

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



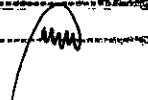
**IN THE MATTER OF THE APPLICATION FOR APPROVAL OF THE ENERGY SUPPLY CONTRACT (ESC) ENTERED INTO BY AND BETWEEN ISABELA I ELECTRIC COOPERATIVE, INCORPORATED (ISELCO I) AND SAN MIGUEL ENERGY CORPORATION (SMEC), WITH PRAYER FOR PROVISIONAL AUTHORITY,**

**ERC CASE NO. 2011-113 RC**

**ISABELA I ELECTRIC COOPERATIVE, INC. (ISELCO I) AND SAN MIGUEL ENERGY CORPORATION (SMEC),**

**Applicants.**

X ----- X

DOCKETED  
Date: JUN 21 2018  
By: 

**ORDER**

Before this Commission for resolution is the *Motion for Reconsideration* dated 10 November 2015 (Motion) filed by Applicant San Miguel Energy Corporation (SMEC) on 11 November 2015 relative to the *Decision* dated 17 August 2015 issued by the Commission under the instant case.

**FACTS**

On 10 August 2011, Applicants Isabela I Electric Cooperative, Inc. (ISELCO I) and SMEC filed the instant *Application* dated 06 May 2011 for the approval of their Energy Supply Contract (ESC), with prayer for provisional authority.

On 17 August 2015, the Commission issued a *Decision*, the dispositive portion of which reads:

**WHEREFORE**, the foregoing premises considered, the provisional authority granted to Isabela I Electric Cooperative,



Incorporated (ISELCO I) and San Miguel Energy Corporation (SMEC) on October 17, 2011 in relation to this application, is hereby made **PERMANENT**, subject to the following modifications:

1. The applicable base rates shall be the Time-of-Use (TOU) rates provided under the ESC, which shall be adjusted in accordance with the Adjustment Formula stated therein; and
2. SMEC's actual cost of operation and construction shall be audited by an Independent Third Party, in accordance with the rules to be promulgated by the Commission, and the approved rates herein shall be adjusted, if warranted. The test of reasonability shall be "whether or not such cost is incurred based on a good utility practice and comparable or within the level of the power plants similarly situated to that of SMEC" and NOT the actual cost incurred. The cost of audit shall be shouldered by SMEC.

The Commission further **RESOLVES** to:

1. **MODIFY** the provision of the ESC under Section 4.3.a (Customer is not a Direct WESM Member), so that: "In the event that the SUPPLIER provided electricity in excess of one hundred twenty percent (120%) of the contracted energy to the CUSTOMER, the basic energy rate shall be the actual cost incurred by the SUPPLIER in providing such additional energy. For electricity purchased beyond the contracted energy but within one hundred twenty percent (120%) thereof, the rate shall be the approved basic energy rate";
2. **DIRECT** ISELCO I and SMEC to **SUBMIT**, within thirty (30) days from receipt hereof, their proposed refund or recovery scheme, as the case may be, for the difference between the final approved rates and the provisionally implemented rates; and
3. **DIRECT** ISELCO I to **PASS ON** to its member-consumers fifty percent (50%) of the Prompt Payment Discount (PPD) availed from SMEC and fifty percent (50%) of the Collection Efficiency Discount (CED) granted to it.

On 11 November 2015, SMEC filed the instant *Motion*, praying that:

1. The Decision dated August 17, 2015 be reconsidered insofar as the modification of Section 4.3.a is concerned, and that the original provision be approved as implemented by the parties;
2. Grant SMEC an additional period of thirty (3) calendar days or until December 29, 2015 within which effect a reconciliation of power bills with ISELCO I, and to submit its compliance with the directive of the Honorable Commission.

SMEC prays for other just and equitable relief.

DISCUSSION

**Evaluation of the Non-Rate  
Provision of the ESC**

The Commission modified Section 4.3.a of the ESC and required SMEC to charge the approved basic energy charge for power in excess of the contracted energy within 120% of the contract energy, as discussed in the dispositive portion:

The Commission further **RESOLVES** to:

- 1) **MODIFY** the provision of the ESC under the Section 4.3.a (Customer is not a Direct WESM Member), so that: "In the event that the SUPPLIER provided electricity in excess of the 120% of the contracted energy to the CUSTOMER, the basic energy rate shall be the actual cost incurred by the SUPPLIER in providing such additional energy. For the electricity procured beyond the contracted energy but within 120% thereof, the rate shall be the approved basic energy rate.

The above provision applies only to SMEC's customers who are not Direct Wholesale Electricity Spot Market (WESM) Members. If the DU is a Direct WESM Member, any energy in excess of 100% of its contracted energy is purchased by the DU from the WESM and was not supplied by SMEC.

If the DU is not a Direct WESM Member, SMEC's obligation to supply is limited to 100% of the Contract Energy only. However, to address any imbalance caused by the variation of those that are not Direct WESM Members, SMEC is responsible for sourcing energy to address any consumption above the Contract Energy. Thus, in the event of overconsumption, Section 4.3.a of the ESC applies, which provides:

Whenever available, in accordance with good utility practice, the SUPPLIER may, but shall not be obliged to provide electricity to the CUSTOMER in excess of the Contract Energy provided that the CUSTOMER shall pay the appropriate Default Wholesale Supply Arrangement (DWSA) charges for consumption in excess of one hundred twenty percent (120%) of the contract energy level. (Emphasis Supplied)

SMEC alleged that the afore-quoted provision should not be interpreted to mean that it is obligated to supply up to 120% of the Contracted Energy to ISELCO I. Section 4.3.a of the ESC is clear that SMEC may, but without any obligation, provide electricity in excess of the Contract Energy only when there is available capacity from the plant.

The Commission recognizes that the ESC only contemplates the Contract Energy. Thus, the energy over and above the Contract Energy is not covered by the ESC, and therefore, subject to a different pricing. SMEC determines the Contract Energy based on the available capacity of the plant and the needs of its other customers. Therefore, SMEC can only supply additional energy if there is available capacity, which was not nominated by its other customers. However, if during the supply period under the ESC, there was no available capacity from the plant to supply any additional energy for ISELCO I, SMEC will be constrained to purchase replacement power from WESM.

This additional energy, if sourced from WESM, should be billed at the applicable WESM price. Further, if the additional energy exceeds 120% of the Contract Energy, there is an additional DWSA Charge as required by the then DWSA Rules. Any energy over and above the Contract Energy is billed at the cost of purchase price since there is no available capacity from the Sual Power Plant. This is the understanding between SMEC and the Indirect WESM Members when they signed the ESC.

Further, if SMEC will be required to price the additional energy at the basic energy charge based on the ESC, SMEC would be subsidizing ISELCO I's over consumption, and in effect, penalize SMEC for the imbalances caused by ISELCO I as an Indirect WESM Member.

Hence, the Commission finds merit on the Motion. Section 4.3.a of the ESC is hereby reconsidered.

**WHEREFORE**, the foregoing premises considered, the instant *Motion* is granted. Section 4.3.a (Customer is Not a Direct WESM Member) of the subject ESC is hereby reconsidered.

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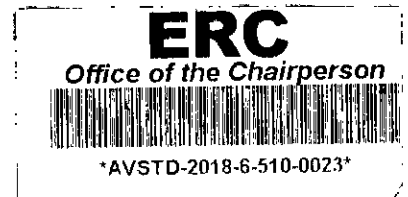


**ACCORDINGLY**, Applicants are hereby directed to comply with the Commission's directive pursuant to the *Decision* dated 17 August 2015.

**SO ORDERED.**

Pasig City, 29 May 2018.

  
**AGNES VST DEVANADERA**  
*Chairperson and CEO*



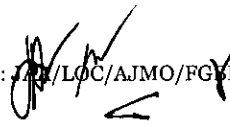
  
**ALFREDO J. NON**  
*Commissioner*

  
**GLORIA VICTORIA C. YAP-TARUC**  
*Commissioner*

  
**JOSEFINA PATRICIANA MAGPALE-ASIRIT**  
*Commissioner*

  
**GERONIMO D. STA. ANA**  
*Commissioner*

LS:  KJP/LSE/ARG/APV

ROS:  JAL/LOC/AJMO/FGED

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8. Office of the City Mayor  
Cauayan City, Isabela
9. Office of the City Mayor  
Santiago City, Isabela



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10. Office of the Municipal Mayor  
Alicia, Isabela
11. Office of the Municipal Mayor  
Angadanan, Isabela
12. Office of the Municipal Mayor  
Cabatuan, Isabela
13. Office of the Municipal Mayor  
Cordon, Isabela
14. Office of the Municipal Mayor  
Echague, Isabela
15. Office of the Municipal Mayor  
Jones, Isabela
16. Office of the Municipal Mayor  
Luna, Isabela
17. Office of the Municipal Mayor  
Ramon, Isabela
18. Office of the Municipal Mayor  
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19. Office of the Municipal Mayor  
San Agustin, Isabela
20. Office of the Municipal Mayor  
San Guillermo, Isabela
21. Office of the Municipal Mayor  
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