil, Kabankalan City, Negros Occidental
- Panay Power Corporation (PPC)**
Applicant
Brgy. Ingore, La Paz, Iloilo City
- Office of the Solicitor General**
134 Amorsolo Street, Legaspi Village, Makati City

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6. **Commission on Audit**
Commonwealth Avenue, Quezon City
7. **Senate Committee on Energy**
GSIS Bldg. Roxas Blvd., Pasay City
8. **House Committee on Energy**
Batasan Hills, Quezon City
9. **Philippine Chamber of Commerce and Industry (PCCI)**
3rd Floor, Chamber and Industry Plaza (CIP), 1030 Campus Avenue corner Park Avenue, McKinley Town Center, Fort Bonifacio, Taguig City
10. **Office of the Governor**
Province of Negros Occidental
11. **Local Government Unit (LGU) legislative body**
Province of Negros Occidental
12. **Office of the City Mayor**
Kabankalan, Negros Occidental
13. **Office of the LGU legislative body**
Kabankalan, Negros Occidental
14. **Office of the City Mayor**
La Carlota, Negros, Occidental
15. **Office of the LGU legislative body**
La Carlota, Negros, Occidental
16. **Office of the City Mayor**
Himamaylan, Negros Occidental
17. **Office of the LGU legislative body**
Himamaylan, Negros Occidental
18. **Office of the City Mayor**
Sipalay, Negros Occidental
19. **Office of the LGU legislative body**
Sipalay, Negros Occidental
20. **Office of the Municipal Mayor**
Pontevedra, Negros Occidental
21. **Office of the LGU legislative body**
Pontevedra, Negros Occidental
22. **Office of the Municipal Mayor**
Pulupandan, Negros Occidental
23. **Office of the LGU legislative body**
Pulupandan, Negros Occidental
24. **Office of the Municipal Mayor**
San Enrique, Negros Occidental
25. **Office of the LGU legislative body**
San Enrique, Negros Occidental
26. **Office of the Municipal Mayor**
Valladolid, Negros Occidental
27. **Office of the LGU legislative body**
Valladolid, Negros Occidental

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28. **Office of the Municipal Mayor**
Binalbagan, Negros Occidental
29. **Office of the LGU legislative body**
Binalbagan, Negros Occidental
30. **Office of the Municipal Mayor**
Hinigaran, Negros Occidental
31. **Office of the LGU legislative body**
Hinigaran, Negros Occidental
32. **Office of the Municipal Mayor**
Isabela, Negros Occidental
33. **Office of the LGU legislative body**
Isabela, Negros Occidental
34. **Office of the Municipal Mayor**
La Castellana, Negros Occidental
35. **Office of the LGU legislative body**
La Castellana, Negros Occidental
36. **Office of the Municipal Mayor**
Moises Padilla (Magallon), Negros Occidental
37. **Office of the LGU legislative body**
Moises Padilla (Magallon), Negros Occidental
38. **Office of the Municipal Mayor**
Candoni, Negros Occidental
39. **Office of the LGU legislative body**
Candoni, Negros Occidental
40. **Office of the Municipal Mayor**
Cauayan, Negros Occidental
41. **Office of the LGU legislative body**
Cauayan, Negros Occidental
42. **Office of the Municipal Mayor**
Hinoba-an, Negros Occidental
43. **Office of the LGU legislative body**
Hinoba-an, Negros Occidental
44. **Office of the Municipal Mayor**
Ilog, Negros Occidental
45. **Office of the LGU legislative body**
Ilog, Negros Occidental
46. **Office of the City Mayor**
Iloilo City
47. **Office of the LGU legislative body**
Iloilo City
48. **Regulatory Operations Service**
17th Flr., Energy Regulatory Commission,
Pacific Center Bldg., San Miguel Ave.,
Ortigas Center, Pasig City

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