

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



**IN THE MATTER OF THE  
APPLICATION FOR APPROVAL  
OF THE INTERIM POWER SUPPLY  
AGREEMENT BETWEEN CLARK  
ELECTRIC DISTRIBUTION  
CORPORATION (CEDC) AND 1590  
ENERGY CORPORATION  
(1590EC)**

**ERC CASE NO. 2015-140 RC**

**CLARK ELECTRIC DISTRIBUTION  
CORPORATION (CEDC) AND 1590  
ENERGY CORPORATION  
(1590EC),**

**Applicants.**

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**DOCKETED**  
Date: AUG 25 2015

**ORDER**

On July 27, 2015, Clark Electric Distribution Corporation (CEDC) and 1590 Energy Corporation (1590EC) filed a joint application for the approval of their Interim Power Supply Agreement (IPSA), as amended by Amendment No. 1, with prayer for the issuance of provisional authority.

In the said application, CEDC and 1590EC alleged, among others, the following:

1. CEDC is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at Bldg. N2830, Bayanihan Street, Clark Freeport Zone, Pampanga;
2. 1590EC is a corporation duly organized and existing under the laws of the Republic of the Philippines with office address at 107 Midland Condominium, Gamboa Street, Legaspi Village, Makati City. It operates and manages the

- energy output of the 215 MW bunker oil-fired diesel engine power plant located at Bauang, La Union;
3. CEDC's primary source of its electricity requirements is the 1,200 MW coal-fired thermal power plant being managed and controlled by San Miguel Electric Corporation (SMEC) located in Sual, Pangasinan;
  4. In view of the scheduled outage of the Sual Power Plant from August 8, 2015 to September 6, 2015, there is a need for CEDC to source the corresponding deficiency from an interim bilateral supply agreement, to mitigate exposure to the Wholesale Electricity Spot Market (WESM) for said period;
  5. Under Section 45 (b) of Republic Act No. 9136 (R.A. 9136), distribution utilities (DUs) may enter into bilateral power supply contracts subject to review by the Commission;
  6. As such, on July 9, 2015, CEDC executed an IPSA with 1590EC for the purchase of up to 30 MW capacity and associated energy output from the Bauang Power Plant;
  7. The salient features of the IPSA are as follows:

**"Article 1 Term and Effectivity**

**1.1 Term of Agreement**

1.1.1 This Agreement shall become effective on August 8, 2015 ("Commencement Date") and shall expire on September 6, 2015, unless terminated earlier in accordance with the terms of this Agreement or extended by the Parties ("Term").

1.1.2 Parties may extend the Term of the Agreement. Unless otherwise agreed upon by the Parties, the terms and conditions of this Agreement shall continue to apply during any extension of the Term.

**1.2 ERC Approval**

1.2.1 Within five (5) days after the date of this Agreement, CEDC and Power Supplier shall

file a joint application with the Energy Regulatory Commission ("ERC") for the approval of this Agreement (including the Contract Price) ("ERC Application"). Both parties shall only seek a Final Approval ("FA") of this Agreement with the ERC.

1.2.2 If the ERC, in its FA, requires an amendment of any provision herein or authorizes a Contract Price that the Power Supplier finds to be unviable, the Parties shall re-negotiate the terms of this Agreement and/or the Contract Price within five (5) days from knowledge of the FA. If the Parties are unable to arrive at mutually acceptable renegotiated terms and/or Contract Price, Power Supplier may terminate the Agreement pursuant to Article 8.2. Thereafter, the Parties shall be absolved of their rights and obligations hereunder.

## **Article 2. Sale and Purchase of Contract Capacity and Associated Energy**

### **2.1 Supply of Power**

Subject to the terms and conditions of this Agreement:

2.1.1 Immediately upon issuance of the FA by the ERC, subject to Article 1.2.2 above, Power Supplier shall make available, sell and deliver to CEDC, and CEDC shall purchase from Power Supplier the Contract Capacity and Associated Energy at the Contract Price determined in accordance with Appendix A.

2.1.2 Power Supplier shall not, without CEDC's prior written consent, sell, divert, transfer, dedicate, reserve or assign all or any portion of the Contract Capacity and Associated Energy to any person other than CEDC.

2.1.3 Power Supplier shall not be entitled to any planned/scheduled or forced outage allowances. In case of any such outage, Power Supplier shall procure replacement capacity and/or energy, and

CEDC shall purchase the same at the Contract Price.

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#### **Article 4. Billing and Payment**

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##### **4.2 Payments**

4.2.1 Provided that CEDC receives the Final Invoice within the time set forth in Section 4.1.5, each Final Invoice shall be due and payable not later than 3:00 p.m. Philippine Time, in immediately available funds on or before the twenty-fifth (25<sup>th</sup>) day of the calendar month following the month in which the end of the Billing Period for such Final Invoice relates ("Payment Date"); provided that CEDC shall not be required to make payment on any Final Invoice that is manifestly in error, apparently invalid or not in the form or substance contemplated by this Agreement.

4.2.2 If CEDC disputes all or any portion of a Final Invoice for a reason other than a manifest error in, or the patent invalidity or incorrect form or substance of, such Final Invoice, CEDC shall, nonetheless, pay the full amount of such Invoice. Any payment by CEDC under this Section is without prejudice to CEDC's right at a later date to dispute, protest or question any amount so paid.

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#### **Article 5. Taxes, Fees and Costs**

##### **5.1 Responsibility for Taxes, Fees and Costs**

5.1.1 Power Supplier shall be responsible for and shall make timely payment of the following amounts:

(a) WESM Costs – Power Supplier;

(b) Benefits to Host Communities Charges; and

(c) VAT on the foregoing amounts, if any.

Power Supplier shall also be liable for the payment of all other existing taxes, fees, charges and costs (including penalties) arising from this Agreement that properly pertain to the business of Power Supplier.

5.1.2 CEDC shall be responsible for and shall make payment of the following amounts in connection with the purchase of Contract Capacity and Associated Energy:

(a) VAT on Contract Capacity and Associated Energy in accordance with Bureau of Internal Revenue ("BIR") Revenue Memorandum Circular No. 61-2005 and ERC Resolution No. 20-2005, except in respect of any portion thereof that applies to VAT zero-rated and VAT-exempt customers of CEDC;

(b) WESM line rental charges for the transmission of Associated Energy from the Plant to the delivery point; and

(c) National Grid Corporation of the Philippines Charges.

Notwithstanding this Section, CEDC shall, at all times, be liable for payment of all other existing taxes, fees, charges and costs (including penalties) arising from this Agreement that properly pertain to the business of CEDC.

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## **Article 8. Termination**

8.1 Either Party shall have the right to terminate this Agreement by serving thirty (30)-day advance written notice to the other due to violation of any of the provisions hereof or any of the grounds provided for herein; Provided, that the termination under this Section shall not prejudice the right of the aggrieved Party to seek reimbursement or indemnification from the Party at fault, for any damages or losses that may be incurred as a result of the termination.

8.2 This Agreement is deemed terminated if:

- (a) After forty (40) days from filing of the ERC Application, the ERC has not issued an ERC FA; or
- (b) The Parties fail to arrive at mutually acceptable renegotiated terms and/or Contract Price pursuant to Article 1.2.2 of this Agreement.

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Under the IPSA (Appendix A), estimated Contract Price would be PHP7.80 per kWh.

8. It should be noted that the Contract Price under the IPSA is the rate approved by the Commission in its Decision dated May 12, 2014 in ERC Case No. 2014-035 RC;
9. Accordingly, based on PhP780/kW-month Capacity Fee and Fixed O&M, PhP0.40/kWh Variable O&M, 0.2438 Fuel Heat Rate (HFO) and PhP17.71/liter HFO, the simulated delivered price under the IPSA for the period beginning August 8, 2015 to September 6, 2015 is PhP7.80/kWh;
10. For the duration of the IPSA, the simulated delivered price would result in cost savings in the generation rate of about PhP1.17/kWh compared with the June 2015 WESM price during Peak Periods of PhP8.97/kWh. Moreover, when compared with the historical average WESM price of PhP8.4178 per kWh during Peak Periods and outages of 1,000 MW and up, the savings of the consumers is PhP0.6178 per kWh;
11. However, if the IPSA between CEDC and 1590EC is not implemented from August 8, 2015 to September 6, 2015, the period during which the Sual Power Plant, CEDC's primary source of its electricity requirements, will be on scheduled outage, CEDC will be constrained to source from the WESM, where the historical price with a plant outage of 1,000 MW and up is PhP8.4178/kWh. This can increase further, considering the high volatility of WESM prices. Thus, it is essential and urgent that the instant application be approved in order to shield the end-users from the volatility of WESM prices;

12. There is a paramount urgency and necessity to implement the subject IPSA from August 8, 2015 to September 6, 2015 in order to ensure continuous and reliable electricity for CEDC's customers;

**OTHER RELATED DOCUMENTS**

13. In support of the instant application, they submitted to the Commission the following documents:

Annex	Nature of Documents
A	Interim Power Supply Agreement (IPSA) between CEDC and 1590EC dated July 9, 2015
B	1590EC Certificate of Incorporation
C	1590EC General Information Sheet
D	1590EC latest Audited Financial Statements
E	CEDC Actual and Forecasted Load Data
F	CEDC Rate Impact Analysis
G	CEDC Procurement Process
H	Other Documents - Supporting
I	Affidavit of Fortunato C. Leynes

14. They pray that after hearing on the merits, a Decision be immediately rendered by the Commission approving the IPSA.

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 **September 22, 2015 (Tuesday) at ten-thirty in the morning (10:30 A.M.) at the CEDC's Multi-Purpose Hall, Bldg. N2830, Bayanihan Street, Clark Freeport Zone, Pampanga.**

CEDC and 1590EC 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 consumers within CEDC'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 hearings.

Likewise, let copies of this Order and the attached Notice of Public Hearing be furnished the Office of the Administrator/Responsible Officer of the Clark Freeport Zone Authority (CFZA) for the appropriate posting thereof on its bulletin board.

CEDC and 1590EC 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 and pre-trial conference, CEDC and 1590EC must submit to the Commission their written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidences on the actual posting and publication of the Notice of Public Hearing consisting of certification issued to that effect, signed by the afore-mentioned Administrator/Responsible Officer or his duly authorized representative, bearing the seal of his office, and the affidavits of the Editors or Business Managers of the newspapers where the 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.

CEDC, 1590EC 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 CEDC and 1590EC to submit the required Pre-Trial Brief and Judicial Affidavits of its 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, CEDC and 1590EC 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 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, August 17, 2015.


FOR AND BY AUTHORITY  
OF THE COMMISSION:

  
**JOSE VICENTE B. SALAZAR**  
Chairman

**ERC**  
Office of the Chairman



H:2015-025-00050

  
2015-140 RC/CEDC and 1590 PSA Initial Order

**Copy Furnished:**

**1. Quiason Makalintal Barot Torres Ibarra and Sison Law Offices**

Attention: ATTYS. MANUEL M. TORRES and MIGUEL K. MATHAY  
Counsels for Applicant CEDC  
21<sup>st</sup> Floor, Robinsons-Equitable Tower,  
4 ADB Avenue corner Poveda Street,  
1605 Ortigas Center, Pasig City

**2. Atty. Julieta B. Estamo**

Counsel for SMEC  
23<sup>rd</sup> Floor, San Miguel Properties Centre  
No. 7 St. Francis Avenue  
Mandaluyong City

**3. The General Manager**

**Clark Electric Distribution Corporation (CEDC)**

Attention: MR. RADITO P. TUAZON  
Chief Operating Officer  
Building N2830 Bayanihan Street  
Clark Freeport Zone, Pampanga

**4. Commission on Audit**

Commonwealth Avenue  
Quezon City

**5. Senate Committee on Energy**

GSIS Building, Roxas Boulevard  
Pasay City

**6. House Committee on Energy**

Batasan Hills, Quezon City

**7. Office of the President of PCCI**

Philippine Chamber of Commerce and Industry (PCCI)  
3<sup>rd</sup> Floor, ECC Building, Sen. Gil Puyat Avenue  
Makati City

**8. Office of the Administrator/Responsible Officers**

Clark Freeport Zone  
Province of Pampanga