

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 (IPSA) BETWEEN
PAMPANGA II ELECTRIC
COOPERATIVE, INC. (PELCO II)
AND 1590 ENERGY
CORPORATION (1590EC)**

ERC CASE NO. 2015-168 RC

**PAMPANGA II ELECTRIC
COOPERATIVE, INC. (PELCO II)
AND 1590 ENERGY
CORPORATION (1590 EC),
Applicants.**

D O C K E T E D
Date: OCT 21 2015
By: [Signature]

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ORDER

On September 17, 2015, Pampanga II Electric Cooperative, Inc. (PELCO II) and 1590 Energy Corporation (1590 EC) filed a joint application for the approval of their Interim Power Supply Agreement (IPSA).

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

1. PELCO II is a non-stock, non-profit electric cooperative duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at San Roque, Guagua, Pampanga;
2. PELCO II was granted by the National Electrification Commission (NEC) a franchise to own, operate and maintain a power distribution system and to distribute power exclusively in the city and municipalities in the Province of Pampanga, namely: Guagua, Bacolor, Porac, Sasmuan, Lubao, Sta. Rita and Mabalacat City;

3. 1590 EC 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;
4. PELCO II'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;
5. In view of the scheduled outage of the Sual Power Plant from September 15, 2015 to November 15, 2015, there is a need for PELCO II to source the corresponding deficiency from an interim bilateral supply agreement, to mitigate exposure to the Wholesale Electricity Spot Market (WESM) for said period;
6. 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;
7. As such, on September 7, 2015, PELCO II executed an IPSA with 1590EC for the purchase of up to 30 MW capacity and associated energy output from the Bauang Power Plant;
8. 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 November 15, 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, PELCO II 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 PELCO II, and PELCO II 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 PELCO II'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 PELCO II.

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 PELCO II 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 PELCO II 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 (25th) 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 PELCO II 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 PELCO II 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, PELCO II shall, nonetheless, pay the full amount of such Invoice. Any payment by PELCO II under this Section is without prejudice to PELCO II'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 PELCO II 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 PELCO II;
- (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, PELCO II 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 PELCO II.

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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.

xxx"

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

9. 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;

10. Accordingly, the simulated delivered prices under the IPSA for the months of September, October and November 2015 are PhP8.1165/kWh, PhP8.0659/kWh and PhP7.9063/kWh, respectively, as shown in the sample computation below:

Rate Impact of 1590 EC IPSA (September 2015 to November 2015)										
	Capacity (MW)	Dispatch (MW)			Delivered Price (PhP/kWh)			Cost of Sourced from WESM (PhP/kWh)		
		Sept**	Oct.	Nov***	Sept**	Oct	Nov***	Sept**	Oct	Nov***
1590 EC	30	2.88	9.00	6.48	8.1165	8.0659	7.9063	9.5495	8.4156	9.7204

* Inclusive of Line Rental Charge (1590 EC): PhP0.1199/kWh

** Covers September 17 to September 25, 2015 only

*** Covers October 26 to November 15, 2015 only

Impact to PELCO II's Generation Charge											
	September 2015			October 2015			November 2015			Sept to Nov 2015 Overall Rate Impact	
	Gen Charge (PhP/kWh)	Rate Impact PhP/kWh M PhP		Gen Charge (PhP/kWh)	Rate Impact PhP/kWh M PhP		Gen Charge PhP/kWh	Rate Impact PhP/kWh M PhP			
Without 1590 EC IPSA	5.1632	-	-	5.1240	-	-	5.4447	-	-	-	-
With 1590 EC IPSA	5.0524	-0.1108	-4.13	5.0361	-0.0879	-3.15	5.1277	-0.3170	11.76	-0.1728	19.03

11. As seen above, for the months of September, October and November 2015, the simulated delivered prices under the IPSA with 1590 EC would result in cost savings in the blended generation rate for the said months of about PhP0.1108/kWh, PhP0.0879/kWh and PhP0.3170/kWh, respectively. This translates into an overall savings of PhP0.1728/kWh for the duration of the IPSA;
12. If the IPSA between PELCO II and 1590EC is not implemented from September 17, 2015 to November 15, 2015, the period during which the Sual Power Plant, PELCO II's primary source of its electricity requirements, will be on scheduled outage, PELCO II will be constrained to source from the WESM, where the simulated cost for the months of September, October and November 2015 are PhP9.5495/kWh, PhP8.4156/kWh and PhP9.7204/kWh, respectively. This can increase further, considering the high volatility of WESM prices. Thus, it is essential and urgent that the application be approved in order to shield the end-users from the volatility of WESM prices;
13. There is a paramount urgency and necessity to implement the subject IPSA from September 17, 2015 to November 15, 2015 in order to ensure continuous and reliable electricity for PELCO II's customers; and
14. PELCO II and 1590 EC 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 **November 27, 2015 (Friday)**

at ten o'clock in the morning (10:00 A.M.) at the PELCO II's Main Office, San Roque, Guagua, Pampanga.

PELCO II 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 PELCO II'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 Offices of the Governor of Pampanga and the Mayors of the City and Municipalities within the franchise area of PELCO II for the appropriate posting thereof on its bulletin board.

PELCO II and 1590 EC 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, PELCO II and 1590 EC 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 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.

PELCO II, 1590 EC 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 PELCO II and 1590 EC 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, PELCO II and 1590 EC 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, October 12, 2015.

FOR AND BY AUTHORITY
OF THE COMMISSION:


JOSE VICENTE B. SALAZAR
Chairman


@p/n/s/2015-168 RC/PELCO II and 1590 PSA Initial Order

ERC
Office of the Chairman



J-2015-019-00858

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5. **Senate Committee on Energy**
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6. **House Committee on Energy**
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7. **The Municipal Mayor**
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8. **The Municipal Mayor**
Municipality of Bacolor
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10. **The Municipal Mayor**
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11. **The Municipal Mayor**
Municipality of Lubao
12. **The Municipal Mayor**
Municipality of Sta. Rita
13. **The Provincial Governor**
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