

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



IN THE MATTER OF THE JOINT
APPLICATION FOR THE
APPROVAL OF THE POWER
PURCHASE AGREEMENT (PPA)
ENTERED INTO BY AND
BETWEEN BUKIDNON SECOND
ELECTRIC COOPERATIVE,
INCORPORATED (BUSECO) AND
SURE ECO ENERGY
PHILIPPINES, INCORPORATED
(SURE ECO), WITH PRAYER FOR
THE ISSUANCE OF PROVISIONAL
APPROVAL/AUTHORITY AND
MOTION FOR CONFIDENTIAL
TREATMENT OF INFORMATION

ERC CASE NO. 2015-170 RC

BUKIDNON SECOND ELECTRIC
COOPERATIVE, INCORPORATED
(BUSECO) AND SURE ECO
ENERGY PHILIPPINES,
INCORPORATED (SURE ECO),
Applicants.

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DOCKETED
Date: OCT 15, 2015
By: W

ORDER

On September 28, 2015, Bukidnon Second Electric Cooperative, Incorporated (BUSECO) and Sure Eco Energy Philippines, Incorporated (SURE ECO) filed an application for approval of their Power Purchase Agreement (PPA), with prayer for the issuance of provisional approval/authority and motion for confidential treatment of information.

In the said application, BUSECO and SURE ECO alleged, among others, that:

The Nature of the Application

1. The application is submitted to the Commission for its due consideration and approval of the PPA executed by and between BUSECO and SURE ECO dated January 28, 2015, as modified by the Addendum dated May 20, 2015, pursuant to Rule 20(B) of the Commission's Rules of Practice and Procedure (the ERC Rules) and other pertinent rules and regulations. Copies of the said PPA and Addendum are attached to the application as Annexes "A" and "B", respectively;

The Applicants

2. BUSECO is an electric cooperative created and existing pursuant to the provisions of Presidential Decree No. 269, as amended, serving the power requirements of the City of Malaybalay, the Municipalities of Manolo Fortich, Libona, Sumilao, Cabangsalan, Malitbog, Baungan, Impasug-ong, Talakag Lantapan, and the Barangay of Lilingayon, Valencia City, all in the Province of Bukidnon (the Franchise Area). Copies of its Certificates of Franchise and Registration, and Articles of Incorporation are, likewise, attached to the application as Annexes "D", "E" and "F", respectively;
3. SURE ECO is a corporation duly organized and registered under the Philippine Law, with principal office address at Unit 602, OMM Citra Building, San Miguel Avenue, Ortigas Center, Pasig City. Copies of its Certificate of Incorporation, Articles of Incorporation, General Information Sheet (GIS) and latest Audited Financial Statements (AFS) are attached to the application as Annexes "H", "I", "J" and "K", respectively;

Compliance with Pre-filing Requirements

4. In compliance with Rule 6 of the ERC Rules and in support of the application for approval of the PPA, a copy of the said application together with all its annexes was furnished to the respective legislative bodies of the Municipality of Manolo Fortich and the Province of Bukidnon, where BUSECO principally operates. As proof of receipt of the copies of the application together with all its annexes and accompanying documents, the certifications issued by the local government units (LGUs) concerned are attached to the application as Annexes "L" and "M";
5. The entire application, excluding the annexes, was published in a newspaper of general circulation within the Franchise Area of BUSECO. A copy of the newspaper and the affidavit of publication are, likewise, attached to the application as Annexes "N" and "O", respectively;

BUSECO Power Situation

6. BUSECO currently sources the bulk of its electricity requirements from the Power Sector Assets and Liabilities Management Corporation (PSALM), Therma Marine, Incorporated (TMI) and FDC Misamis Power Corporation (FDC MISAMIS);
 - 6.1 The PSALM and BUSECO executed a Contract for the Supply of Electric Energy (CSEE) which was in force from December 26, 2012 to December 25, 2016. However, in a certification dated August 22, 2014, the PSALM confirmed that it has insufficient capacity to supply the additional power requirements of the Mindanao distribution utilities (DUs) beyond the contracted demand and energy in its existing CSEEs with them. Further, in its letter dated November 5, 2014, the PSALM informed BUSECO of the reduction of its CSEE, from the average 8.61 MW, it went down to 6.21 MW or about thirty percent (30%) reduction on the average. Copies of the PSALM certification and letter are attached to the application as Annexes "P" and "Q", respectively;

- 6.2 On March 25, 2015, BUSECO and TMI executed a Supplement Agreement extending the term of their Energy Supply Agreement (ESA) for an additional period of three (3) years from the expiration of the Original Term. The said Supplement Agreement was provisionally approved by the Commission in its Order dated July 13, 2015;
- 6.3 On January 15, 2013, BUSECO and Therma South, Incorporated (TSI) entered into twenty-five (25) year ESA for the supply of 2 MW baseload. The said ESA was subsequently approved by the Commission in its Decision dated May 8, 2014. The Commercial Operation Date of the power plant is expected to be in 2015;
- 6.4 On October 31, 2014, BUSECO entered into an Electric Power Purchase Agreement (EPPA) with FDC MISAMIS for a 10 MW contracted capacity, the operation of which commenced on December 26, 2014;
7. It is expected that the baseload requirements of BUSECO's member-consumers will significantly increase in the next few years as demonstrated by its Actual and Forecasted Load Data and Distribution Development Plan (DDP), copies of which are attached as Annexes "R" and "S", respectively;
8. The expiration of the PSALM CSEE on December 25, 2016, will significantly diminish its baseload requirement due to the projected increase in the energy demand of BUSECO's member-consumers, thus, will inevitably result in power curtailment;
9. Given its demand growth, BUSECO deems it appropriate to secure stable, reliable and adequate supply of electricity. Accordingly, it finds rationale to enter into bilateral agreements with various generation companies. Thus, its electricity requirements are sourced from different power suppliers in order to mitigate the impact of supply deficiency in case one power supplier incurs delay

10. BUSECO solicited offers from generation companies to supply the deficiency in its power requirements. Among the offers considered and evaluated was from SURE ECO which committed to build an embedded Biogas Power Generation Facility located within its Franchise Area, particularly, at San Vicente, Sumilao, Bukidnon. The power plant is scheduled to be commissioned in January 2015;
11. The power plant will be directly connected to BUSECO's power distribution network, thus, sparing the latter from the payment of transmission and line rental charges;
12. BUSECO has forecasted and simulated the indicative rate impact on its power charges resulting from the inclusion of the power to be supplied by SURE ECO, to wit:

Particular	Rate, PhP/kWh
Generation Rates with SURE ECO	4.6437
Existing Generation Rate	4.5825
Rate Increment	0.0612

The PPA

13. On January 28, 2015, BUSECO and SURE ECO signed and executed the PPA for a contracted demand of 600 kW for one (1) year;

Executive Summary

- 13.1 The PPA governs the relationship between the Supplier and the Customer for the sale of electric power. The electric power supply will be drawn from the Supplier's 1 x 0.925 MW biogas power generation facility. The commencement of the obligation of SURE ECO to deliver of electric power to BUSECO is subject to the satisfaction of conditions precedent, including the declaration of the commercial operation of the power plant. The PPA is subject to the Customer's security deposit, assignment and termination;

Salient Features

13.2 The PPA, as amended, between BUSECO and SURE ECO contains the following salient terms and conditions:

13.2.1 Commercial Operation Date – The target Commercial Operation Date will immediately take effect after all the requirements (Conditions Precedent to Commercial Operation Date) has been met;

13.2.2 Term – The Term of the PPA shall be one (1) year from the Commercial Operation Date, unless extended or revised by mutual written agreement by the Parties. The PPA may be renewed by written agreement between the Parties not later than sixty (60) days prior to the expiration of the Term;

13.2.3 Service Specification – The Applicants agreed to the following service specifications:

Contracted Demand	600 kW
Contracted Energy	The Customer will take all the kWh generated by the Supplier within the Contracted Demand
Delivery Point	13.2 kV distribution line system of BUSECO's Sumilao Substation Feeder

13.2.4 Outage Allowance – The Supplier shall have an Outage Allowance of eight hundred seventy-six (876) hours per Contract Year during the term of the PPA;

13.2.5 Generation Charge – BUSECO shall pay the generation charge of **PhP6.00/kWh**. Any disallowance of the generation charge or any component thereof, for recovery from end-users, shall be for the sole account of the Supplier and shall not prejudice the Customer;

Schedule 3: Generation Charge Computation

Monthly Energy Fee = Capital Recovery Fee_{month} + Fixed Operation and Maintenance Charge_{month} + Variable Operation and Maintenance Charge_{month} + Lube Oil Charge_{month}

Where:

Capital Recovery Fee_{month} = PhP3.7566/kWh * TED
 Fixed O&M Charge_{month} = PhP0.5529/kWh * TED
 Variable O&M Charge_{month} = PhP1.4793kWh * TED
 Lube Oil Charge_{month} = ((Lube Oil Price/1000) * CR) * TED

And where:

TED = Total Energy Delivered to the Customer by the Supplier in kWh during the current Billing Period.
 Lube Oil Price = Either at PhP264.00/kg or the actual price, whichever is lower
 CR = Consumption rate at 0.8 gram/kWh

- 13.2.6 Other Charges – The Customer shall be liable for the payment of: a) any taxes (including value-added tax, if any), fees, charges, levies (including but not limited to Universal Charge) and imposts imposed or assessed by any governmental authority on or in connection with the purchase and sale of electricity and/or payments due to Supplier hereunder; b) any new taxes, fees, charges, levies and imposts (including any increase in the rate or amount thereof after but excluding income taxes) imposed on the Supplier after Effective Date. That is if such taxes, fees, charges, levies and imposts are approved by the Commission ERC as pass on charges;
- 13.2.7 Discount for Prompt Payment – The Supplier agrees to grant the Customer a discount equivalent to one percent (1%) of the billing for a particular month whenever the Customer shall have paid the former in full the monthly billing in advance within ten (10) days from receipt of the monthly billing, provided the Customer has not incurred any delay in the payment of its bills and posting/replenishment of the required Security Deposits for the past six (6) Payment Months;
- 13.2.8 Security Deposit – The Security Deposit shall be in an amount equivalent to the cost of 400,000 kWh or Two Million Two Hundred Forty Thousand Pesos (PhP2,400,000.00). The Customer shall post the Security Deposit within thirty (30) days upon written notice of commercial operation by the Supplier;
- 13.2.9 Assignment – In all cases of valid assignment, the Assignee shall assume all the rights and obligations of the Assignor under the PPA;

13.2.10 Notice on Force Majeure – The Party whose performance is affected by a *Force Majeure Event* shall promptly notify the other Party in writing of the occurrence and likely duration of such event;

Other Related Documents

14. In support of the application, they submit to the Commission the following documents:

Annex	Nature of the Document
T	BUSECO's Procurement Process
U	BUSECO Rate Impact Analysis
V	BUSECO Demand-Supply Scenario 2013-2020
W	BUSECO Load Curve
X	SURE ECO Board of Investment Certificate of Registration
Y	SURE ECO Certificate of Non-Coverage
Z	The Department of Energy (DOE) Certificate of Endorsement No. 2015-06-09
AA	SURE ECO General Plant Description
BB	SURE ECO Details regarding transmission projects necessary to complement the proposed generation capacity
CC	SURE ECO Financial Model with weighted average cost of capital (WACC) and justification
DD	SURE ECO Details of Project Cost
EE	SURE ECO Payment Assignment Agreement

Allegations in Support of the Issuance of Provisional Approval/Authority

15. As discussed earlier, the PSALM cannot supply the additional requirements of BUSECO. As the lack of sufficient supply has significant adverse effects on the local economy, the urgent need for additional generation capacity is clear. A provisional approval of the PPA will enable BUSECO to draw power from SURE ECO, thus avoiding the further power interruptions which have already caused irreversible losses on the economic activity within the former's Franchise Area. Furthermore, the issuance of a provisional authority will allow BUSECO to pass on to its member-consumers the cost as provided

under the PPA. A copy of a sworn statement supporting the foregoing allegations is attached to the application as Annex "FF";

16. Further, a provisional approval of the application is necessary for SURE ECO to deliver power to BUSECO coming from an embedded renewable energy and to charge and collect the fees as provided under the PPA. A copy of a sworn statement supporting the foregoing allegation is, likewise, attached to the application as Annex "GG";
17. Pursuant to its Rules of Practice and Procedure, the Commission may exercise its discretion by granting provisional approval or interim relief prior to a final Decision;
18. They understand that the interim relief, which may be granted by the Commission, shall be subject to adjustments and other conditions that it may impose after hearing and final determination;

Motion for Confidential Treatment of Information

19. Under Sections 15.9, 15.9.1, and 15.9.2 of the PPA, the Customer undertook to ensure that no confidential information is disclosed to third parties and shall employ its utmost effort and diligence to prevent unauthorized disclosure of such confidential information;
20. Under Rule 4 of the ERC Rules, the Commission may, upon request of a party and determination of the existence of conditions which would warrant such remedy, treat certain information submitted to it as confidential. Pursuant to such undertaking, they move that Annexes "CC", "DD" and "EE" not be disclosed and be treated as confidential documents in accordance with the said Rule and, accordingly, not to be disclosed to persons other than the officers and staff of the Commission, as necessary. These documents contain certain non-public information, data and calculations involving business operations and financial trade secrets reflecting SURE ECO's investment and business calculations;

21. They submit one (1) copy of Annexes "CC", "DD" and "EE" in a sealed envelope, with the envelope and each page of the documents stamped with the word "*Confidential*";

Prayer

22. Thus, they pray, that the Commission:

22.1 Approve the PPA;

22.2 A provisional approval/authority of the PPA be issued, in order to allow SURE ECO to supply the needed power of BUSECO, thereby authorizing BUSECO to accept such power supply and pass on the full amount of the fees and charges under the said PPA to its member-consumers as may be billed by SURE ECO;

22.3 Issue an Order treating Annexes "CC", "DD" and "EE" and the information contained therein as confidential, directing their non-disclosure to persons other than officers and staff of the Commission, as necessary, pursuant to Rule 4 of the ERC Rules, and prescribing the guidelines for the protection thereof;

23. They further pray, that after trial on the merits, the Commission issue a permanent approval of the PPA which would permanently authorize BUSECO to charge and collect the fees under the said PPA to its member-consumers.

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 **November 11, 2015 (Wednesday) at ten-thirty in the morning (10:30 A.M.) at BUSECO's Main Office, Manolo Fortich, Bukidnon.**

BUSECO and SURE ECO 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 BUSECO'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 Cities and Municipalities within BUSECO's franchise area and the Provincial Governor of Bukidnon for the appropriate posting thereof on their respective bulletin boards.

BUSECO and SURE ECO 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, BUSECO and SURE ECO 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 Governor 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.

BUSECO and SURE ECO 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 BUSECO and SURE ECO 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, BUSECO and SURE ECO 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, October 5, 2015.

FOR AND BY AUTHORITY
OF THE COMMISSION:


JOSE VICENTE B. SALAZAR
Chairman 

 m/BUSECO and SURE ECO PPA/2015-170 RC/initial order

ERC
Office of the Chairman



J-2015-012-00607

Copy Furnished:

1. **A.C. Gaviola Law Office**
Counsel for BUSECO and SURE ECO
Room 203, 2nd Floor, Crown Port View Hotel,
3rd Avenue, North Reclamation Area, Cebu City
2. **Bukidnon Second Electric Cooperative, Inc. (BUSECO)**
Manolo Fortich, Bukidnon
3. **Sure Eco Energy Philippines, Incorporated (SURE ECO)**
Unit 602, OMM Citra Building, San Miguel Avenue,
Ortigas Center, Pasig City
4. **Office of the Solicitor General (OSG)**
134 Amorsolo Street, Legaspi Village,
City of Makati 1229
5. **Commission on Audit (COA)**
Commonwealth Avenue, Quezon City 1121
6. **Senate Committee on Energy**
GSIS Building, Roxas Boulevard, Pasay City 1300
7. **House of Representatives Committee on Energy**
Batasan Hills, Quezon City 1126
8. **Office of the City Mayor**
Malaybalay City, Bukidnon
9. **Office of the City Mayor**
Valencia City, Bukidnon
10. **Office of the Municipal Mayor**
Baungon, Bukidnon
11. **Office of the Municipal Mayor**
Cabanglasan, Bukidnon
12. **Office of the Municipal Mayor**
Impasug-ong, Bukidnon

13. **Office of the Municipal Mayor**
Lantapan, Bukidnon
14. **Office of the Municipal Mayor**
Libona, Bukidnon
15. **Office of the Municipal Mayor**
Malitbog, Bukidnon
16. **Office of the Municipal Mayor**
Manolo Fortich, Bukidnon
17. **Office of the Municipal Mayor**
Sumilao, Bukidnon
18. **Office of the Municipal Mayor**
Talakag, Bukidnon
19. **Office of the Governor**
Province of Bukidnon
20. **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