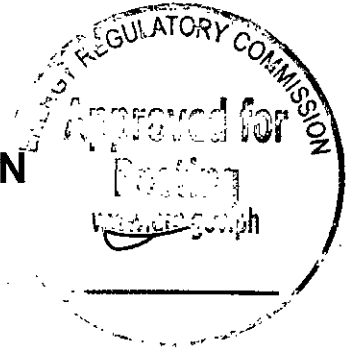


Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City



IN THE MATTER OF THE
APPLICATION FOR APPROVAL
OF THE POWER SUPPLY
AGREEMENT (PSA) BETWEEN
CAGAYAN ELECTRIC POWER
AND LIGHT COMPANY,
INCOPORATED (CEPALCO)
AND MINDANAO ENERGY
SYSTEMS, INCORPORATED
(MINERGY), WITH PRAYER
FOR PROVISIONAL
AUTHORITY

ERC CASE NO. 2015-167 RC

CAGAYAN ELECTRIC POWER
AND LIGHT COMPANY,
INCOPORATED (CEPALCO)
AND MINDANAO ENERGY
SYSTEMS, INCORPORATED
(MINERGY),

Applicants.

X ----- X

D O C K E T E D
Date: OCT 05 2015
By: [Signature]

ORDER

On September 15, 2015, Cagayan Electric Power and Light Company, Incorporated (CEPALCO) and Mindanao Energy Systems, Incorporated (MINERGY) filed an application for approval of their Power Supply Agreement (PSA), with prayer for provisional authority.

In the said application, CEPALCO and MINERGY alleged, among others, that:

The Applicants

1. CEPALCO is a private electric distribution utility organized and existing under the laws of the Republic of the Philippines, with office address at CEPALCO Administration Building, Masterson Avenue, Upper Balulang, Cagayan de Oro City. It has a legislative franchise to distribute electricity in the City of Cagayan de Oro¹, and the Municipalities of Tagoloan, Villanueva and Jasaan, all in the Province of Misamis Oriental. A copy of its Certificate of Public Convenience and Necessity (CPCN) is attached to the application as Annex "A";
2. MINERGY is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal address at MINERGY Road, Tablon, Cagayan de Oro City. Copies of its Certificate of Incorporation, Articles of Incorporation and By-Laws, and General Information Sheet (GIS) are, likewise, attached to the application as Annex "B" and series;

Nature of the Application

3. Pursuant to Rule 20 (B) of the ERC Rules of Practice and Procedure, approved by the Commission on June 22, 2006 in Resolution No. 38, Series of 2006, the application is submitted to the Commission for its review and approval of the PSA dated August 25, 2015 between CEPALCO and MINERGY. A copy of the said PSA is attached to the application as Annex "C";

¹ Except the Barangays of Baikingon, San Simon, Pagatpat, Tagpangi, Pagalungan, Taglimao, Tuburan, Pigsagan, Tumpagon, Bayanga, Mambuaya, Dansolihon, Tignapoloan, Besigan, and a portion of Canitoan, all located in the City of Cagayan de Oro. (Republic Act No. 9284, Section 11)

Compliance with Pre-filing Requirements

4. In compliance with Rule 6 of the ERC Rules of Practice and Procedure, they have furnished the legislative bodies of each of the local government units in CEPALCO's franchise area and in the place where MINERGY holds its principal office with copies of the application and all its annexes and accompanying documents. The corresponding proofs of receipt are, likewise, attached to the application as Annexes "D" and series;
5. Further, they have caused the publication of the application in its entirety, excluding its annexes, in a newspaper of general circulation within CEPALCO's franchise area. Copies of the newspaper and the corresponding affidavit of publication are attached to the application as Annexes "E" and "E-1", respectively;

Statement of Facts

6. **Shortage of Power Supply in the Mindanao Grid.** The Mindanao Grid is currently facing a deficit in its power supply. The generating capacity in the Grid is no longer sufficient to meet the power requirements of Mindanao;
7. The Power Sector Assets and Liabilities Management Corporation (PSALM), which took over all the generating assets of the National Power Corporation (NPC) pursuant to Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 or the EPIRA, supplies the bulk of the power requirements of Mindanao. However, the PSALM has drastically reduced its power supply commitments to distribution utilities in Mindanao, including CEPALCO;
8. As a result, Mindanao has experienced significant power outages, adversely affecting local businesses and the daily lives of all electricity consumers;

9. **Insufficiency of CEPALCO's Power Supply.** At present, CEPALCO's power supply is not sufficient to meet the power requirements of its franchise area. As a result, its customers have to endure as much as four (4) hours of daily rotational brownouts;
 - 9.1 CEPALCO has a projected peak demand of 177 MW from the third quarter of 2015 up to the end of the year. However, its total contracted supply is only 166 MW, resulting in a supply deficiency of 11 MW. The supply deficiency is expected to continue in 2016 up to the third quarter of 2017 with projected deficits of 19 MW and 12 MW, respectively. A copy of its Supply-Demand Scenario is attached to the application as Annex "F";
 - 9.2 **Supply from the PSALM.** The PSALM currently supplies a significant portion of CEPALCO's power requirements;
 - 9.3 CEPALCO's Contract for the Supply of Electric Energy (CSEE) with the PSALM expired last March 25, 2015. PSALM has not renewed the said CSEE, and its current supply to CEPALCO is on a month-to-month basis, without certainty on the contract levels. From April 2015 to July 2015, CEPALCO sourced about seventy-six percent (76%) of its power requirements from the PSALM;
 - 9.4 **The PSALM Certification.** On August 20, 2014, the PSALM issued a letter informing CEPALCO that it has no available capacity to supply the latter's peak load requirement for 2015 and base load requirement for 2016 onwards. A copy of the said letter is attached to the application as Annex "G";
10. **CEPALCO's Demand Projections.** The current shortage is expected to increase due to the steadily increasing power demand of CEPALCO's customers. The expected increase is indicated in its Distribution Development Plan (DDP), a copy of which is attached to the application as Annex "H";

11. **Immediate Need for Power Supply.** As previously stated, CEPALCO's customers have to endure as much as four (4) hours of daily rotational brownouts;
12. It is clear that CEPALCO needs to procure additional power supply that can be available at the soonest possible time. Thus, it executed efforts to procure the appropriate power supply;
13. MINERGY offered to supply power to CEPALCO from leased modular diesel-fired power generating sets to be installed in the latter's franchise area as an urgent and temporary solution to the power shortage. Modular generating sets are the most appropriate solution to immediate need for power supply because they can be deployed and installed expediently;
14. CEPALCO evaluated the offer and as a result, it executed the PSA with MINERGY for the supply of 10 MW. An affidavit supporting the foregoing is attached to the application as Annex "I";
15. The immediate implementation of the PSA will significantly mitigate, if not completely eliminate, the power outages. It will also address the need for voluntary de-loading by large customers under the Interruptible Load Program (ILP);
16. Under the law, no contract for the supply of power to a distribution utility like CEPALCO can become legally effective unless approved by the Commission. Hence, the application;

Abstract of the PSA and Related Information

17. **The Generation Facilities.** MINERGY shall supply power under the PSA using leased modular diesel-fired power generating plants with a total net output of 10 MW to be located in Barangay Tablon, Cayagan de Oro City, connected to the distribution system of CEPALCO (the Modular Power Station);

- 17.1 The Modular Power Station consists of eleven (11) units of diesel generator sets and auxiliaries, with a total installed capacity of 1,070 kW per unit;
- 17.2 The foregoing will be connected to CEPALCO's distribution system through a dedicated 34.5 kV tie-line to its Baloy Substation;
18. The specific fuel oil consumption (SFOC) of the Power Station shall not be greater than 0.265 liter/kWh. A copy of a certification on the Power Station's specific fuel oil consumption rate is attached to the application as Annex "J";
19. **Salient Features of the PSA.**
- 19.1 **Supply of Power.** Under the PSA, MINERGY shall supply or cause to supply 10 MW of capacity (Contracted Capacity) to CEPALCO, subject to the terms and conditions of the said PSA;
- 19.2 **Term.** The term of supply and purchase under the PSA shall be for two (2) years commencing on receipt of a provisional authority from the Commission;
- 19.3 **Fuel Supply.** For fuel supply security, MINERGY shall maintain sufficient fuel inventory equivalent to thirty (30) days of continuous operations;
- 19.4 **Backup Power.** In case of forced outage as defined in the PSA, MINERGY shall procure backup power, failing which MINERGY shall incur financial penalties;
20. **Purchased Power Rate.** For the capacity drawn by CEPALCO from MINERGY, the former shall charge the latter with a Capacity Fee, Operation and Maintenance Fees and Energy Fee, computed according to the following formulae:

20.1 Capacity Fee (CF).

$$CF = \left\{ CFR \times \left[\left(0.8857 \times \frac{USD_{NEW}}{USD_{BASE}} \right) + (0.1143) \right] \right\} \times CC$$

Where:

CRF = Capital Recovery Rate of
PhP1,353.05/kW per month

USD_{NEW} = Average US Dollar – Philippine Peso
Exchange Rate for the month as
published by the Bangko Sentral ng
Pilipinas (BSP)

USD_{BASE} = Base US Dollar – Philippine Peso
Exchange Rate
= PhP45.65/USD

CC = Contracted Capacity
= 10,000 kW

20.2 Operation and Maintenance Fee (OMF).

$$OMF = \left\{ OMFR \times \left[0.1317 + \left(0.8683 \times \frac{USD_{NEW}}{USD_{BASE}} \right) \right] \right\} \times AKWH$$

Where:

OMFR = The O&M Fee Rate of PhP0.7229/kWh

USD_{NEW} = Average US Dollar – Philippine Peso
Exchange Rate for the month as
published by the BSP

USD_{BASE} = Base US Dollar – Philippine Peso
Exchange Rate
= PhP45.65/USD

AKWH = Actual electricity, in kWh, exported to the Buyer

20.3 Energy Fee (EF).

The Energy Fee shall be the actual cost of fuel consumed during the period subject to the Specific Fuel Consumption cap of 0.265 liters per kWh and calculated based on the formula:

$$EF = AFP \times SFC \times AKWH$$

Where:

AFP = The actual fuel price of all fuel deliveries during the period

SFC = The Specific Fuel Consumption of the plant
= capped at 0.265 li/kWh, if actual is above this SFC

AKWH = Actual electricity, in kWh, exported to the Buyer

20.4 Startup Costs (SC).

The Buyer shall pay the Supplier Start-Up Costs for the cost of starting up the Plant after period of shutdown due to any reason attributable to the Buyer. The Start-Up Costs shall be computed based on the prevailing price of diesel fuel at the time of the Start Up and paid in accordance with the following formula and schedule:

$$SC = \left(FUEL_C \sum_{t=1}^n GENSETS_{C-t} + FUEL_W \sum_{y=1}^m GENSETS_{W-y} \right) \times AFP$$

Where:

AFP = The actual fuel price of all fuel deliveries during the period

t = Number of cold startups during the period

y = Number of warm startups during the period

GENSETS_C = Number of generating units started from cold startup during startup t

GENSETS_W = Number of generating units started from warm startup during startup y

FUEL_C, FUEL_W = Fuel requirement for cold and warm startup, respectively, as specified in the schedule below:

Type of Start-Up	Liters of Diesel Fuel per Generator Set
Cold Start-up (more than or equal to 10 hours of shutdown)	60
Warm Start-up (less than 10 hours of shutdown)	40

20.5 Commissioning Power Fee.

The Buyer shall pay the Supplier the Commissioning Power Fee for electricity supplied during commissioning. The Commissioning Power Fee shall be computed as follows:

$$CPF = OMF + EF$$

Where:

CPF = Commissioning Power Fee

OMF = Operation & Maintenance Fee computed in accordance with Item 2 of this Schedule 1

EF = Energy Fee computed in accordance with Item 3 of this Schedule

20.6 For reference, a sample computation of the monthly payment is appended to the PSA;

20.7 **Basis for Indexation.** As indicated in the formulae above, the fees to be paid by CEPALCO are subject to monthly adjustments based on the foreign exchange rate for components representing foreign-currency denominated costs, and on the actual price of fuel for the components representing fuel costs;

21. **Financial Aspects of the Project.**

21.1 **Project Cost and Operations and Maintenance Costs.** An explanation of the cost basis for the tariff under the PSA, including breakdowns of the first costs and the operations and maintenance costs is attached to the application as Annex "K";

21.2 **Project Funding.** The project will be funded entirely through equity, with a cost of capital of 13.59%;

22. **Fuel Supply.** For the fuel requirements of the Modular Power Station, MINERGY shall source fuel from the fuel supplier for its existing power plants. The said fuel supplier was previously selected through a competitive bidding process;

22.1 It must be stressed that, in accordance with the relevant policy of the Commission, MINERGY shall derive no revenue whatsoever from the fuel supply;

23. **Environmental Compliance Certificate (ECC).** The Department of Environment and Natural Resources (DENR) issued ECC No. ECC-R10-1305-0107 for the Power Station. A copy of the said certificate is attached to the application as Annex "L";
24. **The Department of Energy (DOE) Certification.** MINERGY has requested the DOE for the issuance of a certification that the capacity of the Power Station is consistent with the latter's Power Development Plan (PPD). A copy of the said request is, likewise, attached to the application as Annex "M";
25. **Certificate of Compliance (COC).** The application for the issuance of a COC by the Commission for the Power Station is currently being processed;

Rate Implication of the PSA

26. CEPALCO conducted an analysis using actual data from the July 2015 billing period in order to determine the impact of the implementation of the PSA on its generation costs. A copy of the said analysis is attached to the application as Annex "N";
27. The implementation of the PSA, which will significantly alleviate the power outages, will result in an upward adjustment of PhP0.221/kWh in the generation charge to be paid by CEPALCO's customers. Shown below is a summary of the said analysis:

Power Suppliers	Without PSA		With PSA	
	Total kWh Purchased	Net Generation Cost, Peso	Total kWh Purchased	Net Generation Cost, Peso
Existing Suppliers	78,130,340	307,203,578	78,130,340	302,955,911
MINERGY Modular Power Station	-	-	1,354,362	27,071,276
Total	78,130,340	307,203,578	79,484,702	330,027,187
Ave. Generation Cost (P/kWh)		3.9319		4.1521
Rate Impact (PhP/kWh)				0.2201
Avoided Unserved Energy (kWh)				1,354,362

Assumptions:

- a. The generation costs of existing suppliers were based on the actual costs as billed for the July 2015 billing month. These are the same costs used in the computation of CEPALCO's generation charges for its August 2015 billing
- b. The generation cost of the Modular Power Station is computed based on the following:
 - i. Energy delivered is assumed equal to the average kWh curtailed and the de-loaded kWh by Interruptible Load Program participants for the billing month of July 2015. This is more or less equivalent to a 4-hour daily operation of the Modular Power Station
 - ii. Fuel cost is based on the diesel price of PhP35 per liter
- c. The generation cost of the Modular Power Station assumed no foreign exchange adjustment
- d. Any effect on transmission charges and any other component of the retail rate, e.g., system loss, were not considered
- e. Start-up costs and taxes were not included in the simulation

Allegations in Support of the Motion for Provisional Authority

28. As discussed above, CEPALCO's power supply is not sufficient to meet the power requirements of its franchise area. As a result, its customers have to endure as much as four (4) hours of daily rotational brownouts;
29. For instance, as explained above, CEPALCO has a projected peak demand of 177 MW from third quarter of 2015 to the end the year. However, its total contracted supply is only 166 MW;

30. As the City of Cagayan de Oro is regional center and business hub of Northern Mindanao, the daily outages continue to cause significant disruption in commercial activity, not to mention considerable difficulties for all electricity consumers;
31. Taking into consideration the current power situation in CEPALCO's franchise area as well as its projected demand, it is imperative that it contracts for additional power supply that can be available at the soonest possible time;
32. CEPALCO's immediate need for additional power is best addressed by the leased modular diesel-fired generating sets under the PSA because of their immediate deployment capability. This solution has proven effective when similar projects were implemented by other generation companies for other distribution utilities in Mindanao to help alleviate power shortages in their respective franchise areas;
33. The immediate implementation of the PSA will significantly mitigate, if not entirely eliminate, the power outages in CEPALCO's franchise area;
34. In view of the foregoing, they move for the provisional approval of the application pursuant to Rule 14 of the Commission's Rules of Practice and Procedure. A copy of a sworn statement supporting the said motion is attached to the application as Annex "O";

Prayer

35. Thus, they pray, that the Commission:
 - 35.1 Immediately issue an Order provisionally approving the PSA subject of the application, as well as the generation rate and adjustment mechanisms indicated therein; and
 - 35.2 After due hearing, render judgment making such provisional approval permanent.

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 30, 2015 (Friday) at two o'clock in the afternoon (2:00 P.M.) at Function Room No. 1, CEPALCO Administration Building, Masterson Avenue, Upper Balulang, Cagayan de Oro City.**

CEPALCO and MINERGY 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 CEPALCO'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 Office of the Governor of the Province of Misamis Oriental and the Offices of the Mayors of the City and Municipalities within CEPALCO's franchise area for the appropriate posting thereof on their respective bulletin boards.

CEPALCO and MINERGY 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, CEPALCO and MINERGY must submit to the Commission their written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidence on the actual posting and publication of the Notice of Public Hearing consisting of certifications issued to that effect, signed by the aforementioned Governor 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 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.

CEPALCO and MINERGY 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 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 CEPALCO and MINERGY 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.

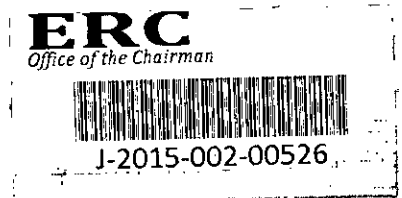
As part of the pre-trial conference, CEPALCO and MINERGY must also be prepared to make an expository presentation of their application, aided by whatever communication medium that they may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the customers and other concerned parties, what the application is all about and the reasons and justifications being cited in support thereof.

SO ORDERED.

Pasig City, September 28, 2015.

FOR AND BY AUTHORITY OF
THE COMMISSION:


JOSE VICENTE B. SALAZAR
Chairman 



Copy Furnished:

1. **Lachica and Associates**
Counsel for CEPALCO and MINERGY
Unit 1912 Jollibee Plaza Building,
Emerald Avenue, Pasig City
2. **Cagayan Electric Power and Light Co., Inc. (CEPALCO)**
33 Toribio Chaves St., Cagayan de Oro City
3. **Mindanao Energy Systems, Incorporated (MINERGY)**
MINERGY Road, Tablon, Cagayan de Oro City
4. **Office of the Solicitor General (OSG)**
134 Amorsolo Street, Legaspi Village, Makati City
5. **Commission on Audit (COA)**
Commonwealth Avenue, Quezon City
6. **Senate Committee on Energy**
GSIS Bldg., Roxas Boulevard, Pasay City
7. **House Committee on Energy**
Batasan Hills, Quezon City
8. **Office of the City Mayor**
Cagayan de Oro City, Misamis Oriental
9. **Office of the Municipal Mayor**
Jasaan, Misamis Oriental
10. **Office of the Municipal Mayor**
Tagoloan, Misamis Oriental
11. **Office of the Municipal Mayor**
Villanueva, Misamis Oriental
12. **Office of the Provincial Governor**
Province of Misamis Oriental
13. **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