

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 SUPPLY
AGREEMENT (PSA)
ENTERED INTO BY AND
BETWEEN LEYTE III
ELECTRIC COOPERATIVE
INC., (LEYECO III) AND
FDC UTILITIES, INC.
(FDCUI) WITH PRAYER
FOR THE ISSUANCE OF
PROVISIONAL
AUTHORITY (PA)**

ERC CASE NO. 2015-186 RC

**LEYTE III ELECTRIC
COOPERATIVE INC.,
(LEYECO III) AND FDC
UTILITIES, INC. (FDCUI)
Applicants.**

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D O C K E T E D
Date: **FEB 12 2016**
By: 

ORDER

On 28 October 2015, Leyte III Electric Cooperative, Inc. (LEYECO III) and FDC Utilities, Inc. (FDCUI) filed an Application for approval of their Power Sales Agreement (PSA), with prayer for provisional authority.

In the said application, LEYECO III and FDCUI alleged, among others, that:

THE APPLICANTS

1. LEYECO III was created pursuant to the provisions of the National Electrification Administration Act (R.A. 6038) as amended by Presidential Decree No. 269. Pursuant to this decree, LEYECO III was incorporated and registered on 30 October 1975 with principal office at Brgy. San Roque, Tunga, Leyte. LEYECO III serves the power requirements of the

Municipalities of Alang-alang, Barugo, Capoocan, Cariaga, Jaro, Pastrana, San Miguel, Sta. Fe and Tunga, all in the Province of Leyte.

2. FDCUI is a Corporation duly organized and existing under Philippine Laws, with principal office address at 30th Floor PBCOM Tower, 6795 Ayala Avenue cor. V. A. Rufino St., Makati City. FDCUI was formerly known and registered under the name ALG Renewable Energy Holdings, Inc. FDCUI is a wholly owned subsidiary of Filinvest Development Corporation.

3. Applicants may be served Orders and other processes through their undersigned counsels.

COMPLIANCE WITH PRE-FILING REQUIREMENTS

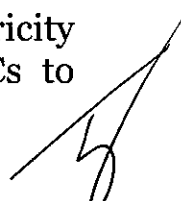
4. In compliance with Rule 6 of the ERC Rules and in support of the instant Joint Application for the approval of the PSA, a copy of the instant Joint Application (including Annexes) was furnished the respective legislative bodies of the Municipality of Tunga and the Province of Leyte, where LEYECO III principally operates.

5. Likewise, a copy of the instant Joint Application (including Annexes) was furnished to the City of Makati where FDCUI principally operates.

6. The entire Joint Application, excluding the Annexes, was published in a newspaper of general circulation within the Franchise Area or area where LEYECO III and FDCUI principally operate.

LEYECO III POWER SITUATION

7. At present, Applicant LEYECO III sources its electricity requirements from various suppliers, however, due to increasing energy demand and volatility of WESM prices, Applicant LEYECO III deemed it necessary to look for additional capacity to address its electricity requirements, aggregating with other Region 8 ECs to



ensure bargaining power in negotiating with potential power suppliers;

Regretfully, sometime in November 2013, Typhoon Yolanda severely hit the region which required rehabilitation efforts and the restoration of reliable electric service which is essential for the economic recovery of the region.

8.To ensure continuous supply and security of electricity within its franchise area, LEYECO III signed a Power Supply Agreement (PSA) with FDCUI on 22 December 2014 for a contracted demand of 1MW for 1 year from December 26, 2015 to December 25, 2016. The power requirements for LEYECO III shall be sourced from the Unified Leyte Geothermal Power Plant (ULGPP) Output administered by FDCUI.

9.Applicant LEYECO III has simulated and forecasted the effect of the inclusion of FDCUI's supply from the ULGPP as follows:

LEYTE III ELECTRIC COOPERATIVE, INC.

Generation Rate Impact

Simulation of Generation Mix Rate with FDCUI for the Year 2016

Power Supplier	Forecasted 2016 Quantity (kWh)	Amount (PhP)	Percent Share (%)	Resulting Capacity Factor (%)	2016 Average Rate (P/kWh)	Weighted Average Rate (kWh)
GCGI	26,280,000.00	137,554,776.00	78.09%	100%	5.2342	5.9721
FDCUI	8,760,000.00	52,136,892.00	26.03%	100%	5.9517	
WESM	(1,388,532.27)	11,277,823.93	-4.13%		-8.1221	
TOTAL	33,651,467.73	200,969,491.93	100%			

Simulation of Generation Mix Rate without FDCUI for the Year 2016

Power Supplier	Forecasted 2016 Quantity (kWh)	Amount (PhP)	Percent Share (%)	Resulting Capacity Factor (%)	2016 Average Rate (P/kWh)	Weighted Average Rate (kWh)
GCGI	26,280,000.00	137,554,776.00	78.09%	100%	5.2342	5.9785
FDCUI						
WESM	7,371,467.73	63,629,693.99	21.91%		8.6319	
TOTAL	33,651,467.73	201,184,469.99	100%			

Generation Rate Impact -0.0064

THE SELECTION OF IPPA ADMINISTRATOR FOR THE STRIPS OF THE UNIFIED LEYTE GEOTHERMAL POWER PLANT

10. On 7 November 2013, PSALM conducted the opening of bids for the Selection and Appointment of Independent Power Producer Administrator (IPPA) for the Strips of Energy of the ULGPP located in Tongonan, Leyte;

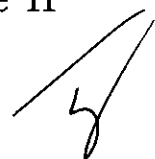
11. FDCUI was selected as the Winning Bidder for 40MW strips of Energy of the ULGPP. The Notice of Award was issued by PSALM on January 29, 2014;

COMPETITIVE SELECTION PROCESS

12. In view of the power supply and demand situation in the region and due to the damage brought about by Typhoon Yolanda, the eleven (11) electric cooperatives of Region 8 composed of Don Orestes Romualdez Electric Cooperative, Inc., Leyte II Electric Cooperative Inc., Leyte III Electric Cooperative Inc., Leyte IV Electric Cooperative Inc., Leyte V Electric Cooperative Inc., Southern Leyte Electric Cooperative Inc., Biliran Electric Cooperative, Inc., Samar I Electric Cooperative, Inc., Samar II Electric Cooperative Inc., Eastern Samar Electric Cooperative, Inc. and Northern Samar Electric Cooperative, Inc. (the "Region 8 ECs") agreed through a Memorandum of Agreement to conduct a joint procurement of their short-term aggregated baseload requirement. A Bids and Awards Committee (BAC) was created to conduct the R8 Joint Competitive Power Supply Procurement ("R8 JCPSP").

13. The Region 8 ECs initially prepared their respective least-cost power supply plans and subsequently their aggregated demand for competitive bidding. Thereafter, a competitive selection process was launched with the publication and announcement of invitations to prospective Bidders (GENCOs, IPP Administrators and Wholesale Aggregators) in the franchise areas of the Region 8 ECs.

14. The Bid required that the capacity offered by the winning bidder shall be allocated among the eleven (11) Region 8 ECs in proportion to their declared demand. A bidder may offer to supply capacity that is less than or equal to the aggregated baseload requirement in any or all of the contract years in increments of 1MW. In the event that some winning bidders offered less than 11 MW, the loads shall be optimally allocated in such a way that the blended price from the R8 JCPSP is almost the same. In the event multiple bidders are declared winners for any contract year, all winning bidders shall enter into individual power supply agreements with each of the 11 ECs.



15. The BAC conducted Pre-Bid Conferences and issued Bid Bulletins and the Final Instruction to Bidders which prescribed the 2-envelope system: (i) the legal requirements and proof of financial and technical capability and (ii) the commercial offer. Bids were evaluated based on an Evaluation Framework released to the Bidders.

16. After evaluation, on November 14, 2014, the BAC issued a Notice of Award declaring FDCUI as a winning bidder of 1 MW for Contract Year 2016 with a Lowest Calculated Responsive Bid Effective Price of Php 5.9517/kWh.

THE POWER SUPPLY AGREEMENT

17. After extensive negotiations, LEYECO III signed on 22 December 2014, a Power Supply Agreement (PSA) with FDCUI from the Strips of Energy of ULGPP for a contracted demand of 1 MW for 1 year.

Executive Summary

18. The PSA governs the relationship between Supplier and Customer for the sale of electric power. The electric power supply will be drawn from the output of ULGPP. The Monthly Generation Charge is equal to Fixed Monthly Charge and Energy Charge. The PSA is subject to customer's security deposit, assignment and, termination.

Salient Features

19. The PSA, between LEYECO III and FDCUI contains the following salient terms and conditions:

19.1 Term - This PSA shall have a term of one (1) year or from December 26, 2015 to December 25, 2016.

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

Contract Year	Duration	Contracted Capacity (CC)
CY 2016	Dec. 26, 2015 – Dec 25, 2016	1,000kW



19.3 Unutilized Contracted Capacity - The unutilized Contracted Capacity of the Buyer may be made available for utilization of other Region 8 ECs or sold to the WESM in accordance with the WESM Rules and WESM, Scheduling and Dispatch Protocol of this PSA.

19.4 Reallocation of Contracted Capacities Among Region 8 - In order to maximize capacity utilization, the Buyer may, from time to time, reallocate to other load nodes, their Contracted Capacities in accordance with the WESM, Scheduling and Dispatch Protocol provided that the Buyer shall still be solely and exclusively responsible for the settlement and payment of the Contracted Capacities. All charges against any of the Parties, related to the reallocation of the contracted capacities such as but not limited to, Value Added Tax, Local Business tax; WESM Charges, Line Rentals and such other incidental or regulatory charges or penalties as may be imposed shall be for the account of the Buyer.

19.5 Reduced Generation Output - Should the Contracted Capacity delivered for the Seller by Unified Leyte Geothermal Power Plant (ULGPP) be interrupted or curtailed to a level below its allocated strips of 40 MW, for the period, due to the fault or lack of generation capacity of the operator of the ULGPP, the Contracted Capacity of the Buyer shall be adjusted proportionately with the other customers of the Seller.

The Total Customers' Contracted Capacity shall be the sum of the Contracted Capacity of the Seller's Customers under a valid and binding power supply contract with the Seller, but not to exceed 40 MW. For this purpose, the Seller shall update the Buyer of its total Customers' Contracted Capacity.

19.6 Replacement Power - In case of reduced Generation Output of the ULGPP, the Buyer shall procure Replacement Power at its own costs. The Seller shall cooperate to arrange for Replacement Power from the WESM.



19.7 Contract Price and Total Monthly Charge -
 The total monthly charge, before taxes, for a billing shall be computed according to the following:

$$\text{Total Monthly Charge} = \text{Fixed Monthly Charge} + \text{Energy Charge}$$

19.7.1 Fixed Monthly Charge

$$\text{Fixed Monthly Charge} = \text{FMFCY} * \sum(\text{CAP}_{\text{Sched}} * H_n)$$

Where:

Fixed Monthly Charge	Fixed Monthly Payment for Contracted Capacity (CC) in Php. E-VAT of 12% shall be applied to this Fixed Monthly Charge.
FMFCY	Fixed Monthly Fee at a given Contract Year (CY) in Php/kWh. FMFCY values are given in the table below.
CAP_{Sched}	Scheduled Capacity in kW For Hour n Where CAP _{Sched} = CC except during interruption or curtailment as provided under Section 1.2
H_n	Specific Hour during the billing period

19.7.2 Energy Charge

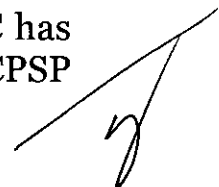
$$\text{Energy Charge} = \text{EF}_{\text{CY}} * \sum(\text{CAP}_{\text{Sched}} * H_n)$$

Where:

Energy Charge	Monthly Payment for actual Energy delivered by the Seller to Buyer in Php. ZERO E-VAT shall be applied to this Energy Charge
CAP_{Sched}	Scheduled Capacity in kW For Hour n Where CAP _{Sched} = CC except during interruption or curtailment as provided under Section 1.2
EF_{CY}	Energy Fee at Contract Year (CY= 2015 or CY= 2016) in Php/kWh
Energy Charge	Monthly Payment for actual Energy delivered by the Seller to Buyer in Php. ZERO E-VAT shall be applied to this Energy Charge

19.8 Security Deposit - The Buyer shall establish a Security Deposit, not later than thirty (30) Business Days after the Effective Date. The Security Deposit shall be equivalent to one hundred percent (100%) of the projected highest monthly Power Bill for the first Contract Year of the Agreement

19.8.1 RENAGMEC Security Fund – The RPC has established a fund exclusively for the R8 JCPSP



Transaction Sellers as an additional security for the amounts payable by the Buyer to the Seller.

If the Security Deposit is insufficient for the amount payable by the Buyer to the Seller, the Seller is entitled to draw the balance from the RENAGMEC Security Fund subject to drawing procedures to be agreed upon by the parties.

OTHER RELATED DOCUMENTS

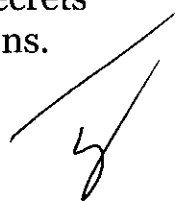
20. In further support of the instant Application, Applicants most respectfully submit to the Honorable Commission, the following documents:

ANNEX	NATURE OF DOCUMENTS
A	Power Supply Agreement between FDCUI and LEYECO IV
B	LEYECO III Certificate of Franchise
C	LEYECO III Certificate of Registration
D	LEYECO III Articles of Incorporation
E	ALG Renewable Energy Holdings, Inc. Certificate of Incorporation
E-1	FDC Utilities, Inc.'s Certificate of Filing of Amended Articles of Incorporation
F	FDCUI General Information Sheet
G	FDCUI latest Audited Financial Statements
H	Affidavit of Service (including annexes) to the Legislative Body of the Municipality of Tunga, Province of Leyte
H-1	Affidavit of Service (including annexes) to the Legislative Body of the Province of Leyte
I	Affidavit of Service (including annexes) to the Legislative Body of the City of Makati
J	Copy of the Affidavit of Publication
K	Copies of Newspaper of General circulation within the franchise area or area where LEYECO III and FDCUI principally operate.
L	Letter to PSALM requesting for certification of insufficiency of capacity to supply Visayas Distribution Utilities.
M	LEYECO III Actual and Forecasted Load Data
N	LEYECO III Rate Impact Analysis
O	LEYECO III Board Resolution No. 2015-08-122
P	Financial Runs and Payment Schedules to PSALM (in a sealed envelope)
Q	PSALM Notice of Award to FDCUI
R	Judicial Affidavit of Roderick Z. Fernandez
S	Region 8 Electric Cooperatives - Memorandum of Agreement

T	Region 8 Electric Cooperatives – Letter of Invitation
U	Region 8 Electric Cooperatives – Newspaper Advertisement
V	Notice of Award declaring FDCUI as a winning bidder
W	Information Memorandum
X	Final Instruction to Bidders
Y	Supplemental Bid Bulletin No. 1
Y-1	Supplemental Bid Bulletin No. 2
Y-2	Supplemental Bid Bulletin No. 3
Y-3	Supplemental Bid Bulletin No. 4
Z	Meeting Notes of Pre-bid conferences
AA	Bid Evaluation Slip
BB	Comparison of Bids
CC	Region 8 Electric Cooperatives – Joint Competitive Procurement Power Supply Process
DD	Region 8 Electric Cooperatives – Sequence of Calculation in the Evaluation Bids
EE	NEA Certification for Standby Credit Facility
FF	RENAGMEC Undertaking
GG	LEYECO III Distribution Development Plan

**ALLEGATIONS IN SUPPORT OF THE
MOTION FOR CONFIDENTIAL TREATMENT OF
INFORMATION**

21. The Honorable Commission may, upon request of a party and determining that the disclosure of information requested to be treated as confidential information is justified, treat certain information submitted to it as confidential.¹ LEYECO III and FDCUI are bound by confidentiality agreement prohibiting the disclosure of any business, technical, marketing, operational, organizational, financial or other information and trade secrets and other confidential documents, papers and information.² Accordingly, the Applicants respectfully request before the Honorable Commission that Annex “P” not be disclosed and be treated as confidential in accordance with Rule 4 of the ERC Rules. These Annexes contain confidential information critical to the business operation of FDCUI including trade secrets and business calculations, assumptions and projections.



¹ Rule 4 - Confidential Information, ERC Rules
² Article 12.4 of the PSA

**ALLEGATIONS IN SUPPORT FOR THE
ISSUANCE OF PROVISIONAL AUTHORITY**

22. The Certificate of Closing and Effectivity for the turnover of the output of the Unified Leyte Geothermal Power Plant is scheduled to be issued on December 19, 2014. FDCUI commences obligation on 00:00H of December 26, 2014 – the effectivity date of the IPPA Administration Agreement dated October 20, 2014. A provisional approval of the PSA with indicative rate, from the Honorable Commission will allow FDCUI to perform its obligation to supply the requirements of LEYECO III and for LEYECO III to receive power from the power plant. The issuance of the provisional authority will allow LEYECO III to charge and collect the respective fees enumerated in the PSA as well as authorize it to pass on the full amount to its consumers.

23. Pursuant to ERC Rules of Practice and Procedures, the Honorable Commission may exercise its discretion by granting provisional authority or interim relief prior to a final decision.

24. It is understood that the interim relief sought by the Applicants that may be granted by Commission, shall be subject to adjustments and other conditions that the Commission may impose after hearing and final determination of the Honorable Commission.

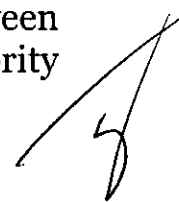
PRAYER

WHEREFORE Applicants LEYECO III and FDCUI most respectfully pray that the Honorable Commission:

(a) Approve the duly negotiated PSA between herein Applicants;

(b) An Order be issued (a) treating Annexes and the information contained therein as confidential, (b) directing their non-disclosure pursuant to Rule 4 of the ERC Rules, and (c) prescribing the guidelines for the protection thereof;

(c) A Provisional Approval of the PSA between LEYECO III and FDCUI as a Provisional Authority



authorizing LEYECO III to pass on the full amount of the fees and charges under the PSA to its consumers;

(d) LEYECO III and FDCUI also pray that after trial on the merits, the Honorable Commission issue a Permanent Approval of the PSA between LEYECO III and FDCUI which would authorize LEYECO III to charge and collect fees under the PSA as well as authorize LEYECO III to pass on the full amount to its consumers, retroactive to the Effective Date of the PSA; and

Other relief just and equitable under the premises are likewise prayed for.

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 **4 March 2016 (Friday) at two o'clock in the afternoon (2:00 P.M.) at LEYECO III's Principal Office, Brgy. San Roque, Tunga, Leyte.**

LEYECO III and FDCUI 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 LEYECO III'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 Leyte and the Offices of the Mayors of the Municipalities within LEYECO III's franchise area for the appropriate posting thereof on their respective bulletin boards.



LEYECO III and FDCUI 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.

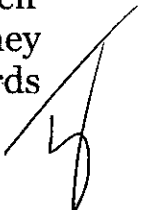
On the date of the initial hearing, LEYECO III and FDCUI must submit to the Commission their written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidence on the actual posting and publication of the Notice of Public Hearing consisting 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.

LEYECO III and FDCUI 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 LEYECO III and FDCUI 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, LEYECO III and FDCUI 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, 11 January 2016.

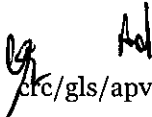
FOR AND BY AUTHORITY OF
THE COMMISSION:


JOSE VICENTE B. SALAZAR
Chairman

ERC
Office of the Chairman



B-2016-009-OC-00652

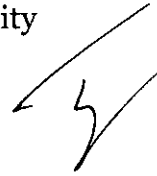

erc/gls/apv/ord.2015-186 RC-LEYECO III-FDCUI/PSA/initial order

Copy Furnished:

1. **Delos Angeles Aguirre Olaguer Salomon
Fabro & Ojeda Law Firm**
Attn: **Atty. Maria Concepcion O. Ojeda**
Counsel for Renagmec Member
240 JP Rizal, Marikina City
2. **Leyte III Electric Cooperative, Inc. (LEYECO III)**
Brgy. San Roque, Tunga, Leyte
3. **QUIASON MAKALINTAL BAROT TORRES
IBARRA & SISON**
21ST Floor Robinsons Equitable Tower 4
ADB Avenue cor Poveda Street
Ortigas Center, Pasig City
4. **FD Utilities, Inc. (FDCUI)**
30TH Floor PBCOM Tower , 6795 Ayala Ave.
Cor. V. A. Rufino St., Makati City
5. **Office of the Solicitor General (OSG)**
134 Amorsolo Street, Legaspi Village, City of Makati 1229
6. **Commission on Audit (COA)**
Commonwealth Avenue, Quezon City 1121
7. **Senate Committee on Energy**
GSIS Building, Roxas Boulevard, Pasay City 1300
8. **House of Representatives Committee on Energy**
Batasan Hills, Quezon City 1126
9. **Office of the Municipal Mayor**
Alang- alang, Leyte
10. **Office of the Municipal Mayor**
Barugo, Leyte
11. **Office of the Municipal Mayor**
Capoocan, Leyte
12. **Office of the Municipal Mayor**
Cariaga, Leyte
13. **Office of the Municipal Mayor**
Jaro, Leyte
14. **Office of the Municipal Mayor**
Pastrana, Leyte
15. **Office of the Municipal Mayor**
San Miguel, Leyte



16. **Office of the Municipal Mayor**
Sta. Fe, Leyte
17. **Office of the Municipal Mayor**
Tunga, Leyte
18. **Office of the Governor**
Province of Leyte
19. **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

A handwritten signature or mark consisting of a long diagonal stroke from the top right to the middle left, and a shorter diagonal stroke from the middle left to the bottom right, forming a stylized 'S' or 'Z' shape.