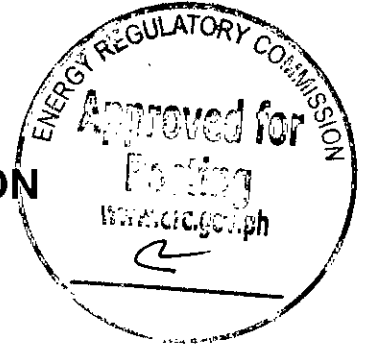


Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City



IN THE MATTER OF THE
APPLICATION FOR
APPROVAL OF THE AMENDED
POWER PURCHASE
AGREEMENT (PSA) ENTERED
INTO BY AND BETWEEN
AURORA ELECTRIC
COOPERATIVE, INC.
(AURELCO) AND ECO
MARKET SOLUTIONS, INC.,
WITH PRAYER FOR THE
ISSUANCE OF PROVISIONAL
AUTHORITY

ERC CASE NO. 2015-146 RC

AURORA ELECTRIC
COOPERATIVE, INC.
(AURELCO) AND ECO-
MARKET SOLUTIONS, INC.
(EMS),

Applicants.

X- -----X

DOCKETED
Date: AUG 27 2015

ORDER

On July 31, 2015, Aurora Electric Cooperative, Inc. (AURELCO) and Eco-Market Solutions, Inc. (EMS) filed a joint application for the approval of their Amended Power Supply Agreement (APSA), with prayer for the issuance of provisional authority.

In the said application, AURELCO and EMS alleged, among others, that:

1. AURELCO is a non-stock non-profit electric cooperative (EC) duly established and existing under and by virtue of the laws of the Republic of the Philippines, particularly under the provisions of Presidential Decree No. 269, as amended. It is registered with the National Electrification

Administration (NEA). It has its principal office at Barangay Reserva, Baler, Aurora;

2. It is the exclusive holder of a franchise issued by the NEA to operate electric light and power services in the Municipalities of Baler, Dipaculao, San Luis, Maria Aurora, Dinalungan, Casiguran, Dilasag and Dingalan, all in the Province of Aurora, the Municipality of Dinapigue in the Province of Isabela and the Municipality of General Nakar in the Province of Quezon;
3. EMS is a corporation duly organized and existing under Philippine laws, with principal office address at Cristina Condominium, Unit 501, 143 Legaspi Street, Makati City;

Compliance with Pre-Filing Requirements

4. In compliance with Rule 6 of the Commission's Rules of Practice and Procedure and in support of the instant application, a copy of the joint application (including annexes) was furnished to the respective legislative bodies of the Municipality of Baler, Aurora and the Province of Aurora, where AURELCO principally operates;
5. Likewise, a copy of the instant application (including annexes) was furnished to the respective legislative body of the city where EMS principally operates;
6. The entire joint application, excluding annexes, was published in a newspaper of general circulation within the franchise area of AURELCO;

Power Situation in AURELCO

7. The power supply of AURELCO is currently sourced from a) Masinloc Power Partners Company Limited (MPPCL) – 5.020 MW; b) San Luis Mini-Hydro Power Plant (SLMHPP) – 640 kW; c) NPC-SPUG – 2.156 MW;
8. Beginning September 19, 2014, the off-grid areas located within AURELCO's franchise area were connected to the transmission facilities of the National Grid Corporation of the Philippines (NGCP) through the 13.2 kV distribution lines of AURELCO;

9. Before such connection, AURELCO sourced its power to its off-grid areas, comprising of the Municipalities of Dinalungan, Casiguran, Dilasag in the Province of Aurora, and the Municipality of Dinapigue in the Province of Isabela (DiCaDiDi Area) from diesel generator sets owned by NPC-SPUG. The power sourced through NPC-SPUG was subsidized with the Subsidized/Approved Generation Rate (SAGR) of PhP6.7133/kWh for the cost of power provided by NPC-SPUG with the True Cost Generation Rate (TCGR) of NPC-SPUG in the area of about PhP32.99/kWh;
10. EMS and AURELCO entered into a Power Supply Agreement (PSA) dated December 3, 2012 to supply power to the DiCaDiDi Area. They filed an application for the approval of the said PSA in January 25, 2013. The Commission resolved the application in its Decision dated November 18, 2013. Said Decision provided that "EMS is authorized to recover the subsidy from the approved Universal Charge for Missionary Electrification (UCME) in accordance with the Guidelines for the Setting and Approval of Electricity Generation Rates and Subsidies for Missionary Electrification Areas;
11. Upon the connection of the DiCaDiDi Area to the Luzon Grid through the distribution lines of AURELCO, it cannot anymore avail of the subsidized rates to supply power to the DiCaDiDi Area;
12. In light of this development, the PSA dated December 3, 2012 between EMS and AURELCO has been affected. It should be noted that based on ERC Case No. 2013-013 RC, the EMS' approved generation rate is PhP11.4197/kWh, part of which was being subsidized from the UCME;
13. With the removal of the subsidy and following Article 18.2 (b) of the December 3, 2012 PSA, AURELCO and EMS have agreed to amend the PSA to adjust the generation rate to take into account the removal of the subsidy as well as the connected of the DiCaDiDi Area to the Luzon Grid, to wit:

"18.2 Full Grid Integration of DiCaDiDi Area

If and when the DiCaDiDi Area in Northern Aurora serviced by AURELCO is fully integrated to the Grid, the Parties agree as follows:

x x x

b) Within thirty (30) days of the occurrence of any of the events in the preceding Section 18.2 (a) above, the Parties shall meet to negotiate in good faith for an Offtaker Fee which shall be applicable from the date of full Grid Integration until the Termination Date, in lieu of the SAGR-based Offtaker Fee currently provided for in this Agreement (the "On-Grid Offtaker Fee"). The Parties agree to negotiate in good faith towards an On-Grid Offtaker Fee that represents a fair and reasonable electricity tariff for the Seller that will preserve its expected economic return from the project and allow the Power Plant to be operated sustainably for the remainder of the Term, and which On-Grid Offtaker Fee can be justified by the Buyer to the electricity consumers of AURELCO."

14. EMS and AURELCO entered into an APSA on November 21, 2014;
15. Based on the AURELCO's Demand and Energy Forecast for 2015-2024, its demand requirement is expected to grow every year, from 7.3 MW in 2015 to 23.4 MW in 2024;
16. Given its demand growth and in order to obtain a secure and adequate supply of electricity for its consumers during this time, AURELCO has found it advantageous to its consumers to contract with EMS for it to supply 12,397 kWh at PhP9.7524/kWh for a term of ten (10) years;
17. As added benefit to AURELCO, the EMS biomass plants help to stabilize the power supply in the DiCaDiDi Area given its long distance from the NGCP San Luis Substation;
18. AURELCO has forecasted and simulated the effect of the inclusion of the power supplied by EMS on its generation costs upon the full commercial operation of the power plant of EMS:

With EMS	PhP7.1367/kWh
Without EMS	PhP8.3133/kWh
Rate Impact	PhP(0.9454/kWh)

The Amended Power Supply Agreement

19. The APSA governs the relationship between AURELCO and EMS for the sale of electric power. The electric power supply will be drawn from EMS 2.5 MW biomass plant located in Barangay Esperanza, Dilasag, Aurora that is to be constructed, owned, and operated by EMS. The commencement of the obligation of EMS to deliver electric power to AURELCO is subject to the satisfaction of conditions precedent as set forth in the APSA;
20. The original PSA between AURELCO and EMS was a result of a competitive selection process conducted by AURELCO;
21. The APSA contains the following salient terms and conditions:

Electricity Fee: The Electricity Fee for each Billing Period

Where applicable, all local and/or national shall be calculated using the following formula:

$$EF_t = (FF_t + FOMF_t + LOMF_t + FLOF_t)$$

Where:

t = Billing Period t

EF_t = Electricity Fee during each Billing Period t expressed in Pesos

FF_t = Fixed Fee during each Billing Period t expressed in Pesos

FOMF_t = FOREX O&M Fee during each Billing Period t expressed in Pesos

LOMF_t = Local O&M Fee during each Billing Period t expressed in Pesos

FLOF_t = Fuel and Lube Oil Fee during each Billing Period t expressed in Pesos

Where applicable, all local and/or national taxes shall be added to the Electricity Fee. Each of the above Fees shall be computed according to each of their respective formulas as follows:

A. $FF_t = FR_t \times EOT_t$

Where:

t = Billing Period t

FR_t = Fixed Rate during each Billing Period t is:

- a) **PhP4.0296/kWh** (ex-VAT) for EOT during each Billing Period t that is not in excess of the cumulative EOT for the Billing Period t (from COD of the PSA) of 148,769,184 kWh; and
- b) **PhP0.00/kWh** for EOT during each Billing Period t that is in excess of the cumulative EOT (from COD of the PSA) of 148,769,184 kWh

EOT_t = Energy delivered by SELLER to BUYER as indicated in the Billing Meters of the Power Plant during each Billing Period t expressed in kWh

B. $FOMF_t = FOMR_t \times EOT_t$

Where:

t = Billing Period t

$FOMR_t$ = The FOREX O&M Rate applicable for Billing Period t computed according to the following formula:

$$FOMR_t = BFMOR \times \frac{UF_{(t-1)}}{BUF} \times \frac{UCPI_{(t-1)}}{BUCPI}$$

$BFMOR$ = Base FOREX O&M Rate set at **PhP0.5825/kWh** (ex-VAT)

$UF_{(t-1)}$ = Whole Month Average Peso/US\$ Exchange Rate for the Month immediately preceding each Billing Period t as published by the Bangko Sentral ng Pilipinas (BSP) through their web site at http://www.bsp.gov.ph/statistics/statistics_online.asp

BUF = Base Peso/US\$ Exchange Rate of PhP43.0256/US\$ (as of September 2011)

$UCPI_{(t-1)}$ = United States Consumer Price Index (All Items for All Urban Consumers) for the month immediately preceding each Billing Period t as published by the U.S. Department of Labor's Bureau of Labor Statistics through their web site at <http://data.bls.gov/pdq/SurveyOutputServlet>

BUCPI = Base United States Consumer Price Index (All Items for All Urban Consumers) of 226.889 (as of September 2011)

EOT_t = Energy delivered by NPP to AURELCO as indicated in the Billing Meters of the Power Plant during each Billing Period t expressed in kWh

$$C. LOMF_t = LOMR_t \times EOT_t$$

Where:

t = Billing Period t

$LOMR_t$ = The Local O & M Rate applicable for Billing Period t computed according to the following formula:

$$LOMR_t = BLMOR \times \frac{PCPI_{(t-1)}}{BPCPI}$$

BLOMR = Base Peso O&M Rate set at **PhP1.3603/kWh**
(ex-VAT)

PCPI_(t-1) = Philippine Consumer Price Index (Philippine Index for All Items) for the month immediately preceding each Billing Period t as published by the National Statistics Office through their web site at <http://www.census.gov.ph/data/sectordata/2011/cp110901coicop.htm>

BPCPI = Base Philippine Consumer Price Index (Philippine Index for All Items) of 126.9 (as of September 2011)

EOT_t = Energy delivered by NPP to AURELCO as indicated in the Billing Meters of the Power Plant during each Billing Period t expressed in kWh

$$D. \text{ RFLOF}_t = \text{RFLOR}_t \times \text{EOT}_t$$

Where:

t = Billing Period t

RFLOR_t = The Renewable Fuel and Lube Oil Rate applicable for Billing Period t computed according to the following formula:

$$\text{RFLOR}_t = (\text{RFC}_t \times \text{RFR}) + (\text{LO}_t \times \text{LOR})$$

RFC_t = Delivered cost of Renewable Fuel Consumed by NPP during each Billing Period t expressed in PhP/kg (ex-VAT)

RFR = Renewable Fuel Consumption Rate of **1.212000 kg/kWh**

LO_t = Delivered cost of Lubricating Oil Consumed by NPP during each Billing Period t expressed in P/Liter (ex-VAT)

LOR = Lubricating Oil Consumption Rate of **0.001694** Liters/kWh

EOT_t = Energy delivered by NPP to AURELCO as indicated in the Billing Meters of the Power Plant during each Billing Period t expressed in kWh

Utilizing the following Base costs: Renewable Fuel = PhP3.00/kg; Light Fuel & Lube Oil = PhP85.00/liter as well as each of their respective consumption rates above results in a base Renewable Fuel and Lube Oil Rate of **PhP3.7800/kWh** (ex-VAT).

1. **True Cost Generation Rate:** The True Cost Generation Rate (TCGR) for each Billing Period t shall be calculated using the following formula:

$$TCGR_t = \frac{TF_t}{EOT_t}$$

Where:

T = Billing Period t

$TCGR_t$ = True Cost Generation Rate for Billing Period t expressed in PhP/kWh

TF_t = Total Fee for the Billing Period t expressed in Pesos

EOT_t = Energy delivered by NPP to AURELCO as indicated in the Billing Meters of the Power Plant during each Billing Period t expressed in kWh

2. **Off-taker Fee:** The Buyer shall pay Seller an Offtaker Fee (OF) for each Billing Period t determined according to the following formula:

$$OF_t = ER_t \times EOT_t$$

Where:

t = Billing Period t

OF_t = Offtaker Fee for Billing Period t expressed in Pesos

ER_t = Electricity Rate for the Billing Period t as defined in Section 3 above expressed in PhP/kWh

EOT_t = Energy delivered by NPP to AURELCO as indicated in the Billing Meters of the Power Plant during each Billing Period t expressed in kWh

- 2.1. Buyer shall be entitled to a 3.0% Early Payment Discount (EPD) if OF_t is paid within ten (10) calendar days from date of receipt by the Buyer of the Seller Invoice. The PPD shall be calculated as follows:

- 2.1.1. **Rate Eligible for Discount:** The Rate Eligible for Discount (RED) shall be calculated using the following formula:

$$RED_t = FR_t + FOMR_t + FLOF_t$$

Where:

t = Billing Period t

RED_t = Rate Eligible for Discount for Billing Period t expressed in PhP/kWh

FR_t = Applicable Fixed Rate for Billing Period t expressed in PhP/kWh

$FOMR_t$ = The FOREX O&M Rate applicable for Billing Period t expressed in PhP/kWh

$POMR_t$ = The PESO O&M Rate applicable for Billing Period t expressed in PhP/kWh

$FLOF_t$ = Fuel and Lube Oil Fee during each Billing Period t expressed in Pesos

2.1.2. In the event that the Buyer is eligible for EPD_t , then the Buyer shall pay the Seller the amount calculated using the following formula:

$$DOF_t = (OF_t - EPD_t)$$

Where:

t = Billing Period t

DOF_t = Discounted Offtaker Fee for Billing Period t expressed in Pesos

OF_t = Offtaker Fee for Billing Period t expressed in Pesos

EPD_t = Early Payment Discount applicable for each Billing Period t expressed in Pesos

22. Term and Service Commencement Date

“The term of this Agreement shall commence on the Effective Date and end on the Termination Date. Upon the termination of this Agreement, the obligations of the Parties shall effectively be terminated except those arising prior to the Termination Date that have accrued and those, which by their nature, are to be performed after the Termination Date, shall survive any such termination.

Effectivity of Obligations: Commercial Operations Date

This Agreement shall become effective on the date hereof (the "Effective Date"); provided that the Parties' rights and obligations hereunder shall commence on the specified dates as follows:

- a) With respect to the obligation of the Seller to construct the Power Plant, the ERC shall have approved this Agreement, and the orders approving said Agreement and the pricing structure set out hereunder shall have become final and not subject to reconsideration or appeal (the "Decision Date"); provided, that, in the event the ERC shall grant a Provisional Authority for the sale and purchase of Electricity under this Agreement, such Provisional Authority shall be considered substantial compliance with this provision; and
- b) With respect to the obligations of the Parties for the sale and purchase of, as well as payment for, electricity, the Seller shall have completed the commissioning of the Power Plant and has achieved its Commercial Operations Date, and is ready to deliver electricity in accordance with the terms and conditions of Annex "A" (Delivery and Metering of Electricity);

Extension

Term of this Agreement will be automatically be extended for a period of two (2) Contract Years from the end of the initial ten (10) year term, and then may be extendable for another five (5) Contract Years, under the same terms and conditions, unless either Party gives one (1) Contract Year prior written notice to the other that (i) it no longer wishes to extend the Term of the Agreement, or (ii) the extension of the Term shall be under terms and conditions mutually satisfactory to both Parties. The Parties shall have ninety (90) days from the receiving Party's receipt of said notice within which to negotiate and come to an agreement, otherwise, this Agreement shall terminate upon the occurrence of the Termination Date.

Contract Quantities

- I. Contract Quantity for Each Contract Year

Unless otherwise increased by the Parties in writing, the Parties agree on the following Contract Quantities for each Contract Year of the Agreement, subject to annual mandatory review and agreement by the Parties:

Year	Contract Quantity (kwh)
1	12,397,432
2	12,397,432
3	12,397,432
4	12,397,432
5	12,397,432
6	12,397,432
7	12,397,432
8	12,397,432
9	12,397,432
10	12,397,432

23. They acknowledge that they are continuing in the spirit of their previous agreement, and wish to expedite the implementation of their agreement towards a more sustainable and permanent PSA that will benefit the Province of Aurora;

Allegations in Support for the Issuance of Provisional Authority

24. The issuance of a provisional authority/rate in the subject application is a condition to the financial closing with the banks by EMS. It will alleviate any shortage of power being encountered by AURELCO as well as improve the quality of power being provided to the DiCaDiDi Area;
25. Pursuant to its Rules of Practice and Procedure, the Commission may exercise its discretion by granting provisional authority or interim relief prior to a final Decision;
26. It is understood that the interim relief sought by them that may be granted by the Commission, shall be subject to adjustments and other conditions that the Commission may impose after hearing and final determination of the Commission; and

Prayer

27. They pray that the Commission:

- a) Approve the duly negotiated APSA;
- b) A provisional approval of the APSA between AURELCO and EMS as well as a provisional authority to AURELCO to pass on the full amount of the fees and charges under the APSA to its consumers; and
- c) After trial on the merits, a permanent approval of the APSA shall be issued which would authorize AURELCO to charge and collect the fees under the APSA as well as authorize AURELCO to pass on the full amount to its consumers.

Finding the said application to be sufficient in form and in 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 **October 1, 2015 (Thursday) at two o'clock in the afternoon (2:00 P.M.), at the AURELCO Main Office, Barangay Reserva, Baler, Aurora.**

AURELCO and EMS 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 AURELCO's franchise area, by any other means available and appropriate, of the filing of the instant application, their reasons therefor and of the scheduled hearings 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 Offices of the Governors of the Provinces of Aurora, Isabela and Quezon and the Mayors of the Municipalities within the franchise area of AURELCO for the appropriate posting thereof on their respective bulletin boards.

AURELCO and EMS 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, AURELCO and EMS 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 Governors and Mayors 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.

AURELCO, EMS 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 AURELCO and EMS 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.

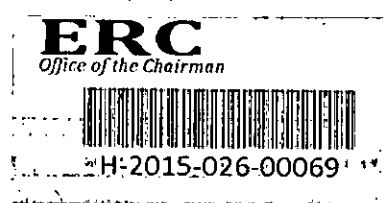
As part of the pre-trial conference, AURELCO and EMS must also be prepared to make an expository presentation of their application, aided by whatever communication medium that they may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other 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 CASE NO. 2015-146 RC

ORDER/August 17, 2015

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Copy Furnished:

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3. **The Office of the Solicitor General**
134 Amorsolo Street, Legaspi Village, Makati City
Metro Manila
4. **The Commission on Audit**
Commonwealth Avenue
Quezon City
5. **The Senate Committee on Energy**
GSIS Building, Roxas Boulevard
Pasay City
6. **The House Committee on Energy**
Batasan Hills, Quezon City
7. **Office of the Municipal Mayor**
Municipality of Dingalan
Province of Aurora
8. **Office of the Municipal Mayor**
Municipality of Dilasag
Province of Aurora
9. **Office of the Municipal Mayor**
Municipality of Casiguran
Province of Aurora
10. **Office of the Municipal Mayor**
Municipality of Dinalungan
Province of Aurora
11. **Office of the Municipal Mayor**
Municipality of Dipaculao
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12. **Office of the Municipal Mayor**
Municipality of Maria Aurora
Province of Aurora
13. **Office of the Municipal Mayor**
Municipality of Baler
Province of Aurora
14. **Office of the Municipal Mayor**
Municipality of San Luis
Province of Aurora
15. **Office of the Municipal Mayor**
Municipality of General Nakar
Province of Quezon
16. **Office of the Municipal Mayor**
Municipality of Dinapigue
Province of Isabela