

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



**IN THE MATTER OF THE
APPLICATION FOR APPROVAL
OF THE POWER SUPPLY
AGREEMENT (PSA) BETWEEN
FIRST BUKIDNON ELECTRIC
COOPERATIVE, INCORPORATED
(FIBECO) AND BUKIDNON
POWER CORPORATION (BPC),
WITH MOTIONS FOR ISSUANCE
OF PROVISIONAL AUTHORITY
AND CONFIDENTIAL
TREATMENT OF INFORMATION**

ERC CASE NO. 2015 -099 RC

**FIRST BUKIDNON ELECTRIC
COOPERATIVE, INCORPORATED
(FIBECO) AND BUKIDNON
POWER CORPORATION (BPC),
Applicants.**

DUCKETED
Date: **JUN 18 2015**
By: *[Signature]*

X ----- X

ORDER

On May 19, 2015, First Bukidnon Electric Cooperative, Incorporated (FIBECO) and Bukidnon Power Corporation (BPC) filed an application for approval of their Power Supply Agreement (PSA), with motions for issuance of provisional authority and confidential treatment of information.

In the said application, FIBECO and BPC alleged, among others, that:

The Applicants

1. FIBECO is a non-stock, non-profit electric cooperative, organized and existing under and by virtue of Presidential Decree No. 269, as amended, otherwise known as the National Electrification Administration (NEA) Decree, with principal office address at Anahawon, Maramag,

Bukidnon. It operates an electric light and power distribution service in the Municipalities of Don Carlos, Kalilangan, Kibawe, Kitaotao, Maramag, Pangantucan, San Fernando, Quezon, Danggagan, Damulog, Kadingilan, and the City of Valencia, all in the Province of Bukidnon, and the Municipality of Wao in the Province of Lanao del Sur. Copies of its Certificate of Franchise, and Articles of Incorporation and By-Laws are attached to the application;

2. BPC is a stock corporation duly organized and existing under the laws of the Republic of the Philippines with principal address at National Highway, Barangay Barandias, Municipality of Pangantucan, Province of Bukidnon. Copies of its Certificate of Registration, Articles of Incorporation, By-Laws and latest General Information Sheet (GIS) are, likewise, attached to the application;

It is joining FIBECO as co-applicant in this case for approval of the terms and conditions provided in their PSA;

Nature of the Application

3. Pursuant to Rule 20 (B) of the Commission's Rules of Practice and Procedure (ERC Rules), and other pertinent rules and regulations, this application is being submitted to the Commission for its due consideration and approval of their PSA. A copy of the said PSA is attached to the application;

Statement of the Facts

4. FIBECO currently sources the bulk of its electricity requirements from the Power Sector Assets and Liabilities Management Corporation (PSALM) and the remainder from King Energy Generation, Incorporated (KEGI) and Crystal Sugar Company, Incorporated (CSCI);

- 4.1 On August 26, 2005, PSALM and FIBECO executed a Contract for the Supply of Electric Energy (CSEE) to be in force for a period of ten (10) years. The said CSEE will expire on August 26, 2015. PSALM has also confirmed that it has insufficient capacity to supply the additional power requirements of the Mindanao distribution utilities beyond the contracted energy and equivalent demand in its existing CSEEs; and
 - 4.2 To avoid power curtailment, FIBECO entered into: (a) a PSA with KEGI for 3 MW for a term of ten (10) years from 2011-2021; and (b) a non-firm power supply agreement with CSCI for an average power of 4 MW from September 6, 2010 until such time that CSCI's facility becomes a Feed-In Tariff (FIT)-eligible renewable energy plant;
5. FIBECO's load requirement at present is, on average, 31.54 MW on a monthly basis. With 24.3 MW supplied under the PSALM CSEE and the PSAs with KEGI and CSCI providing the remaining demand, it currently has a supply deficiency of 2 MW to 5 MW on a monthly basis resulting in rotating brown-outs in its franchise area. This deficiency in supply persists in the entire Island of Mindanao and has been recognized by the Department of Energy (DOE), prompting the latter to issue various Department Circulars to address the critical supply situation in Mindanao including DC2010-03-0003 and DC2012-03-0004 which call for distribution utilities to ensure that the power requirements within their franchise areas are adequately covered by supply contracts;
6. In addition to the supply deficiency to meet the current demand in FIBECO's franchise area, the energy requirement of its member-consumers is expected to increase in the next few years as demonstrated by its Actual and Forecasted Load Data and Distribution Development Plan (DDPC), copies of which are, likewise, attached to the application;
7. The expiration of the PSALM CSEE in 2015 coupled with the projected increase in FIBECO's energy requirements are expected to intensify this existing shortage of the energy available to its member-consumers;

8. The current power crisis in Mindanao underscores the need for FIBECO to enter into a bilateral agreement with generation companies with other sources of power to augment its supply;
9. Cognizant of the impending shortfall, by 2010 FIBECO began searching for additional sources of power and had discussions with various generation companies. Thus sometime in 2014, they began exploratory discussions on the possibility of BPC addressing FIBECO's energy shortage;
10. By late 2014, and after BPC had secured its Environmental Compliance Certificate (ECC) from the Department of Environment and Natural Resources (DENR), FIBECO finalized its negotiations with the former for the execution of their PSA;
11. The execution of the said PSA is attractive to FIBECO for the following reasons:
 - 11.1 BPC is committed to construct a 4.8 MW Diesel/Bunker Fuel Power Plant located in the Municipality of Pangantucan, Bukidnon (Facility);
 - 11.2 The Facility will address the impending energy shortage faced by FIBECO and its franchise area brought about by the nearing expiration of the PSALM CSEE and the expected increase in the energy requirements of its member-consumers; and
 - 11.3 BPC has committed to build the Facility in the shortest possible period and, in fact, has already ordered the two (2) diesel engine generators from its supplier;
12. On October 16, 2014, they signed and executed the PSA subject of the instant application. A copy of the Board Resolution attesting to the authority of FIBECO and its authorized representatives to enter into the PSA with BPC is attached to the application;

Abstract of the PSA and Other Relevant Information

13. In order to supply power to FIBECO under the PSA, BPC shall construct, own, operate, manage and maintain a 4.8 MW Diesel/Bunker Fuel Power Plant;
14. **Salient Features of the PSA.** Their PSA contains the following salient terms and conditions:
 - 14.1 **Term.** The PSA has a term or contract period of fifteen (15) years commencing from Closing Date, renewable for another fifteen (15) years, upon mutual agreement of the parties. The term shall, likewise, be extended, day for day, for the duration of any Force Majeure Event;
 - 14.1.1 The Closing Date shall be on March 15, 2015 or on such date after March 15 2015, as may be provided by BPC under the pertinent terms of the PSA, when all of the following conditions precedent have been achieved: (a) receipt by BPC of a certificate executed by the corporate secretary of FIBECO attesting that the Board of Directors of FIBECO has adopted resolutions: (i) authorizing FIBECO to execute, enter into, deliver the PSA and the performance of its obligations thereunder; and (ii) designating the person authorized to execute the PSA on behalf of FIBECO; (b) FIBECO's submission of the Security Deposit to BPC; (c) receipt by BPC of all permits, license, and other requirements necessary for the operation of the Facility; (d) approval by the Commission of the PSA, including the pricing structure set out therein with the grant of any provisional authority being considered as satisfaction of this condition; and issuance by the Commission of a Certificate of Compliance (COC) in favour of BPC; and

14.1.2 All of such conditions precedent have either been achieved or are in the process of being finalized except for the provisional or final approval by the Commission of the PSA;

14.2 **Contract Energy.** BPC offers all electricity generated exclusively to FIBECO and the latter shall take and pay for all electricity generated by the Facility. The said Facility is expected to produce up to 4400 kW; and

14.3 **Commercial Operations.** During the term of the PSA, fees for each Billing Period shall be calculated using a fixed rate as indicated below. The Contract Energy Fee (CEF) for every month is projected to be PhP5.4834/kWh subject to the escalation factors:

14.3.1 **Electricity Rates.**

Capacity Fee (CF) = PhP675/kW/month
Fixed O&M (FOM) = PhP287/kW/month
Billing Capacity (BC) = 4,400 kW

14.3.2 **Contract Energy Fee per Month.**

$$\text{CEF} = \text{CF} \times \text{BC} + (\text{FOM} \times \text{IFf} \times \text{BC}) + (\text{VOM} \times \text{IFv} \times \text{ED}) + (\text{FL} \times \text{ED})$$

Where:

BC = Billing Capacity
CEF = Contract Energy Fee in PhP
CF = Capacity Fee in PhP/kW/Month
ED = Energy Delivered in kWh
FOM = Fixed O&M fee in PhP/kW/month
FL = Fuel and Lube Oil
IFf = Inflation Factor Fixed
IFv = Inflation Factor Variable
VOM = Variable Charge per Month in PhP/kW

14.3.3 Computation of Power Purchased.

GENSET INPUT

General Terminal Output at site conditions (kW/unit)	=	2200
Number of units installed	=	2
Generator Total Output at site condition in kW	=	4400
SLOC, Plant HFP (1/kWh)	=	0.25

PLANT OPERATION OUTPUT

Capacity Factor	=	90%
Hours/Day	=	8
Days/year	=	350
Total	=	2800 hours
Average Demand	=	4400 kW
Energy Consumption per Year	=	12,320,000 kWh/year
Energy Consumption per Month	=	1,026,666.67

CONTRACT ENERGY FEES

$$\text{CEF} = \text{CF} \times \text{BC} + (\text{FOM} \times \text{IFf} \times \text{BC}) + (\text{VOM} \times \text{IFv} \times \text{ED}) + (\text{FL} \times \text{ED})$$

Capacity Fee (CF)	=	PhP675/kW/month
Billing Capacity (BC)	=	4,400 kW
	=	PhP2,971,277/month
	=	PhP2.894/kWh
Fixed O&M (FOM)	=	PhP287/kW/month
	=	PhP1,262,500/month
	=	PhP1.230/kWh
Inflation Factor Fixed (IFf)	=	1
Variable O&M (VOM)	=	PhP1.3596 /kWh
Inflation Factor Variable (IFv)	=	1

Energy Delivered = 1,026,667 kWh
 = PhP1,395,833/month
 = PhP1.360/kWh

Total Contract Energy Fee¹ = PhP5,629,610/month
 = PhP5.4834/kWh

15. **Rate Implication.** An analysis was conducted to determine the impact of the implementation of the PSA on FIBECO's generation costs when the Facility commences commercial operation in 2015 vis-à-vis FIBECO procuring power from other sources. A detailed discussion of the rate impact analysis and its Forecasted Power Supply are, likewise, attached to the application, and a summary of which is illustrated in the following table:

Particulars	Without BPC	With BPC	Difference
Year	PhP/kWh	PhP/kWh	PhP/kWh
2014	3.5396		
2015	6.6259	6.3033	0.3227
2016	6.8301	6.5275	0.3026
2017	6.9677	6.6616	0.3060
2018	7.0492	6.7598	0.2894

The expected average increase in FIBECO's generation rate with the supply from BPC is **PhP0.2730 PhP/kWh**. This is based on the following assumptions:

- 15.1 The Expiration of, or reduced supply from, the PSALM CSEE by 2015;
- 15.2 Without BPC, FIBECO will source supply from the Interim Mindanao Electricity Market (IMEM) and/or available diesel power plants;
- 15.3 The average rate impact is computed based on forecasted sales for the relevant period, which takes into account the increase in demand in FIBECO's franchise area; and

¹ Excluding Fuel Cost as it is a pass-on to member-consumers

- 15.4 The average rate impact is computed based on the assumption that additional power from FDC Misamis Power Corporation's coal-fired power plant will begin commercial operations in 2017;
16. The benefits that will redound to FIBECO's member-consumers are immediate and tangible due to the significant decrease in rotating brownouts in the franchise area, which will improve the living conditions of residential customers and bolster the local economy as well as attract additional investments in the area;
17. In support of the instant application, they are providing the Commission with the following documents, in addition to the attachments specified above:

Description of Document	Annex
BPC's Sources of Funds/Financial Plans	K and K-1
Summary of BPC's Project Cost	L
BPC's cash flow	M
Basis for purchased power rate	N and N-1
Soft copy of financial model of project	O
BPC's Fuel Supply Agreement	P and P-1
Technical Description of the Plant	Q
BPC Environmental Compliance Certificate	R
Sworn Statement of Procurement Process	S
DOE Certificate of Endorsement	T

18. **COC.** Pursuant to ERC Resolution No. 9, Series of 2010, BPC shall file the necessary application for a COC no later than three (3) months prior to the commencement of commercial operations;

Motions for Provisional Authority and Confidential Treatment of Information

19. They move for the issuance of a provisional approval of the PSA pending trial on the merits thereof, upon the following reasons:

- 19.1 **Mindanao Power Crisis.** The power shortage in Mindanao has remained a critical problem for FIBECO which continues to suffer rotating brownouts. A bilateral agreement, such as the PSA, will significantly aid it in minimizing or even eliminating the rotating brownouts in its franchise area, which has had a debilitating impact upon the local economy. The said PSA is also among the measures taken by FIBECO to comply with the DOE's directives under DC2010-03-0003 and DC2012-03-0004 which call for distribution utilities to ensure that the power requirements within their franchise areas are adequately covered by supply contracts;
- 19.2 **Insufficiency of PSALM's Supply.** The insufficient capacity under the PSALM CSEE makes imperative an additional influx of bilateral supply to answer for the supply deficiency, lest FIBECO be compelled to resort to the unpredictable and expectedly higher prices in the IMEM or, worse, be curtailed for insufficient contracted capacity. They request the Commission to take official notice of PSALM's Electric Power Industry Reform Act (EPIRA)-mandated efforts to privatize the assets of the National Power Corporation (NPC) in Mindanao, including the ongoing privatization activity for the Mt. Apo geothermal facilities, which are providing significant capacities to NPC and the privatization of which is expected to accelerate the reduction of PSALM's supply to FIBECO under the CSEE; and
- 19.3 **Continuing demand Growth.** As illustrated in its DDP, FIBECO is expecting a growth in the total demand of its end-users so that, coupled with insufficiency of the PSALM capacity, there is a wide supply gap that urgently needs to be filled. Without its PSA with BPC, FIBECO will be incapable of satisfying the electricity requirements of its member-consumers who must be forced to suffer brownouts resulting from its curtailment;

20. In view of the foregoing, they request the Commission for the provisional approval of the PSA so that the obligation of BPC to supply energy therein may commence, which will enable the said PSA to achieve Commercial Operation Date by 2015 when FIBECO's supply gap becomes critical. This will minimize and possibly avoid the power interruptions which have caused irreversible losses upon the economic productivity within FIBECO's franchise area. An affidavit in support of the prayer for the issuance of provisional authority is attached to the application;
21. Furthermore, considering that under Article 8 of the PSA, each party undertook to keep in strict confidence and not disclose to any third party the terms or conditions of the said PSA and all confidential Information of the other party, they have agreed which information, in particular, they deem sensitive considering that these documents contain certain non-public information, data and calculations involving business operations and financial trade secrets reflecting BPC's investment and business strategy;
22. Thus, for the foregoing reasons, pursuant to Rule 4 of the ERC Rules, which provides that the Commission may, upon request of a party and determination of the existence of conditions that warrant such remedy, treat certain information submitted to it as confidential, they move that **Annexes "K", "K-1," "L", "M", "N," "N-1," "O," "P" and "P-1"** not be disclosed and be treated as confidential documents;
23. They submit one (1) copy of **Annexes "K", "K-1," "L", "M", "N," "N-1," "O," "P" and "P-1"** in a sealed envelope, with the envelope and each page of the documents stamped with the word "*Confidential*"; and

Prayer

24. Thus, they pray, that the Commission:

- 24.1 Issue an Order treating Annexes “K”, “K-1,” “L”, “M”, “N,” “N-1,” “O,” “P” and “P-1” and the information contained therein as confidential and directing their non-disclosure pursuant to Rule 4 of the ERC Rules of Practice and Procedure as well as prescribing guidelines for the protection thereof;
- 24.2 Pending trial on the merits, provisionally approve the PSA; and
- 24.3 After trial on the merits, approve, with finality, the said.

Finding the said application to be sufficient in form and substance with the required fees having been paid, the same is hereby set for jurisdictional hearing, expository presentation, pre-trial conference and evidentiary hearing on **July 24, 2015 (Friday) at nine o'clock in the morning (9:00 A.M.) at FIBECO's Main Office, Anahawon, Maramag, Bukidnon.**

FIBECO and BPC are hereby directed to cause the publication of the attached Notice of Public Hearing, at their own expense, twice (2x) for two (2) successive weeks in two (2) newspapers of general circulation in the Philippines, with the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial hearing. They are also directed to inform the customers within FIBECO's franchise area, by any other means available and appropriate, of the filing of the instant application, their reasons therefor, and of the scheduled hearing thereon.

Let copies of the application, this Order, and the attached Notice of Public Hearing be furnished 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.

Likewise, let copies of this Order and the attached Notice of Public Hearing be furnished the Offices of the Mayors of the City and Municipalities within FIBECO's franchise area and the Provincial Governors of Bukidnon and Lanao del Sur for the appropriate posting thereof on their respective bulletin boards.

FIBECO and BPC are hereby directed to furnish all those making requests therefor with copies of the application and its attachments, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing, FIBECO and BPC must submit to the Commission their written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidences of the actual posting and publication of the Notice of Public Hearing consisting of certifications issued to that effect, signed by the afore-mentioned Mayors and Governors or their duly authorized representatives, bearing the seals of their offices, and the affidavits of the Editors or Business Managers of the newspapers where said Notice of Public Hearing were published together with the complete issues of the said newspapers, and such other proofs of compliance with the requirements of the Commission.

FIBECO and BPC and all interested parties are directed to submit, at least five (5) days before the date of initial hearing and pre-trial conference, their respective Pre-Trial Briefs containing, among others:

- (a) A summary of admitted facts and proposed stipulation of facts;
- (b) The issues to be tried or resolved;
- (c) The documents or exhibits to be presented, stating the purposes thereof and proposed markings therefore; and
- (d) The number and names of the witnesses, with their written testimonies in an individual affidavit form, to be attached to the Pre-Trial Brief.


Failure of FIBECO and BPC to submit the required Pre-Trial Brief and Judicial Affidavits of their witnesses 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 said date of cancellation.

As part of the pre-trial conference, FIBECO and BPC must also be prepared to make an expository presentation of their 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 member-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, June 15, 2015.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ZENAIDA G. CRUZ-DUCUT
Chairperson *per 4*

Copy Furnished:

1. **Atty. Arnido O. Inumberable**
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2. **Puyat Jacinto and Santos**
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6772 Ayala Avenue, Makati City
3. **First Bukidnon Electric Cooperative, Inc. (FIBECO)**
Anahawon, Maramag, Bukidnon
4. **Bukidnon Power Corporation (BPC)**
National Highway, Barangay Barandias,
Pangantucan, Bukidnon
5. **Office of the Solicitor General (OSG)**
134 Amorsolo Street, Legaspi Village,
City of Makati 1229
6. **Commission on Audit (COA)**
Commonwealth Avenue,
Quezon City 1121
7. **Senate Committee on Energy**
GSIS Building, Roxas Boulevard,
Pasay City 1300
8. **House of Representatives Committee on Energy**
Batasan Hills, Quezon City 1126
9. **Office of the Municipal Mayor**
Maramag, Bukidnon
10. **Office of the Municipal Mayor**
Quezon , Bukidnon
11. **Office of the Municipal Mayor**
Don Carlos, Bukidnon
12. **Office of the Municipal Mayor**
Kitaotao, Bukidnon

13. **Office of the Municipal Mayor**
Dangcagan, Bukidnon
14. **Office of the Municipal Mayor**
Kibawe, Bukidnon
15. **Office of the Municipal Mayor**
Damulog, Bukidnon
16. **Office of the Municipal Mayor**
Kadingilan, Bukidnon
17. **Office of the Municipal Mayor**
Kalilangan, Bukidnon
18. **Office of the Municipal Mayor**
Pangantucan, Bukidnon
19. **Office of the City Mayor**
City of Valencia, Bukidnon
20. **Office of the Municipal Mayor**
San Fernando, Bukidnon
21. **Office of the Municipal Mayor**
Wao, Lanao del Sur
22. **Office of the Governor**
Province of Bukidnon
23. **Office of the Governor**
Province of Lanao del Sur
24. **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