

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 SALES  
AGREEMENT (PSA)  
ENTERED INTO BY AND  
BETWEEN BUKIDNON  
SECOND ELECTRIC  
COOPERATIVE, INC.  
(BUSECO) AND GERPHIL  
RENEWABLE ENERGY  
INC. (GREI) WITH  
PRAYER FOR THE  
ISSUANCE OF  
PROVISIONAL  
APPROVAL/ AUTHORITY  
AND MOTION FOR  
CONFIDENTIAL  
TREATMENT OF  
INFORMATION**

**ERC CASE NO. 2015-181 RC**

**BUKIDNON SECOND  
ELECTRIC COOPERATIVE,  
INC. (BUSECO) and  
GERPHIL RENEWABLE  
ENERGY, INC. (GREI),  
Applicants.**

**D O C K E T E D**  
Date: FEB 24 2016  
By: [Signature]

**X-----X**

**ORDER**

On 28 October 2015, Bukidnon Second Electric Cooperative, Inc. (BUSECO) and Gerphil Renewable Energy, Inc. (GREI) filed an Application for approval of their Power Sales Agreement, (PSA), with prayer for provisional authority.

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

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### **THE NATURE OF THE APPLICATION**

1. This is a Joint Application submitted to this Honorable Commission for its due consideration and approval of the Power Sales Agreement (PSA) executed by and between BUSECO and GREI, pursuant to Rule 20(B) of the Energy Regulatory Commission's Rules of Practice and Procedure (the "ERC Rules") and other pertinent rules and regulations.

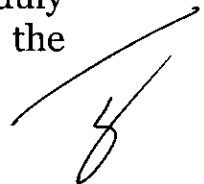
A copy of the PSA and Addendum is attached to the said application as ANNEXES "A" and "B".

### **THE APPLICANTS**

2. Applicant BUSECO is an electric cooperative created and existing pursuant to the provisions of the National Electrification Administration Act (R.A. 6038) as amended by Presidential Decree No. 269. Pursuant to this decree, BUSECO was incorporated and registered on July 26, 1977 with principal office at Manolo Fortich, Bukidnon. BUSECO serves the power requirements of the City of Malaybalay and the Municipalities of Manolo Fortich, Libona, Sumilao, Cabanglasan, Malitbog, Baungon, Impasug-ong, Talakag Lantapan, and Barangay Lilingayon, part of Valencia City, all in the province of Bukidnon ("the Franchise Area"); and for purposes of this Application is represented by the OIC-General Manager DEITER HOFF P. ARELLANO, as authorized by virtue of Resolution No. 14-12-190 dated 12 December 2014 of the Board of Directors. The filing of this Application is likewise authorized under said Resolution, copy of which is attached hereto as ANNEX "C";

Copies of BUSECO's Certificate of Franchise and Certificate of Registration and Articles of Incorporation are attached in the said application as ANNEXES "D", "E" and "F".

3. Applicant GREI is a private corporation duly organized and existing under the laws of the



Republic of the Philippines, with principal office address at Panoon Plant Site, Brgy. Poblacion, Impasug-ong, Bukidnon. For the purposes of this Application is represented by its President, GODOLIVO B. URBIZTONDO JR., duly authorized for the purpose by virtue of Board Resolution No. 04-2015 dated 23 January 2015, copy of which is attached to the said application as ANNEX "G".

Likewise, copies of GREI's Certificate of Incorporation, Articles of Incorporation, General Information Sheet and latest Audited Financial Statements are attached to the said application as ANNEXES "H", "I", "J" and "K".

4. Applicants may be served Orders and other processes through its undersigned counsel.

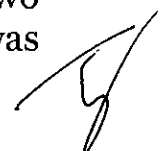
#### **COMPLIANCE WITH PRE-FILING REQUIREMENTS**

5. 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 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 are the certifications issued by the Local Government Units concerned are attached at said application as ANNEXES "L" and "M", respectively.
6. The entire Joint Application, excluding the Annexes, was published in a newspaper of general circulation within the Franchise Area of Applicant BUSECO. Copy of the newspaper and the affidavit of publication are attached to the said application as ANNEXES "N" and "O".



## BUSECO POWER SITUATION

7. BUSECO currently sources the bulk of its electricity requirements from the Power Sector Assets & Liabilities Management Corporation (“PSALM”), Therma Marine, Inc. (“TMI”) and FDC Misamis Power Corporation (“FDC MISAMIS”).
  - 7.a. PSALM & BUSECO executed a Contract for the Supply of Electric Energy (“CSEE”) which was in force from 26 December 2012 to 25 December 2016. However, in a certification dated 22 August 2014 PSALM confirmed that it has insufficient capacity to supply the additional power requirements of the Mindanao distribution utilities beyond the contracted demand and energy in its existing CSEEs. Further, in its letter dated 5 November 2014, PSALM informed BUSECO of the reduction of its CSEE from the average 8.61MW it went down to 6.21MW or 30% reduction on the average, a copy of the PSALM certification and letter are attached in the said application as ANNEXES “P” and “Q”, respectively.
  - 7.b. On 25 March 2015, BUSECO and TMI executed a Supplement Agreement extending the term of the 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 this Honorable Commission in its Order dated July 13, 2015.
  - 7.c. On 15 January 2013, BUSECO and Therma South, Inc. entered into twenty-five (25) years Energy Supply Agreement (ESA) for the supply of two (2) MW baseload. The said ESA was



subsequently approved by this Honorable Commission in its decision dated 8 May 2014. The Commercial Operation Date of the power plant is expected to be in 2015.

- 7.d. On 31 October 2014, BUSECO entered into an Electric Power Purchase Agreement (EPPA) with FDC MISAMIS for a ten (10) MW contracted capacity which started to commence its operation dated 26 December 2014.
8. It is expected that the baseload requirements of BUSECO customers will significantly increase in the next few years as demonstrated by BUSECO's Actual and Forecasted Load Data and Distribution Development Plan, copies of which are attached in the said application as ANNEXES "R" and "S", respectively.
9. The expiration of the PSALM CSEE on 25 December 2016 and the projected increase in the energy requirements of BUSECO customers will result in a shortage of the energy available to BUSECO and its customers.
10. Given its demand growth, Applicant BUSECO deemed appropriate to secure stable, reliable and adequate supply of electricity; Accordingly, finds it rationale to enter into bilateral agreements with various generation companies. Thus, Applicant BUSECO's power supplies are sourced from different power suppliers in order to mitigate the impact of power deficiency in case one power supplier incurs delay in its commercial operation or discontinue the project or when undergoing preventive maintenance.
11. BUSECO solicited offers from generation companies to supply its deficient power requirements. Among the offers considered and evaluated was from Gerphil Renewable Energy, Inc. (GREI) which offered to supply BUSECO 220 kW of demand from its embedded Mini



Hydro Plant located in the franchise area of BUSECO at Panoon, Barangay Poblacion, Impasug-ong, Bukidnon.

12. Based on BUSECO's evaluation, it was determined that the proposal of GREI is advantageous to its consumers. Considering the power plant location and further be connected directly to BUSECO's power distribution network, BUSECO is spared from the payment of transmission and line rental charges.
13. After extensive negotiations, BUSECO and GREI signed the Power Sales Agreement on 28 January 2015.
14. BUSECO has simulated the effect of GREI on its generation cost, taking into consideration the insufficient capacity of PSALM to supply additional energy:

BUSECO's Generation Rate with GREI	Php 4.76657 /kWh
BUSECO's Generation Rate without GREI	4.7570 /kWh
<b>Rate Increment</b>	<b>Php 0.0087 /kWh</b>

### **THE POWER SUPPLY AGREEMENT**

15. On January 28, 2015, BUSECO and GREI signed and executed the Power Sales Agreement (PSA) for a contracted demand of 220kW for 5 years.

#### **Executive Summary:**

- 15.1 The PSA governs the relationship between Supplier and Customer for the sale of electric power. The electric power supply will be drawn from 2 x 110 kW Hydro power generation. The commencement of the obligation of GREI to deliver electric power to its



customers is subject to the satisfaction of conditions precedent, including the declaration of the commercial operation of the power plant. The PSA is subject to customer's assignment and termination.

**Salient Features:**

The PSA between BUSECO and GREI contains the following salient terms and conditions:

- 15.2 Commercial Operation Date - The Commercial Operation Date will immediately take effect after all the requirements (Conditions Precedent to Commercial Operation Date) has been met.
- 15.3 Term - The Term of this Agreement shall be Five (5) years from the Commercial Operation Date, unless extended or revised by mutual written agreement by the Parties. This Agreement may be renewed by written agreement between the Parties not later than sixty (60) days prior to the expiration of the Term.
- 15.4 Service Specification – The Applicants agreed to the following service specifications:

Contracted Demand	220 kW
Contracted Energy	The Customer will take all the kWh generated by the Supplier within the Contracted Demand.



- 15.5 Outage Allowance - The Supplier shall have an Outage Allowance of eight hundred seventy six (876) hours per Contract Year during the term of this Contract.
- 15.6 Generation Charge. BUSECO shall pay the generation charge of 5.20 Peso/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<sub>month</sub> + Fixed Operation and Maintenance Charge<sub>month</sub> + Variable Operation and Maintenance Charge<sub>month</sub>

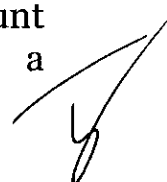
Where:

Capital Recovery Fee<sub>month</sub> = Php 2.35/kWh \* TED  
Fixed Operation and Maintenance Charge<sub>month</sub> = Php 0.81/kWh \* TED  
Variable Operation and Maintenance Charge<sub>month</sub> = Php 2.04kWh \* TED

And where:

TED = Total Energy Delivered to the Customer by the Supplier in kWh during the current Billing Period.

- 15.7 Other Charges - Customer shall be liable for and pay (i) 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, and (ii) any new taxes, fees, charges, levies and imposts (including any increase in the rate or amount thereof after but excluding income taxes) imposed on Supplier after Effective Date. That is if such taxes, fees, charges, levies and imposts are approved by ERC as pass on charges.
- 15.8 Discount for Prompt Payment - The Supplier agrees to grant the CUSTOMER a discount equivalent to 5% of the billing for a





particular month whenever the Buyer shall have paid the Seller in full the monthly billing within ten (10) days from receipt of the monthly billing.

15.9 Assignment. In all cases of valid assignment, the assignee shall assume all the rights and obligations of the assignor under this Agreement.

15.10 Adjustments Due to Force Majeure - The Supplier shall have seventy-two (72) hours to restore interrupted supply counted from the time a Force Majeure Event prevented it from supplying electric power to the Customer. The Customer shall not be entitled to interruption adjustment during such period. On the other hand, the Customer shall have seventy-two (72) hours to resume taking electric power counted from the time a Force Majeure Event prevented it from fully taking its Contracted Energy.

### **OTHER RELATED DOCUMENTS**

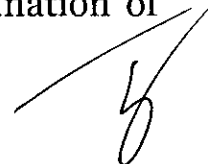
16. In support of the instant application, Applicants most respectfully submit to the Honorable Commission the following documents:

<b>ANNEX</b>	<b>NATURE OF DOCUMENTS</b>
T	BUSECO's Procurement Process
U	BUSECO Rate Impact Analysis
V	BUSECO Demand-Supply Scenario 2013-2020
W	BUSECO Load Curve
X	GREI Board of Investment Certificate of Registration
Y	GREI Certificate of Non-Coverage
Z	GREI Certificate of Compliance
AA	GREI General Plant Description
BB	GREI Sources of Funds/Financial Plans



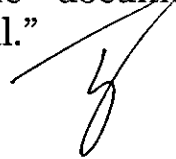
**ALLEGATIONS IN SUPPORT FOR THE  
ISSUANCE OF PROVISIONAL  
APPROVAL/AUTHORITY**

17. As discussed earlier, 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 PSA will enable BUSECO to draw power from co-applicant GREI, thus avoiding the further power interruptions which have already caused irreversible losses on the economic activity within its franchise area. Furthermore, the issuance of the provisional authority will allow BUSECO to pass on to its consumer-members-owners the cost as provided under the PSA. A copy of the sworn statement supporting said motion is attached in the said application as ANNEX "CC".
18. Further, the provisional approval of the instant Application is necessary for GREI deliver power to BUSECO coming from an embedded renewable energy and to charge and collect the fees as provided under the PSA. A copy of the sworn statement supporting said motion is attached in the said application as ANNEX "DD".
19. 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.
20. It is understood that the interim relief sought by the Applicants 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 Honorable Commission.



**MOTION FOR CONFIDENTIAL TREATMENT  
OF INFORMATION**

21. Under Section 13.1 of the PSA, neither Party shall disclose the terms or conditions of this Agreement or any business, technical, marketing, operational, organizational, financial or other information and trade secrets of a party which the other party may acquire in connection with the implementation of this agreement to a third party (other than the Parties' employees, lenders, counsel, accountant or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation or in connection with any court or regulatory proceeding or when the consent of the party is obtained, in all cases with notice to the non-disclosing party; provided, however, each party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure.
  
22. Under Rule 4 of the ERC Rules, the Honorable 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 its undertaking, Applicants respectfully move that ANNEX "BB" not be disclosed and be treated as confidential documents in accordance with Rule 4 of the ERC Rules and, accordingly, not to be disclosed to persons other than the officers and staff of the Honorable Commission, as necessary. These documents contain certain non-public information, data and calculations involving business operations and financial trade secrets reflecting GREI's investment and business calculations.
  
23. The Applicants hereby submits one (1) copy of ANNEX "BB" in a sealed envelope, with the envelope and each page of the document stamped with the word "Confidential."



**P R A Y E R**

WHEREFORE, foregoing considered, Applicants BUSECO and GREI most respectfully pray that the Honorable Commission:

Approve the Power Sales Agreement (PSA) entered into by and between herein Applicants;

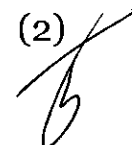
A provisional approval/authority of the Power Sales Agreement (PSA) between BUSECO and GREI be issued, in order to allow GREI to supply the needed power of BUSECO; authorizing BUSECO to accept such power supply; and pass on the full amount of the fees and charges under the Power Sales Agreement to its consumers as may be billed by GREI;

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

BUSECO and GREI further pray that after trial on the merits, the Honorable Commission issue a permanent approval of the PSA between BUSECO and GREI, which would permanently authorize BUSECO to charge and collect the fees under the PSA 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 **14 April 2016 (Thursday) at ten o'clock in the morning (10:00 A.M.) at BUSECO's Principal Office, Manolo Fortich, Bukidnon.**

BUSECO and GREI 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 Office of the Governor of the Province of Bukidnon and the Offices of the Mayors of the Municipalities within BUSECO's franchise area for the appropriate posting thereof on their respective bulletin boards.

BUSECO and GREI 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 GREI 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.

BUSECO and GREI 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 BUSECO and GREI 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 GREI 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.

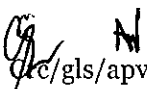
**SO ORDERED.**

Pasig City, 11 January 2016.



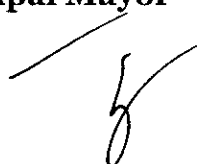
FOR AND BY AUTHORITY OF  
THE COMMISSION:

  
**JOSE VICENTE B. SALAZAR**  
Chairman

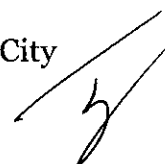
  
cc/gls/apv/ord.2015-181 RC-BUSECO-GREI/PSA

Copy Furnished:

1. **A. C. GAVIOLA LAW OFFICE**  
Counsel for the Applicant  
Rm 203, 2/F Crown Port View Hotel  
3<sup>rd</sup> Avenue, North Reclamation Area  
Cebu City
2. **Bukidnon Second Electric Cooperative, Inc. (BUSECO)**  
Manolo Fortich, Bukidnon
3. **Gerphil Renewable Energy, Inc. (GREI)**  
Panoon Plant Site, Brgy. Poblacion  
Impasug-ong, Bukidnon
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, Bukidnon
9. **Office of the Municipal Mayor**  
Manolo Fortich, Bukidnon
10. **Office of the Municipal Mayor**  
Libona, Bukidnon
11. **Office of the Municipal Mayor**  
Sumilao, Bukidnon
12. **Office of the Municipal Mayor**  
Cabanglasan, Bukidnon
13. **Office of the Municipal Mayor**  
Malitbog, Bukidnon
14. **Office of the Municipal Mayor**  
Baungon, Bukidnon
15. **Office of the Municipal Mayor**  
Baungon, Bukidnon



16. **Office of the Municipal Mayor**  
Impasug-Ong, Bukidnon
17. **Office of the Municipal Mayor**  
Talakag, Bukidnon
18. **Office of the Municipal Mayor**  
Lantapan, Bukidnon
19. **Office of the Barangay Chairman**  
Brgy. Lilingayon, Valencia City
20. **Office of the Provincial Governor**  
Province of Bukidnon
21. **Philippine Chamber of Commerce and Industry (PCCI)**  
3<sup>rd</sup> Floor, Chamber and Industry Plaza (CIP),  
1030 Campus Avenue corner Park Avenue,  
McKinley Town Center, Fort Bonifacio, Taguig City

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